# Report of the

# Public Utilities Commission of Utah

## to the Governor

December 1, 1922 to November 30, 1923

ARROW PRESS
Salt Lake City, Utah

## COMMISSIONERS

December 1, 1922, to November 30, 1923.

THOS. E. McKAY, President
WARREN STOUTNOUR
E. E. CORFMAN
FRANK L. OSTLER, Secretary

Office: State Capitol, Salt Lake City, Utah

To His Excellency, Charles R. Mabey,
Governor of the State of Utah.

Sir:

Pursuant to Section 4780, Compiled Laws of Utah, 1917, the Public Utilities Commission of Utah herewith submits its Annual Report, covering the period of December, 1, 1922, to November 30, 1923, inclusive.

## COURT DECISIONS

During the fiscal year ended November 30, 1923, the Supreme Court of Utah rendered its decision in the following case:

City of St. George,
vs.
Dixie Power Company and
Public Utilities Commission of Utah.

Copy of this decision will be found under Appendix III.

## STATISTICS

The following is a summary of matters before the Commission during the period covered by this report:

| | Filed | Closed | Pending |
|---|---|---|---|
| Formal Cases ..... | 87 | 69 | 18 |

At the beginning of the period, there were 33 formal cases pending, 2 from the year 1920, 6 from the year 1921 and 25 from the year 1922.

The two cases from 1920 have now been closed, and one from the year 1921 has been closed, leaving five still pending (Nos. 399, 418, 450, 477 and 488). Of the 25 cases from 1922, 18 have been closed, leaving 7 still pending (Nos. 500, 573, 576, 580, 584, 592 and 597). Total cases pending as of November 30, 1923, 30.

The Commission also issued 193 Ex Parte Orders, 43 Special Dockets (Reparation), 9 Grade Crossing Permits and 27 Certificates of Convenience and Necessity.

## FINANCIAL

The following is a statement of the finances of the Commission from December 1, 1922, to April 1, 1923.

### Receipts

| | |
|---|---|
| Unexpended balance on hand, November 30, 1922 | $12,426.70 |
| Receipts from sale of documents | 352.10 |
| Total | $12,778.80 |

### Disbursements

| | | |
|---|---|---|
| Salaries, Clerical | $3,088.36 | |
| Salary, Secretary | 533.93 | |
| Salaries, Commissioners | 5,444.44 | |
| Travel and Contingencies | 1,525.83 | |
| Total Disbursements | | 10,592.56 |
| Balance | | $ 2,186.24 |

$2,186.24 was the balance of appropriation which lapsed and was turned back into the General Fund, June 1, 1923, and was composed of the following items:

| | |
|---|---|
| Salaries, Clerical | $ 1,043.52 |
| Salaries, Commissioners | 555.56 |
| Salary, Secretary | 266.07 |
| Travel and Contingencies | 321.09 |
| Total | $ 2,186.24 |

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Respectfully submitted,

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

# FINANCIAL

The following is a statement of the finances of the Commission from April 1, 1923, to November 30, 1923.

| NAME OF ACCOUNT | Appropriation | Total Amount Appropriated | Expenses to Nov. 30, 1923 | Amount of Appropriation Expended | Balance on hand | Available Balance |
|---|---|---|---|---|---|---|
| Salaries | $40,000.00 | | $11,533.34 | | $28,927.61 | |
| Credits through sale documents | 460.95 | $40,460.95 | | $11,533.34 | | $28,927.61 |
| **Office Expenses** | | | | | | |
| Office Supplies | 350.00 | | 130.97 | | 219.03 | |
| Postage | 400.00 | | | | 400.00 | |
| Premiums | 200.00 | | 122.50 | | 77.50 | |
| Printing | 400.00 | | 86.24 | | 313.76 | |
| Telephone and Telegraph | 150.00 | | 29.10 | | 120.90 | |
| *Subscriptions | | 1,500.00 | 17.00 | 385.81 | 17.00 | 1,114.19 |
| **Traveling Expenses** | | | | | | |
| Officers | 1,200.00 | | 115.70 | | 1,084.30 | |
| Employes | 600.00 | 1,800.00 | 26.65 | 142.35 | 573.35 | 1,657.65 |
| **Equipment** | | | | | | |
| Office Equipment | 200.00 | | 27.98 | | 172.02 | |
| Books and Maps | 300.00 | 500.00 | 45.50 | 73.48 | 254.50 | 426.52 |
| **Repairs** | | | | | | |
| Total Repairs | 50.00 | 50.00 | 6.50 | 6.50 | 43.50 | 43.50 |
| Grand Total | | $44,310.95 | | $12,141.48 | | $32,169.47 |

Summary:

Appropriation April 1, 1923, and Credits to November 30, 1923 ..... $44,310.95
Expenditures from April 1, 1923, to November 30, 1923, and Balance on hand ..... 44,310.95

*No distribution of Office Expenses for subscriptions was made.

## COMMISSIONERS

A. R. HEYWOOD, President
WARREN STOUTNOUR
JOSHUA GREENWOOD
T. E. BANNING, Secretary.

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THOMAS E. McKAY, President
WARREN STOUTNOUR
E. E. CORFMAN
FRANK L. OSTLER, Secretary

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President Heywood died January 9, 1923.

Judge E. E. Corfman qualified as Commissioner, March 1, 1923, to fill the vacancy caused by Mr. Heywood's death.

T. E. Banning, Secretary, resigned February 15, 1923.

Judge Joshua Greenwood's term expired April 1, 1923.

Mr. Thomas E. McKay qualified as Commissioner, April 2, 1923, to succeed Judge Greenwood.

April 10, 1923, Thomas E. McKay chosen President, Frank L. Ostler chosen Secretary.

Mr. Frank L. Ostler assumed duties as Secretary, April 17, 1923.

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Office: State Capitol, Salt Lake City, Utah.

# APPENDIX I.
## Part 1—Formal Cases.

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

SALT LAKE REAL ESTATE BOARD, et al.,
*Complainants,*
vs.
UTAH POWER & LIGHT COMPANY,
*Defendant.*
} CASE No. 162

Decided March 19, 1923.

### REPORT AND ORDER OF THE COMMISSION

By the Commission:

This complaint was filed April 4, 1919, alleging that the rules and regulations of the defendant Company relating to the extension of lines to proposed new customers for supplying electric lights and fuel service, are unreasonable, unjust and discriminatory.

After a partial hearing, complainants and defendant were able to reach a satisfactory conclusion as to all concerned in the controversy, and on June 30, 1919, the parties appeared before the Commission and submitted certain proposed amendments to rule 12 on extensions, which amendments and modifications were agreed to as being satisfactory to both parties. Thereupon, an order was issued, subject to any further action that the Commission might deem necessary on its own motion, or on complaint or action by the public.

May 5, 1920, the case was reopened for further investigation into the reasonableness of the rule governing extensions to new customers, and further testimony was taken September 20, 1921.

The Commission having given careful consideration to this question, and being fully advised in the premises, is of the opinion that further investigation should be suspended and the case dismissed, without prejudice.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Application of the MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, to change toll, rural and certain exchange rates, and to restrict certain local service areas in the State of Utah. | CASE No. 206-A |

Submitted December 22, 1922 Decided March 14, 1923.

Appearances:

D. W. Moffat, for Salt Lake County Farm Bureau, Salt Lake County Citizens Committee, et al.
W. H. Folland, for Salt Lake City.
John E. Pixton, for Murray City.
L. Loraine Bagley, for residents of Salt Lake County.
Milton Smith, for Mountain States Telephone & Telegraph Co.

REPORT OF THE COMMISSION UPON REHEARING

By the Commission:

The above matter was submitted September 8, 1922, upon various applications for a rehearing and for a suspension of the order heretofore made, and on said date, the case having been submitted upon said applications and the protest against any rehearing filed on the part of the Mountain States Telephone & Telegraph Company, and the Commission being willing to afford the ample opportunity for the presentation of any matters pertinent to the issues involved, upon its own motion, granted a rehearing by an order made and entered on September 11, 1922, but without any suspension of the order previously entered. Thereafter, on December 18 to December 22, 1922, inclusive, a rehearing was had and the case finally submitted to the Commission.

In our opinion and order in this case, decided July 27, 1922, we stated:

> "The principle of eliminating district service wherever possible, is economically sound, and where discriminatory practices exist, such as here, the continuation of such practice is illegal."

The Commission established for the cities of Murray, Midvale and Holliday, a schedule of base area rates, and, in

the following language, established a five cent charge for direct calls between Murray, Midvale, Holliday and Salt Lake City, to wit:

> "The so-called two-number toll system should be established with a five cent charge for direct calls between Murray, Holliday, Midvale and Salt Lake City. Applicant asks that the charge to Midvale be made ten cents. We believe, however, that the charge should at this time be universal at five cents and the local rates named in the application for business and residence, for the exchanges of Murray, Midvale and Holliday, approved."

In the opinion above referred to, the Commission also said:

> "Where communities are self-contained, are separately built up, maintain industries, stores, etc., and, generally speaking, are communities in and of themselves, there should be a telephone rate schedule for that community with rates commensurate with the value of that service, and a toll or long distance service from that locality or town to all other localities or towns."

After full consideration of all material facts that have any bearing upon the issues raised in this case, we are still of the opinion and find that the district service must be eliminated, as it is contrary to law, resulting in and constituting discrimination and preferential rates.

As to Murray and Midvale, the evidence clearly discloses that both of these cities or towns are self-contained, being separately built up and maintaining industries, stores, churches, schools; in fact, are fully equipped to and do meet the requirements of the population for food, clothing, social service and the other features that go to make up what is described or defined as a self-contained community. On the other hand, the record also discloses that Holliday has not to the same extent the features above outlined as applicable to Murray or Midvale. It is more essentially a residential section. There are few business telephones in Holliday. The telephone development in Holliday is almost exclusively residence service. Fewer patrons, relatively speaking, have any business communication within the Holliday exchange. The greatest use of the telephone for business purposes in Holliday is to communicate with Salt Lake City. There is sufficient communication between those connected with the Holliday exchange of a social and local nature to warrant the establishment of the exchange at

Holliday. This, however, does not change essential features of the exchange, as above described. Therefore, the conditions in the Holliday exchange seem to justify a modified schedule of local base area rates than either Murray or Midvale. The conditions under which the so-called two-party or A-B service is given between these three exchanges and Salt Lake City, are essentially the same and consequently the charge for directing calls between these exchanges, should be the same. We established a five cent charge for this service, and it should remain.

Because different conditions, as clearly shown in this record, prevail in Holliday than in Murray or Midvale as to the local service as above set forth, the schedule of business and residence rates for Holliday base rate area should be different and on a lower level than for the Murray and Midvale base rate areas. Under the circumstances in which the patrons of the Company in Holliday base rate area find themselves, we have concluded that the business rates in Holliday should be reduced fifty cents per month, and the residence rates should be reduced twenty-five cents per month; that the schedule of business and residence rates of Holliday base rate area should be as follows:

| | |
|---|---|
| One-party business ..... | $48.00 per annum. |
| Two-party business ..... | 42.00 per annum. |
| One-party residence ..... | 24.00 per annum. |
| Two-party residence ..... | 21.00 per annum. |
| Four-party residence ..... | 18.00 per annum. |

It was urged in this case that the rates found by the Commission were unjust and discriminatory, for the reason that the price paid in consideration of the extent of the use was higher than in any other parts; that the base rate areas and the exchange areas had been cut down; so that the use of the telephones is limited, so much so that the rates paid for such use are unreasonably high and discriminatory.

The Commission, in its former order, instituting A-B service, reduced the monthly rental rates. The following table shows the rates charged before and after the Commission's order which eliminated district service:

| Classification of Service | Former Rates | Rates as Reduced |
|---|---|---|
| 1-Party Business ..... | $6.50 | $4.50 |
| 2-Party Business ..... | Not quoted | 4.00 |
| 1-Party Residence ..... | $3.00 | $2.25 |
| 2-Party Residence ..... | 2.50 | 2.00 |
| 4-Party Residence ..... | 2.00 | 1.75 |

It was contended that the extent of the use permitted in Salt Lake City was very much greater than that of the three exchanges in question.

The following table shows the rates as compared between Salt Lake City and Murray, Midvale and Holliday exchanges with the amount of difference for the same classes of service in these different areas:

| Class of Service | Salt Lake | Murray Midvale Holliday | Difference |
|---|---|---|---|
| 1-Party Business ..... | $8.50 | $4.50 | $4.00 |
| 2-Party Business ..... | Not quoted | 4.00 | .... |
| 1-Party Residence ..... | $4.00 | $2.25 | $1.75 |
| 2-Party Residence ..... | 3.25 | 2.00 | 1.25 |
| 4-Party Residence ..... | 2.50 | 1.75 | .75 |

A thorough check of the base rate areas and exchange areas of Murray, Midvale and Holliday, discloses the fact that the base rate areas are especially large and greater than many other such areas. Likewise, the exchange areas are, on an average, larger than many others in the state. Also, such areas carry a population larger than many others of the same class; so, the charge of discrimination is not well taken.

The above figures clearly indicate that the rates as established by the Commission are not, on an average, higher than in other parts of the state, while compared with some parts, are lower.

After a careful consideration of all matters submitted at the hearing, the Commission is of the opinion that no sufficient reason is shown for departing from or in any respect modifying or changing its order entered heretofore on the 27th day of July, 1922, except in the particular as to business and residence rates for the Holliday base rate area, as above set forth.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 14th day of March, A. D. 1923.

| | |
|---|---|
| In the Matter of the Application of the MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY, to change toll, rural and certain exchange rates, and to restrict certain local service areas in the State of Utah. | CASE No. 206-A |

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the business and residence rates of the Mountain States Telephone & Telegraph Company within the base rate area of the Holliday exchange, shall be as follows:

| | |
|---|---|
| One-party business ..... | $48.00 per annum. |
| Two-party business ..... | 42.00 per annum. |
| One-party residence ..... | 24.00 per annum. |
| Two-party residence ..... | 21.00 per annum. |
| Four-party residence ..... | 18.00 per annum. |

ORDERED FURTHER, That, with the exception of the above mentioned rates within the Holliday base rate area, the previous order of the Commission dated the 27th day of July, A. D. 1922, shall continue in full force and effect.

ORDERED FURTHER, That the rates herein above set forth shall be made effective April 1, 1923, by giving due notice to the public and to the Commission, such notice to be given by publishing and filing schedule naming such rates in the manner heretofore prescribed by the Commission.

ORDERED FURTHER, That schedules naming such charges shall show in connection therewith the following notation:

"Issued upon less than statutory notice by authority Public Utilities Commission of Utah, Case

No. 206-A, dated at Salt Lake City, Utah, the 14th day of March, 1923."

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Investigation of Special Contracts of the UTAH POWER & LIGHT COMPANY for electric service. } CASE No. 230

Submitted November 8, 1922. Decided December 7, 1922.

Appearances:
J. F. MacLane, for Utah Power & Light Co.
Devine, Howell, Stine & Gwilliam, for Bamberger Electric Railroad Company.

## REPORT OF THE COMMISSION

By the Commission:

The Commission, by its order dated September 27, 1919, entered upon an investigation of some seventy-six special contracts for electric service of the Utah Power & Light Company, under which contracts the customers receiving service under the same were enjoying apparently preferential and discriminatory rates for power service. Both the Power Company and the customers were directed to appear and justify, if they could, the apparently preferential and discriminatory rates named in the respective contracts.

Pursuant to this order, the parties named therein, among which was the Bamberger Electric Railroad Company, appeared before the Commission, and hearings were had and testimony was introduced which, before the investigation was concluded, involved weeks in the examination of witnesses, and inquiry into practically every phase of the Power Company's business, including its revenues, rate structure, the circumstances and conditions surrounding the business, both of the Power Company as a whole, and the contracts in particular.

As a result of this investigation, the Commission, on October 18, 1920, Case No. 230, P. U. R. 1921-B, 827, issued its order, effective October 22, 1920, wherein it found the contract rates discriminatory and preferential, not in keeping with the standard rates, and directed that

consumers, under the restrictive contracts, be served on the Power Company's applicable standard schedules.

As to certain contract customers, the Commission found, however, as follows:

> "The Commission is of the opinion that the evidence before it as to the special consideration involved in each of the contracts of the following consumers warrants it in making a separate and further investigation as to each of said contracts, and while the Commission will direct that pending an opinion and finding as to each of these contracts, the holders thereof shall be placed on standard schedules applicable to like service, the Power Company will also hold itself ready to make such reparation as the Commission may order, if any be found just and reasonable: * * * Salt Lake & Ogden Railroad Company."

By the Commission's order, predicated on this finding, it is provided:

> "That the Commission shall, and it hereby does, retain jurisdiction over each of said contracts for the express purpose of further investigation, particularly as to the special consideration, if any, involved in each of said contracts."

Pursuant to the above, and upon application of the Bamberger Electric Railroad Company, the present hearing was ordered on the contract of the Salt Lake & Ogden Railway Company (now known as the "Bamberger Electric Railroad Company") with a view of determining the value, if any, of a special consideration for the preferential rate so found by the Commission, in the power contract in question. Hearing was had upon a written stipulation of facts, filed June 14, 1920, during the general hearing and investigation heretofore mentioned, and on oral testimony introduced on August 22 and 23, 1922.

The law of the case, with the findings and order of this Commission have been settled in the former hearing, Case No. 230, which held that under the Public Utilities Act of Utah, and particularly under Sections 4788, 4789, 4799 and 4800, Compiled Laws of Utah, 1917, charges for public utilities service must be in accordance with published schedules; that preference and discrimination were expressly prohibited, and that contracts made before or after the creation of the Public Utilities Commission could not justify the continuance of the discriminatory rate, but such

a discriminatory contract rate must yield to the statutory requirement of conformity to schedule.

As to the claim made by all the contract customers involved in the case, that the proviso in Paragraph 3, Section 4787, of the Compiled Laws, 1917, that nothing contained in the Act should be construed "to prevent the carrying out of contracts for free or reduced rate, passenger transportation or other public utility service heretofore made, founded upon adequate consideration and lawful when made," exempted all pre-existing preferential contracts from interference, if founded on an adequate consideration in the legal sense and permitted by law at the time when they were made, we held:

> "The term 'adequate' as used in the exception clause would seem to imply a separate and additional consideration than the stipulated price to be paid for the service or commodity. It appears to the Commission that in the absence of a showing that as part of the contract price paid for the service there was actually passed from the consumer something of value to the power company in the giving of service to the public, there was no such special consideration as would make the reduced contract rate non-discriminatory. Something of value must be shown to have moved from the beneficiary of the reduced rate or free service to the utility rendering such service. In that event, the company would have received something for which it should properly be charged. And if the showing was that such thing of value actually did pass, the Commission would then have to determine the amount of such value and apply it along with the rate fixed in the contract, and thereby ascertain whether or not the thing of value passed from the consumer to the power Company justified in the whole or in part the reduced rate named in the contract."

This finding of the Commission was reviewed by our Supreme Court on a writ of certiorari, to which this railroad was a party. In this case, the Court sustained the order of the Commission as to all contracts involved, discussed at length the meaning of the words "adequate consideration" required to exclude a contract from the statutory prohibition involving preference and discrimination.

In this connection, the Court said:

> "By adequate consideration, therefore, as that term is used in the Act, is meant such a consideration

> as when added to or considered in connection with the reduced rate agreed upon will make such rate non-preferential and non-discriminatory by reason of the fact that the additional consideration paid and received will prevent the reduced rate from being preferential in that the contract, within the purview of the Act, is then 'founded upon an adequate consideration.'"

After further consideration and elaboration, the Court concluded:

> "If, after a consideration of the foregoing elements a rate, if continued, would be preferential and discriminatory, then, in our judgment, the Commission should find that the contract fixing such rate is not founded upon an adequate consideration within the purview of the Act, and the rate agreed upon schould be modified so as to prevent it from being preferential and discriminatory. It needs no argument to determine that whether a rate is founded upon an adequate consideration, and is preferential and discriminatory or not, is, to say the least, a mixed question of law and fact, and, in most instances, principally one of fact, and must, therefore, be determined by the Commission from all the facts and circumstances, as before indicated."

This decision of the Supreme Court of Utah was affirmed by the Supreme Court of the United States, under the title "Ogden Portland Cement Company vs. Public Utilities Commission of Utah," in memorandum of decisions filed April 10, 1922, United States Supreme Court Advanced Opinions, July 21, 1922, Page 481.

After the decision of the Supreme Court in this case, companion Case No. 248, entitled "In the Matter of the Application of the Utah Power & Light Company to increase its power rates," was decided by the Commission and was also taken to the Supreme Court for review under the title, "Utah Copper Company vs. Public Utilities Commission of Utah," reported in 203 Pacific Reporter, 627, and in that case, the Court approved and confirmed its ruling in the former case, and sustained the order of the Commission in applying the new rate schedules fixed by the Commission in that case to the special contract consumers involved in former case.

Thereafter, in the application of the Utah Power & Light Company to increase steam service rates, reported in P. U. R. 1922-A, 436, the contract with the Hotel Utah

Company, involved in Case No. 230, and which is another of the contracts over which the Commission reserved jurisdiction for further investigation as to the considerations involved, the Commission applied its former rule and the test of adequacy of consideration laid down by the Supreme Court, in the U. S. Smelting Company case, and applied the general schedules for steam and electric service to the Hotel Utah Company, in lieu of the contract rates, subject to a credit representing the annual value throughout the life of the contract, of special considerations, over and above the contract rate for service found to have been involved in that transaction. This credit amounted to less than 5 per cent of the annual bills for service under the schedules.

This order of the Commission was likewise taken to the Supreme Court of Utah, and is reported under the title "Utah Hotel Company vs. Public Utilities Commission. 204, Pacific 511, P. U. R. 1922-C, 443.

In this case the Supreme Court reviewed fully and at great length all previous cases before the Court, and confirmed the order of the Commission.

The claim of the Bamberger Electric Railroad Company, which will hereafter be referred to as the Railroad Company in this hearing, was therefore confined to the single question: Whether this contract rate, admittedly preferential to the extent of approximately 50 per cent of standard schedules, was justified by a special consideration for which it was not otherwise compensated than the preferential rate and which equalled or at least approximated in value the difference between the contract and the standard schedule rates.

The Railroad Company bases its claim for such consideration, on the following facts:

The Salt Lake & Ogden Railroad Company, predecessor in interest of the Bamberger Electric Railroad Company, constructed a railroad between Salt Lake City and Ogden, and was desirous of electrifying it. Mr. Simon Bamberger, who controlled the road, made a water power filing in 1909, claiming to divert 300 second feet of water from the Weber River by means of the Davis & Weber Canal Company Irrigation Canal, and to utilize the fall back to the river obtained at a point some miles distant from the intake.

This filing is claimed to have been of great value because of its expropriation of already existing hydraulic works, consisting of the irrigation dam and canal, per-

mitting a very inexpensive development for power purposes near the center of the power market. It is claimed by the railroad Company that conditions for the production of power at this site were not only equal to what are ordinarily found at other plants, but were described as "unique." Although the canal company had apparently not heretofore realized the advantages of this situation for power purposes, they quickly realized them once the filing was made, and it is claimed by the railroad company that the canal company proposed that if Mr. Bamberger would assign his water rights for power purposes to the canal company, the canal company would build a power plant and furnish him power at approximately one-half the going rate for power, for a contract period of 25 years. This filing, it was claimed, was transferred to the Davis & Weber Counties Canal Company, hereinafter called the Canal Company, in consideration of its developing this power site and agreeing to furnish power at a low rate to the Railroad Company. This contract is in evidence and purports to give the Railroad Company a preferential right to power to the extent of 1250 H. P., with option on additional power at a rate of $2.50 per H. P. per month.

Later, and before the plant was placed in operation, it appears that a three cornered arrangement was entered into between the Railroad Company, the Canal Company and the Utah Power & Light Company, which latter company then appeared upon the scene and is hereafter referred to as the Power Company, whereby the Power Company purchased the power plant of the Canal Company, paying therefor, as is stipulated, "the full cost and capital values of the plant so purchased."

The Railroad Company released and cancelled its power contract with the Canal Company and the Power Company and Railroad Company made a new contract for power at an admittedly very low rate in consideration of the release of the power contract with the Canal Company, which enabled the Power Company to buy the power plant, released of all contract or service obligations. Under these circumstances, the Railroad Company claims that it was never paid for its water filing, except in its low rate for the power stipulated in the contract with the Canal Company. That on the release of that contract, this new contract with the Power Company was substituted therefor, and the Power Company became obligated, as the Canal Company was formerly obligated, to pay for the water right, through the preferential rate for power. It is

claimed that this water filing was worth, as appraised by various witnesses, $250,000.00 to $300,000.00, or more. As compared with both the present schedules and with going rates for power at the time the contracts were made, the preference for a twenty-five year period of the contract would amount to approximately $600,000.00, and this would represent the price to be paid for the water right over the life of the contract.

The Power Company denies that the contract with the Davis & Weber Canal Company expressed a low rate for power in consideration of the sale of such water rights to the Canal Company; denies any substantial value to the water rights, and alleges that relying on the stipulation, as above referred to, that whatever value the rights had they were fully paid for by the Power Company in the purchase of the power plant. The Power Company further contends that the water filing possessed only a strategic value in that the making of the filing, although Mr. Bamberger did not own a foot of ground, spent no money on development, risked no capital or reputation in the enterprise, carried with it the ability to obstruct development by the Davis & Weber Company, except upon terms and under conditions that would put the Railroad Company in possession of a contract naming rates for power satisfactory to himself.

Expressed briefly, the fundamental question presented here, therefore, is one of the value of this water right filing.

Had the water filing made by Mr. Simon Bamberger at the Davis & Weber Canal site any substantial value which is sufficient to justify the admitted discrimination in the contract rate or to justify the Commission in establishing a differential from the schedule rate in favor of the Bamberger Electric Railroad Company?

The record contains much expert testimony as to the relative costs of steam and water power generation of electricity, and the resultant value of water power rights equated to the competitive costs of coal, considering the water as analagous to an inexhaustible coal supply.

This Commission here desires to go on record as denying as controlling any such theory of determining the value of water rights for power purposes. Utah and the intermountain country have splendid natural advantages as regards developed and undeveloped water power; to put a value upon water rights, equated to the competitive cost of coal, which must later be capitalized and reflected

in rates paid by the consumers, would operate to deprive the public of these natural advantages and be destructive of public right. To value water rights solely upon this basis would benefit hugely the owners of these water rights who secured them under state and Federal laws at nominal expense, and would be inimical in the end to the very parties who now propose it. The benefit of available water power should move to both the producer and consumer of water power. This cannot be realized under any such theory.

Further, the record of annual stream flow of the Weber River shows that there is not sufficient water to supply power for any such dependable output of electricity, as it was sought to show the hypothetical steam plant could produce in translating the costs of coal into value of water rights. The minimum stream flow is shown to be only 20 or 30 second feet available for power purposes.

An attempt was also made in this case to value the so-called water right here involved by comparison with the capitalized value of the annual rental paid under the Judge contract. The conditions are so entirely dissimilar that no direct, rational comparison can be made. The stream flow in the Weber River available under this filing varies, as before stated, from a minimum of from 20 to 30 second feet upward to 300 second feet, depending upon stream flow and the demands of the irrigators, and is zero so far as power purposes are concerned in winter months, while the record shows that the flow of waters from the Snake Creek tunnel concerned in the Judge contract is practically uniform. It only varies a small per cent from month to month each year, winter and summer. It has a reliably developed and completely vested right of ownership. The conditions in the two cases are very dissimilar.

As to the question of the disposition of excess power over and above the requirements of the railroad, the testimony of witness Devine is that Mr. Bamberger assigned the excess power to another company, at the same price as the Railroad Company was required to pay the Canal Company. No profit was realized from this transaction.

As to the equivalence or non-equivalence of the rates in the two power contracts with the Canal Company and the Railroad Company and the Railroad Company and the Power Company, respectively, much testimony was given; whether exactly equivalent or not, this Commission is unable to say. What did happen, as we understand it, is that after prolonged conference by experts, a new contract

was substituted for the old, that was satisfactory to both sides.

Conceding that water rights are private property and subject to private ownership and that they possess a value which must be recognized by commissions and courts, the measure of such value has seldom, if ever, been accurately defined, as stated by the Railroad Company's witness, Mr. Butler, it is a matter of judgment, taking into consideration all elements. Generally speaking, but without intending in this case to lay down any binding rule, the market value of similar water rights, their cost to the utility originally, or the cost to reproduce them, would seem to indicate the proper measure of value and that which would accord with established valuation principles.

In this case, the water filing admittedly cost nothing, beyond nominal filing and surveying fees. It was merely in Mr. Bamberger's hands—a right to develop water power, subject to lapse or abandonment. He risked no capital in development. It would cost nothing to reproduce the right he possessed, except the nominal filing and surveying fees if it had not already been developed. There is no evidence of sales of any similar rights. The contract he made with the Canal Company is silent as to any sale of the right as a consideration for the rate expressed in the contract. Mr. Bamberger possessed the water filing, the Davis & Weber Counties Canal Company, the irrigation canal and diverting works.

Mr. Bamberger, with the keen vision and foresight for which he is noted, joined with the Canal Company in constructing a power project. He put into the enterprise the water filing. The Canal Company put in the capital and existing works. It is usual in commission practice, and has been our practice, to allow something by way of reward for conceiving and constructing such projects over and above the actual out-of-pocket cost thereof. Men who have the ability to construct legitimate enterprises of this kind should be compensated sufficiently to encourage enterprise, and such compensation should be treated as a return for useful services rendered, but an extravagant reward should not be permitted or exacted. This compensation is generally fixed at about 5 per cent of the actual cost, and this principle should govern in fixing the value of this water filing, as Mr. Bamberger's contribution to the enterprise.

The evidence in this case discloses that the purchase price of the Power projects was about $525,000.00, upon which sum, we have based Mr. Bamberger's consideration,

with additional amounts to cover any incidental expenses he may have incurred, in the way of surveying, filing and legal fees, in making this water filing.

The Canal Company received their share of such compensation in the purchase price when they sold the plant to the Utah Power & Light Company. To Mr. Bamberger, there is something due as his compensation, which, after full consideration of all material facts that may or do have any bearing upon this question, including a consideration of other methods of valuing this water filing, heretofore discussed, we place a value of $17,000.00. This sum should be amortized as follows:

The contract rate was set aside by the Commission's order, effective October 22, 1920. Hence, $2,000 should be repaid to the Railroad Company as reparation to compensate for this credit for the period between October 22, 1920, and October 22, 1922, and the balance discharged by annual credits of $1,000 per year, pro-rated monthly, upon power bills, for the remaining fifteen years, during which the contract purported to fix a firm power rate.

Subsequent to this decision, the remaining special contracts over which the Commission reserved jurisdiction for further investigation under its original order in Case No. 230, with the exception of this one, have been disposed of by the Commission.

Therefore, as to some seventy contracts, originally brought before the Commission, in Case No. 230, the rule has been rigorously and uniformly applied to all, that the standard schedules are the only ones that can lawfully be applied to utility service and that no deviation from such schedules can be permitted, except as far as strictly justified by a special consideration involved in the contracts and measuring to the test of adequacy, as defined by the Supreme Court. As said by the Supreme Court in the Hotel Utah case, this rule has become settled law.

There is no escape from the conclusion that to permit the carrying out of the contract rate, unreasonably low in itself, would be in violation of the law, and an unwarranted preference and discrimination which has been prohibited to any other user of electric service.

An appropriate order will be issued.

(Signed) A. R. HEYWOOD,
WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) T. E. BANNING, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 7th day of December, A. D. 1922.

In the Matter of the Investigation of Special Contracts of the UTAH POWER & LIGHT COMPANY for electric service. } CASE No. 230

This case being at issue upon motion of the Commission, and the Commission having on the date hereof made and filed its report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That respondent, Utah Power & Light Company, be and it is hereby required and ordered to pay unto respondent, Bamberger Electric Railroad Company, the sum of Two Thousand ($2,000.00) Dollars, as reparation, covering recess charges October 22, 1920, to October 22, 1922.

IT IS ORDERED FURTHER, That respondent, Utah Power & Light Company, allow respondent, Bamberger Electric Railroad Company, an annual credit of One Thousand ($1,000.00) Dollars for a term of fifteen (15) years from October 20, 1922, as compensation for the consideration set in the foregoing report, such credit to be pro-rated upon power bills of Bamberger Electric Railroad Company.

ORDERED FURTHER, That this order shall be in full force and effect five (5) days from the date hereof.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the BAMBERGER ELECTRIC RAILROAD COMPANY, for permission to abolish grade crossing located near Sidney Curve. } CASE No. 262

Submitted March 3, 1921. Decided March 31, 1923

Appearances:

R. C. Gwilliam, for Petitioner.
John A. Bourne and W. E. Potter } for Protestants.

## REPORT OF THE COMMISSION

By the Commission:

The above application represents that along the road of the railroad between Farmington and Kaysville, Utah, there are a number of grade crossings, some of which are of such character as to constitute a hazard, both to the public and the railroad, and is made dangerous by reason of the alignment of the track and the contour of the surrounding land, so as to make it difficult to avoid grade crossing accidents, and that this crossing is located between the regular stations of the Railroad Company, on what is known as a high speed track.

Petitioner further represents that there is a short distance from this grade crossing a sub-grade crossing, which could be used without serious inconvenience to the traveling public, and thereby avoid the hazard of accident such as exists at the present location, and for such reasons the petitioner asks that the grade crossing be abolished.

The matter set forth in this application, together with other grade crossings nearby, has been heard and investigated by the Commission, and for the purpose of getting all the information possible to assist the Commission, hearings have been held at various times, an examination of the conditions has been made personally by members of the Commission, and conclusions have been reached to the effect that the particular grade crossing mentioned in the application is dangerous and, in so far as practicable, should be abandoned or changed.

The railroad at this point is constructed along the hill side, through which there are a number of deep cuts and farm lands located upon the eastern side, reached at various points by crossing the petitioner's roadway. There

has been constructed along the section in question, several subways, so that traffic coming from the west may pass under the track at said points.

It appears, however, that the crossing in question, as well as some others nearby, are not provided with the subways, and, in order to obviate the necessity of crossing the railroad track at grade, it has been suggested in the course of hearings and investigations, that a road be constructed along and near the railroad track on the east side, thereby doing away with all of the grade crossings. This plan was not satisfactory to the petitioner, for the reason that it would require a very great outlay for the construction of such road. The estimate given for the construction of the proposed road on the east side is almost $65,000.00.

The plan of using the subways instead of some of the grade crossings, seems to be reasonable and feasible.

The grade crossings, known as the Sidney grade crossing and Secrist grade crossing, are dangerous. It does appear, however, that the traffic over the Sidney crossing could be diverted through the Loynd subway, and thence south along the east side of the railroad embankment, to connect with the road now used, and that the grade crossing now used should be for special purposes only, if at all. For example: At such times as the subway will not permit the passage of certain kinds of machinery or other property, suitable gates could be furnished for the prevention of general traffic. The Secrist grade crossing could be abandoned by using the subway near it, and upon the Railroad Company furnishing suitable road for travel.

The Loynd subway may require some enlargement and change in order to meet the reasonable demands of those who use the same.

The changes suggested herein will of necessity require a little longer distance in traveling to some of the farm lands, but will, no doubt, compensate the traveling public by removing a dangerous grade crossing. A grade crossing is always attended with more or less danger, and accidents often happen at points where the least danger is apparent, and for the general good, a concerted action should be taken by all parties concerned.

The crossings referred to are, in the estimation of the Commission, unusually dangerous, and in order to eliminate such danger, it is to be hoped that all the parties concerned will be willing to do whatever is reasonable and consistent to remove the danger.

The Secrist grade crossing should be abandoned to the use of the public, and the traffic diverted to the subway crossing of highway No. 3, when the railroad shall have provided suitable connecting roads, and suitable gates and locks should be provided at said Secrist crossing to permit the passage of machinery, derricks, etc., of too great dimensions to pass through the subway.

The applicant should provide good and sufficient highways connecting the Sidney grade crossing and the Loynd subway, and a gate should be provided at the grade crossing to accommodate unusual traffic.

Said construction and improvements shall be subject to the approval of the Commission, which hereby retains jurisdiction over the matter for further construction or order.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 31st day of March, A. D. 1923.

In the Matter of the Application of the BAMBERGER ELECTRIC RAILROAD COMPANY, for permission to abolish grade crossing located near Sidney Curve. } CASE No. 262

This case being at issue upon petition and protest on file, and having been duly heard and submitted, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That when carrier provides necessary highways to divert traffic, as indicated in the Report by the Commission, and applicant, Bamberger Electric Railroad Company, has altered or reconstructed the subway to the extent necessary to accommodate ordinary traffic, then, and in that event, the present grade crossing

under consideration in this case, may be closed and traffic diverted therefrom, and through the subway.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of the OLD CAPITOL PETROLEUM FUEL & IRON COMPANY, for a certificate of convenience and necessity authorizing the construction of a railroad from Lund, Utah, to Cedar City, Utah. | CASE No. 282 |

ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the matter in the above entitled case be, and it is hereby, dismissed, without prejudice.

By the Commission.

Dated at Salt Lake City, Utah, this 9th day of October, 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

DAVIS COUNTY, a public corporation,
*Plaintiff.*

vs.

The Oregon Short Line Railroad Company, a corporation, and the Denver & Rio Grande Western Railroad Company, a corporation.
*Defendants.*

CASES Nos. 493 and 351

Decided December 19, 1922.

REPORT AND ORDER UPON APPLICATION FOR RE-HEARING.

By the Commission:

After due consideration of the matters presented in the motion for rehearing, filed by the defendants in the above entitled cases, we are of the opinion that the motion should be denied.

IT IS THEREFORE ORDERED, That the application of the Denver and Rio Grande Railroad Company, et al., and the Oregon Short Line Railroad Company for a re-hearing in the above entitled matters be, and they are, hereby denied.

(Signed) A. R. HEYWOOD,
WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) T. E. BANNING, Secretary.

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CEDAR FORT, UTAH,
*Complainant,*

vs.

MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY,
*Defendant.*

CASE No. 399

PENDING

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the TELLURIDE POWER COMPANY, for permission to increase its rates. } CASE No. 414

ORDER

By the Commission:

In the above entitled case, in which a decision was rendered December 27, 1921, and thereafter, upon application of the Sevier County Farm Bureau and the Sanpete County Farm Bureau, protestants, asking for the opening of the case for the submitting of further testimony, the Commission ordered the case reopened and extended the time for the protestants to appear and give further testimony.

Messrs. Hayes and Hepler, attorneys for the protestants, appeared before the Commission on February 14, 1923, and asked that the matter of rehearing be dismissed without prejudice.

IT IS THEREFORE ORDERED, That the proceedings in the above entitled case be, and the same hereby are, dismissed without prejudice.

Dated at Salt Lake City, Utah, this 17th day of February, A. D. 1923.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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UTAH STATE WOOLGROWERS ASSOCIATION. *Complainant,*

vs.

THE DENVER & RIO GRANDE RAILROAD COMPANY, and A. R. BALDWIN Receiver; LOS ANGELES & SALT LAKE RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, UNION PACIFIC RAILROAD COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, *Defendants.* } CASE No. 418

PENDING

In the Matter of the Investigation of conditions existing at the grade crossing over the tracks of the BAMBERGER ELECTRIC RAILROAD, the DENVER & RIO GRANDE RAILROAD, and the OREGON SHORT LINE RAILROAD, at Beck's Hot Springs, north of Salt Lake City, Utah. } CASE No. 450

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the Dixie Power Company for permission to file new schedules increasing its rates. } CASE No. 457

Submitted June 20, 1922 Decided December 8, 1922

Appearances:

For Dixie Power Company, D. H. Morris.
For City of St. George, Cheney-Jensen & Holman.

## REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

This case was, upon the application of the City of St. George, reopened for the taking of further testimony, and was set down for hearing June 20, 1922, at St. George.

The city filed an answer and cross-complaint in which it set forth reasons for certain relief; that in 1916, it was the owner of a power plant for the purpose of generating and distributing electric energy for light and power purposes to the City of St. George and its inhabitants; that the amount paid by the City of St. George for said power plant and its appurtenances was $11,400; that improvements and expenses added to said plant made a total outlay of $24,956.85.

That about the 18th day of October, 1916, the Dixie Power Company began negotiations with the City of St. George for the purchase of the power plant and appurtenances, improvements, and extensions, offering as a consideration for the said plant and property the sum of $13,500, in cash and other valuable considerations, to-wit: that the said Dixie Power Company and its predecessors in interest, their heirs nor assigns would charge, during the term of 25 years, rates not to exceed the following:

## RESIDENCE AND COMMERCIAL LIGHTING FOR CURRENT CONSUMED IN ONE MONTH.

Minimum charge .....$1,00 per month

11 cents per K.W.H. for first 30 K.W.H.
9 " " " for next 30 K.W.H.
7½ " " " for the next 200 K.W.H.
6 " " " for all additional K.W.H.

10% discount if paid before the 10th of each month for all current monthly bills above the minimum charge.

## COOKING RATES

Minimum charge .....$1.50 per month
3 cents per K.W.H. for the first 50 K.W.H.
2½ " " " for all additional K.W.H.

## COMMERCIAL LIGHTING, HOTELS, BUSINESS HOUSES, ETC. RATES

Minimum Charge .....$1.50 per month

11 cents per K.W.H. for the first 30 K.W.H.
8 " " " for the next 50 K.W.H.
6 " " " for the next 500 K.W.H.
5 " " " for all additional K.W.H.

10% discount if paid before the 10th of each month for all current month bills above the minimum charge.

## SMALL MOTOR RATES

Service charge of $1.00 per H.P. per month, based on the rated capacity of motor, plus a quantitative charge per K.W.H. consumed of:

7½ cents per K.W.H. for first 50 K.W.H.
4½ " " " for next 50 "
3¾ " " " for next 200 "
3 " " " for next 200 "
2½ " " " for next 500 "
2¼ " " " for next 1000 "
2 " " " for next 1000 "
1¾ " " " for next 2000 "
1½ " " " for next 2000 "
1¼ " " " for next 3000 "
1 " " " for all additional K.W.H.

No discount from power bills.

## MUNICIPAL LIGHTING

75 cents per month for 25 Watt Mazda Lamps.
$1.25 " " " 40 " " "
2.50 " " " 250 " " "

The grantee to take care of all renewals and to install and maintain all fixtures.

1. All bills for residence and commercial lighting subject to discount of ten per cent (10%) if paid on or before the 10th day of the month succeeding that in which the service was rendered.

2. That the said parties and their heirs and assigns would furnish free of charge to said City of St. George, during said period of twenty-five (25) years, 15 K. W. or 20 H.P. electrical energy for the operation of its street lighting or for other strictly municipal service.

St. George City claims that without the consideration referred to in addition to the money consideration, the cash consideration received by the City of St. George for its electric plant and appurtenances would have been insufficient to remunerate the city for the plant delivered to Mr. Woodhouse.

That the Commission is without jurisdiction to discharge, absolve and release said Dixie Power Company from its obligation which it incurred, as above referred to, in furnishing power and light at the rates above set out.

The Dixie Power Company, in its reply to the cross-petition denies the contention of St. George City; and denies that in the contract of sale of the Power Plant by the city of St. George, any of the obligations enumerated in said cross-petition, except the $13,500, were made any part of the purchase price; and denies that the Commission is without power and jurisdiction to grant applicant's petition or in granting said petition it is necessary to violate any of the provisions of the constitution of the State of Utah.

At the beginning of the hearing, it was stipulated that the consideration in cash was $12,000 instead of $13,500. Said city contends and claims that the following entered into the considerations in fixing a cash amount to be paid for the plant:

First. That the parties to whom the sale was made, their heirs or assigns, would charge, during the term of the agreement and contract (viz., the term of 25 years) rates not to exceed the present rates; and that the said Dixie Power Company, or its predecessors in interest, would furnish free of charge to the City of St. George, during the period of 25 years, 15 K.W. or 20 H.P. electrical energy for the operation of its street lighting or for other strictly municipal service.

The testimony submitted at the hearing by the City of St. George was a history of the negotiations had be-

tween A. L. Woodhouse and the city, and which led up to the sale of the power plant in question, and which finally resulted in the accepting by St. George City, the proposition of $12,000 for said plant.

The matters were handled and the negotiations made by the Mayor and the City Council in behalf of the municipality. A mass meeting was called to submit for the approval or disapproval of the proposition to sell the plant. And after considerable time spent in discussing the matter, a vote was taken which was unanimous with the exception of four votes. Thereupon, the city appointed a committee to report on the property with the apparent understanding that its value should not exceed $12,000. The committee returned its report to the Mayor and City Council, enumerating in brief the property embraced in the plant, fixing a price on the various portions of said property so as to make an aggregate of $12,000 value.

Upon the acceptance of said report, a contract was entered into between the City and Mr. Woodhouse, who afterwards assigned and set over to the Dixie Power Company, all his right, title and interest in said plant.

The testimony upon the part of the City was to the effect that at the time the value of $12,000 was decided upon the rates and commissions formed a valuable consideration and was considered as an argument in favor of the sale, viz., the contract of Mr. Woodhouse to continue rates to the citizens of St. George at a figure not to exceed the rates that were being collected from the consumers at the time of the sale. And further, that Mr. Woodhouse's heirs or assigns should furnish, free of charge, 15 K.W. or 20 H.P. of energy to be used for lighting the streets of the city or any other strictly municipal service for the period of 25 years.

The conditions and circumstances under which the power plant was purchased from St. George City, and the steps taken leading up to such sale, strongly indicate to the minds of the Commission that the price fixed was not reached by any careful, technical, painstaking process. In fact, it was a bargain, made under an offer and acceptance, without much inquiry as to what was the value of the thing that passed from St. George City to the party in interest of the Dixie Power Company.

The concessions of Mr. Woodhouse strongly indicate that the matter of rates and the period of their continuance was one very attractive feature of the change brought about by the sale to Mr. Woodhouse.

The unfortunate thing in matters of this kind, and especially in this instance, is that there was no definite or specific values reached at the time of the deal. The concessions offered as found in the contract, presented an attractive proposition to the City for the reason that the plant was to be turned over, the workings of which had in the past not been entirely efficient or satisfactory; that the new management gave every hope of not only increasing the power but also of extending its service and making it more adequate, thereby relieving the responsibility of the city of its former management. And while it was to be relieved of all such responsibility, the rates under which it had been operated were to continue for a period of 25 years. All of which, no doubt, in the minds of the Commission, had a moving influence upon, not only the Mayor and City Council of St. George City, but also the citizens.

It was admitted by witnesses for the city that the services were improved. The services were improved in that they were more constant, reliable and dependable.

The City bases its rights for relief upon the ground and for the reason that at the time that the deal was consummated, it had a right to believe, and did believe that the rates fixed in said contract would be continued, and that there was no authority to interfere with the right and demand of the City to require the continuance of the rates and concessions.

Had the City continued to operate the plant as a municipality, the changes of increase in labor and material would necessarily have to be met by the City and its residents. So that to fix damages upon the basis of what the city will lose by the advance of rates alone, would not be fair and equitable, if the value was reasonably fixed at the time of the sale.

Concerning the question of the Cottonwood Canal and its maintenance, and for which the City of St. George is claiming a valuation in this case, the exhibits would seem to indicate and the testimony disclose the facts, that a contract was entered into between the City of St. George and one B. E. Slusser, in which Mr. Slusser agreed to pay a yearly rental and to build and construct an electric light plant and to install therein all necessary machinery for the purpose of generating electricity to be conducted to the City of St. George and other contiguous points to be used for lighting, heating and power purposes; and that said Slusser would keep the so-called Cottonwood Canal in repair from the head thereof to the point where the waters

were returned to the present canal, below said power plant. That the amount expended by said Slusser upon the said Cottonwood Canal would be $600.00 per year. The agreement further recites that the said Slusser was given and granted a right to use all the waters flowing into said creek so long as the conditions set out in the contract were performed by him, and that if said Slusser decided to sell such plant and rights as he had obtained in the use of said water or otherwise, that the City of St. George would be given the first opportunity to purchase said plant, together with all the appurtenances thereunto belonging.

That thereafter, said plant and the appurtenances and rights acquired, were sold, conveyed and delivered to St. George City; and for sometime and until it was sold and delivered to the predecessors in interest of the Dixie Power Company, operated by said City.

In the agreement between A. L. Woodhouse and the City of St. George, said A. L. Woodhouse agreed to use reasonable diligence in keeping in repair and furnishing the inhabitants of the City of St. George with electric power and energy and to maintain the Cottonwood Canal, from the intake to the power plant on said canal, whenever his heirs and assigns shall operate said power plant.

Under the above provisions, counsel for the city claims that there was a value to the city in the operation of its canal that was worth $600.00 a year. There appears, however, to be a modification in the provisions entered into between the City of St. George and A. L. Woodhouse to the effect that such repair and maintenance of the Cottonwood Canal from the intake to the power plant on said canal, would be made by Mr. A. L. Woodhouse, or his assigns, whenever he operated said power plant at the place it was first built and maintained and until it was removed by the Dixie Power Company to the Santa Clara River.

The showing further discloses the fact that it was the intention of the Dixie Power Company and its predecessors in interest to change the place of the operation of the plant from the Cottonwood Creek to the Santa Clara River, some distance away. And when it was removed, which was soon after the deal was perfected between the city and Mr. A. L. Woodhouse, a strict construction of the phraseology of the provisions above referred to, would, in the estimation of the Commission, relieve the obligation of the Dixie Power Company from maintaining the Cottonwood Canal from the intake to the power plant or any portion thereof. So it would seem reasonable to conclude that after

the plant had been removed, and there could be no disappointment or misunderstanding on the part of the city that it was to be removed, there was no value or material consideration that could pass to the Dixie Power Company in, or any promise or covenant that would be binding between the city and the power plant with reference to the maintaining of the said Cottonwood Canal, and that the use of the water was not made to the benefit or purpose of said power plant.

It appears from the testimony that the canal in question, viz., the Cottonwood Canal, which carried the water part of the way from its source to St. George, has been maintained in part from an assessment upon the water owners and the balance from the general funds of the city. The water of said canal being used for irrigation purposes as well as domestic purposes. That such conditions existed prior to the time that Slusser established the plant upon the canal, and that during his management he contributed sufficient to keep it cleaned out; but when the plant was turned over to the city, the cleaning out and upkeep of the canal was done by the city and after by Mr. Woodhouse as long as the waters of said canal were utilized for power generating purpose.

The city claims that during the time it operated the plant, it was considerably improved and enlarged, expending thereon for maintenance, repairs and replacements the sum of $12,398. That said time, from 1910 to 1916, the system was developed and extended and enlarged, thereby increasing the business from twenty-five customers to two hundred and forty-two customers. From the tabulated reports of the city, under the heading, "Labor," "Freight," "Transformers," "Meters," "Governors," "Cedar Poles," "Poles," and "Wire," and "Plant," we have the following amounts, viz:—

| | |
|---|---|
| 1910 | $2,365.19 |
| 1911 | 1,961.94 |
| 1912 | 1,163.53 |
| 1913 | 3,649.33 |
| 1914 | 2,465.29 |
| 1915 | 709.20 |
| 1916 | 1,242.37 |

Making a total of $13,556.85, less meters $1,158.74, leaving a total of $12,398.00, which adds to the purchase price paid for the plant of $11,400, and interest on bonds issued for its purchase, $3,705.00, makes a total of $27,503.00.

The increase of business claimed by the city shows as follows:

January 1910, 30 consumers.
December 31, 1910, 71 consumers.
1911, 119 consumers.
1912, 149 consumers.
1913, 167 consumers.
1914, 184 consumers.
1915, 226 consumers.
1916, 272 consumers.

Making a total increase of 242.

The City claims that it is entitled to something for going value. This is urged upon the grounds, and for the reason that at the time that the plant was taken over, it was a going concern, and that the receipts from the business showed a margin of receipts over ordinary expenditures by way of repairs, maintenance and replacements of $5,069.59; which is a favorable showing, especially during the period of original developments, when the business was growing from a mere starting point to the successfully supplying of an entire unit, meeting the needs of the people and enjoying the good will of the customers. The plant at the time of its purchase by the city had a going value which cannot be determined mathematically, but in reaching said value, all the facts and circumstances concerning its operation must be taken into consideration.

Some testimony was submitted on behalf of the City to the effect that the going value at the time of the purchase by Mr. A. L. Woodhouse was $10,000.00. The question of going value includes a number of things; but the principal one upon which it had relied here is that it was a living, progressive and remunerative business.

According to the testimony, the city purchased this plant from Slusser about seven years before the deal was made with Mr. A. L. Woodhouse, for $11,400.00. If there was any going value in such purchase, it does not appear so. It appears that the customers increased in number during the City's operation.

With reference to the actual value of the property, the City claims that the value increased from 1910 to 1916 from $13,765.19 to $24,956.85. This, of course, without any reduction for depreciation.

As to the amount claimed by the City, the statement of the Power Company, filed September 19, 1921, discloses the fact that the value of the St. George plant was $13,500.00; and the distribution system $10,292.65, making a total value of $23,792.65, as of the date 1917, soon after

the property was taken over by Mr. Woodhouse. It is true that much of the property was depreciated in value to the Power Company on account of dismantling and removing the same to the new power site, while some of the material was not such as could be worked into the new plant. That, however, should not, in the mind of the Commission, be considered as an offset to the true valuation of the property at the time of the purchase. The valuation, as claimed by the City, of $24,956.85, is the full value without depreciation.

It is claimed by the Power Company that this property would depreciate at the rate of 6 per cent per annum; and that the depreciation, during the years between 1910 and 1916 would amount to $8,315.86; which amount, if subtracted from the $24,956.85, would leave a value of $16,640.89.

The question of depreciation is one that is not easy of solution. In the hearing, there was but little testimony given by either of the parties to this action with reference to the subject of depreciation. The property was located near the City of St. George, not subject to any great change of climate or other conditions; and, according to the amounts paid out for replacements during the years it was operated, should have been kept in reasonably good condition. The rate of depreciation in cases of this kind varies. But we are of the opinion that under the conditions and circumstances, and with a consideration of the material and nature of the plant, to reduce the depreciation claimed for by the Power Company, from 6 to 4 per cent, would be fair; which, of course, would reduce the amount of the depreciation to $5,544.00, leaving a total structural value of the property at the time of the sale to the company, $19,412.00.

The question of "Going Value" is that element of value separate from any structural elements growing out of an established business, or, in other words, a going concern. It is not easy of measurement, yet any allowance should be based upon conditions and facts, rather than opinion, alone.

In this case there was some testimony directed to the subject of going value, concerning the development of the system—additions to the subscription list and the establishing in the minds of the public, the value and the worth of such service, as compared with the former means of light and energy.

The Commission held in the Utah Hotel case, that such value cannot be exactly and mathematically reached, but

can be made upon the best judgment of the Commission, after a full consideration of the material facts, which seem to indicate that there was a going value to this property at the time it was turned over to the Dixie Power Company, or its predecessors in interest; and that such value was at least 10 per cent of the structural value, which would be $2,495.00; making a total value of $21,907.00, giving the City of St. George a credit of the difference between $12,000.00, paid and the value here found $21,907, which is $9,907.00, which amount should be amortized over the remaining life of the contract from February 1, 1922, the effective date of our former order in this case, modifying the old contract rates.

This credit should take the form of equal annual credits upon the city's bills for service pro-rated monthly. The old contract rates were clearly preferential, discriminatory and unreasonably low.

In our former order, we found just and reasonable rates applied to the service generally of this company, and with the exception of the credit heretofore mentioned, those rates are the legal rates to be applied to the company's business.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

We concur:
A. R. HEYWOOD,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:
(Signed) T. E. BANNING, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of December, A. D. 1922.

In the Matter of the Application of the Dixie Power Company for permission to file new schedules increasing its rates. } CASE No. 457

This case being at issue upon petition and protest on file, and full investigation of the matters and things in-

volved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the Dixie Power Company allow the City of St. George a credit of Nine Thousand, Nine Hundred, Seven ($9,907.00) Dollars, such credit to be amortized over the remaining life of the contract referred to in the foregoing order; such credit to be in the form of equal annual credits, to be pro-rated, and credited monthly upon the power bills of the City of St. George.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the DIXIE POWER COMPANY, for permission to file new schedules increasing its rates. } CASE No. 457

Decided March 15, 1923.

REPORT AND ORDER OF THE COMMISSION UPON APPLICATION FOR REHEARING.

By the Commission:

Full consideration having been given to the application of the City of St. George, for a rehearing in the above entitled matter:

And there appearing no reason why the application should be granted,

IT IS ORDERED, That the application of the City of St. George, for a rehearing in the above entitled matter, be, and it is hereby, denied.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 15th day of January, A. D. 1923.

In the Matter of the Application of L. C. MORGAN and JAMES E. CARTER, for permission to operate an automobile freight line between Provo and Eureka, Utah, and between Provo and Nephi, Utah, and intermediate points. } CASE No. 460

It appearing that on February 23, 1922, the Commission issued its Report and Order in the above entitled matter, authorizing L. C. Morgan and James E. Carter to operate an automobile truck line for the transportation of property between Provo and Eureka, Utah, and between Provo and Nephi, Utah, and intermediate points (Certificate of Convenience and Necessity No. 129);

And it further appearing that the Commission subsequently, in Case No. 574, in the matter of the application of the Provo Transfer & Taxi Company, for permission to operate a truck line between Provo and Eureka, and Provo and Nephi, Utah, decided January 15, 1923, found that public convenience and necessity no longer require the operation of an automobile freight line between Provo and Nephi, Utah, and intermediate points;

IT IS THEREFORE ORDERED, That Certificate of Convenience and Necessity No. 129, issued to L. C. Morgan and James E. Carter, be, and it is hereby, modified to authorize the operation of an automobile freight line between Provo and Eureka, Utah, and intermediate points.

ORDERED FURTHER, That said L. C. Morgan and James E. Carter shall discontinue such automobile freight service between Provo, Utah, and Nephi, Utah, and intermediate points, and shall, on or before February 1, 1923, file with the Commission and post at each station upon their route, a new schedule of rates, rules and regulations, which schedule shall supersede and cancel the schedule now on file with the Commission; provided that said schedule shall not affect any increase in the present rates, rules or regulations applying between Provo and Eureka, Utah, and intermediate points.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Investigation of certain contracts and agreements between the Bingham & Garfield Railway Company and Utah Copper Company. | CASE No. 466 |

Submitted October 25, 1921. Decided January 26, 1923.

Appearances:

R. C. Lucas, for Utah Copper Co.

## REPORT OF THE COMMISSION

By the Commission:

This is an investigation, made on the Commission's own motion, of certain contracts and agreements by and between the Bingham & Garfield Railway Company, hereinafter called the Railway Company, and the Utah Copper Company, hereinafter called the Copper Company, whereby the Railway Company permits the Copper Company the use of certain of its tracks.

On October 18, 1920, there was filed with this Commission an agreement designated "Trackage Agreements," wherein the Railway Company gives to the Copper Company "for an indefinite term, subject to revocation as in the agreement provided, the right and privilege of using and utilizing, in common with itself, and any other person or persons to whom it may hereafter grant similar licenses or license" the main line track from the copper mine at Bingham to the mills at Magna and Arthur, with the right in the Copper Company to transport its own ores over that track in its own cars and equipment, with its own motive power in trains manned by its own employes.

The right of user is "In subordination to and subject to the duties and obligations of the Railway Company as a common carrier," and must "At all times give way to the requirements of the Railway Company in serving the public and in performing its common carrier duties and obligations, of the necessities of which the Railway Company is made the sole judge and to which end the Railway Company reserved supervision over and direction and control of all train movements."

The Copper Company assumes all risk of loss, damage or injury to its property, employes and third persons incident to its enjoyment of the license and indemnifies the

Railway Company against all negligence on the part of the Copper Company or its employes.

As a consideration for the "revocable license," the Copper Company agrees to pay the Railway Company on the following basis: On the investment value of the Railway Company's property, embraced in the license, a return of six per cent per annum shall be allowed, and the Copper Company agrees to pay monthly to the Railway a portion of said six per cent return, calculated on a wheelage basis, in the proportion its car mile movement bears to the total car mile movement over that track.

Maintenance, repair, expenses, salaries and wages of joint employes and taxes are also to be borne on a car mile basis.

On July 1, 1917, there was also executed an agreement between the Railway Company and the Copper Company, whereby the Copper Company is given the right and privilege to use all the tracks and lines of the Railway Company at the mine and the yard tracks at the mills "for the handling of freight" of and "with the motive power of" the Copper Company; such use by the Copper Company not to be "exclusive," but "joint as between the parties" and such as to "permit each party to operate its own business over said lines."

The agreement also carries provision for the payment by the Copper Company to the Railway Company and the division of the cost of maintenance and renewals.

On the 16th day of September, 1921, the Commission issued its order to enter upon an investigation "with a view of determining whether said trackage agreements and arrangements do or may result in any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or to any particular description of traffic in any respect whatever," or "subject any particular person, company, firm, corporation or locality or to any particular description of traffic to any undue prejudice or disadvantage * * * ."

The Interstate Commerce Commission, about the same time, entered upon a proceeding, inquiry and investigation into and concerning the same agreements.

A joint hearing was held at the State Capitol, December 14, 1921. After hearing, the case was submitted upon brief filed March 29, 1922.

The record discloses in detail the nature of the financial relationship between the Copper Company and the Railroad Company and the operating conditions incident

to the mining and transportation of ores from the mines to the mills and smelters.

The Copper Company is the owner and operator of a large copper mine in Bingham Canyon, Salt Lake County, Utah. The ores are of low grade, and, after mining, require treatment by milling, concentrating and smelting, as necessary steps to produce copper. The ore is worked by open pit method. The overlying waste material is first stripped off the ore and hauled by the railway to a nearby dumping ground. Both the waste material and the ore are loaded in cars by steam shovels. Concentrating mills were erected at Magna, about 17.5 miles from Bingham and near the shores of Great Salt Lake.

The Denver & Rio Grande Western Railroad Company at first transported the ores from Bingham to Magna, by a circuitous route about 27.5 miles long; but, after a time, was unable to furnish adequate railway facilities to handle the output of the mine. Hence, the Copper Company caused to be organized a railway company under the laws of the State of Utah, with the powers and obligations of a common carrier. The railroad was completed and put in operation, in September, 1911. The Copper Company is the owner of all the issued and outstanding capital stock of the Railway Company. The Railway Company now has no bond issue outstanding. It is claimed that this line of railway was primarily essential as an adjunct and plant facility of the Copper Company, to enable it to conduct its mining operations.

The mine is laid out in a series of terraces or levels on the mountain side. There were twenty-three of these levels, the top level being at an elevation of about 1500 feet above the bottom level. On each of the levels or terraces is a steam shovel which moves on a track parallel with another track on the same terrace on which the railway cars are to be loaded. These tracks in turn connect with tracks to the main assembly yard at the base of the mountain. All of the engines used in operating the mine tracks are ordinarily known as "dinky engines," and are unsuited to main line operation.

The first steam shovel started work at this mine in August, 1906, and the mine tracks have been gradually extended to keep pace with the operation of the mine, until these tracks now aggregate 56.96 miles.

In 1910, the Copper Company transferred the mine tracks to the Railway Company. At that time there were constructed by the Copper Company, 25.16 miles of tracks.

Prior to the time these tracks were turned over to the Railway Company, they were constructed and operated solely as a plant facility of the Copper Company. Since that time, they have been extended as necessity required, and are still used primarily as a plant facility in the movement of the Copper Company's ores, and empty cars about the mine. Approximately 85 per cent of the mine tracks have been devoted exclusively to the service of the Copper Company. The remaining 15 per cent have been used jointly for the handling of the tonnage of the Copper Company and the general public. Testimony shows that the hill or mine tracks are essential to the operation of the mine and are a necessary part of its equipment.

At the Magna and Arthur mills, are the usual switch, yard, loading and storage tracks to be found about a plant of this character, and the testimony shows they have been used exclusively in the handling of the ores of the Copper Company.

The ore comes from the mine in trainload lots. There are about forty-two miles of mill or plant tracks, twenty miles of main line track, and about sixteen miles of branches or spur tracks.

Before the main track agreement was made, the method of operation was as follows: The ore having been mined from the mountain side by steam shovels and loaded in the railroad cars, the loaded cars were collected by the dinky locomotives, hauled to the assembly yards at the foot of the mountain, thence transported over the main line to the milling and concentrating plants at Magna and Arthur. The cars moved upon a local bill-of-lading, the Copper Company being both consignor and consignee, in accordance with the local tariff of the Railway Company.

At the mills the ore was subjected to concentrating treatment. The milling operation concentrates copper to the extent that for every one thousand tons of ore milled the tonnage of concentrates produced is only fifty tons, or a ratio of twenty tons of ore to one ton of concentrates. The concentrates must be smelted before copper is obtained in marketable form. It is impossible to treat low grade ore in the smelter successfully without being concentrated. The concentrates from the mills were loaded on cars and transported to the smelters of the American Smelting & Refining Company, at Garfield, Utah, which movement was made on a local bill-of-lading naming the Copper Company as the shipper and the Smelting Company as the consignee. At the smelter the concentrates were subjected to a smelting process, and were converted into copper

bullion, and commingled with bullion received by the smelter from other sources.

Two contracts between the Copper Company and the American Smelting & Refining Company cover this transaction. In substance, the Copper Company sells and agrees to deliver to the Smelting Company all of the copper concentrates which it may produce, and the Smelting Company buys and agrees to accept delivery of such concentrates, and to pay therefor in money for the gold and the silver, and in copper for the portion of the copper contents, and the Smelting Company shall pay for the copper contents by delivering to the Mining Company, or its order, f. o. b. cars, or both, at a refinery at a point on the Atlantic Coast, refined copper.

The amount of refined copper to be paid is based upon the technical terms of the agreements, and is in evidence. The movement up to the smelter has no particular relation to the ultimate destination of the final product. Before the bullion ever comes into form, the movement begins and ends. The ore of the Copper Company represents substantially all of the business of the road during the years 1917-1921, inclusive. The Copper Company's ore movement over the main line track constituted about 93 per cent of the entire traffic of the Railway Company on a straight tonnage basis, and does not include the waste removed to mine dumps nor the inbound mine supplies. On a ton mile basis, the Copper Company has furnished in excess of 95 per cent of the traffic of the Railway Company.

The method of operating under the agreement now under investigation in this case is as follows:

The haul between the mine at Bingham and the Mills at Magna and Arthur is performed by the Copper Company for itself, in its own cars, with its own motive power and equipment and in trains manned by its own employes and crews. During the entire movement from the mine to the mills the ore is in the possession of the Copper Company itself. The continuity of the movement is broken at the concentrating plant, and ends at the smelting plant, just as it did prior to the making of this agreement.

The mine and milling trackage agreement provides that the cost of maintaining and renewing the so-called hill tracks or mine tracks shall be borne by the parties in proportation to the tonnage which each party transports over the same; but, where either party uses said tracks or a portion of them exclusively for a month, that party must stand the entire expense of maintenance and renewal

during such period of exclusive use. In handling normal tonnage, the Copper Company pays over 99 per cent of the cost of maintaining those tracks, in addition to the per ton track rental, and the tonnage handled by the Copper Company, including its waste, is more than 99 per cent of the total tonnage handled over those tracks.

The operation of the mine requires the continuous presence of numerous special type locomotives at all hours of the day and night. The work is of such a continuous character that it would be impracticable for the Railway Company, in our opinion, to furnish locomotives and crews for the constant use of the Copper Company in the operation of serving steam shovels for the loading of ore, which is a special and distinct kind of service, and not such work as is ordinarily or customarily performed by common carriers, under published tariffs; nor is it the kind of service that can be accepted by a common carrier as a general proposition. It would be impossible to know in advance how much railway service would be required to serve the various steam shovels in the loading of its ore into cars in two different levels, or all of the levels together. There are two other shippers of ore at Bingham shipping via this carrier. Their ores are not the low grade, porphyry copper ores, such as is the ore of the Copper Company. The ores of these shippers are smelting ores and are from five to fifteen times as valuable as the ores of the Copper Company. These ores are silver lead ores, and the copper content of the ore is merely incidental.

The record shows that there is no material competition between the Copper Company and its ores and the other mining industries at Bingham and their ores. No rate relationships applicable to other ores are disturbed or affected by this agreement, and the routing of the shipment of other ores has not been and could not be influenced or affected by this agreement. The Railway Company's local tariff names a "high line arbitrary" rate from certain levels at the mine to the main assembly yard at Bingham. Testimony is to the effect that these rates were established to cover an occasional car from the Copper Company's own sulphide ore mine, and no one else has used those rates. The silver lead ore shippers pay a "high line arbitrary" rate of ten cents a ton, and exhibits were introduced (Exhibits 25, 26 and 34) to show that the cost of performing this service exceeded this figure. Rates on ores and other commodities likely to be shipped by the general public over this line, are rates competitives with those of another carrier serving the same mining district.

Summarized, the traffic of the Copper Company has in the past, and doubtless will in the future, furnish substantially all of the traffic of this railroad. As heretofore stated, this carrier was constructed for the specific purpose of handling this traffic. The operation of the mine and hill tracks has no relationships to the duty of this railroad as a common carrier. The public service is being actually continued, adequate train service is being given, and the agreement under investigation recognizes the duty and the right of the carrier to continue and maintain ample, commodious and sufficient service, and provides that the duty of public service is superior to any obligation to the Copper Company.

Notwithstanding prolonged hearings and investigations, no aggrieved shipper, consignee or locality has appeared in protest to these agreements or to claim any undue prejudice or disadvantage because of them or discrimination. We are unable to say that a contemporaneous advantage moves to the Copper Company and to the disadvantage of other shippers; nor do we find that the making of this agreement in its particular operation, impairs the performance of this carrier's own duties to the public.

The proceeding is accordingly dismissed.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) T. E. BANNING, Secretary.

THE UTAH LIME & STONE COMPANY,
*Complainant,*
vs.
BINGHAM & GARFIELD RY. COMPANY, DENVER & RIO GRANDE WESTERN R. R. CO., LOS ANGELES & SALT LAKE R. R. CO., OREGON SHORT LINE RAILROAD CO., SOUTHERN PACIFIC COMPANY, UNION PACIFIC RAILROAD COMPANY, UTAH RAILWAY COMPANY, UTAH-IDAHO CENTRAL RAILROAD CO., WESTERN PACIFIC RAILROAD COMPANY,
*Defendants.*

CASE No. 477

PENDING

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In the Matter of the Investigation of the rules of the Mountain States Telephone & Telegraph Company covering rural extensions.

CASE No. 488

PENDING

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DAVIS COUNTY, a Public Corporation,
*Plaintiff,*
vs.
DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, a corporation,
*Defendant.*

CASE No. 493

(See Case No. 351)

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LION COAL COMPANY, a corporation,
*Complainant,*
vs.
OREGON SHORT LINE RAILROAD COMPANY, a corporation.
*Defendant.*

CASE No. 500

PENDING

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

KAMAS TOWN, a Municipal Corporation,
*Complainant,*
vs.
G. W. BUTLER, doing business under the name of "Kamas Light, Heat and Power Company,"
*Defendant.*

CASE No. 511

Submitted December 5, 1922 Decided March 10, 1923

Appearances:
L. C. Montgomery, for Complainant.
Morris & Callister, for Defendant.

## REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

The above entitled action came on for hearing, at Kamas, Utah, June 14, 1922, upon the complaint of said Kamas Town, and the answer of the defendant, G. W. Butler.

The complainant represented that it is a municipality, incorporated under the laws of the State of Utah, located in Summit County; that the defendant owns and operates a hydro-electric power plant, and is engaged in furnishing electricity for light, heat and power purposes to the inhabitants of the town of Kamas; that at the time of the construction of said electric light plant, some years ago, the complainant passed an ordinance, granting to the defendant the right to construct, operate and maintain an electric generating, transmission and distribution system within its corporate limits, one of the provisions being that the defendant should furnish energy to the inhabitants of said town at a rate not exceeding eleven cents per K. W. H. for light purposes, subject to a minimum charge of a dollar; that on June 21, 1921, the Public Utilities Commission of Utah, in Case No. 274, authorized the defendant to increase its rates from 11 to 15 cents per K.W.H. and the minimum charge from one to two dollars per month.

The complainant further represented that the defendant has failed to comply with the ordinance granted by

the Kamas Town so far as the same pertains to the construction and maintenance of distribution lines within the corporate limits of Kamas, which are at the present time in poor condition; so much so that there is a hazard and danger to the lives of travelers upon the streets and highways; and that the services given by the defendant are insufficient and inadequate; that the rates now being charged are unjust, unreasonable and excessive, and yield the defendant a return far in excess of his requirements and in excess of the value of the service being given.

The defendant represented that he had an investment on the electric light plant and distribution system which cost approximately $12,000; that during the calendar year of 1921, the net return from said business was less than $1,000; and this, without taking into consideration the personal services rendered by him and his wife and son, and without taking into consideration any interest whatsoever upon the invested capital, claiming that for personal service he is entitled to at least $100 per month; that the said returns from the operation of the plant is wholly insufficient to compensate the defendant for the operation of said system and for the capital invested therein.

Considerable testimony was taken in support of the complainant's contention, as well as the defendant's allegations.

There seemed to be no specific evidence concerning the operation of the plant. Some testimony was submitted showing that the line of some parts of the system was not well kept up, and that at times the service was not as efficient as it ought to be. However, the defendant contended that he was doing the best he could under the circumstances, and that the revenue from the operation of the plant did not afford sufficient means to make such replacements, and meet the depreciation which was taking place.

At the close of the taking of the tesitmony, the defendant was required by the Commission to file a statement showing his financial results from the operation of the plant. Upon application, time for filing such statement was granted until July 10th, and, upon further application, said time was continued until July 25th, and again until July 31st.

On August 1, 1922, a financial statement was filed with the Commission, showing the earnings and expenses for the year 1921, as well as the earnings and expenses for six months ending June 30, 1922.

The following is the statement submitted for the year 1921:

EARNINGS

Gross receipts from services (all kinds) ..... $2,592.00

EXPENSES

Salaries:

| | |
|---|---|
| G. W. Butler, Manager, $125.00 per month..... | $1,500.00 |
| Operator at plant, $75.00 per month..... | 900.00 |
| Mrs. G. W. Butler, bookkeeper, $25.00 per month | 300.00 |

Supplies:

| | |
|---|---|
| Feb. 8, Copper Wire ..... | $ 69.02 |
| Feb. 11th, Insulators ..... | 2.25 |
| Mar. 1-31, Stubs for poles ..... | 35.50 |
| Sept. 24th, Transformer ..... | 42.00 |
| Sept. 24th, Meters ..... | 17.66 |
| Sept. 30th, Creosote ..... | 21.00 |
| Jan. 1st-Dec. 31st, Incidental Supplies..... | 25.00 |

Taxes:

| | |
|---|---|
| Sept. 24th, Taxes on pole line, for year 1921..... | 15.08 |
| Sept. 24th, Taxes on plant, for year 1921..... | 25.20 |

Repairs:

| | |
|---|---|
| March 1-31, Labor on pole line ..... | $ 97.00 |
| March 1-31, Labor on ditch ..... | 10.50 |
| April 1-30, Labor on pole line..... | 158.00 |
| May 1-30, Labor on ditch ..... | 13.00 |
| June 1-30, Labor on ditch ..... | 197.75 |
| Sept. 1-30, Labor on ditch ..... | 41.00 |
| Oct. 1-31, Labor on ditch ..... | 40.50 |
| | $3,511.46 |

The following is a statement of the earnings and expenses for the six months ending June 30, 1922:

Gross receipts from services (all kinds) ..... $1,092.50

(Note: The above amount includes the estimated receipts for June, 1922, as collections have not all been made for that month.)

## EXPENSES

Salaries:

| | |
|---|---|
| G. W. Butler, Manager, at $125.00 per month | $ 750.00 |
| Operator at plant, $50.00 per month | 300.00 |
| Mrs. G. W. Butler, bookkeeper, at $25.00 | 125.00 |

Supplies:

| | |
|---|---|
| May 10, Rope | $ 3.35 |
| Mar. 14, Oil | 2.80 |
| May 17, Stubs for poles | 3.70 |
| June 10, Stubs for poles | 11.50 |
| June 10, Creosote | 10.00 |
| June 10, Meter supplies | 11.65 |

Repairs:

| | |
|---|---|
| Jan. 1-31, Labor on pole line | $ 7.50 |
| Mar. 1-31, Labor for pole line | 3.90 |
| May 1-30, Labor for pole line | 3.18 |
| June 1-30, Labor on pole line | 63.87 |
| June 1-30, Labor on ditch | 191.20 |
| | $1,513.65 |

Upon a check and an investigation of the above statements, the Commission felt that it was necessary to more thoroughly go into the operations of the defendant, and thereupon sent Mr. D. O. Rich, auditor of the Commission, to visit Mr. Butler and obtain from him his financial doings. Said report comprises four pages, and is hereby attached to this order, so that the complainant in this case may learn what information was obtained by the Commission's auditor, and, going into an analysis of these statements, it appears upon the face of the report that a reduction in the rates at this time could not be ordered.

This matter having been before the Commission a number of times, and on account of the dissatisfaction of a part of the customers, it was thought proper to submit a tentative report to the parties concerned, which was done, giving them ample time to consider the same, with the privilege of submitting further testimony. After waiting some sixty days for a reply, it may be concluded that no additional hearing is desired at this time.

After a full and careful consideration of the history of this case, together with a check made of the financial doings of said Company, it clearly shows that the com-

plaint has not been sustained, and that to reduce the rates under present conditions, would be unfair and prejudicial to the Kamas Light, Heat & Power Company.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

I concur:

(Signed) WARREN STOUTNOUR,
[SEAL] Commissioner.

Attest:

(Signed) D. O. RICH, Acting Secretary.

Salt Lake City, Utah, September 19, 1922.

Wednesday, September 13, a visit was made by me to Kamas, Utah, for the purpose of checking over the investment and operating figures of the Kamas Light, Heat & Power Company.

Mr. G. W. Butler, owner and manager of the above power company, advised that he had received the uniform Classification of Accounts for Electrical Corporations, prescribed by the Commission, but that he was unable to understand same, even after a careful reading. He further stated that because of his not being able to comprehend an accounting system and of his financial inability to employ a bookkeeper, he had not complied with the Commission's order in this respect. Some time was spent in explaining to Mr. Butler the Uniform Classification of Accounts as prescribed by the Commission. As he did not appear to understand the fundamental principles of bookkeeping it was suggested that he employ the services of one of his friends who understands bookkeeping, to enable him to get started. A Mr. Taylor, the cashier of the local bank at Kamas, agreed to help Mr. Butler out in this respect, and some time was spent in going over our classification of accounts for electrical corporations with him. Mr. Taylor agreed to purchase such books as we thought were necessary and to assist Mr. Butler in setting up the accounts which are necessary for him to keep.

An attempt has been made, however, by Mr. Butler and his wife to keep detailed check of all receipts and expenditures for their lighting system for the past two years, and particularly since the Commission's classification of accounts became effective. Apparently no regular bookkeeping system has been kept at any time since the installation of the plant, about 1913.

It appeared to be impossible to make an accurate check of Mr. Butler's investment in his electrical system, due to the fact that no accurate record was kept concerning same. Mrs. Butler, who seemed to be in charge of the accounts, advised that at one time she had collected together all the original invoices pertaining to purchase of items entering into the system, but that rats or mice had destroyed a large part of them.

Such invoices as Mr. Butler had were checked by me and it appeared from these that some $3,000.00 had been spent for machinery, poles and wire, etc., without regard to freight and labor items. As no system was kept as to expenditures for labor or freight in the construction of the line, it appeared to be impossible to obtain an accurate accounting of the cost of the system.

In Case No. 274, Mr. Butler submitted a detailed statement as to the cost of the electrical system, which totaled $11,617.91. There seemed to be little in support of this figure from such records as were kept. Advice was given, however, that these figures were compiled some two or three years ago by Mr. Butler and his wife after weeks of work, using such notations, vouchers, etc., as were available, and after having consulted different parties who had rendered services in the construction of plant and system, and Mr. Butler's memory having served in some cases.

After having made a visit to the plant and an examination of the system in general, it appeared to me that the different units of plant were in urgent need of repair or replacement. During the nine years which Mr. Butler has been operating his plant, he advised that he had never been able to set aside an amount out of earnings for replacement, and now that he is in need of such funds, none are to be had.

After a check of such records as were available, it appeared that the statement of operations for the year 1921, as submitted to the Commission by Morris & Callister, on July 31, 1922, is substantially correct.

A detailed check of the operations for the first eight months of 1922 was made, and the following is submitted:

1922
EIGHT MONTHS

REVENUE:

| | |
|---|---|
| Gross Revenue, all sources.. | $1,449.95 |

EXPENSES:

*Salaries*:

| | | |
|---|---|---|
| Manager at $125.00 mo.. | $1,000.00 | |
| Plant Operator at $50 mo. | 400.00 | |
| Bookkeeper at $25 mo... | 200.00 | 1,600.00 |

*Direct Expenses, Plant and System*:

| | | |
|---|---|---|
| Labor & expense, poles.. | 74.55 | |
| Labor & expense, line... | 3.90 | |
| Miscellaneous supplies... | 17.25 | |
| Stubbing poles ..... | 19.10 | |
| Labor on ditch and dam. | 273.45 | |
| Repairs to machinery... | 39.55 | 427.80 |

*Law Expenses and Damages*:

| | | |
|---|---|---|
| Law expenses..... | 75.00 | |
| Damage to property.... | 85.00 | 160.00 |

*Taxes*:

| | |
|---|---|
| Taxes on plant & system ⅔ of year based on 1921.. | 27.52 |

| | |
|---|---|
| Total Expenses..... | $2,215.32 |
| Loss from eight months operation... | $ 765.37 |

Should a reserve have been set aside for replacement purposes, and have been included with the above expenses (said sum earning compound interest at the rate of five per cent per annum, to create an amount sufficient to replace depreciable plant and system at the expiration of twenty-five years) it would require approximately $244.99 per year. The amount for eight months operation would have been $163.33, and the result of operation have been:

| | | |
|---|---|---|
| Revenue, eight months ..... | | $1,449.95 |
| Expenses, eight months .....$2,215.32 | | |
| Reserve for replacement purposes on above basis, ⅔ yr..... | 163.33 | 2,378.65 |
| Loss from operation ..... | | $ 928.70 |

Should a reserve have been set aside for replacement purposes and included with the above expenses (said sum being set aside on the basis of one twenty-fifth of the amount of the depreciable property each year, earning no interest) this sum would approximate $459.99 per year, or $306.66 for the eight months, and the result of operation have been:

| | | |
|---|---|---|
| Revenue, eight months | | $1,449.95 |
| Expenses, eight months | $2,215.32 | |
| Reserve for replacement purposes on above basis ⅔ yr. | 306.66 | 2,521.98 |
| Loss from operation | | $1,072.03 |

It appears that the present need for replacement is such that a reserve at this time based on either of the above methods would be wholly inadequate. Even assuming that they are adequate, it appears that the earnings are entirely too small to permit of any reserve.

It may be stated that one of the chief items of expense connected with the electrical system is the cost of cleaning rocks, gravel and debris from the one and one-quarter mile of ditch which runs along the mountain side and supplies water for generation. This ditch is cleaned every year, and a failure to clean same would result in very unsatisfactory lights. Mr. Butler advised that the cost of piping the water would save this expense but would be prohibitive to him.

Mr. Butler and different members of the family read the meters and collect the bills and no regular meter reader and collector is employed. In a number of cases accounts remain on the books for several months without being settled. In other cases parties who owe Mr. Butler electrical bills, pay for same in services to him on his ditch or line. In some instances Mr. Butler pays his indebtedness to men employed on his system by doing automobile and garage work for them.

It might be added that Mr. Butler has a very good garage business, and it appears that most of his time is devoted to same. He advised that his garage is the only thing which has kept him from being bankrupt, and that he has used a great deal of the money earned from his garage in defraying expenses connected with his electrical system.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 10th day of March, A. D. 1923.

KAMAS TOWN, a Municipal Corporation, *Complainant,*

vs.

G. W. BUTLER, doing business under the name of "Kamas Light, Heat and Power Company," *Defendant.*

CASE No. 511

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the complaint be, and it is hereby, dismissed.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of J. F. HANSEN and J. H. WADE, for permission to operate an automobile stage line between Castle Gate and Willow Creek.

CASE No. 525

Submitted April 14, 1922. Decided June 9, 1923.

Appearance:
J. H. Wade, for Applicants.

## REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

In this application, it was desired to establish an automobile stage line common carrier service from Price, Car-

bon County, Utah, via Helper and Castle Gate, Utah, to a point about two miles northeast of Castle Gate, known as Willow Creek, at which point a mining town was to be established, in Carbon County.

The case came on regularly for hearing, April 14, 1922; but action has been withheld, for the reason that no mining town has been established at this point.

It now appears that it is unlikely that any development will be had in the near future, and the case is accordingly dismissed, without prejudice.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
Commissioner.

We concur:
(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 9th day of June, A. D. 1923.

| | |
|---|---|
| In the Matter of the Application of J. F. HANSEN and J. H. WADE, for permission to operate an automobile stage line between Castle Gate and Willow Creek. | CASE No. 525 |

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be, and it is hereby, dismissed, without prejudice.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

TINTIC SCHOOL DISTRICT,
*Complainant,*

vs.

MAMMOTH MINING COMPANY,
*Defendant.*

CASE No. 527

Submitted November 27, 1922. Decided March 14, 1923.

Appearances:

I. L. Williamson and Pat Fennel, for Complainant.

Earl F. Dunn and Earl McIntyre, for Defendant.

## REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

The above entitled matter came on for hearing at Eureka, Utah, April 21, 1922.

The Tintic School District contends that it is required to pay an exorbitant price for water used by it, furnished by the Mammoth Mining Company, maintaining the rate is entirely unreasonable and excessive; that the Mining Company owns and operates the only available source of water supply for Mammoth City, including the Mammoth Public Schools; that prior to last year, said Mining Company charged as a flat rate $60.00 per year, while last year the rate was raised to $90.00, and the present year charges $3.00 per thousand gallons, which results in a cost of $35.00 per month for a school of 170 pupils and which will amount to about $400 per year. The rate charged, in comparison with the rate paid by the public schools of Eureka City, is alleged to be high.

The defendant Mining Company contends that the price so charged was the same as the rate to the Tintic Mining & Developing Company and the Gold Chain Mining Company, and is entirely reasonable, considering the large capital invested in the water system, pipes, pumps and equipment connected with the cost of delivering said water to the consumers; that the source of supply of said water is some twenty miles west of Mammoth, and, in order to bring the water to Mammoth, requires machinery and pumps, which must be kept continuously in good condition to guard against water shortage. Said defendant Com-

pany further contends that the school in question has always used more water than that paid for, due to the fact that they were not metered until recently, which has resulted, in the past, in a prodigal waste of said water. This was done before the Company installed meters and assessed the School District at the rate under complaint. It is contended by the defendant Company that the rate is reasonable and within its rights.

At the close of the taking of the testimony, the Mining Company was requested to send in a report of its plant costs and operation. In keeping with such request, the Mammoth Mining Company, on June 5, 1922, filed with the Commission a statement showing the operation of the water system, claiming that from said statement, the charge of the Mammoth School of the Tintic District was reasonable and within the rights of the said defendant corporation.

Thereafter, Mr. D. O. Rich, Auditor of the Commission, visited Mammoth and Eureka, for the purpose of checking over the figures presented to the Commission by the Mammoth Mining Company, relative to the above. Said report shows that Mr. Rich conferred with the Superintendent of the District schools and with Mr. Fennel, a member of the school board. He likewise visited Mr. McIntyre and Mr. Dunn, employes of the defendant Mining Company, and some of the matters in dispute were investigated.

Additional testimony was taken at a hearing, November 27, 1922, at which time the statement and report of the Mammoth Mining Company was checked over and the party making it cross-examined by the officers of the school board. There was also some additional testimony given by Mr. A. L. Williams, Mr. Pat Fennel, Mr. Earl McIntyre and Mr. Earl F. Dunn. Some exhibits were also introduced purporting to show the result of the operation of the water plant in question.

The statement above referred to, filed by the Mining Company, claims an investment in said water system of $19,000, consisting of water rights, pump, pipe lines, equipment, and a fixed cost per month for coal, wages, sundry supplies and taxes, of $767.00, with seven per cent interest on the amount invested, making a monthly requirement of $1,898.00, that said system must earn, in order to pay expenses, a fair interest on the invested capital.

The income from all sources, as claimed by the statement, based upon an average, covering a period of five years, amounts to $737.50 per month. To this, however,

should be added the consumption of the defendant Company of 500,000 gallons per month, fixed at a rate of $1.50 per thousand gallons, which would show a total earning of $1,487.50. This, however, would be $400.00 less than would pay expenses and interest on the investment.

The statement further shows that the average family in the lower part of Mammoth used about a thousand gallons per month, for which they paid $2.00 per thousand gallons, and setting forth as a defense of the $3.00 per thousand gallons that is being charged the Tintic School District; that the water furnished the School District is pumped to upper Mammoth and entails greater expense. However, it would appear that the expense of pumping water to Upper Mammoth is not so great as $1.00 per thousand gallons. There is clearly a discrimination of rates as between the consumers in Lower Mammoth and the School District; and again, the charge of $1.50 for a thousand gallons to the Company itself, is a discrimination as between the School District and the Mammoth Mining Company. The question of rates to be charged by the Company must be entirely outside of the consideration of its mining operations and treated as a water company rather than a mining company in this case.

Primarily, the water obtained and conveyed to Mammoth was for the use of the Mining Company in operating its mines, and without such water the operation of the mines could not be effected.

After a careful consideration of all the testimony, together with the checking up and the inquiries made by the Commission, it would seem that $3.00 per month per thousand gallons charged to the School District is discriminatory and that it is too high.

Under the circumstances, the Commission is of the opinion that the charge made to the Mammoth School District should be reduced from $3.00 per thousand gallons to $2.00 per thousand gallons.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

I concur:

(Signed) WARREN STOUTNOUR,
Commissioner.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 14th day of March, A. D. 1923.

TINTIC SCHOOL DISTRICT,
*Complainant,*

vs.

MAMMOTH MINING COMPANY,
*Defendant.*

CASE No. 527

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That defendant, Mammoth Mining Company, be, and it is hereby, required to publish and put into effect rates for water sold to the Tintic School District which shall not exceed $2.00 per thousand gallons.

ORDERED FURTHER, That such reduced rates shall be made effective March 15, 1923.

ORDERED FURTHER, That defendant, Mammoth Mining Company, shall forthwith publish and file with the Commission a schedule naming all its rates, rules and regulations, in the manner prescribed by the Commission's Tariff Circular No. 2.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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In the Matter of the Application of CHRIS ANDERSON, ET AL., for permission to operate an automobile stage line between Helper and Roosevelt, via Duchesne and Myton and between Heber and Roosevelt, via Duchesne and Myton, Utah.

CASE No. 530

PENDING

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of CEDAR CITY, a Municipal Corporation, for permission to construct and operate a municipal lighting plant. } CASE No. 542

Submitted September 12, 1922. Decided March 13, 1923.

REPORT AND ORDER OF THE COMMISSION

By the Commission:

The application of Cedar City, a municipal corporation, for an order authorizing it to construct and operate a municipal lighting plant, was filed with the Commission, May 16, 1922. Subsequently, on September 12, 1922, the Commission received a letter stating that it was not deemed advisable to hear the matter at the present time, and did not desire that the case be set down for hearing.

Nothing further having been heard from said City, and it appearing that the further prosecution of this application has been abandoned, on motion of the Commission, the case is dismissed, without prejudice.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the TOWN OF PARAGONAH, for permission to increase its schedule of rates for electric lighting and electric power. } CASE No. 553

Submitted December 11, 1922. Decided March 27, 1923.

Appearances:

Thos. W. Jones, Claud Edwards, S. T. Topham } for Town of Paragonah.

D. H. Morris and A. L. Woodhouse } for Dixie Power Company.

## REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

The above entitled case came on for hearing at Paragonah, Utah, June 22, 1922.

There being no opposition or protest, the Town of Paragonah, by its officers, represented that the applicant was an organized town, within Iron County; that it was the owner of a distribution system used for the purpose of serving the inhabitants of said town; that the power used by said town was purchased from the Parowan City Municipal Power Plant; that the revenues received from the operation of the plant were not sufficient to meet the upkeep and maintain the system in an efficient manner for the operation and distribution of the power for light and other purposes.

Mr. S. D. Topham, Secretary of the Town Board, also gave testimony to the effect that the system of distribution was in bad condition, and that it was necessary to increase the rates to the consumers in order to obtain more revenues with which to keep up and maintain the distribution system owned by the town; that the present rate for lighting was seven cents per K.W.H., and for power, seven cents per K.W.H.; that the increase necessary to furnish and make up the deficit, would require an advance of rates as follows:

For lighting, 9c per K.W.H.
For power, 6c per K.W.H.

that the system had been used by the predecessors in interest some fifteen years prior to the purchase of the same by the petitioner, and that it was necessary to rebuild the system; but that the present income was insufficient to do so.

A statement was filed by the petitioner which shows the valuation of the distribution system to be $5,688.00; that there was an indebtedness to the Intermountain Electric Company of $600.00; that the maintenance cost per month was $25.00, the cost of electric energy purchased from Parowan City was $25.00, and that monthly payments of $50.00 had been made upon the bonds, making a total expense of $100.00; that revenues received from the consumers amounted to $85.00 a month; that the estimated revenue from the new schedule as proposed by the petitioner, would be about $105.00 per month.

At the close of the hearing, the petitioners filed with the Commission a financial statement showing the result of the operations of their plant for at least one year, as follows:

| | |
|---|---|
| Money due the Bank of Iron County | $ 320.00 |
| Interest | 28.80 |
| Intermountain Electric Co., for transformers and meters | 580.46 |
| Freight on electric supplies | 45.50 |
| Electrician's fees, from Mar. 1 to Dec. 1 | 184.40 |
| Miscellaneous expenses | 97.98 |
| Parowan City for power, at $40 per Mo. for 9 Mos | 360.00 |
| Salaries of town officers | 240.00 |
| Total Expenses | $1,857.14 |
| Cash received during the year | 925.62 |
| Deficit | $ 931.52 |

The amount received, according to the report, is made up of the following items:

| | |
|---|---|
| From electric lighting in Paragonah | $634.62 |
| Pedlers' License | 6.00 |
| Town Taxes | 285.00 |
| Total | $925.62 |

In the report submitted, there are a number of items, both in the receipts and expenses, which should not be considered. From the expenses to be charged to the operation of the system, the following should not be included:

| | |
|---|---|
| Money from the Bank of Iron County | $ 320.00 |
| Interest on said money | 28.80 |
| Intermountain Electric Co., for transformers and meters | 580.46 |
| Salaries of town officers | 240.00 |
| Total | $1,169.26 |

which total of $1,169.26, should be subtracted from the total given of $1,857.14, which would leave an amount of $687.88 balance for the year.

From the receipts there should be subtracted:

| | |
|---|---|
| Pedlers' licenses | $ 6.00 |
| Taxes | 285.00 |
| | $291.00 |

This amount of $291.00 substracted from $925.62, cash received, would leave $634.62.

So, we have, according to the report and its operating adjustments, the following:

| | |
|---|---|
| Receipts | $634.62 |
| Operating Expenses | 687.88 |
| Deficit | $ 53.26 |

It would appear from the statement given at the hearing that the original purchase of the system was from one J. H. Gurr, for $3,850.00. Other expenses of extensions, etc., brought the total to the value of $5,688.00. The statement also furnished the information that the agreement between Parowan City and Paragonah was that the revenues from the light be divided on a basis of 50-50. While it appears that the charge was $40.00 a month for the power, yet the figures would indicate that the amount paid Parowan City was almost 50-50.

In the statement, there appears to be no reserve for depreciation or replacement; nor has there been, as far as the information given the Commission, for covering any period of time since the purchase was made by the Town of Paragonah from Mr. Gurr. This, no doubt, accounts for the bad condition of the system as testified to by Mr. Jones, President of the town board, as well as the secretary and electrician. Five per cent for depreciation would give the city about $284.40, and the advace rates as asked for would furnish about, according to the figures submitted, $240.00. This amount would seem to be necessary, in order to put the plant in a reasonably good condition, leaving a very small amount for actual expenses.

It is very clear to the Commission that under the showing, the application for the advance should be allowed, and that the rates to be collected by the town board of Paragonah from the users of light and power shall be as follows:

For light purposes .....9c per K.W.H.
For power purposes, (applicable for small motors) .....6c per K.W.H.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

I concur:
(Signed) WARREN STOUTNOUR,
Commissioner.

[SEAL]

Attest:
(Signed) D. O. RICH, Acting Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 27th day of March, A. D. 1922.

In the Matter of the Application of the TOWN OF PARAGONAH, for permission to increase its schedule of rates for electric lighting and electric power. } CASE No. 553

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That petitioner, the Town of Paragonah, be, and is hereby authorized to establish and put into effect, increased rates for electric service which will not exceed the following:

For Light purposes .....9c per K.W.H.
For power purposes, (applicable for small motors) .....6c per K.W.H.

ORDERED FURTHER, That increased rates authorized herein be made effective upon ten days' notice to the public and the Commission.

ORDERED FURTHER, That publications naming such increased rates shall bear upon the title page the following notation:

"Issued upon less than statutory notice, by authority of Public Utilities Commission of Utah, Case No. 553, dated March 27, 1923."

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

CULLEN HOTEL COMPANY, et al.,
*Complainants,*

vs.

UNION PACIFIC RAILROAD COMPANY and the OREGON SHORT LINE RAILROAD COMPANY,
*Defendants.*

CASE No. 565

Submitted October 19, 1922. Decided December 14, 1922.

Appearances:

H. L. Mulliner, for Complainant.
R. B. Porter, for Defendants.

## REPORT OF THE COMMISSION

By the Commission:

This case came on regularly to be heard before the Commission on the 14th day of September, 1922, upon the complaint of the Complainants and the answer and demurrer of the defendants.

The contention of part of the Complainants is that they are engaged in the hotel business in Salt Lake City, and part of them are engaged in operating hotel busses, sight-seeing cars and taxi-cabs for the transportation of passengers in said Salt Lake City. That the defendants are corporations operating under the laws of the State of Utah as public carriers of passengers, baggage, express and freight for hire, and are so engaged between Ogden, Utah, and Salt Lake City, Utah. That in the operation of said railroad they are issuing free transportation to a company known as the "Salt Lake Transportation Company," and which is engaged in competition with the Complainants in the operation of hotel busses, sight-seeing cars and taxi-cabs for hire. That said free transportation is used by the employes of said transportation company for the purpose of riding upon the trains of the defendant companies and soliciting among the passengers of said trains

and selling transportation for hotel busses, sight-seeing cars and taxi-cabs within Salt Lake City; that the transportation so issued is not to any individual but is issued generally to the employes of said transportation company and used by different employes who solicit passengers on said trains for service by selling tickets entitling said passengers to said services. That the transportation company above referred to operates hotel busses for four hotels in Salt Lake City; and that in soliciting transportation in said busses and in other vehicles of said transportation company, said hotels are favored by said solicitors. And that said solicitors also solicit business for the hotels. That the practice above referred to is a discrimination against all other persons who are engaged in the business of competition with said transportation company, which results in a discrimination against the above named hotels; and that the permitting of such solicitation by the said company or its agents upon trains of the defendants and the free transportation issued therefor, which is not paid for in accordance with the rates as fixed and published and required by law for the same, constitutes a violation of Chapter 37 of the Session Laws of Utah, 1917, and particularly Sections 5, 6 and 7 of said Chapter; the same being Sections 4787, 4788, 4789 of the Compiled Laws of Utah, 1917.

The Oregon Short Line Railroad Company, one of the defendants, filed certain objections to the petition by demurring to the jurisdiction of the Commission to granting the relief prayed for; also that the allegations of the complaint are not sufficient to entitle the Complainants to any relief. And further filed its answer admitting that it owns and operates a line or lines of railroad within and through the State of Utah as a common carrier of passengers, baggage and freight, and is now and was at all times mentioned in the complaint engaged in the business of transporting passengers, baggage and freight between points in said state as a common carrier, subject to the provisions of acts of Congress known as the "Interstate Commerce Act and Transportation Act of 1920"; and admits that it permits employees of the Salt Lake Transportation Company to ride upon certain trains between Ogden and Salt Lake for the purpose of making arrangements with the defendant's passengers for the transfer of said passengers and their baggage from its depot to different places said passengers may desire to be transferred or have their baggage transferred; contending that the Commission is

without jurisdiction or authority to adjudicate or decide matters alleged in said complaint, for the reason that the matters alleged in said complaint relative to the employees of the Salt Lake Transportation Company, riding on its trains is not furnishing free transportation, but relates to contractural service which this defendant has entered into with the Salt Lake Transportation Company for the protection, benefit and convenience of its passengers and is a matter over which this Commission has no jurisdiction.

Testimony was submitted by the Complainants that they were in business in Salt Lake City as set out in their complaint; stating that the Salt Lake Transportation Company had been given a preference by the defendant Railroad Companies, as alleged in the Complaint and admitted in the answer of the railroad companies; that said privileges accorded said transportation company was discriminatory and preferential, and resulted in giving said transportation company a great advantage over complainants in the operation of busses, taxi-cabs and patronage to the head of the hotel transportation wagons, all of which results in damage to the complainants named in the complaint.

The questions raised in the demurrer and answer of the defendant to the jurisdiction of this Commission over the subject matter we think is not well taken, and we hold that the Commission has authority to investigate the complaint of the Complainants herein.

There seems to be but little conflict in the testimony and the questions for this Commission to decide is as to whether or not the privileges given to the Salt Lake Transportation Company, under this contract, are discriminatory, preferential and in violation of the acts of the Legislature in creating the Utilities Commission.

It was stipulated by the parties to this action during the hearing that an order might be entered prohibiting the sale of sight-seeing tickets and the soliciting for hotels and hotel busses on the trains of the defendant company.

The railroad companies claim that the relationship to the Salt Lake Transportation Company, as complained of is a contractural one, and is specifically set out in a contract introduced in evidence in this case, and in part contains the following contractual conditions:

That in consideration of the payment of $1,500.00 per annum to the Oregon Short Line Railroad Company by the Salt Lake Transportation Company in equal monthly installments, the Transportation Company is granted per-

mission to its authorized agents, and representatives to board all passenger trains of the said Railroad Company entering Salt Lake City at convenient points where trains are scheduled to stop, not, however, at a distance to exceed 36 miles from Salt Lake City; for the purpose of soliciting baggage and transfer business of passengers on said trains, which enables said agents and representatives of the transportation Company to travel upon said trains for said purposes; that for the carrying out of said contract the Railroad Company furnishes to the Transportation Company free transportation for solicitors of baggage; the number of such solicitors to be employed to be left to the judgment and discretion of the proper representatives of the Railroad Company.

The Railroad Company further furnishes to the said Transportation Company a convenient office space or room inside of the passenger depot at Salt Lake City for the accommodation of one or more representatives of the Transportation Company in checking or handling of baggage; and grants permission to the said Transportation Company to occupy convenient office space—the kind, nature and location to be selected by the Railroad Company, but not to have more than one of its agents or representatives in the said depot building and the approaches thereto and the hallways thereof at any one time for the purpose of notifying passengers of the transfer and livery facilities and soliciting business; and to have one or more of its men in the baggage room for the purpose of handling baggage.

The Transportation Company in said contract covenants and agrees that its charges for handling baggage shall be fair and reasonable and in no case in excess of the general charge existing and charged by other transfer companies or expressmen in Salt Lake City for like service.

There are a number of other covenants and obligations specified and set forth in the contract which is on file with the Commission, all of which would seem to be sufficient and adequate to protect the Railroad Company from any damage that might arise from the actions of the Transportation Company's agents, as well as to secure payment of a stipulated price of $1,500.00 per year for such privilege.

The employes or agents of said Transportation Company are subject to the control and direction of the superintendent and subordinates in charge of trains, as well as the regulations of the depot master and employes of the company for the purpose of enforcing proper discipline and maintaining order in the conduct of the business and

are subject to such directions as they may give them in the maintenance of proper discipline and order in and about said depot; and shall, in no event, solicit baggage or business from any passenger or person in or about said depot in such a way as to constitute an annoyance to such passenger or other persons. And that in the event of the character of the men employed by the Transportation Company in the performance of the service of the trains, or in and about said depot, shall not be satisfactory to the Railroad Company, the said Transportation Company, upon notice from the Railroad Company, will remove such employes from its employment.

Under the provisions of the contract, the Transportation Company is not authorized to sell sight-seeing or taxi-cab tickets or solicit patronage for any hotels; and it further appeared by the testimony of the defendant that no such soliciting or selling of tickets was done by and with the knowledg or consent of the Railway Company; that such acts would constitute a violation of the contract and were never intended by the Railway Company. That the defendant would insist that the work and activity of the agents and representatives of said transportation company be limited and controlled in keeping with the provisions of said contract, which specifically limits said transportation company, its agents and representatives, to the riding on its trains for the purpose of soliciting baggage, and transportation business.

Under the authorities and the almost universal practice concerning matters set forth in the contract referred to, the defendant is justified in entering into such a contract, and that the carrying out of the same does not amount to a violation of the provisions of the statute referred to in the complainant's brief.

In view, however, of the stipulation entered into by the complainants and the defendants, and in view of there being some testimony introduced by the complainants which would in a degree indicate that the agents and representatives of the Transportation Company had been selling taxi-cab and sight-seeing tickets and had done some soliciting for certain hotels, we feel called upon to enter an order restraining the Railroad Companies from allowing the agents and representatives of the Transportation Company from selling sight-seeing and taxi-cab tickets or soliciting patronage for any of the hotels of Salt Lake City; and to further say that it would be the duty of the Railroad

Companies to see to it that such acts are not committed on is trains.

An order will issue in keeping with the above findings.

(Signed) A. R. HEYWOOD,
WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:
(Signed) T. E. BANNING, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 14th day of December, A. D. 1922.

CULLEN HOTEL COMPANY, et al.,
*Complainants,*

vs.

UNION PACIFIC RAILROAD COMPANY and the OREGON SHORT LINE RAILROAD COMPANY,
*Defendants.*

} CASE No. 565

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That defendant, Oregon Short Line Railroad Company, require agents and representatives of the Salt Lake Transportation Company to refrain from soliciting or selling tickets for taxies, sight-seeing tickets, or soliciting patronage for any hotel, while riding upon defendant's trains on transportation furnished by the said Railroad Company.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

C. E. SMITH, et al.,
*Complainants,*
vs.
THE BEAR CANYON PIPE LINE COMPANY, a corporaton,
*Defedant.*
} CASE No. 573

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the PROVO TRANSFER & TAXI COMPANY, a Corporation, for permission to operate a truck line between Provo, Eureka, and Nephi, Utah, and intermediate points.
} CASE No. 574

Submitted August 31, 1922 Decided January 15, 1923

Appearances:

Parker & Robinson, for Applicant.
Chase Hatch, for Utah Central Transfer and Morgan & Carter.
E. J. Hardesty, for American Express Co.
B. R. Howell, for Denver & Rio Grande Western R. R. Co.
Dana T. Smith, T. H. Burton, for Los Angeles & Salt Lake Railroad Company.
Aldon J. Anderson, Ralph Jewell, for Salt Lake & Utah Railroad Co.

## REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

This application was filed August 7, 1922.

The Provo Transfer & Taxi Company sets forth in this application that it is a corporation having its principal place of business in Provo, Utah County, State of Utah, doing business under and by virtue of the laws of the State of Utah; that the business of said corporation is the doing of all kinds of transfer business and the maintaining of a taxi service within Provo, and alleges that it

has been particularly engaged in the transfer of all kinds of freight, merchandise, furniture, etc., and the storage of such articles, and owns a number of trucks with which to conduct said business; and alleges further that it has ample and sufficient, satisfactory and proper equipment with which to conduct and extend its transfer business as required in this application, so that it can operate trucks between Provo, Eureka and Nephi, Utah, and all intermediate points, regularly, and maintain an efficient service in the hauling and delivery of all kinds of merchandise, freight and such articles as are available to be transferred and delivered in said business. Applicant asks that the Commission issue a certificate, granting the right to establish and maintain such service.

The protest of the Denver & Rio Grande Western Railroad Company, filed August 28, 1922, for ground of protest, alleges that Joseph H. Young, Receiver of said Railroad, is operating the Denver & Rio Grande Western Railroad, and that said Railroad is a common carrier of freight for hire between Provo, Utah, and Eureka, Utah, and intermediate points, and is a trunk line railroad operating between Ogden, Utah, and Denver, Colorado. Protestant alleges that it furnishes adequate freight service between Provo and Eureka, and that neither public convenience nor necessity require the granting of said application, and that the freight service maintained by the protestant and the other common carriers between Provo and Eureka, and intermediate points, is full, convenient, adequate and efficient; and further, that the automobile service proposed in said application would subject protestant to unjust and unreasonable competition, and would cause protestant to suffer great and irreparable injury.

The protest of the Los Angeles & Salt Lake Railroad Company, filed August 30, 1922, alleges that public convenience and necessity do not require the establishment of an automobile freight line between the City of Provo and the City of Nephi, Utah, for the reason that protestant is now operating a line of steam railroad between said points, furnishing freight and passenger service fully adequate for the needs and requirements of the public, and that the Denver & Rio Grande Western Railroad Company and the Salt Lake and Utah Railroad Company, together with protestant, furnish transportation facilities for freight and passengers fully adequate for the needs of the public, and asks that the application of the Provo Transfer & Taxi Company be denied.

The protest of the American Railway Express Company denies that the necessities of the public in the territory proposed to be served by the applicant would be benefitted by the operation of the proposed truck line, and alleges that neither public convenience nor necessity requires the service which the applicant seeks to inaugurate, and alleges that the service which the applicant seeks to inaugurate duplicates the service already offered by this protestant, and contends that the service which it now renders the public is ample, commodious, convenient and efficient, and asks that the application herein be denied.

The protest of the Salt Lake & Utah Railroad Company denies that public convenience and necessity would be benefitted by the operation of the proposed truck line, and states that it is the owner of an electric railroad running from Salt Lake City to Payson, Utah, through the cities of Provo, Springville, Spanish Fork, Salem and Payson, Utah, and the route of the proposed truck line which applicant seeks to inaugurate to operate, parallels that part of the line of the above described railroad between Springville and Payson, and protestant contends that the service which it now renders the public is ample, commodious, convenient and efficient, and that no need exists for any other additional service in said territory.

The protestants, L. C. Morgan and James E. Carter, doing business under the name of the Utah Central Transfer Company, protested against the application filed herein, upon the following grounds: That the protestants now are, and since on or about the 23rd day of February, 1922, have been, operating the Auto Transfer line for the handling of freight between Provo and Eureka and between Provo and Nephi, under and by authority of permit to operate, granted in Case No. 460, by the Public Utilities Commission of Utah, and allege that there is no public necessity for any further or additional service in the territory served by these protestants than is now in force and effect, and further allege that the service which they now render the people together with the services rendered by the railroad companies, is ample, commodious and efficient, and that the shippers of goods, wares and merchandise between said points above mentioned are satisfied with the service now existing, and that there is no need for any additional service in said territory.

August 9, 1922, a communication was received from the Provo Chamber of Commerce, supporting the petition of the Provo Transfer & Taxi Company.

The case came on regularly for hearing, August 31, 1922. Thereupon, numerous witnesses produced by the respective parties were heard, exhibits were introduced by both the applicants and the protestants, and the case, after hearing, submitted.

The record in this case disclosed that a certificate of convenience and necessity had been issued by the Commission, Feb. 23, 1922, in Case No. 460, to Morgan and Carter, authorizing them to conduct a common carrier service by auto truck between Provo and Nephi and Provo and Eureka, likewise serving intermediate points on both routes. Service was established; but, after a time, financial difficulties became so pressing and of such a nature that the holders of the certificate were deprived of the trucks used in carrying on transportation, and at the solicitation of Morgan and Carter, the B. & O. Transportation Company carried on the business for a few days, and on about the first of May, Mr. Morgan made an operating arrangement with the applicant in this case. As a result of said arrangement, Mr. Morrison furnished the trucks for the continuing of this service and Mr. Morgan drove one of the trucks.

There is some conflict in the evidence as to the exact nature of the arrangement between Messrs. Morgan and Morrison, and particularly in the matter of compensating Mr. Morgan; suffice to say that on about July 29th, the arrangement was terminated. Mr. Morgan secured the use of other trucks and continued the operation of the motor truck service.

The applicant in this case seeks a certificate upon the ground that public convenience and necessity require the operation of motor truck lines operating as common carriers between the points named in the application, and further that weight should be given to the fact that applicant had helped to carry on the service for Mr. Morgan, and had helped to build up the business.

It is apparently conceded by all concerned that there is no necessity for two competing truck lines.

The evidence of the carriers by rail and of the American Express Company, protestants in this case, was generally intended to show the kind and character of the service now offered by the protestants and supporting the theory that no necessity existed for any service competitive with theirs; further, that the carriers by rail paid a large amount of taxes, a part of which was used to construct hard surface highways; these, in turn being used by the competing motor truck, without any contribution to the upkeep of the high-

ways; that the motor truck paid only a nominal tax, was generally without substantial financial responsibility, and operated whenever it found the roads good and the time convenient.

Numerous business men of Nephi appeared and testified in substance to the effect that as between the service of the railway and the motor truck they preferred the railway, as giving an all-year-round, dependable service, and, with the railway giving service as at present, there was no public necessity for a competing motor truck line.

The record further disclosed that the principal kinds of freight delivered to Nephi and intermediate points from Provo is freight received from wholesale houses and delivered to retail merchants. There is also a considerable movement of household furniture, occasioned by people moving from one town to the other.

The very people whom the motor truck line seeks to serve in Nephi, now come forward and ask that no common carrier service by truck be permitted, for the reason that the railway served them adequately and dependably. To permit the continued operation of the motor truck over this part of the route, would obviously serve no useful public purpose, and would result in economic waste. The record as regards Eureka is not to the same effect.

After a full consideration of all material facts that may or do have any bearing upon the application and the questions involved in this case, the application of the Provo Transfer & Taxi Company, to establish a motor truck, common carrier service between Provo and Nephi, and Provo and Eureka and intermediate points, should be denied. Further, the continued operation by motor truck as a common carrier by Morgan and Carter between Provo and Nephi, no longer serves public necessity, and should be discontinued, the service between Provo and Eureka should remain as heretofore authorized, a common carrier service to be conducted by Morgan and Carter.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) T. E. BANNING, Secretary.

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 15th day of January, A. D. 1923.

In the Matter of the Application of the PROVO TRANSFER & TAXI COMPANY, a Corporation, for permission to operate a truck line between Provo, Eureka, and Nephi, Utah, and intermediate points. } CASE No. 574

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, that the application of the Provo Transfer & Taxi Company, for permission to operate a freight truck line between Provo and Eureka, Utah, and between Provo and Nephi, Utah, be, and it is hereby, denied.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

F. B. HAMMOND,
*Complainant,*
vs.
BLUE MOUNTAIN IRRIGATION CO., a Corporation,
*Defendant.* } CASE No. 575

ORDER

Upon stipulation of complainant and defendant herein:

IT IS ORDERED, That the complaint of F. B. Hammond vs. Blue Mountain Irrigation Company, a Corporation, be, and it is hereby, dismissed, without prejudice.

By the Commission.

Dated at Salt Lake City, Utah, this 28th day of June, 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

In the Matter of the Application of the STATE ROAD COMMISSION OF UTAH, for an investigation and order covering a crossing of the State Highway over the Oregon Short Line Railroad near Brigham. } CASE No. 576

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of SALT LAKE CITY, a Municipal Corporation of Utah, for permission to construct a public highway across the tracks of the Bamberger Electric Railroad Company. } CASE No. 578

ORDER

Upon motion of the petitioner, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed, without prejudice.

By the Commission.

Dated at Salt Lake City, Utah, this 18th day of April, 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

In the Matter of the Application of the UTAH CENTRAL RAILROAD COMPANY for a certificate of public convenience and necessity. } CASE No. 580

PENDING

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of E. L. VEILE, for permission to operate an automobile stage line between Fillmore and Beaver, Utah. } CASE No. 582

Submitted October 13, 1922. Decided March 13, 1923.

Appearances:

E. L. Veile, Petitioner.
Parley P. Payne, Protestant.

### REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

The above entitled matter was heard at Fillmore, Utah, October 13, 1922.

Testimony was given by the applicant to the effect that he was engaged in the business of transporting passengers between Delta and Fillmore; that in view of the building of the railroad from Fillmore to Delta, he was of the opinion that there would be traffic from the end of the railroad at Fillmore south to Beaver, and that there would be a necessity for such convenience; that he was prepared to put on sufficient automobiles to take care of the traffic; and asked for a certificate of convenience and necessity to give such service; but desired that the order for such service be withheld for a time, especially until the railroad from Delta to Fillmore would be completed such railroad.

Mr. Parley P. Payne appeared and stated that he would object to Mr. Veile operating a stage line between Fillmore and Beaver, if such service interfered with his right to carry passengers between Fillmore and Kanosh, and service for passenger traffic given to the public by and intermediate points.

Mr. Veile stated that he had no intention of interfering with the service now being given by Parley P. Payne between Fillmore and Kanosh.

The railroad was completed to Fillmore and passenger service commenced about the middle of January of the present year, and on the 10th day of March, 1923, Mr. Veile, the applicant, was called over the telephone by Commissioner Greenwood, who heard the case, at which time he was informed that some action must be taken in the matter. Mr. Veile stated that he did not believe there was

sufficient traffic at the present time, and conditions were not such as would warrant the operation of the service contemplated by the petition, and expressed himself as having no objection to the case being dismissed, without prejudice; that it would be his intention to renew his application later on.

It would appear from the facts in this case that Fillmore is about sixty-five miles from Beaver, and the only towns or settlements between those points are Kanosh and Meadow, and a few ranches scattered along the road. It is a question as to whether there is a necessity for the establishment of such service at the present time.

In view of the conditions, together with the attitude of the applicant above referred to, the Commission is of the opinion that the application should be dismissed.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

I concur:

(Signed) WARREN STOUTNOUR,
Commissioner.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 13th day of March, A. D. 1923.

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|---|---|
| In the Matter of the Application of E. L. VEILE, for permission to operate an automobile stage line between Fillmore and Beaver, Utah. | CASE No. 582 |

Upon motion of the Commission and by the consent of the Petitioner:

IT IS ORDERED, That application in the above entitled matter be, and it is hereby, dismissed without prejudice.

By the Commission.

(Signed) DON O. RICH,
Acting Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of ABE MEEKING, JR., for permission to operate an automobile stage line between Ogden and Salt Lake City, and intermediate points. } CASE No. 583

Decided September 21, 1923.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Commission, September 2, 1922, Abe Meeking, Jr., requests permission to operate an automobile buss or passenger line between Salt Lake City and Ogden, Utah, and intermediate points.

This case was assigned several times for hearing before the Commission, the last date being Monday, August 13, 1923.

On August 13, 1923, Gustin and Pence, Attorneys for applicant, filed a written motion for dismissal of the case.

The Commission is of the opinion that the case should be dismissed.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 21st day of September, A. D. 1923.

In the Matter of the Application of ABE MEEKING, JR., for permission to operate an automobile stage line between Ogden and Salt Lake City, and intermediate points. } CASE No. 583

Upon motion of applicant, and with the consent of the Commission:

IT IS ORDERED, That the application of Abe Meeking, Jr., for permission to operate an automobile stage line between Ogden and Salt Lake City, Utah, and intermediate points, be, and the same is hereby, dismissed, without prejudice.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Investigation of the service rendered by the Salt Lake-Ogden Transportation Company. } CASE No. 584

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of BERNARD CASTAGNO, for permission to operate an automobile freight line between Salt Lake City and Grantsville, Utah. } CASE No. 586

Submitted Sept. 20, 1922. Decided Dec. 13, 1922.

Appearances:

Bernard Castagno, for himself.

B. R. Howell { for Western Pacific Railroad Company. Also for Frank T. Burmester.

## REPORT OF THE COMMISSION

By the Commission:

This application of Bernard Castagno was filed September 20, 1922, and shows that his residence and postoffice address is Grantsville, Utah; that his occupation is garage and truck man; that Grantsville is a town of approximately twelve hundred (1200) inhabitants, located seven miles from a railroad station, and is dependent upon the Western Pacific Railroad and the Burmester Truck Line for freight shipments from and to Salt Lake City and other points, and alleges that the present method of transporting freight from and to Grantsville is unsatisfactory, by reason of the many delays incident to the receiving of of shipments from Salt Lake City, and that public convenience and necessity require a more expeditious service.

Petitioner desires to establish such a service and transport freight and express by auto truck, as a common carrier, between Salt Lake City and Grantsville, making two round trips each week until such time as business conditions warrant an increased service, and for this service petitioner alleges that he has a one-ton truck available for such service and is financially able to procure such additional equipment as may be required to render sufficient service to the public, and asks that a certificate be issued authorizing such service.

The protest of the Western Pacific Railroad Company, filed October the 4th, alleges that the town of Grantsville is already furnished adequate freight service from Salt Lake City by protestant, in connection with the Burmester Truck Line, and that said service is ample, convenient, adequate and efficient, and that the application of Mr. Castagno, if granted, would subject the protestant and the said Burmester Truck Line to injurious and unreasonable competition, and would cause protestant to suffer great and irreparable injury.

Frank T. Burmester filed a protest October 6, 1922, alleging that the present service is all that is required to serve the town of Burmester, and that the total freight transported by a public carrier monthly to Grantsville does not exceed ten tons, and further that the Western Pacific Railroad transports freight to Burmester four times a week, and that protestant operates a stage daily, every day in the year between Burmester and Grantsville, and asks that the petition be denied.

The case came up regularly for hearing before Commissioners Heywood and Stoutnour, October 6, 1922.

Testimony of the applicant was to the effect that the present service was inadequate and inefficient, and that the service contemplated in his application would be more expeditious; that he was financially able to procure such additional equipment as the service might require, and that there was public necessity for such service.

The Western Pacific Railroad Company, through its witnesses, testified as to the service being rendered by that railroad, and that the present service was adequate and that the earnings of the Western Pacific Railroad Company in this state were meager, and that to take away even the relatively small amount of business from said railroad would only tend to further weaken the carrier's ability to render service to the public generally. The protestants also testified that the road conditions in winter were such as to preclude the giving of a dependable regular service.

That the carriers were taxed for the purpose of building roads, which were in turn used by auto trucks to the destruction of their business.

The Western Pacific Railroad traverses a rather sparsely settled section of the state, and the earnings of the carrier in this section are meager. It does give, however, a dependable, all the year round service, and is attempting to build up its business along the line in a commendable way.

A dependable, all the year round service is necessarily of vital concern to this section of the state, but to render said service, there must be sufficient earnings to keep the service going.

To grant this application would simply mean that during the summer months, when the roads were good, automobile trucks would take the greater portion of the business, and place upon the railroad the burden of furnishing equipment and service during the months of winter.

All things considered, we believe the public is best served by the present service and would gain nothing by taking away a portion of the already rather meager earnings of the railroad. The application should be denied.

An appropriate order will be issued.

(Signed) A. R. HEYWOOD,
WARREN STOUTNOUR,
Commissioners.

I concur:
(Signed) JOSHUA GREENWOOD,
[SEAL] Commissioner.

Attest:
(Signed) T. E. BANNING, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 13th day of December, A. D. 1922.

In the Matter of the Application of BERNARD CASTAGNO, for permission to operate an automobile freight line between Salt Lake City and Grantsville, Utah. } CASE No. 586

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things in-

volved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Bernard Castagno for permission to operate an automobile freight line between Salt Lake City and Grantsville, Utah, be, and it is hereby denied.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of HYRUM DAVIS, for permission to operate a passenger stage line between Milford and the Utah-Nevada state line, west of Garrison, Utah. | CASE No. 587 |

Submitted Dec. 14, 1922 Decided Dec. 19, 1922.

Appearances:

Hyrum Davis, for himself.

REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

This matter was heard at Milford the 14th day of December, 1922, pursuant to notice duly given. It was partially heard in September, but was not finished for the reason that proper notice had not been given.

From the showing, it appears that the applicant lives at Milford, Utah, and is engaged in carrying the United States mail from Milford, Utah, to Ely, Nevada, making three trips a week. The petitioner asked leave to amend his application to include express as well as passengers, which was granted.

It appears that there is no one authorized to carry passengers or who had been carrying passengers between the points in question, with the exception of one Joseph Dearden, who was engaged in carrying mail for the United States prior to July 1, of the present year. Mr. Dearden appeared at the hearing and stated that he hauled passengers from Milford to Garrison and Ely at times when Mr. Davis' stage was not running, and asked that he be per-

mitted to continue to do so. Mr. Davis did not object to Mr. Dearden carrying passengers at such times when he was not there to carry them. There was apparently no other objections or reasons appearing why a certificate of necessity and convenience should not issue to Mr. Davis to carry passengers from Milford to Garrison in the direction of Ely, to the Utah-Nevada State line.

It further appeared that the applicant had received from the authorities at Nevada a certificate authorizing him to carry passengers from the State Line between Nevada and Utah to Ely. Mr. Davis had been engaged in carrying mail as well as passengers and appeared to be competent and qualified and equipped to take care of the service.

It further appeared that there was a considerable traffic from and to Milford towards the western part of Millard County in the direction of Ely, and that a service so established would be a convenience to the traveling public.

Under the showing made, it clearly appeared that there was a necessity for such convenience and that the applicant is prepared and is capable of giving such service to the traveling public.

Applicant should comply with the law and rules of the Commission regarding filing schedules and should be granted authority to operate, conditioned upon his complying therewith, within thirty days from the date hereof.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

We concur:

A. R. HEYWOOD,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:

(Signed) T. E. BANNING, Secretary.

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

Certificate of Convenience and Necessity
No. 171

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 19th day of December, A. D. 1922.

### ORDER

In the Matter of the Application of HYRUM DAVIS, for permission to operate a passenger stage line between Milford and the Utah-Nevada state line, west of Garrison, Utah. } CASE No. 587

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the Application be granted and applicant, Hyrum Davis, be, and is hereby authorized to operate an automobile stage line for the transportation of passengers and express between Milford, Utah, and the Utah-Nevada state line, via Newhouse, Utah.

ORDERED FURTHER, That applicant, Hyrum Davis, shall, within thirty days from the date hereof publish and file with the Commission, in the manner heretofore prescribed, schedules naming all rates, rules and regulations, governing the transportation of passengers and express over his stage line.

ORDERED FURTHER, That his authority shall be revoked and set aside if applicant fails to comply with the terms of this order.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of A. E. HOOPER, for permission to operate an automobile stage line between Mammoth and Eureka, Utah. } CASE No. 590

### ORDER

Upon motion of the applicant and with the consent of the Commission:

IT IS ORDERED, That the application of A. E. Hooper, for permission to operate an automobile stage line between Mammoth and Eureka, Utah, be, and is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 11th day of December, 1922.

(Signed) T. E. BANNING,
[SEAL] Secretary.

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INTERSTATE SUGAR COMPANY, et al.,
*Complainants.*
vs.
THE DENVER & RIO GRANDE RAILROAD COMPANY, et al.,
*Defendants.* } CASE No. 592

PENDING

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

PEOPLES SUGAR COMPANY, *Complainant,*
vs.
DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, et al., *Defendants.*
} CASE No. 593

Submitted February 26, 1923. Decided March 22, 1923.

Appearances:
H. W. Prickett and Milton H. Love } for Complainant.
J. A. Gallacher and George Williams } for Defendants.

## REPORT OF THE COMMISSION

By the Commission:

Complainant, Peoples Sugar Company, by its representative, the Traffic Service Bureau of Utah, on October 6, 1922, filed a complaint against the above named defendants, seeking reparation in the sum of $986.32, with interest from date of collection, covering alleged excess freight charges on fifty-eight cars of sugar beets shipped from Townsend, Utah, to complainant's sugar factory at Moroni, Utah.

The complaint alleges that the Peoples Sugar Company is a corporation of the State of Utah, engaged in manufacturing and marketing beet sugar and its by-products in competition with similar industries in Utah and other states. Its investment in plant and facilities is represented to be in excess of one million dollars, in addition to which it is claimed, large sums have been expended in developing the sugar beet industry in the territory from which it obtains sugar beets.

The complaint also sets forth the character of the various commodities used in the manufacture of sugar, and which is transported by defendant, and states the location of other sugar refineries with which it is in competition, and makes reference to the importance of such industry to the State of Utah, and to the carriers which transport the raw material and finished product.

Complainant alleged that during the period December 2, 1920, to December 24, 1920, it purchased and shipped

from Townsend, Utah, to Moroni, Utah, approximately fifty-eight carloads of sugar beets, weighing in the aggregate about 1,973 tons, upon which freight charges amounting to $3,943.61 were collected, which charge was borne by complainant. Such charges were based on the then published rate of $2.00 per net ton, Townsend to Moroni, being a combination of rate of $1.62½ per ton, Townsend to Ephraim, and 37½c per ton, Ephraim to Moroni. The rate Townsend to Ephraim is the intermediate application of the rate Elberta to Elsinore. The distance the shipments in question moved is approximately ninety-eight miles, while the distance from Townsend to Elsinore is approximately one hundred forty-four miles.

The complaint alleged discrimination under Section 7 of Article 3, of the Public Utilities Act of Utah, and asks reparation on the basis of $1.50 per ton.

Defendants filed their answer, October 17, 1922, admitting that the rates named for the transportation of sugar beets covering the movement set forth in the complaint were the legal rates effective at the time referred to in the complaint, and entering a general denial of the other allegations, and specific denials that the rates were unjust, unreasonable or discriminatory, or in any way in violation of the law, and asked that the complaint be dismissed.

After notice, the case was heard, February 1, 1923.

Evidence was introduced by the complainant to show that the Peoples Sugar Company purchased sugar beets from the growers near Townsend, in competition with the Utah-Idaho Sugar Company, which has sugar factories located at Spanish Fork and Elsinore, Utah; that at the time the shipments moved, defendant maintained a rate of 37½c per ton on sugar beets, carloads, from Townsend to Spanish Fork, a distance of 12.6 miles; from Elberta to Elsinore, $1.62½ per ton, a distance of 144 miles, Townsend being intermediate to Elberta. This rate also applied from Townsend to Elsinore. The rate from Townsend to Moroni was $2.00 per ton, made by using the Elberta to Elsinore rate of $1.62½, Townsend to Ephraim, and rate of 37½c per ton, Ephraim to Moroni.

Evidence was further to the effect that the sugar manufactured by the complainant was marketed in competition with the product of the Utah-Idaho Sugar Company. Mr. Stringham, of the complainant Company, testified that in order to secure sugar beets at Townsend, it was necessary to pay a higher price than was paid by complainant's competitor, the Utah-Idaho Sugar Company. A movement

of the sugar beets from Townsend to Moroni was established by complainant's witnesses.

Subsequent to the movement of the shipments in question, defendant established a rate of $1.50 per ton on sugar beets from Townsend to Moroni, and later, again reduced this rate by publishing a mileage scale which provides a rate of $1.00 per ton from Townsend to Moroni. Complainant introduced evidence and exhibits showing various rates which would be in effect from Townsend to Moroni, based on other rates in effect at that time. As this case deals solely with the question of discrimination, no discussion of these rates or the methods used in deriving them, appears necessary.

Witness McPhearson, testifying for the defendants, outlined the method of handling sugar beets from Townsend to Elsinore, and to Moroni. Moroni is located on a branch line of the defendant's railroad, and it is necessary to switch cars of beets destined to Moroni, at Ephraim, from which point they are moved in a local train, which does not reach Elsinore. Subsequent testimony (Transcript, Pages 72-73), indicated that it was also necessary to forward shipments destined to Elsinore in a train moving from Ephraim to Elsinore, and other points on the Marysvale branch of the defendant; that four train crews participated in transporting beets destined either Moroni or Elsinore. The operations necessary to move a car of sugar beets from Townsend to Elsinore or Moroni are practically the same, excepting that shipments destined to Elsinore are transported approximately forty-six miles farther than those destined to Moroni. The defendants also introduced evidence to show that it was customary for sugar factories to obtain beets in nearby territory, thereby eliminating long hauls by railroad, rather than invading the territory of a competing sugar factory.

Defendants also took exception to the methods proposed by complainant for determining what complainant termed the properly related rate between Townsend and Moroni. This question is not before the Commission in this case, and need not be discussed. The question is whether the defendant carrier discriminated against complainant, the Peoples Sugar Company, by charging and collecting a relatively higher rate for transporting sugar beets from Townsend to Moroni than was charged and collected for transporting sugar beets for complainant's competitor, Utah-Idaho Sugar Company.

The Commission is not asked to determine a reasonable rate between Townsend and Moroni, or to prescribe a

method of determining the volume of a reasonable rate, and will not undertake to do so.

It has been repeatedly held by the Interstate Commerce Commission that a subsequent reduction in a rate was not in itself evidence that the former rate was unreasonable, and therefore such reduction was not of itself sufficient to warrant a payment of reparation. The Commission will therefore consider the rate charged at the time of the shipment as compared with the rates in effect from Townsend to Elsinore, and Townsend to Spanish Fork, to determine if the complaint is well founded.

It appears to the Commission that discrimination will result where any common carrier, by reason of its rate structure, offers a more favorable rate, all things considered, for one shipper than to another shipper of the same commodity. Undoubtedly, that situation exists in the instant case.

The evidence clearly shows that complainant made the shipments in question; that a rate of $2.00 per ton was paid by complainant for a service rendered by defendant, but contemporaneously a rate of $1.62½ per ton was effective for the movement of sugar beets, in carloads, from Townsend to Elsinore, and 37½c per ton, Townsend to Spanish Fork.

Section 19 (a), Article 5, of the Public Utilities Act of Utah, provides:

> "When complaint has been made to the Commission concerning any rate, * * * and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, in excess of the schedules, rates and tariffs on file with the Commission, or has discriminated under said schedules against the complainant, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation."

After consideration of all the evidence, the Commission finds that defendant has discriminated against complainant, by charging and collecting a relatively higher rate for the transportation of sugar beets from Townsend to Moroni than was charged and collected, or would have been charged and collected, from its competitor for the transportation of sugar beets from Townsend to Elsinore, or Townsend to Spanish Fork.

The Commission further finds that complainant has been damaged to the extent the charges collected for the transportation of sugar beets from Townsend to Moroni during the period herein referred to, to the extent that such charges exceeded those which would have accrued had complainant enjoyed the same rate as was effective for the transportation of sugar beets from Townsend to Elsinore during that period. Complainant is entitled to reparation in the sum of 37½ cents per ton on all such shipments, with interest at the legal rate of interest in this State, from the date of collection of charge.

By such finding, the Commission neither approves nor disapproves the rates on sugar beets in effect at the time shipments in question moved; neither does it approve the same rate for the transportation of like commodities a shorter than for a longer distance over the same line or route, as this feature was not before it for consideration.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) DON O. RICH, Acting Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 22nd day of March, A. D. 1923.

PEOPLES SUGAR COMPANY,
*Complainant,*
vs.
DENVER & RIO GRANDE WESTERN RAILROAD COMPANY, et al.,
*Defendants.*
} CASE No. 593

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That defendant, Denver & Rio Grande Western Railroad Company, et al., be, and it is hereby, required to pay unto complainant, Peoples Sugar Company, on or before the 15th day of May, 1923, a sum equal to 37½ cents per ton on all shipments of sugar beets moving from Townsend to Moroni, during the period December 2, 1920, to December 18, 1920, with interest at the rate of six per cent per annum, from date of collection.

ORDERED FURTHER, That defendant, Denver & Rio Grande Western Railroad Company, et al., shall notify the Commission the date such reparation is paid, together with the amount thereof.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of WILLIAM H. MARSHALL and F. N. FAWCETT, for permission to transfer the franchise, or the part belonging to William H. Marshall to F. W. Fawcett. | CASE No. 594 |

Submitted October 13, 1922 Decided December 8, 1922

## REPORT OF THE COMMISSION

By the Commission:

On October 13, W. H. Marshall and F. N. Fawcett filed a joint application, wherein W. H. Marshall asks permission to withdraw from and F. N. Fawcett to assume the operation of a stage line for the transportation of passengers between Cedar City and St. George, Utah.

The authority to operate this stage line was issued to R. J. Farnsworth and William H. Marshall.

Subsequently, R. J. Farnsworth was permitted to withdraw his interest, being assumed by Charles C. Starr, who operated in connection with said Marshall.

Accompanying the application of Marshall & Fawcett is a statement by said Charles C. Starr to the effect that the transfer from Marshall to Fawcett will meet with no opposition on the part of Mr. Starr.

The Commission, by reason of previous investigations, is familiar with the operation of this line and with the

necessity of its operations, and is of the opinion that the application should be granted.

Upon assuming such operations, applicant, Fawcett, in connection with Charles C. Starr, shall publish a schedule of rates, rules, regulations, etc., in the manner prescribed by the Commission and file with the Commission, and post such schedule as required by the Commission's rules.

The authority granted herein is conditional upon applicant complying with the commission's orders regarding the filing of tariffs within thirty days from the date hereof.

An appropriate order will be issued.

(Signed) A. R. HEYWOOD,
WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:
(Signed) T. E. BANNING, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of December, A. D. 1922.

In the Matter of the Application of WILLIAM H. MARSHALL and F. N. FAWCETT, for permission to transfer the franchise, or the part belonging to William H. Marshall to F. W. Fawcett. } CASE No. 594

This case being at issue upon petition on file, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED That the application be granted and applicant, F. N. Fawcett be, and he is hereby, authorized to assume the operation of an automobile stage line, heretofore operated by William H. Marshall between Cedar City and St. George, Utah.

IT IS FURTHER ORDERED, That before beginning such operations, applicant, F. N. Fawcett shall publish, in

the manner prescribed in the Commission's tariff circular No. 4, a schedule naming all rates, rules and regulations, applying over his route, and shall file said schedule in the manner provided therein.

ORDERED FURTHER, That this order shall be cancelled, annulled and set aside, if the provisions thereof are not complied with on or before January 9, 1923.

(Signed) T. E. BANNING,
[SEAL] Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of the UTAH-IDAHO CENTRAL RAILROAD COMPANY, for reparation against the Utah Power & Light Company. | CASE No. 595 |

Submitted December 30, 1922 Decided March 24, 1923

Appearances:

DeVine, Howell, Stine & Gwilliam, for Petitioner.
John F. MacLane, for Respondent.

## REPORT OF THE COMMISSION

By the Commission:

This application was filed October 19, 1922. The Utah-Idaho Central Railroad Company, petitioner, is a corporation existing under and by virtue of the laws of the State of Utah, and a common carrier, for hire, owning and operating a line of railroad between Ogden, Utah, and Preston, Idaho, and uses electric energy for power, and is solely dependent upon the use of electric energy for power.

Petitioner alleges that the Utah Power & Light Company, a public utility under the laws of the State of Utah, furnished electric energy for power to the petitioner prior to October 22, 1920, under and pursuant to a contract at a rate specified in said contract, and that on the 22nd day of October, 1920, the Public Utilities Commission of Utah, by order made in Case No. 230, abrogated the said contract rate and directed the said Utah Power & Light Company to furnish electric energy for power to the petitioner, temporarily at rates based upon standard schedules, as evidenced by the schedules of the said Utah Power & Light

Company on file with this Commission; but that the Commission in its said order and decision in Case No. 230, retained jurisdiction over all matters relating to the rate to be charged to the petitioner for power by the said Utah Power & Light Company, for the purpose of ordering such reparations to this petitioner by the said Utah Power & Light Company as were just and reasonable, in the event the said Commission later determined that a rate lower than the said standard schedule rate, was the just and reasonable rate for this petitioner to pay; that during the period October 22, 1920, to May 12, 1922, inclusive, the respondent, Utah Power & Light Company, furnished electric energy for power to the petitioner, and charged and collected for said power so furnished, rates in accordance with Tariff No. 2, Schedule No. 1, on file with the Commission. Petitioner alleged that said rate was a general rate for consumers taking power at high voltage, but which rate was never at any time intended to apply for power consumed by the petitioner and was never meant for them to pay, but was only the temporary rate pending the establishment of the fair, reasonable and just rate; that said tariff schedule was in effect by virtue of the Report and Order of the Public Utilities Commission of Utah, in Case No. 248, decided March 8, 1921, by this Commission.

Petitioner further alleges that on or about the 17th day of May, 1921, it filed an application with the Public Utilities Commission of Utah, asking for an investigation of the method of measuring power furnished it by the respondent under the aforesaid schedule and tariffs, setting forth that the method of determining the monthly demand charge for power in Case 248, as aforesaid, as applied to interurban electric railways such as this petitioner, was arbitrary, unreasonable, unjust and discriminatory, and asked the Commission to issue an order modifying the rules and regulations covering the measurement of power furnished by the respondent to the petitioner; that pursuant to said application, the Commission conducted a hearing and rendered a decision, May 12, 1922; that in said decision, this Commission decided and ordered that a maximum demand charge of 55 per cent of the highest five minute average peak for all electric railroads having more than two points of delivery established monthly, was the fair, reasonable and average demand charge, and the rate basis to apply to electric railways of the character of this defendant in place of 70 per cent demand charge, tentatively and temporarily established in said Case 248.

The petitioner further alleged that the aforesaid 70 per cent ratio was never intended to be a permanent tariff or schedule rate; but merely a temporary tariff and schedule to apply until the fair, just and reasonable rate could be determined through operating expenses and established as a permanent rate.

It is alleged further by petitioner that from the period October 22, 1920, to May 12, 1922, it should have paid only the sum which it would have been required to pay, if based on a ratio of 55 per cent of the five-minute average peak load, established monthly throughout the said period, instead of a rate based on 70 per cent of the five minute average peak load established monthly, and petitioner alleges that it has been therefore damaged in the premises in the sum of $24,143.96, and that the same was unjust, unreasonable and discriminatory, and in violation of the law and in excess of the schedules, rates and tariffs of the Public Utilities Commission of Utah, which orders have applied, now apply, and which were intended to apply, from October 22, 1920.

It is also alleged by the petitioner that each and all of the schedules, rates and tariffs which applied prior to May 12, 1922, were temporary and tentative rates, schedules and tariffs, and were intended by the Public Utilities Commission of Utah so to be, and to govern only as temporary rates until such time as the Commission could conveniently arrive at and determine the fair, just and reasonable rate which was the rate determined upon in Case No. 426.

The petitioner asks that the respondent, Utah Power & Light Company, be required to pay the petitioner, by way of reparation, the sum of $24,143.96, together with the interest thereon at 8 per cent per annum, computed from the several dates of the respective payments of the monthly amounts.

The respondent, the Utah Power & Light Company, filed a motion to dismiss the petition of the Utah-Idaho Central Railroad Company, on the ground that the Commission had no jurisdiction to hear or entertain the same, or to enter any order therein, except an order of dismissal, for the following reasons: That the rates and charges collected by respondent, Utah Power & Light Company, were in accordance with its lawful schedules on file with and established by this Commission in Cases Numbers 230, 248 and 426, and were not in excess of said schedules, rates and tariffs, nor was there any discrimination under said schedules against the petitioner herein, and there is no

provision of the law which authorizes this Commission to make any award of reparation. Further, that the contention of the petitioner herein depends upon an interpretation of the construction of the reports and orders of the Commission in Cases 230, 248 and 426; that such interpretation on construction in a question of law is for the courts and not one of administrative discrimination in the Commission.

It is further alleged that any order of this Commission upon the premises herein, other than an order of dismissal, would deprive the respondent, Utah Power & Light Company, of property, without due process of law, in violation of Section 7, Article 1, of the Constitution of Utah, and Section 1 of Article 14 of the Amendments to the Constitution of the United States.

There are, in substance, two questions: First, whether this Commission has jurisdiction under the Public Utilities Act to order reparation, and, second, whether on the record of the former proceedings had by this Commission in Cases Nos. 230, 248 and 426, any order of reparation can be made. While other questions are raised, they are largely questions of constitutional law which may properly be left to the decision of the courts. In view of the position, we feel constrained to take up the above two questions.

Section 4838 of the Compiled Laws, so far as material, provides:

> "When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, in excess of the schedules, rates and tariffs on file with the Commission, or has discriminated under said schedules against the complainant, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation."

It appears from the petition and from the proceedings of the Commission in the above numbered cases, that the defendant, Utah Power & Light Company, has at all times billed the petitioner in strict accordance with the filed and published schedules, and especially subsequent to the order in Case 248, and in accordance with the schedules

and rules and regulations promulgated by the Commission in that case.

The substance of the petition is that some months after the decision of the Commission in Case No. 248, the petitioner filed Case No. 426, asking for a modification of the rates prescribed in Case No. 248, and afterwards the Commission decided Case 426, modifying the billing rules affecting interurban railways, so as to result in a lower billing to the petitioner, which billing, if applied retroactively, between the effective date of the order in Case 248 and the effective date of the order in Case 426, would entitle petitioner to the order of reparation which it seeks. It appears to us that such an order cannot be made either under the statute, as above quoted, or under any broader interpretation of the Commission's powers which might be sought to be drawn from the Public Utilities Act, as a whole. The statute authorizes reparations only where a utility has charged "an excessive or discriminatory amount for such * * * service, in excess of the schedules on file with the Commission, or has discriminated under said schedules against the complainant * * *."

It is admitted that the charge is in accordance with the schedules, also the only charge which could have been made at the time, under such schedules, could not possibly constitute, as claimed by the petitioner, "discrimination under such schedules," since it is admitted that the schedule during the time it was in force was properly construed and applied to the service.

Aside from all other questions, therefore, we are without jurisdiction to award reparations under the only section of the statute which gives such jurisdiction; but, fundamentally, this case does not rest upon any narrow interpretation of our jurisdiction under Section 4838.

In Case No. 230, involving the special service contract of the petitioner with the respondent, Utah Power & Light Company, the Commission, on finding the contract rates discriminatory, ordered the then existing standard schedule rates applied to the plaintiff's service, but with the proviso that: "the Power Company should hold its rates to seek such reparation as the Commission may order when the order in Case 248 is issued."

This order was made effective, October 22, 1920, Case No. 248, being a general investigation of power rates which had been submitted and was under advisement, awaiting decision. Such decision was rendered, March 8, 1921, and the schedules therein prescribed became effective, March

25, 1921. By the order in that case, the Power Company was directed to:

> " * * * recalculate bills for service from twelve o'clock noon, October 22, 1920, to the effective date of this order, and refund to the consumers any excess of billing charged or collected by the Power Company under said standard schedules over and above the amounts which would have been charged or collected had the schedules herein prescribed been in force and effect from and after twelve o'clock noon, October 22, 1920."

To holders of special contracts covered by the order in Case No. 230, where the application of the schedules prescribed in Case 248 would result in any lower billing under the previous applicable standard schedules. This, it is admitted and in substance alleged in the complaint, has been done.

While the order in Case 230 was a temporary order in so far as the form of and exact billing under schedules was concerned, the order in Case 248 was a final order, so far as any rate order is final; that is to say, it fixed a definite schedule of rates to be in force until thereafter modified. It is true that the evidence as to special factors affecting electric railroad service, was not satisfactory. On this point, the Commission, after discussing the question briefly, said in Case No. 248:

> "No evidence was introduced by applicants or protestants to show exactly what such factor should be, and it is difficult to appraise exactly the value which should be assigned to this peculiar element in a rate structure. However, a study of the past operating experience of these utilities and careful consideration of all factors involved, convinces the Commission that the factor of 70 per cent is reasonable, pending further operating experience."

No reservation of the jurisdiction to make a retroactive order with respect to this service, was made. Any rate structure is, in a sense, experimental, in that its effects cannot be determined pending actual operating experience, and if rates were to be adjusted, either upwards or downwards, and adjustments made retroactive, in view of the operating experience under them, there never would be any stability in a rate structure and neither the utility nor the consumer would ever know what his rates for service would be. Carried to the logical conclusion, such a situation would require power customers to set up reservations

against contingent increases in their power bills, and utility companies to hold substantial portions of their earnings in reserve against contingent reductions in rates.

In Case No. 426, it is alleged that further operating experience had demonstrated the injustice of these rates as applied to interurban railroads, and an entirely new schedule and method of arriving at power rates for electric railroads was suggested by the petitioner here and other electric railroads which filed similar cases. No suggestion was made in that case that these rates, when fixed, should be made retroactive. The order entered in that case did not go as far as the request of the petitioners and prescribe a new form of rate; but directed the Power Company to publish and put in effect an amended rule:

> "* * * establishing a maximum demand for electric interurban and street railroads of 70 per cent of the highest five-minute average peak for all railroads having not more than two points of delivery for electric power, and a maximum demand of 55 per cent of the highest five-minute average peak for all electric railroads having more than two such points of delivery.
>
> "ORDERED FURTHER, That such amended rule shall be made effective upon five days' notice to the public and to the Commission."

This order, it will be seen, was entirely prospective in its operation. No petition for rehearing or for modification of the order requesting that it be made retroactive, was made. The Power Company, in accordance with the order, a few days thereafter filed and published its amended rule, effective May 20, 1922. If the Commission ever had jurisdiction to make this order retroactive, which is doubtful, such jurisdiction should have been exercised in connection with its order in Case 426, and if the plaintiff here ever had the right to have the order made retroactive, which is equally doubtful, it must have exercised that right not later than the time allowed for filing petition for rehearing in that case, since, under Section 4833, of the Compiled Laws:

> "No cause of action arising out of any order of the Commission shall accrue in any court * * * unless such person shall have made before the effective date of said order or decision, application for rehearing."

In our view, the time and place to preserve any right to a retroactive interpretation of the schedules established in Case No. 248, in the event of further modification was by

application to the Commission in that case not later than the time allowed for petition for rehearing. If that had been done, appropriate directions could have been made to the Power Company to impound any part of the earnings received from complainant pending further determination of questions involved as to that customer, but it is unnecessary to decide this question. Certainly, the orders of the Commission in both Cases 248 and 426 had become final and beyond control as to the past, whatever the Commission might do with respect to future rates, at the time these proceedings were commenced.

We are, therefore, of the opinion that we are without jurisdiction either under the provisions of Section 4838 of the Compiled Laws or under any general powers to be implied from the statute to award reparation in this case and the petition should be dismissed.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:
(Signed) D . O. RICH, Acting Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 24th day of March, A. D. 1923.

In the Matter of the Application of the UTAH-IDAHO CENTRAL RAILROAD COMPANY, for reparation against the Utah Power & Light Company. } CASE No. 595

This case being submitted upon petition and motion to dismiss on file, and briefs having been filed, and the Commission having duly considered said petition, motion to dismiss and briefs, and on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the motion of respondent, Utah, Power & Light Company, be granted, and the proceedings herein be, and the same are hereby, dismissed.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

MORTON SALT COMPANY,
*Complainant,*
vs.
WESTERN PACIFIC RAILROAD CO., et al.,
*Defendants.*
} CASE No. 596

Submitted February 1, 1923. Decided March 21, 1923.

Appearances:
E. D. Trout for Complainant.
J. A. Gallaher and George Williams } for D. & R. G. W. R. R. Co.
James S Moore, Jr, for Western Pacific R. R. Co.

## REPORT OF THE COMMISSION

By the Commission:

November 27, 1922, the Morton Salt Company filed a complaint against the Western Pacific Railroad Company, Denver & Rio Grande Western Railroad Company, and Denver & Rio Grande Western Railroad System, Joseph H. Young, Receiver, in which complainant alleges that it is a corporation of the State of Illinois and authorized to conduct operations within the State of Utah; that its principal business is refining, shipping and selling salt for various purposes, and that its salt refining plant is located at Burmester, Utah; that it is in direct competition with the plant operated by the Capell Salt Company, located at Salduro, Utah, particularly in the marketing of crude Salt at Silver City, Utah; that the distance from the complainant's plant at Burmester to Silver City is approximately 118 miles, and from the plant of its competitor at Salduro to Silver City, approximately 200 miles.

It further alleges that the defendant carriers have established the same rates on salt for milling purposes from Salduro and Burmester to Silver City, and has discriminated against complainant, by depriving it of the advantage of its closer location to the Silver City market.

Complainant asks that defendants be required to readjust the salt rates between Burmester and Silver City, and apply a lower rate from Burmester than from Salduro.

Defendants, Denver & Rio Grande Western Railroad Company and Denver & Rio Grande Western Railroad System, in their answer, filed December 20, 1922, admitted

that the rates on salt from Burmester and Salduro to Silver City are the same, and that the distances are practically those set forth in the complaint. These defendants deny all other allegations. Defendant, Western Pacific Railroad Company, in its answer filed December 20, 1922, admits the parity of rates from Salduro and Burmester to Silver City, as well as the approximate distance, and denies all other allegations of complainant.

In an order dated December 5, 1922, the Capell Salt Company was permitted to intervene and to be treated as a party to the proceedings.

After due notice, the case was heard by the Commission, February 1, 1923.

Complainant introduced evidence to show that active competition existed between the various salt companies operating in Utah, and that a similar condition existed in other parts of the United States, and introduced various exhibits showing rates in effect from other salt producing districts to various markets.

Intervener, Capell Salt Company, testified that the Silver City market consumed a great real of crude salt for milling purposes, and that such salt, being of a low grade, was sold at a very low price, and that any disadvantage, by reason of freight rates, would seriously handicap its business, as the production and marketing of crude salt is an important element in its operations.

The defendants testified as to the practice of carriers in making rates for different commodities based upon commercial requirements, as well as upon operating conditions and further that the practice of granting equal rates to industries of the same nature within a reasonable distance, was advantageous to the carriers as well as the producers and the community at large, by permitting the continued operation of the different plants.

Complainant did not allege that the present commodity rate from Burmester to Silver City is an unreasonable rate in and of itself, nor that the rate from Salduro to Silver City was an unreasonable rate in and of itself. The complainant alleges discrimination, and seeks to have the alleged discrimination removed.

It appears that this complaint is based upon Section 7 of Article 3, of the Public Utilities Act, reading as follows:

> "No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service."

It appears that the question for the Commission to determine in this case is whether the defendant carriers by maintaining a parity of rates from a more distant point to Silver City has discriminated against complainant, located eighty-two miles closer to the destination.

It is the common practice of carriers to blanket certain rates, thereby placing the different producers upon an equal basis in a given market. The distance over which such rates may be blanketed varies with the conditions in respect to any particular commodity and market requiring such adjustment. In some cases this blanket area may cover a restricted district, only; while in others it may be extended to a sonsiderable distance. In the instant case, the Commission finds two salt refineries located upon the rails of the Western Pacific Railroad, competing in the same market for the sale of their products. The rate in question covers a low grade commodity, chiefly valuable in the treatment of mineral bearing ores. It is not adapted for general household uses, and the market for such commodity is greatly restricted.

Complainant seeks a rate adjustment which, as expressed in the complaint, will give it the advantage of its closer location to the market. The evidence shows that this product is sold on a very narrow margin of profit and a very substantial advantage would accrue to complainant, by reason of a lower freight rate than is enjoyed by its competitor. The marketing of salt is very much influenced by changes in rate relationships.

Geographically, the Salduro plant is located some eighty miles westward from the complainant's plant, the intervening territory is very sparsely settled, and there is no appreciable market for salt. Necessarily, the Salduro plant must look elsewhere than its immediate locality for business, if operation of the plant is to be justified. In this respect, we have a condition not at all comparable with the situation in districts with which it is sought to contrast blanketing of this commodity rate. Rates on salt in the west are not generally made on strictly distance scales. Commercial necessities of both producer and consumer modify the making of strictly distance scales.

Burmester enjoys an advantage on many inbound commodities. Coal from Utah mines at Salduro and Burmester takes a lower freight rate at Burmester than is effective at Salduro. The same is true of articles moving from Salt Lake City and Ogden under class rates. In these cases, complainant receives the benefit of his closer location. There is this difference, however: Coal and other commod-

ities are consumed at Burmester, Salduro and various other points located on the Western Pacific Railroad, west of Salt Lake City as far as the Pacific Coast, and an adjustment on a mileage basis is therefore more essential. Here we have but one market for the product of the two refineries. The production of salt is a very considerable industry in the State of Utah, and is one of the contributing factors to its prosperity.

The complainant in this case enjoys the same rate as its competitor located at Salduro, and, after a full consideration of all material matters and things, the evidence presented is not sufficient to warrant the finding that the present basis discriminates unduly against complainant. The Commission, therefore, finds that the complaint should be dismissed.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 21st day of March, A. D. 1923.

MORTON SALT COMPANY,
*Complainant,*
vs.
WESTERN PACIFIC RAILROAD CO., et al.,
*Defendants.*
} CASE No. 596

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the complaint herein be, and it is hereby, dismissed.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

In the Matter of the Complaint of J. H. MANDERFIELD, et al., vs. the MOUNTAIN STATES TELEPHONE & TELEGRAPH COMPANY. } CASE No. 597

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of FILLMORE CITY, a Municipal Corporation, for an order fixing its lighting and power rates. } CASE No. 598

Submited March 3, 1923 Decided March 29, 1923

Appearance:

Grover A. Giles, for Fillmore City.

## REPORT OF THE COMMISSION

GREENWOOD, Commissioner

December 22, 1922, Fillmore City, acting through its Mayor, filed an application asking the Commission to fix new schedules increasing its rates for electric light and power service in said Fillmore City.

Public hearings on this application were held in Fillmore City, January 16th and 17th, 1923, at which time applicant presented evidence in support of its application. No appearances were made in protest against the application, and no evidence was offered by anyone other than the applicant.

On March 3, 1923, at the request of the Commission, applicant submitted statements and supporting data as to its revenue and expenses covering the years 1920, 1921 and 1922, together with an estimate of its revenue and expenses for the year 1923.

It appears from the matter submitted by applicant, that it is the owner of the substation and distributing system used by it in supplying electric light and power to its inhabitants, but that it secures the necessary electricity from the Telluride Power Company under a contract executed February 14, 1917, of which a copy is on file with the Commission. This contract provides for pay-

ments by applicant equal to 50 per cent of the gross charges for electric service delivered or used by it at rates specified in the contract which are the rates now used by applicant; but, in connection with the general increase granted the Power Company by the Commission's order in Case No. 414, this was increased in the same ratio that its rates elsewhere were increased. The resulting increase in the cost of the power supplied by applicant, together with increases in the expense of operating and maintaining its system necessary to enable it to render adequate and efficient service, form the basis for applicant's request for increased rates, and the rates sought to be established are identical with those now in force in the adjacent territory served by the Telluride Power Company as fixed by the Commission's order in Case No. 414.

Applicant's accounts in connection with its electric plant are somewhat incomplete, and it is impossible to determine from them exactly what applicant's electric property has cost. It does appear, however, that the proceeds of a bond issue of $12,000 were invested in the system and the statements submitted show an expenditure on additions and betterments during the last three years of $2,502.98. The system was constructed in 1917 and undoubtedly a considerable amount was likewise expended on additions during the first three years of operation.

Applicant's statements include renewals, additions to property, and other similar items not properly chargeable to operation; but, excluding these items, the data submitted shows the following results for the three year period, 1920, 1921 and 1922:

| | | |
|---|---|---|
| Income | | $18,297.29 |
| Operation and Maintenance | $ 3,533.11 | |
| Uncollectible accounts | 571.98 | |
| Power purchased from the Telluride Power Company | 10,169.32 | |
| Total operating expense | | 14,274.41 |
| Net income for 3 year period, 1920, 1921 and 1922 | | $ 4,022.88 |

or an average annual income of $1,340.96.

Applicant states, however, that it has accomplished these results at the expense of its service by failing to provide adequate attendance, and a part time bookkeeper, which will increase its expenses. It also shows that its present system has been permitted to become inadequate

and obsolete through lack of sufficient maintenance and increases in customers' demands, and estimates the necessary expenditures to restore its system to first-class operating condition, as follows:

| | | |
|---|---|---|
| Labor and material | $6,350.45 | |
| Less material salvaged and already on hand | 2,415.01 | |
| Net requirement | | $3,935.44 |
| Equipment expense | | 834.32 |
| Street lighting brackets | | 380.00 |
| Total | | $5,149.76 |

It will be noted also that applicant has made no provision for an annual allowance to cover renewals and replacements. It has, however, rightly provided for its interest requirements by taxation.

The provision in the past for attendance and bookkeeping has amounted to $20.00 per month for attendance, and $25.00 per month for bookkeeping, both on a part time basis. These amounts are clearly inadequate to any kind of proper service and the results of this policy are shown by the complaints about service and the inadequate records kept, which have contributed in a large degree to the difficulties of this inquiry. Applicant asks an additional allowance sufficient to permit the employment of an attendant who can devote sufficient time to attend to the operation and maintenance of applicant's system, and to permit paying a bookkeeper to maintain an accurate system of accounts.

The matter of depreciation as applied to such a system as applicant's, was considered and discussed at length in the Commission's decision in the Brigham City case, No. 137. In line with the views therein expressed, an annual charge of 5 per cent of the investment, or $750.00, should be allowed to cover accruing depreciation, and an amount required to restore the system to the first-class operating condition necessary to render efficient service.

Applicant estimates its revenues and expenses for 1923 as equal to those in 1922, and, with the additions above mentioned, the results would be as follows:

On the basis of the data submitted by the applicant, we have:

| | |
|---|---|
| Estimated operating revenue at present rates | $6,574.95 |
| Estimated operating expenses | 8,476.47 |
| Deficit | $1,901.52 |

It will be seen from the foregoing that applicant must be allowed to increase its revenues to enable it to properly operate and maintain its system in a condition that will supply its inhabitants with electric service.

Applicant's uncollectible accounts total $571.98. This would seem to indicate a lack of strict business methods. The rules required in such cases call for a more serious effort to be made to collect monthly bills. The Commission will allow only a portion of this amount and will expect the city to collect the remainder. Failure to collect monthly bills, simply places that additional burden upon the remaining consumers. Amounts necessary to restore the property to first-class operating condition will necessarily have to be spread over a period of several years, in order that too great a burden be not placed upon present consumers.

It appears, therefore, that applicant's present rates are too low, and that it should be permitted to file a new tariff increasing its rates. However, as heretofore stated, bond interest is raised through general taxes, and to that extent rates of a municipal plant should not equal the rates of a privately owned utility. It appears that the bond interest upon the bonds representing the capital investment of this utility, would approximate $600 or $700 per year, and to this extent as reflected in rates, rates for lighting should be less than the rates to customers of privately owned plants serving communities under like conditions.

With this correction, applicant may file a new tariff naming rates for residence lighting as follows:

12½ cents per kilowatt hour for the first 30 kilowatt hours of monthly consumption.
11 cents per kilowatt hour for the next 30 kilowatt hours of monthly consumption.
9 cents per kilowatt hour for all additional kilowatt hours of monthly consumption.
Minimum charge: $1.10 per month.
10 per cent discount for prompt payment.

HEATING AND COOKING RATE

3½ cents per kilowatt hour for the first 50 kilowatt hours of monthly consumption.
3 cents per kilowatt hour for the next 100 kliowatt hours of monthly consumption.
2 cents per kilowatt hour for the next 350 kilowatt hours of monthly consumption.

1½ cents per kilowatt hour for the next 500 kilowatt hours of monthly consumption.
1 cent per kilowatt hour for all additional kilowatt hours.

*Minimum Charge*: $2.22 per month for connected load of 3000 watts or less, plus 35 cents per month for each additional 1000 watts or fraction thereof.

*Prompt Payment Discount*: 10 per cent on all charges including minimum charges, if paid within the discount period.

*Application of Schedule*: This schedule is for alternating current service of approximately 110 or 220 volts for heating, cooking, general household appliances, and motors of one horse power, or less, used for domestic purposes.

In the case of power rates, relatively large amounts of energy are used in proportion to property investment, and reflected in bond interest paid through taxes. In order to prevent discrimination, rates for power and other purposes, except residence lighting, cooking and heating, should be the same as rates for like service of the Telluride Power Company, serving communities in this section of the State. This obviates any consideration of the contract between applicant and the Telluride Power Company, and payment should in the future be made upon the basis of 50 per cent of the gross charges for electric service delivered or used by applicant, at rates specified in our present order .

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

I concur:

(Signed) WARREN STOUTNOUR,
[SEAL] Commissioner.

Attest:

(Signed) D. O. RICH, Acting Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 29th day of March, 1923.

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|---|---|
| In the Matter of the Application of FILLMORE CITY, a Municipal Corporation, for an order fixing its lighting and power rates. | CASE No. 598 |

This case being at issue upon petition on file, and having been duly heard and submitted, and full investigation of the matters and things involved having been had, and the Commision having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That applicant, Fillmore City, be, and it is hereby, authorized to establish and put into effect increased rates for electric service which shall not exceed the rates set forth in the report attached hereto.

IT IS FURTHER ORDERED, That the increased rates authorized herein be made effective upon ten days' notice to the public and the Commission.

ORDERED FURTHER, That publications naming such increased rates shall bear upon the title page the following notation:

> "Issued upon less than statutory notice, by authority of the Public Utilities Commission of Utah, Case No. 598, dated March 29, 1923."

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of NEWELL WARNER, for permission to operate an automobile truck, freight and express line between the Union Pacific Railroad Depot at Fillmore and Fillmore City, Utah. | CASE No. 599 |

Submitted Jan. 16, 1923. Decided Jan. 29, 1923.

Newell Warner, Petitioner.

## REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

This application was heard at Fillmore, Utah, January 16, 1923.

Petitioner alleged that he is a resident of Fillmore City, Utah, and has been engaged in the operation of an automobile freight business between Delta and Fillmore; that the Union Pacific Railroad has just completed its branch line to Fillmore, and is soon to operate between the two points mentioned; that in the operation of said railroad, freight and express will be brought to the depot, which is located about one mile west of Fillmore; that it will be necessary to transport such freight and express between said depot and Fillmore City, thereby requiring truck service; that the petitioner is prepared to take care of such service at a reasonable rate, and will commence operation at once.

There are a number of business houses in Fillmore receiving freight and express via the Union Pacific Railroad. Upon inquiry of said business houses, the petitioner stated that none of them desire to join in with the application, and further inquiry discloses the fact that some of said shippers were not in favor of giving the right of transportation to any individual; that it would interefere with the prerogative of said shipper to hire others to perform the trucking services, and that it was their judgment to leave the matter open so that all may transport freight to and from the depot at will.

It appears from the hearing and a knowledge of the conditions that for the present, at least, the public would be served as well by allowing the various parties interested to make such arrangements as they desire to haul their express and freight from the railroad to the city.

Under all the conditions and circumstances appearing, it is the judgment of the Commission that at the present time there is no urgent necessity for the establishment of such a service as is contemplated by the petitioner, and that the application should be denied.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner,

I Concur:

WARREN STOUTNOUR,
Commissioner.

[SEAL]

Attest:
(Signed) T. E. BANNING, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 29th day of January, A. D. 1923.

In the Matter of the Application of NEWELL WARNER, for permission to operate an automobile truck, freight and express line between the Union Pacific Railroad Depot at Fillmore and Fillmore City, Utah. } CASE No. 599

This case being at issue upon petition and file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be, and it is hereby, denied.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of HARRY DRAGATIS to withdraw from and ALMA C. JENSEN to assume the operation of a stage line between Price and Emery, Utah. | CASE No. 600 |

Submitted May 2, 1923. Decided May 28, 1923.

Appearance:

Arthur J. Lee, for Applicants.

## REPORT OF THE COMMISSION

By the Commission:

This application was filed January 5, 1923, by Alma C. Jensen, alleging that the present holder, Harry Dragatis, of a certificate of public convenience and necessity to operate the above named stage line, had sold to the applicant all of his equipment, and has operated the stage line for the said Harry Dragatis for a number of months. Harry Dragatis joined in the application, asking that a certificate be issued to Alma C. Jensen, and that his present certificate to operate be cancelled.

The case came on for hearing, at Price, Utah, May 2, 1923.

Alma C. Jensen testified as to the purchase of the equipment from Harry Dragatis, and his familiarity with the operation of the stage line, having driven a stage for Harry Dragatis for a number of months. He testified further as to his financial ability to carry on the business as successor to the said Harry Dragatis.

After full consideration of all material facts, the Commission is of the opinion that Harry Dragatis should be permitted to withdraw from the operation of this stage line, and a certificate of convenience and necessity be issued to Alma C. Jensen in lieu thereof.

An appropriate order will be issued.

(Signed) T. E. McKay,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

ORDER

Certificate of Convenience and Necessity

No. 174

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 28th day of May, A. D. 1923.

In the Matter of the Application of HARRY DRAGATIS to withdraw from and ALMA C. JENSEN to assume the operation of a stage line between Price and Emery, Utah. } CASE No. 600

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, that Harry Dragatis be permitted to withdraw from and Alma C. Jensen be permitted to assume the operation of an automobile stage line between Price and Emery, Utah.

ORDERED FURTHER, That before beginning such operation, applicant, Alma C. Jensen, shall publish and file with the Commission, and post at each station on his *route,* a schedule of his rates, fares and charges, which fares and charges shall not exceed those at present charged by Harry Dragatis, together with schedule showing arriving and leaving time, such schedules to be published in the manner prescribed in the Commission's Tariff Circular No. 4; and shall at all times operate his stage line in conformity with the rules and regulations governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of HYRUM DAVIS to withdraw and J. L. DOTSON to assume the operations of the stage line between Milford and Newhouse, Utah. | CASE No. 601 |

Decided February 2, 1923.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed January 6, 1923, Hyrum Davis asks permission to withdraw and J. L. Dotson asks permission to assume the operation of the automobile stage line for the transportation of passengers between Milford and Newhouse, Utah.

In Case No. 73, decided August 20, 1918, the Commission issued applicant, Hyrum Davis, Certificate of Convenience and Necessity No. 18, authorizing him to operate an automobile stage line between Milford and Newhouse, Utah. At the time said certificate was issued, applicant was engaged in transporting the United States mail between Milford and Newhouse, Utah.

The Commission's record indicates that on July 1, 1922, J. L. Dotson assumed the transportation of the United States Mail, the contract of Hyrum Davis having expired.

The Commission's knowledge of the conditions in this case appears to warrant it in authorizing the transfer of Certificate of Convenience and Necessity No. 18 from Hyrum Davis to J. L. Dotson, as prayed for in the application.

Applicant, J. L.Dotson, should be permitted to assume the operation of an automobile stage line between Milford and Newhouse, Utah, conditioned upon his complying with all rules of the Commission governing such operation, and filing his schedule of rates, rules and regulations, in the manner prescribed in the Commission's Tariff Circular No. 4, on or before the 15th day of February, 1923.

Authority to operate the line referred to herein will be revoked, should applicant, J. L. Dotson, fail to comply

with the provisions of the law and requirements of the Commission stated herein.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
JOSHUA GREENWOOD,
Commissioners.

[SEAL]

Attest:

(Signed) T. E. BANNING, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 2nd day of February, A. D. 1923.

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| In the Matter of the Application of HYRUM DAVIS to withdraw and J. L. DOTSON to assume the operations of the stage line between Milford and Newhouse, Utah. | CASE No. 601 |

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and J. L. Dotson be, and he is hereby, authorized to assume the operation of the automobile stage line for the transportation of passengers between Milford and Newhouse, Utah.

ORDERED FURTHER, That applicant, J. L. Dotson, shall file with the Commission, on or before February 15, 1923, a schedule of his rates, rules and regulations, which rates, rules and regulations shall not exceed those formerly effective when operation were carried on by Hyrum Davis.

IT IS FURTHER ORDERED, That failure of applicant, J. L. Dotson, to file such schedules as prescribed above, shall be sufficient warrant for the Commission to revoke the authority heretofore granted.

By the Commission.

(Signed) T. E. BANNING,
Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Application of MANOS KLAPAKIS, for permission to operate an automobile stage line between Price and Horse Canyon, Utah. | CASE No. 602 |

Submitted May 2, 1923. Decided May 26, 1923.

Appearances:

Oliver K. Clay, for Petitioner.
Henry Ruggeri, for Protestants.

## REPORT OF THE COMMISSION

By the Commission:

This application was filed, January 22, 1923.

The petition of Manos Klapakis shows that he is a resident of Price, Carbon County, Utah, and desires to operate an automobile stage line between Price, Carbon County, Utah, and Horse Canyon, Utah, said Horse Canyon being situated approximately three miles easterly from Sunnyside, Utah; that at a point in said Horse Canyon a coal camp is being established, employing approximately five hundred men.

Applicant alleges that no stage line is now serving said place, and people are compelled to walk from Sunnyside to the camp, or to seek private automobile service; further, that the said route from Price to Horse Canyon follows the Price-Sunnyside road to a point within seven miles of Sunnyside, from which point to the said coal camp a new road is established which is the highway regularly traversed to the said new coal camp; that the interests of the public will be best served by the establishment of a stage line from Price to Horse Canyon, that being the most direct route to the said camp.

Petitioner further alleges that he is financially able to provide proper equipment for the transportation of passengers over the said route.

This application was protested by Stanislao Silvagni, Angelo Peparakis and Mike Sergakis, doing business as the Arrow Auto Line, protesting likewise the application of James H. Wade and H. F. Thomas, being Case No. 611, and the application of George Samis, for a certificate to give service over the same route, being Case No. 632.

These applications were protested upon the following ground:

That the protestants, Stanislao Silvagni, Angelo Peparakis and Mike Sergakis, are co-partners, doing business under the firm name and style of the Arrow Auto Line, with its principal place of business at Price, Utah; that said protestants now have a certificate of public convenience and necessity, authorizing them to conduct an automobile, common carrier stage service for the transportation of passengers between Price, Utah, and Sunnyside, Utah; that the protestants have operated said stage line continuously for some time past, in accordance with all the rules and regulations of this Commission; that they are competent and experienced automobile drivers, and are financially able to provide necessary equipment; and further, that the proposed service of Manos Klapakis, Case No. 602, of James H. Wade and H. F. Thomas, Case No. 611, and George Samis, Case No. 632, between Price and Columbia, are, with the exception of three or four miles, over the same highway as that over which protestants now conduct stage line operations between Price and Sunnyside; and that should the applications as above named be granted, there would be conflict in service between the protestants and applicants.

Protestants further allege that there is no public necessity at this time for an automobile stage service between Price and Columbia, and deny that there are at this time approximately five hundred men employed at the town of Columbia; and protest further that if a certificate of public convenience and necessity be granted to any or all of the applicants, the same will be a great detriment to the protestants herein; that it would be permitting competition in operation of two stage lines over practically the same route; that the protestants herein, will, if granted permission by this Commission, conduct this service from the junction of the Sunnyside road with the road leading to Columbia, making connections with the stage line between Price and Sunnyside, giving proper service to Columbia and without duplication of stage lines; that if the Commission determines and finds that there is a necessity for an automobile stage line between Price and Columbia, that a certificate be issued to protestants herein.

The application of Manos Klapakis (Case No. 602), for permission to operate an automobile stage line between Price and Horse Canyon, Utah, came on regularly for hearing, at Price, Utah, May 2, 1923, in connection with Case No. 611, being the application of J. H. Wade and H. F. Thomas, for permission to operate an automobile stage line between Price and Columbia, Utah, and Case No. 632,

being the application of George Samis, for permission to operate an automobile stage line between Price and Columbia, Utah.

Upon stipulation of the parties, testimony in each of the said cases will be considered as testimony in so far as applicable in each and all of the said cases, and the protest of the Arrow Auto Line applies equally so far as material to each and every application.

Manos Klapakis, George Samis, J. H. Wade and H. F. Thomas testified in support of their various applications, as to their financial ability, experience and the necessity for the operation of a common carrier stage line service between the above mentioned points.

The record discloses that Manos Klapakis already possesses a certificate of convenience and necessity authoirzing him to operate an automobile stage line between Price and the mining camp of Great Western; and that J. H. Wade is engaged in operating a stage line between Price, Helper and Castle Gate, Utah.

There is no question but that stage line service should be initiated between Price and Columbia, which is named Horse Canyon in the application of Manos Klapakis. The evidence shows that a mining camp of considerable proportions has been established, and, as is the case in all such camps, there is a considerable volume of travel which must be accommodated. The proposed route traverses the Price-Sunnyside highway to within a few miles of Sunnyside, where a new highway is being constructed which leads to the mining camp at Columbia, some four miles distant from the junction.

The testimony of protestants is that they have a well established service leading from Price to Sunnyside; that the service to be established by the applicants would be largely a duplication of their own service; that there will be a demand for service between Sunnyside and Columbia which would not be taken care of by the applicants; that two services would be confusing, resulting in needless encroachment; that by dispatching equipment as they would be able to do at both Sunnyside and Columbia, the needs of the public could be more equally met by the switching of vehicles to either point, as necessity required, to accommodate the traffic.

Section 4818 of the Public Utilities Act of Utah, provides:

> "No * * * automobile corporation * * * shall henceforth establish or begin the construction or operation of a line, route * * * , or of any exten-

sion of such * * * line, route * * * , without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city or town within which it shall have heretofore lawfully commenced operation or for an extension into territory either within or without a city or town contiguous to its * * * line, * * * and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business * * * ."

The evidence here indicates that Columbia is contiguous to Sunnyside and in close proximity to the established route of the protestants, and that a unified service giving transportation facilities to the people between Sunnyside and Columbia, as well as Columbia and Price, and Price and Sunnyside, is desirable as regards service, because of the more readily dispatching of equipment to meet traffic needs, and should result in somewhat less operating and maintenance cost that may be reflected in less transportation costs to the traveling public.

We are of the opinion that this case falls within the proviso of Section 4818 of the Public Utilities Act, and that the certificate of Stanislao Silvagni, Angelo Peparakis and Mike Sergakis, doing business as the Arrow Auto Line, should be extended to include service to and from Columbia to Price and Sunnyside; that the application of Manos Klapakis, J. H. Wade, H. F. Thomas, and George Samis, respectively, be, and accordingly are, denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 26th day of May, A. D. 1923.

In the Matter of the Application of MANOS KLAPAKIS, for permission to operate an automobile stage line between Price and Horse Canyon, Utah. } CASE No. 602

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Manos Klapakis be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of STANISLAO SILVAGNI to withdraw and ANGELO PEPERAKIS to assume the operation of a stage line between Price and Hiawatha and Price and Sunnyside, Utah. } CASE No. 603

ORDER

Upon motion of the petitioner, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed, without prejudice.

By the Commission.

Dated at Salt Lake City, Utah, this 23rd day of March, A. D. 1923.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of VORDA McKEE, for permission to operate an automobile truck line between Holden and Greenwood, Utah. | CASE No. 604 |

Submitted Jan. 29, 1923. Decided July 20, 1923.

Appearance:

Vorda McKee, for himself.

REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

This application was filed January 29th, 1923, showing that Vorda McKee, a resident in Holden, Utah, seeks the right to operate a common carrier freight motor truck line between the towns of Holden and Greenwood, Utah, a distance of approximately five miles, alleging that public convenience and necessity require the rendering of such service.

The case came on regularly for hearing at Fillmore, Utah, Wednesday, June 27th, 1923. No written protests were received, neither did any protestants appear at the hearing.

Vorda McKee testified that he is one of the three merchants for the town of Holden and that they receive their freight at the station of Greenwood on the Delta-Fillmore branch of the Union Pacific Railroad. This branch has only recently been placed in operation.

It appears from all the circumstances and facts developed at the hearing, that there is now, and will continue to be, a necessity for this service, and the application should accordingly be granted.

Applicant may file a tariff showing rates, fares and charges with the Commission in accordance with his application.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 183

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 20th day of July, A. D. 1923.

In the Matter of the Application of VORDA McKEE, for permission to operate an automobile truck line between Holden and Greenwood, Utah. } CASE No. 604

This case being at issue upon petition and having been duly heard and submitted by the party, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and Vorda McKee be, and he is hereby, authorized to operate an automobile truck line between Holden and Greenwood, Utah.

ORDERED FURTHER, That applicant, Vorda McKee, before beginning operation, shall, as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of JOHN DAVIS, for permission to operate an automobile stage line between Provo and Heber City, passing through Vivian Park and Charleston, Utah. | CASE No. 605 |

Submitted June 29, 1923. Decided August 6, 1923.

Appearances:
Van Cott, Riter & Farnsworth } Attorneys for Denver & Rio Grande Western R. R. System.
P. D. Sturn, for himself.

### REPORT OF THE COMMISSION

By the Commission:

This matter was called regularly for hearing before the Commission, at Provo, Utah, June 29, 1923, at two o'clock P. M., after due and legal notice given, this case having been continued by order of the Commission from May 4, 1923, to said date.

Protests were duly filed herein against the granting of a certificate of convenience and necessity to John Davis, as prayed for by him, in behalf of Paul Sturn, of Murray, Utah, and the Denver & Rio Grande Western Railroad System, upon the ground that the granting of a certificate of convenience and necessity to the applicant to carry passengers over the route as applied for, would not subserve the best interests of the traveling public, because of the facts that the protestant, Paul Sturn, is now rendering automobile passenger service, and protestant, Denver & Rio Grande Western Railroad System, furnishing railway passenger service over the same route, and that said services are efficient and adequate to serve the present needs of the traveling public.

No appearance was made at the hearing by or in behalf of the applicant. Whereupon, the protestants moved that the application of said John Davis, for permission to operate an automobile stage line between Provo and Heber City, be denied.

Upon investigation and after careful consideration of all material facts, the Commission concludes that the present services rendered by the protestants are adequate to

meet the needs of the traveling public over the route applied for by John Davis, and, therefore, the application should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 6th day of August, A. D. 1923.

In the Matter of the Application of JOHN DAVIS, for permission to operate an automobile stage line between Provo and Heber City, passing through Vivian Park and Charleston, Utah. } CASE No. 605

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of John Davis, for permission to operate an automobile stage line between Provo and Heber City, passing through Vivian Park and Charleston, Utah, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Application of the OREGON SHORT LINE RAILROAD COMPANY, a Corporation, for permission to discontinue the operation of its station at Willard, Utah, as an agency station. } CASE No. 606

PENDING

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

VIRGIN DOME OIL COMPANY,
*Complainant,*

vs.

B. L. COVINGTON,
*Defendant.*

CASE No. 607

Submitted May 10, 1923. Decided June 6, 1923.

Appearances:
W. J. Graham, for Complainant.
D. H. Morris, for Defendant.

## REPORT OF THE COMMISSION

By the Commission:

The above entitled case was brought before the Commission, December 14, 1922, and came on regularly for hearing, at St. George, Utah, May 10, 1923, at 10:00 A. M.

In this case, the complainant, Virgin Dome Oil Company, a corporation, undertakes to recover a portion of the freight charges on a shipment of wire rope weighing 4,864 pounds, from Lund, Utah, to Virgin Dome Oil Company plant near St. George, Utah, alleging that the defendant erred in charging at a rate of one and one-half cents per pound, instead of one cent per pound.

The defendant, B. L. Covington, operating under certificate of convenience and necessity issued by the Public Utilities Commission of Utah, states the shipment was of large proportions and required blocking, in order to secure safe hauling, the cost of which was three dollars. The plant of the Virgin Dome Oil Company is located off the State Highway, and a portion of the road is in bad condition, on account of a washout, which makes it necessary to use a team to pull machines through the mud and sand, the cost of which was three dollars, in this instance.

The complainant further states its willingness to pay three dollars which was expended for the purpose of getting the shipment safely over the road.

Section 4788, Compiled Laws of the State of Utah, 1917, reads as follows:

> "Except as in this section otherwise provided, no public utility shall charge, demand, collect, or receive a greater or less or different compensation for any

product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons, of the rates, tolls, rentals and charges so specified, nor extend to any corporation or person any form of contract or agreement, or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; *provided, that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.*"

In conformity with this section, defendant in this case filed its tariff P.U.C.U. No. 1, and in conformity with Circular 18-A, the above named tariff is claimed by defendant to apply as follows:

"Machinery weighing over 1,000 pounds, ore, cattle, horses, or other live stock by contract only." Shipments of wire rope cannot be given the classification of machinery.

Inasmuch as no contract was entered into between the complainant and the defendant, there is no evidence to substantiate the application of the special rate used, i. e., one and one-half cents per pound. On the contrary, the only rate applicable is the published rate of $1.00 per 100 pounds, as shown in P.U.C.U. No. 1.

After due consideration of all material facts, the Commission finds that reparation in the amount of one-half cent per pound, less three dollars, should be made by the defendant to the complainant.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 6th day of June, A. D. 1923.

VIRGIN DOME OIL COMPANY,
*Complainant,*
vs.
B. L. COVINGTON,
*Defendant.*
} CASE No. 607

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the defendant, B. L. Covington, be, and he is hereby, authorized and directed to pay complainant, Virgin Dome Oil Company, on or before August 1, 1923, reparation in the amount of one-half cent per pound, on shipment of wire rope weighing 4,864 pounds, from Lund, Utah, to Virgin Dome Oil Company plant near St. George, Utah, less three dollars ($3.00).

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of S. H. BOTTOM and J. S. McAFEE, for permission to operate an automobile stage line between Provo and Eureka, Utah.
} CASE No. 608

Submitted May 4, 1923. Decided June 4, 1923.

Appearances:

Dan B. Shields, for Petitioners.
Ralph Jewel and D. T. Lane } for Salt Lake & Utah R. R. Co.
B. R. Howell } for Denver & Rio Grande Western R. R. Co.

## REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for a public hearing, at Provo, Utah, May 4, 1923, after due and legal notice given in the manner and for the time as required by statute, before Commissioners Warren Stoutnour and E. E. Corfman (Commissioner Thomas E. McKay not participating in the hearing), upon the petition of S. H. Bottom and J. S. McAfee, for a certificate of convenience and necessity authorizing them to operate an automobile stage line for the transportation of passengers between the cities of Provo, in Utah County, and Eureka, in Juab County, and the written protests, separately filed thereto, by the Salt Lake & Utah Railroad Company and the Denver & Rio Grande Western Railroad System, railway corporations.

Upon the issues formed by the said petition and the protests thereto, the Commission, after hearing the evidence adduced for and in behalf of the respective parties at the said hearing, and after full investigation, reports and finds the facts to be as follows:

That petitioners are residents of Provo, Utah County, Utah; that they have had extensive experience in the operation of automobiles for hire, and are capable, efficient drivers of such machines, over country roads; that they are financially able and now have proper equipment, viz., two comparatively new, seven passenger automobiles, available for the transportation of passengers between the points mentioned; that petitioners propose, in the event a certificate of convenience and necessity is issued by the Commission, permitting them so to do, to make one trip each way, daily, between the points mentioned, leaving Provo daily at 9:00 o'clock A. M., arriving at Payson City, an intermediate point, at 9:45 A. M., leaving Payson at 10:00 A. M., and arriving at Eureka at 12:00 o'clock, noon; leaving Eureka at 9:00 A. M., arriving at Payson at 11:00 A. M.; leaving Payson at 11:15 A. M., and arriving at Provo at 12:00 o'clock, noon.

The protest of the Denver & Rio Grande Western Railroad System alleges and the evidence shows, that it operates one passenger train daily between Provo and Eureka, by leaving Provo at 5:10 P. M., and arriving at Eureka at 7:53 P. M., and returning, leaving Eureka at 7:42 A. M., and arriving at Provo at 9:55 A. M., the following day.

It is alleged by the protest of the Salt Lake & Utah Railroad Company, and the evidence shows, that it owns and operates an electric railroad extending from Salt Lake

City to Payson, Utah, and that the passenger service now rendered to the public by it over its said line between said points, is ample, commodious, convenient and efficient, so that the additional service proposed to be rendered by petitioners between Provo and Payson, is not needed

The Commission finds that under the present operating schedules now published and on file in the office of the Public Utilities Commission of Utah, that the protestant, Salt Lake & Utah Railroad Company, operates daily between the points last mentioned, sixteen passenger cars or trains, eight of which pass from Payson to Provo, between 5:35 A. M. and 11:45 P. M., and eight from Provo to Payson, between 8:10 A. M. and 1:45 A. M. (the following day); and that the said trains are so apportioned in their movements as to afford passengers a means of transportation once either way, approximately every two hours, between the times stated.

The Commission further finds that Provo has a population of approximately 12,000, Payson 3,000, and Eureka, about 3,500; and that there is also a large population at Springville, Spanish Fork and Salem, intermediate points between Provo and Payson; and that the public is now being served in the manner aforesaid, by the cars operated in the manner above stated, by the protestant, the Salt Lake & Utah Railroad Company.

The Commission further finds that the Denver & Rio Grande Western Railroad System, in order to serve Eureka, branches at Springville, the first station south of Provo, and that while in some measure it serves the people of the aforesaid cities of Spanish Fork, Salem and Payson, that by reason of its operating but one passenger train one way, each day, between Provo and Eureka, the public is greatly inconvenienced and great need arises for a passenger service between Provo and Eureka that will permit the traveling public from Provo, Payson and intermediate points, to make the trip to Eureka and return the same day, and without the necessity of having to remain over two nights at Eureka City, in order to transact business during business hours.

Therefore, the Commission concludes and decides, by reason of the premises, that the services now rendered by the protestant, the Salt Lake & Utah Railroad Company, between Provo and Payson (its present terminal), and intermediate points, is adequate to meet the needs of the traveling public; that the service accorded the traveling public between Provo and Eureka and said intermediate

points, by the protestant, the Denver & Rio Grande Western Railroad System, is inadequate, and that in order to better subserve the interests and needs of the public traveling between Provo and Eureka, including intermediate points, an automobile passenger stage line should be established and operated, so as to make at least one round trip daily between Payson City and Eureka City, between the hours of 9:00 A. M. and 9:00 P. M., each day; that the application of S. H. Bottom and J. S McAfee, to establish and operate a passenger automobile stage line between Provo and Eureka City, should be denied; that permission should be granted to said applicants to operate such stage line between the cities of Payson and Eureka, only, and that a certificate of convenience and necessity permitting them so to do, should be issued by the Commission, accordingly.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 175

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 4th day of June, A. D. 1923.

In the Matter of the Application of S. H. BOTTOM and J. S. McAFEE, for permission to operate an automobile stage line between Provo and Eureka, Utah. } CASE No. 608

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of S. H. Bottom and J. S. McAfee, for permission to operate an automobile stage line for the transportation of passengers between Provo and Eureka, Utah, be, and it is hereby, denied.

ORDERED FURTHER, That applicants, S. H. Bottom and J. S. McAfee, be, and they are hereby granted permission to operate an automobile stage line for the transportation of passengers, between the cities of Payson and Eureka, Utah.

ORDERED FURTHER, That applicants, S. H. Bottom and J. S. McAfee, before beginning operation, shall file with the Commission and post at each station on their route a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on their line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of S. H. BOTTOM and J. S. McAFEE, for permission to operate an automobile stage line between Provo and Eureka, Utah. | CASE No. 608 |

ORDER

The Commission having issued Certificate of Convenience and Necessity No. 187 (Case No. 644), August 6, 1923, to Walter K. Johnson, granting him permission to operate an automobile passenger stage line between Payson, Utah, and Eureka, Utah, and intermediate points.

And it appearing that S. H. Bottom and J. S. McAfee, holders of Certificate of Convenience and Necessity No. 175 (Case No. 608), granting them permission to operate an automobile stage line between Provo and Eureka, Utah, have consented to the cancellation of their certificate and forfeiture of their right to operate over said route;

IT IS ORDERED, That Certificate of Convenience and Necessity No. 175 (Case No. 608), issued to said S. H. Bottom and J. S. McAfee, be, and it is hereby, cancelled.

By the Commission.

Dated at Salt Lake City, Utah, this 11th day of August, 1923

(Signed) F. L. OSTLER,
[SEAL] Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of R. C. MURDOCK, for permission to operate an automobile truck freight line between Beaver and Milford, Utah. | CASE No. 609 |

Submitted February 10, 1923 Decided February 23, 1923

REPORT OF THE COMMISSION

GREENWOOD, Commissioner:

The above entitled matter was submitted to the Commission on the files and memoranda of Commissioner Greenwood, taken at Milford on the 15th day of December, 1922.

It appears that the applicant took over the business of the transportation of freight between Milford and Beaver from the Milford-Beaver Transportation Company, a corporation that had, prior to July, 1922, been operating a motor truck freight line between the points in question, under a certificate of convenience and necessity issued by the Public Utilities Commission of Utah; that the applicant, since the assignment, had continued to conduct and operate said freight line up to the present time; that he is the owner of two two-ton trucks, having a capacity sufficient to take care of the freight between Milford and Beaver, and intermediate points, and has for the last seven months demonstrated his ability to handle said business and give satisfaction to the shipping public; that during the time of the operation of the applicant, no transfer had been made, for the reason that Messrs. Sherwood and Arrington, former owners and operators of the Milford-Beaver Transportation Company, had been operating for some time, but had not received any certificate of convenience and necessity from this Commission, under the understanding, however, that they would withdraw, and did withdraw in favor of Mr. Murdock; that the parties mentioned herein had the impres-

sion that such withdrawal had been made and a certificate of convenience and necessity had issued in this matter, transferring the right and authority to Mr. Murdock to give such service; but an examination of the records of the Commission disclosed the fact that no such transfer or order had been made.

In compliance with the request of the Commission, an application was filed by Mr. Murdock, asking permission to operate a motor truck freight line between Beaver and Milford, Utah.

It appears from the history of this service that the statements above referred to are correct; that while the petitioner had not received a certificate of convenience and necessity from the Commission, he understood that he was operating under the orders and direction of the Commission.

It would appear that applicant, R. C. Murdock, is entitled to an order authorizing him to continue the operation of the automobile truck line betwen Milford and Beaver, Utah.

An appropriate order will be issued.

(Signed) JOSHUA GREENWOOD,
Commissioner.

I concur:

(Signed) WARREN STOUTNOUR,
Commissioner.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 172

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 23rd day of February, A. D. 1923.

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| In the Matter of the Application of R. C. MURDOCK, for permission to operate an automobile truck freight line between Beaver and Milford, Utah. | CASE No. 609 |

By the Commission:

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and

full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and R. C. Murdock be, and he is hereby, authorized to operate an automobile truck freight line between Beaver and Milford, Utah.

ORDERED FURTHER, That applicant R. C. Murdock, shall file with the Commission, and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares, which rates shall not exceed those formerly charged by the Milford-Beaver Transportation Company, and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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STATE OF UTAH,
*Complainant,*
vs.
BAMBERGER ELECTRIC RAILROAD COMPANY, SALT LAKE & UTAH RAILROAD COMPANY, JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, U. S. RAILROAD ADMINISTRATION,
*Defendants.*
} CASE No. 610

PENDING

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of J. H. WADE and H. F. THOMAS, for permission to operate an automobile stage line between Price and Columbia, Utah. | CASE No. 611 |

Submitted May 2, 1923 Decided May 26, 1923

Appearances:

J. H. Wade, for Applicants.
Henry Ruggeri, for Protestants.

## REPORT OF THE COMMISSION

By the Commission:

This case came on regularly for hearing, at Price, Utah, May 2, 1923, in connection with Cases Nos. 602 and 632, and upon the protest of Stanislao Silvagni, Angelo Peparakis and Mike Sergakis, operators of the Arrow Auto Line.

Upon stipulation of the parties to the above named cases, testimony in each of the said cases will be considered in each and all of said cases, insofar as material.

The Commission having disposed of this case in Case No. 602, the opinion will not be repeated here, but is made a part of the record in this case, and the application is accordingly denied.

An appropriate order will be issued.

(Signed) T. E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 26th day of May, A. D. 1923.

In the Matter of the Application of J. H. WADE and H. F. THOMAS, for permission to operate an automobile stage line between Price and Columbia, Utah. } CASE No. 611

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of J. H. Wade and H. F. Thomas be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of LOUIS PANOS, for permission to operate an automobile stage line between Salt Lake City and Bingham, Utah. } CASE No. 612

Submitted May 9, 1923 Decided May 31, 1923

Appearances:

Rogers & Rogers, W. B. Kelly, and F. C. Loofbourow } for Petitioners.

Dan B. Shields, for Protestant.

## REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for a public hearing, before the Commission, at Salt Lake City, Utah, April 24,

1923, after due and legal notice given for the time and in the manner as required by the statutes in such cases, upon the application of Louis Panos, praying that a certificate of convenience and necessity issue to him to operate an automobile stage line between the cities of Salt Lake and Bingham, and a written protest thereto filed by and on behalf of the Bingham Stage Line Company, a Utah corporation.

Numerous affidavits and petitions by divers persons and associations, both for and against the granting of said application, were also received and filed in the case.

The Commission, after an exhausive investigation and after giving due consideration to all the evidence adduced by the respective parties at the hearing, now reports and finds as follows:

That the applicant's petition in substance alleges:

That the petitioner, Louis Panos, is acting as an agent for and on behalf of a corporation to be hereinafter formed under the laws of Utah, with a capitalization of $50,000, the shares of stock to be held and owned by persons interested in the operation of a stage line, to which corporation petitioner will assign and transfer the certificate of convenience and necessity, if issued to him by the Commission; that the present stage line service between Salt Lake City and Bingham is inadequate and unsatisfactory; that the mines at Bingham are again in full operation, and that prior to the shutting down of the mines, three stage lines were necessary and operated between said points, in order to meet the needs of the traveling public.

The protest of the Bingham Stage Lines Company to the granting of applicant's petition states:

That it is a Utah corporation, organized at the suggestion of the Public Utilities Commission of Utah, in order that responsibility might be centered in the operation of a stage line between the cities of Salt Lake and Bingham; that at the present time, it is the holder of certificate of convenience and necessity No. 44, issued May 13, 1921, and at all times since said date, has been, and now is, operating an automobile stage line between said cities, under the rules and regulations made and approved by this Commission, and that in its said operations it has at all times conformed with and met the requirements thereof; that at the present time it owns and is using in the operation of said line, ten Cadillac automobiles, rebuilt, three of which are capable of accommodating eleven passengers each, and the remaining seven capable of serving seven passengers each; also, one White twenty-five passenger

bus, one White eighteen passenger bus, one White fifteen passenger bus; and that it now has in course of construction as additional thereto, one fifteen and one eighteen passenger bus, both of which will be ready for service within a month or two; that it is financially able, ready and willing to meet the demands for additional equipment to said stage for the use and convenience of the public whenever traffic conditions may so require; that at the present time, no additional equipment or service other than that had and rendered by protestant is required for the convenience and needs of the traveling public, and that the only possible effect the granting of applicant's petition might have would be deteriorating upon the service now being given to the public; that protestant company holds itself at all times in readiness to meet any and all requirements of the Commission with respect to serving the public efficiently and well, between the points mentioned, and is willing to do so.

The evidence submitted on the part of petitioner was to the effect that the applicant, Louis Panos, proposes, in the event the certificate applied for is issued, to organize a corporation under the laws of Utah, with a capitalization of $50,000, to be paid from time to time, with automobiles turned in as payment for stock, by owners interested in a stage line to be operated by them between Salt Lake City and Bingham Canyon, Utah, stopping at all intermediate points, as occasion may require.

It is proposed that the passenger rates shall be practically the same as those now charged by the present operator, Bingham Stage Lines Company, between said points; but that greater frequency of service will be given the public than is available at the present time.

It was also shown by petitioner that he is an experienced stage line operator, having been formerly engaged in conducting an automobile stage line service between the points mentioned. Many witnesses testified that the petitioner's former service over the said route was good and dependable.

To sustain the allegation that the present passenger service between the points mentioned was inadequate, witnesses were produced on petitioner's behalf who testified that the convenience of the public would be better subserved by a larger number of cars moving with greater frequency over the route under consideration. Another witness testified the present service was unsatisfactory for the same reason, lack of frequency in movement of automobiles, and also that occasionally persons were not permitted

to take passage with protestant's automobiles, by reason of the cars not stopping en route and their being loaded to capacity. Some complaint was also made by witnesses that they had been overcharged by the present operating company for passage to and between intermediate points on the route.

A. L. Inglesby, the present manager of the Bingham Stage Lines Company, protestant, testified that the equipment furnished for and the service rendered by the present operating Company was adequate, and fully met and provided for the convenience and all the needs of the traveling public; that it now owns the cars set forth and described in its written protest filed herein, and that two more cars of the most modern type are in course of construction and will be called into requisition for service upon the route in the course of a month or two; that at the present time there is no necessity for additional service, and that a competing stage line would tend to impair the service now being accorded to the public.

Mr. Inglesby also stated that passengers presenting themselves in time, according to schedules published and on file with the Commission, had always been provided for without delay, and that in cases of the regularly operated cars being loaded to capacity, extra cars with capable and efficeint drivers were kept and held in reserve for serving the public in accordance with its schedules. This witness also testified that the present operating company holds itself in readiness to perform any additional service, either at the present or at any future time the Commission may make demand for and the best interests of the public may require.

Many wholly disinterested witnesses testified on behalf of the protesting Company, that they had frequently availed themselves of protestant's service, and that they invariably found the service now being rendered efficient and satisfactory in every way. Other witnesses who have long resided in Bingham, testified that they had observed the stage line service between Salt Lake City and Bingham Canyon in former years when several lines were operating; that it was unsatisfactory, and that of it the public had cause to and did complain; that cars refused to move on scheduled time, more especially when there were but few passengers to accommodate, and that the competing lines were often times poorly equipped, and the managements and their servants indifferent to the comfort and needs of the public.

The Commission finds from the evidence and upon investigation, that the Bingham Stage Lines Company has not been affording the public at Bingham Canyon adequate depot facilities; that its present equipment is of the most approved type for stage line service; that under its present schedule between the hours of 8:00 A. M. and 10:15 P. M., it operates between Salt Lake City and Bingham Canyon fourteen cars each way, thus giving practically an hourly service during the business day; that the drivers of its cars are capable and painstaking in operating them, and universally courteous to passengers; that the Bingham Stage Lines Company, for the better convenience of the public, proposes to add two more trips to its schedule, to be made daily between Salt Lake City and Bingham Canyon, and that it will forthwith proceed to provide larger, more comfortable, and convenient depot facilities for the public at Bingham Canyon.

Upon the whole, the Commission finds that there is not at the present time any public necessity as contemplated by the Public Utilities Act, for an additional stage line between the cities of Salt Lake and Bingham Canyon, and, therefore, the application of Louis Panos, for the best interest of the public, should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 31st day of May, A. D. 1923.

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| In the Matter of the Application of LOUIS PANOS, for permission to operate an automobile stage line between Salt Lake City and Bingham, Utah. | CASE No. 612 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on

the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of the said Louis Panos be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of FRANK NYE, for permission to operate an automobile stage line between Salt Lake City, Utah, and Paris, Idaho, via Logan Canyon and Wellsville Canyon. | CASE No. 613 |

Submitted March 13, 1923. Decided July 30, 1923.

Appearances:

Harry Smith, for Frank Nye, Paris, Idaho.
Dana T. Smith, Attorney for O. S. L. R. R.
Devine, Howell, Stine and Gwilliam, for B. E. R. R. & U. I. C. R. R.
George Q. Rich, Logan, Utah.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, March 13, 1923, Frank M Nye seeks permission to operate an automobile stage line, for the transportation of passengers, between Salt Lake City, Utah, and Paris, Idaho, and intermediate points.

The case came on regularly for hearing, June 1, 1923, at the office of the Commission, Salt Lake City, Utah, after due notice had been given.

The granting of this application was protested by the Bamberger Electric Railroad Company, Utah-Idaho Central Railroad Company and George Q. Rich, owner of a certificate of convenience and necessity granting him permission to operate an automobile stage line between Logan, Utah, and Bear Lake, Utah.

After careful consideration of all material facts, the Commission finds that at the present time there is no necessity for an additional stage line between these points, and that the application of Frank Nye should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 30th day of July, A. D. 1923.

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|---|---|
| In the Matter of the Application of FRANK NYE, for permission to operate an automobile stage line between Salt Lake City, Utah, and Paris, Idaho, via Logan Canyon and Wellsville Canyon. | CASE No. 613 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Frank Nye, for permission to operate an automobile stage line between Salt Lake City, Utah, and Paris, Idaho, via Logan Canyon and Wellsville Canyon, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the SALT LAKE TRANSPORTATION COMPANY, for permission to operate an automobile stage line between Salt Lake City and Timpanogas Cave in American Fork Canyon. } CASE No. 614

Submitted March 15, 1923. Decided July 25, 1923.

Appearances:

James Ingebretsen, Attorney for Applicant.
George H Smith, Gen'l Attorney O. S. L. R. R.
Ralph H. Jewel, Attorney for S. L. & U. R. R.
VanCott, Riter & Farnsworth } Attorneys for D. & R. G. W. R. R.
Clawson & Elsmore, } Attorneys for C. M. Pitts and Ira S. Hatch.
Utah Outdoor Association, (M. A. Keysor).

## REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for hearing before the Commission at its office in Salt Lake City, Utah, on the 26th day of April, 1923, after due and legal notice given for the time and in the manner required by law, upon the written application of the Salt Lake Transportation Company, a Utah Corporation for a certificate of convenience and necessity permitting it to establish and operate an automobile stage line between Salt Lake City and Timpanogas Cave, including intermediate points, and the written protests filed thereto by the Salt Lake & Utah Railroad Company, the Denver & Rio Grande Western Railroad System, the Los Angeles & Salt Lake Railroad Company, railroad corporations, the Utah Outdoor Association, a corporation, and Messrs. C. M. Pitts and Ira S. Hatch.

From the evidence adduced in behalf of the respective parties at the hearing, and upon investigation duly made, the Commission now reports, finds and decides, as follows:

1. That the Applicant, Salt Lake Transportation Company is a corporation duly organized and existing under the laws of the State of Utah, having for its objects, among other things, the carrying on of a general sightseeing automobile, taxicab and transportation business in Salt Lake City and the region roundabout for the accommodation and entertainment of tourists and the general public.

2. That each of the protestants, said railroad corporations, owns a railroad and are operating, daily, cars for passenger service between Salt Lake City and American Fork City and to and from other points in the State of Utah.

3. That the protestants C. H. Pitts and Ira S. Hatch, are the owners of and are operating daily an automobile stage line between American Fork City and Timpanogas Cave in American Fork Canyon, Utah.

4. That the Utah Outdoor Association is a corporation, organized and existing under and by virtue of the laws of Utah, having for its purposes, among things, the development of the natural scenery of the State so as to afford entertainment and pleasure for the public generally.

5. That Timpanogas Cave is situated in American Fork Canyon, about seven miles from American Fork City; that it is one of the scenic attractions of the State, developed largely by the said Utah Outdoor Association; that said cave by reason of the publicity given it by the Utah Outdoor Association and the applicant, and the said railroad corporations as well, is visited annually, each summer season by many thousands of tourists and pleasure seekers from all parts of the country; that the convenience and needs of the public generally is such that many would not visit said cave unless afforded automobile transportation facilities from Salt Lake City direct to said cave.

6. That the applicant, Salt Lake Transportation Company is the owner of a large number of the most modern type of sight-seeing cars, which are operated by experienced and efficient drivers and that with its said equipment and drivers it is capable of not only maintaining a regular daily schedule between Salt Lake City and Timpanogas Cave during each season from June 1st to October 1st, but when occasion demands, will be prepared with its equipment to accommodate large parties of local people or tourists in making said trip from Salt Lake City to said cave or other points that may be of interest in American Fork Canyon.

7. That if permitted to operate, the said applicant proposes to charge the following rates, per passenger, for said service:

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|---|---|
| Round trip between Salt Lake City and Timpanogas Cave | $4.00 |
| One-way trip between Salt Lake City and Timpanogas Cave | 2.50 |

Round trip, Lehi, Utah, to Timpanogas Cave..... 1.50
Round trip, American Fork to Timpanogas Cave.... 1.25
Children over 5 and under 12 years of age....One-half fare
Children under 5 years, if accompanied by passenger paying adult fare .....Free
Special reduced rates for large parties or associations.

8. That said protestants, C. M. Pitts and Ira S. Hatch, are capable of and are now rendering efficient automobile passenger service between American Fork City and Timpanogas Cave under a certificate of convenience and necessity issued by the Public Utilities Commission of Utah on the 30th day of June, 1923, (Case No. 624).

9. That the protestant, Utah Outdoor Association, on the 15th day of April, 1923, filed its application, Case No. 616, before the Commission for a certificate of convenience and necessity to operate an automobile stage line between Salt Lake City and said Timpanogas Cave, including intermediate points. That under date of July 10, 1923, the Utah Outdoor Association withdrew its said application for a certificate of convenience and necessity so applied for.

From the foregoing facts the Commission concludes and decides:

That the transportation service now being rendered by the protestants, C. M. Pitts and Ira S. Hatch, between American Fork City and Timpanogas Cave in American Fork Canyon is adequate for the present needs of the public; that the public convenience and necessity requires that an automobile stage line should be established and operated daily directly from Salt Lake City to Timpanogas Cave, serving intermediate points not including American Fork City, from June 1st to October 1st of each year; that the applicant, Salt Lake Transportation Company, has the equipment and all the facilities necessary to render unto the public such a service; that this Commission should cause to be issued to the said applicant, Salt Lake Transportation Company, a certificate of convenience and necessity in accordance with the foregoing findings and conclusions.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 185

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 25th day of July, A. D. 1923.

In the Matter of the Application of the SALT LAKE TRANSPORTATION COMPANY, for permission to operate an automobile stage line between Salt Lake City and Timpanogas Cave in American Fork Canyon. } CASE No. 614

This case being at issue upon petition and protest and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and the Salt Lake Transportation Company be, and is hereby, authorized to operate daily directly from Salt Lake City to Timpanogas Cave, serving intermediate points not including American Fork City.

ORDERED FURTHER, That applicant, Salt Lake Transportation Company, before beginning operation, shall as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of GUS PAULOS, CHARLES PAULOS and GUS MAKIS, to withdraw and V. U. BUTTERS and E. W. SPEERS, to assume the operations of the automobile freight and express line between Salt Lake City and Garfield, Utah. | CASE No. 615 |

Submitted April 3, 1923. Decided April 7, 1923.

Appearance:
W. H. Wilkins, for Petitioners.

## REPORT OF THE COMMISSION

By the Commission:

This petition was filed, March 16, 1923, and, after due notice, came on regularly for hearing, April 3, 1923.

No protestants appeared at the hearing; neither were any protests received in writing or otherwise.

The petition of Gus Paulos, Charles Paulos and Gus Makis, shows that ever since and prior to the time of the passage of the Public Utilities Act, they have been operating an automobile freight and express service over an established route, between Salt Lake City and Garfield, and serving intermediate points.

Petitioners allege that since the passage of said Public Utilities Act, they have complied with the provisions of said Act and the rules, regulations and orders of the Public Utilities Commission of the State of Utah governing the operation of said automobile transportation, and have been recognized by said Commission as having the exclusive right and authority to operate such automobile freight and express line over said route.

Petitioners further allege that they have heretofore given to the public adequate and satisfactory service, and in the giving of such service, petitioners have been and are now employing four automobile trucks; that petitioners, V. U. Butters and E. W. Speers, are desirous of purchasing from the said petitioners heretofore named, the four automobile trucks aforesaid, and ask the Commission to approve said transfer and issue to petitioners, V. U. Butters and E. W. Speers, a certificate of public convenience and necessity, authorizing them to continue the operation of the said automobile freight and express line, under the same terms as now prevail, and in lieu of the operation by the said other petitioners named in this cause.

Testimony was presented indicating the desire of Gus Paulos, Charles Paulos and Gus Makis, to withdraw from the service and transfer their equipment and service to V. U. Butters and E. W. Speers.

Affidavits were filed supporting the general reliability and financial responsibility of V. U. Butters and E. W. Speers. These applicants also testified in their own behalf as to their responsibility and experience in the operation and management of motor propelled vehicular service, and their general knowledge of the freight transportation business, and their willingness to abide by the rules, regulations and orders of this Commission in all particulars.

After full consideration of all material facts that may or do have any bearing upon this case, we are of the opinion that Gus Paulos, Charles Paulos and Gus Makis should be permitted to withdraw from the giving of common carrier freight and express service between Salt Lake City and Garfield, and that V. U. Butters and E. W. Speers be authorized to assume the operation of the said service; that a certificate of convenience and necessity authorizing this service be issued to the said V. U. Butters and E. W. Speers.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
E. E. CORFMAN,
T. E. McKAY,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 173

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 7th day of April, A. D. 1923.

In the Matter of the Application of GUS PAULOS, CHARLES PAULOS and GUS MAKIS, to withdraw and V. U. BUTTERS and E. W. SPEERS, to assume the operations of the automobile freight and express line between Salt Lake City and Garfield, Utah. } CASE No. 615

This cause being at issue upon petition on file, and having been duly heard and submitted, and full investiga-

tion of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Gus Paulos, Charles Paulos and Gus Makis, to discontinue service as an automobile freight and express line between Salt Lake City and Garfield, Utah, be granted, and V. U. Butters and E. W. Speers be permitted to operate said automobile freight and express line between Salt Lake City and Garfield, Utah.

IT IS FURTHER ORDERED, That before beginning operation, applicants, V. U. Butters and E. W. Speers, shall publish, in the manner prescribed in the Commission's Tariff Circular No. 4, a schedule naming all rates, rules and regulations applying over their route, and shall file said schedule in the manner provided therein, which charges shall not exceed those at present charged by Gus Paulos, Charles Paulos and Gus Makis, together with a schedule showing arriving and leaving time, and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of such lines.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the UTAH OUTDOOR ASSOCIATION, for permission to operate an automobile stage line between Salt Lake City and Timpanogas Cave in American Fork Canyon. | CASE No. 616 |

Submitted March 17, 1923. Decided July 27, 1923.

ORDER

Upon written request of the applicant dated July 10, 1923, and by consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 27 day of July, 1923.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

Attest:
(Signed) F. L. OSTLER, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the CITY OF GREEN RIVER, UTAH, for permission to adopt a sliding scale of charges reducing its rates for service to consumers in excess of 500 K. W. per month. } CASE No. 617

ORDER

Upon motion of the Commission:

IT IS ORDERED, That the application of the City of Green River, Utah, for permission to adopt a sliding scale of charges reducing its rates for service to consumers in excess of 500 K.W. per month, be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 15th day of November, 1923.

(Signed) F. L. OSTLER,
[SEAL] Secretary.

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In the Matter of the Application of the BAMBERGER ELECTRIC RAILROAD COMPANY, to enter protest against filing and acceptance of Tariff No. 4975-D, P.U.C.U. No. 42, of the Denver & Rio Grande Western Railroad, and Item 527 of said Tariff. } CASE No. 618

PENDING

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of FRANK R. SJOSTERDT and ELMER A. PULLEY, for permission to operate an automobile stage line between American Fork and Timpanogas Cave, American Fork and Saratoga, and between American Fork and Geneva Beach, and intermediate points. | CASE No. 619 |

Submitted April 26, 1923. Decided June 30, 1923.

Appearances:

Frank R. Sjosterdt and Elmer A. Pulley, Petitioners.
Clawson & Elsmore, for C. M. Pitts and Ira S. Hatch.
Ralph Jewel, for Salt Lake & Utah R R. Co.
George H. Smith, for Oregon Short Line R. R. Co.
B. R. Howell, for Denver & Rio Grande W. R. R. Co.
James Ingebretsen, for Salt Lake Transportation Co.
W. S. McCarty, for Utah Outdoor Association.

### REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, Frank R. Sjosterdt and Elmer A. Pulley request permission to operate an automobile stage line between American Fork and Community Flat, Pacific Mine, and intermediate points in American Fork Canyon, also between American Fork and Saratoga, and intermediate points, and between American Fork and Geneva Beach, and intermediate points, all located in Utah County.

This case came on regularly for hearing before the Commission, April 26, 1923, after due notice had been given.

The petitioners allege that public convenience and necessity require the operation of an automobile stage line between these points, to provide transportation for pleasure seekers desiring to make these trips. The bulk of the traffic in American Fork Canyon would undoubtedly be to and from Timpanogas Cave, which is a well advertised scenic point of interest. Geneva Beach and Saratoga are both summer resorts, located on or near Utah Lake; the main traffic would be to accommodate dancing parties.

After due consideration of all material facts, the Commission finds that, inasmuch as a certificate of convenience

and necessity was recently issued to C. M. Pitts and Ira S. Hatch to operate an automobile stage line between American Fork and Timpanogas Cave, the business would not justify granting an additional certificate between these points.

Regarding the transportation of dancing parties and others between American Fork and the summer resorts, the Commission believes that the owner of such certificate would constantly be in trouble, because automobile owners would invite their friends to accompany them when making such trip, which practice may be construed by the holder of the certificate as being in violation of the Public Utilities Law.

This application is, therefore, denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 30th day of June, A. D. 1923.

In the Matter of the Application of FRANK R. SJOSTERDT and ELMER A. PULLEY, for permission to operate an automobile stage line between American Fork and Timpanogas Cave, American Fork and Saratoga, and between American Fork and Geneva Beach, and intermediate points. } CASE No. 619

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Frank R. Sjosterdt and Elmer A. Pulley, for permission to operate an automobile stage line between American Fork and Timpanogas Cave, American Fork and Saratoga, and between American Fork and Geneva Beach, and intermediate points, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of MARVIN TERRY, for permission to operate an automobile truck line between Lund, Virgin, Rockville, Springdale, and Zion National Park, Utah. } CASE No. 620

ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 16th day of June, A. D. 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of J. C. RUSSELL, for permission to carry all passengers on Mail Route No. 69130, from Lehi, Utah, to Topliff, Utah, via Fairfield and Cedar Valley, Utah. } CASE No. 621

Submitted April 5, 1923 Decided July 20, 1923.

Appearance:

J. C. Russell, for himself.

REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for hearing before the Commission, on the 29th day of June, 1923, at Lehi, Utah,

after due and legal notice for the time and in the manner required by law, upon the application of J. C. Russell for a certificate of convenience and necessity to operate an automobile express and passenger stage line between Lehi City, in Utah County, and Topliff, in Tooele County, Utah.

It appears from the evidence adduced in behalf of the applicant, that he is now and has been for some time past, engaged in the service of the United States, as a mail carrier, carrying mail between the points heretofore mentioned, making one round trip daily; that he owns and operates in said mail service a five passenger Ford touring car; that he is a resident of Lehi City, and maintains his office at his family residence at said place; that he has had some eight years' experience in the operation of an automobile for hire; that he will be called upon to carry from one to three passengers each way while making the round trip; that the express service will consist of the carrying of small packages of merchandise to Topliff for the accommodation of the families of working men employed at lime rock quarries at said place of Topliff, and for residents at the intermediate points of Cedar Fort and Fairfield, in Utah County, without railway service; that it would be a great convenience to the public connected with said route to be afforded the proposed service; that a necessity exists for said service, for the reason that at the present time there is practically no other service available to the public.

No protests have been filed to the granting of the certificate applied for.

Therefore, the Commission concludes that the applicant should be granted the certificate sought for.

An appropriate order will be issued, granting the applicant a certificate of convenience and necessity to operate an express and passenger stage line between the points mentioned, subject to his filing the required schedule under the Public Utilities Act, and in accordance with the rules and requirements of the Commission.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 182

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 20th day of July, A. D. 1923.

In the Matter of the Application of J. C. RUSSELL, for permission to carry all passengers on Mail Route No. 69130, from Lehi, Utah, to Topliff, Utah, via Fairfield and Cedar Valley, Utah. } CASE No. 621

This case being at issue upon petition and having been duly heard and submitted by the party, and full investigation of the matters and thing involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and J. C. Russell be, and he is hereby, authorized to carry all passengers on Mail Route No. 69130, from Lehi, Utah, to Topliff, Utah, via Fairfield and Cedar Valley, Utah.

ORDERED FURTHER, That applicant, J. C. Russell, before beginning operation, shall, as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Complaint and Protest of H. E. BOWMAN against C. G. PARRY'S operations of automobile stage line between Marysvale, Utah, and Bryce Canyon, asking that certificate of convenience and necessity be revoked. } CASE No. 622

PENDING

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Application of W. E. OSTLER, for permission to operate an automobile stage line between Mammoth and Eureka, Utah. | CASE No. 623 |

Submitted April 10, 1923. Decided July 20, 1923.

Appearance:
W. E. Ostler.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, April 10, 1923, W. E. Ostler requests permission to operate an automobile passenger stage line between Eureka and Mammoth, Utah.

This case came on for hearing at Eureka, Utah, Monday, July 2, 1923. Mr. Ostler holds certificate of convenience and necessity No. 137 issued by the Commission, which authorizes him to operate a passenger stage line between Eureka and Silver City, Utah. He appeared in his own behalf and stated the towns of Eureka, Silver City and Mammoth are situated in a triangle. He stated also, that he had been making the round trip, taking in all three towns each day.

In view of all the relevant facts the Commission finds that a certificate of convenience and necessity should be issued.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 179

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 20th day of July, A. D. 1923.

In the Matter of the Application of W. E. OSTLER, for permission to operate an automobile stage line between Mammoth and Eureka, Utah. } CASE No. 623

This case being at issue upon petition and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and W. E. Ostler be, and he is hereby authorized to operate an automobile stage line between Mammoth and Eureka, Utah.

ORDERED FURTHER, That applicant, W. E. Ostler, before beginning operation, shall, as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of C. M. PITTS and IRA S. HATCH, for permission to operate an automobile stage line between American Fork City and American Fork Canyon. } CASE No. 624

Submitted April 26, 1923. Decided June 30, 1923.

Appearances:

Clawson & Elsmore, for Petitioners.
Ralph Jewel, for Salt Lake & Utah R. R. Co.
George H. Smith, for Oregon Short Line R. R. Co.
B. R. Howell, for Denver & Rio Grande W. R. R. Co.
James Ingebretsen, for Salt Lake Transportation Co.
W. S. McCarty, for Utah Outdoor Association.

### REPORT OF THE COMMISSION

By the Commission:

The above entitled case came on regularly for hearing before the Commission, April 26, 1923, after due notice had been given.

In an application filed with the Commission, April 2, 1923, C. M. Pitts and Ira S. Hatch request a certificate of convenience and necessity to operate an automobile stage line, for the purpose of carrying passengers and express between American Fork City and Timpanogas Cave, situated in American Fork Canyon.

Timpanogas Cave is a scenic point of interest, located in American Fork Canyon. It has been extensively advertised and many tourists and visitors make trips to the cave each year.

At the present time, there are no stage line facilities between these points, and the applicants feel that it is a necessity and will be a convenience, in the event a certificate is issued. They also state that the Salt Lake & Utah Railroad Company will co-operate with them in the advertising and transportation of special parties and excursions, also that they are in a position to comfortably care for all passengers.

There were no protests to the application, in writing or otherwise.

The Commission, in giving full consideration to the facts, finds that a certificate of public convenience and necessity should be issued in favor of the applicants to operate an automobile stage line between American Fork

and Timpanogas Cave, providing transportation for passengers and express.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 178

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 30th day of June, A. D. 1923.

In the Matter of the Application of C. M. PITTS and IRA S. HATCH, for permission to operate an automobile stage line between American Fork City and American Fork Canyon. } CASE No. 624

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that C. M. Pitts and Ira S. Hatch be, and they are hereby, authorized to operate an automobile stage line for the transportation of passengers, between American Fork City and Timpanogas Cave, situated in American Fork Canyon.

ORDERED FURTHER, That applicants, C. M. Pitts and Ira S. Hatch, before beginning operation, shall file with the Commission and post at each station on their route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on their line;

and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Application of L. C. MORGAN and JAMES E. CARTER, for permission to transfer one-half interest in a certain automobile freight line between Provo and Eureka and Provo and Nephi, Utah, and intermediate points, to H. M. Spencer. | CASE No. 625 |

Submitted April 11, 1923. Decided, July 30, 1923.

Appearances:

Robert Wallace, for Petitioners.
Ralph H. Jewell, for the Salt Lake & Utah R. R.
James H. McDonald, for VanCott, Riter & Farnsworth, attorneys for the Denver & Rio Grande Western R. R.

## REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for hearing before the Commission at Provo, Utah, on the 29th day of June, 1923, upon the petition of L. C. Morgan and James E. Carter, for an order of the Public Utilities Commission of Utah, authorizing the said petitioners to transfer to H. M. Spencer an one-half interest in a certificate of convenience and necessity theretofore issued to said petitioners by the Commission, to operate an automobile freight line between Provo and Eureka, and Provo and Nephi, Utah, and all intermediate points, and the written protest filed thereto by the Salt Lake and Utah Railroad Company and the Denver and Rio Grande Western Railroad System, corporations, the same rendering railroad freight service between points applied for by the petitioners.

At the hearing the protestants objected to the introduction of any testimony in support of the said petition upon the ground that the Commission was without jurisdic-

tion to grant the order applied for by reason of the fact that the said H. M. Spencer had not filed his separate formal petition herein nor joined the petitioners by becoming a party to the proceedings pending by signing their petition for authority to transfer an interest in the certificate of convenience and necessity and for the further reason that the petitioners were not authorized by the Commission to operate an automobile freight line from Provo to Nephi and intermediate points. The said H. M. Spencer being present at said hearing and having expressed his intent and willingness to accept a transfer of one-half interest in the automobile freight line in question, protestants' objection upon the ground that the Commission was without jurisdiction to proceed was therefore denied.

In re Inglesby, Case No. 132, (Utah):

From the evidence adduced in behalf of the parties and upon investigation made by the Commission, the Commission reports and finds the following facts:

1st. That in Case No. 460, before the Commission, decided February 23, 1922, the petitioners, L. C. Morgan and James E. Carter were granted a certificate of convenience and necessity (Certificate No. 129), to operate an automobile stage line between Provo and Eureka and between Provo and Nephi, Utah.

2nd. That on January 15, 1923, after a hearing had before the Commission in Case No. 574, it appeared and the Commission found, that public convenience and necessity no longer required the operation of an automobile freight line between Provo and Nephi, Utah, and thereupon the Commission made and entered its order modifying its said order No. 129 by discontinuing said service between Provo and Nephi, which said order has never been modified, set aside, nor appealed from, and the same ever since has been, and now is, a valid and subsisting order of the Commission.

3rd. That since the modification of said order No. 129 as aforesaid, the said L. C. Morgan and James E. Carter have continued to operate an automobile freight line between Provo and Eureka, Utah, and also between Provo and Nephi.

4th. That said H. M. Spencer is a resident of Provo, Utah, about forty years of age and is now and has been for more than three years last past, actively engaged in operating for others, an automobile freight truck upon the public highways of the State of Utah; that he is experienced and capable in handling freight by automobile truck

and is financially able to take over and successfully operate with L. C. Morgan, an automobile freight line between Provo and Eureka, Utah.

5th. That the said James E. Carter proposes to assign and transfer to the said H. M. Spencer, all of his title to the equipment used in operating said freight line between Provo and Eureka and also his rights under, and interest in said certificate No. 129, heretofore issued to himself and L. C. Morgan as aforesaid, and the said L. C. Morgan acquiesces in said transfer and assignment, and consents to continue to operate said automobile freight line between Provo and Eureka City with the said H. M. Spencer, in the event an order of the Commission is made and entered authorizing them to do so.

6th. That no material change as to the need of the public for an automobile freight line service between Provo and Eureka, Utah, for the same reasons as found and set forth in the report of the Commission in said case No. 460.

By reason of the premises, the Commission, therefore concludes and decides that the operation of an automobile freight line between Provo and Nephi, Utah, including intermediate points, as now conducted by the petitioners, L. C. Morgan and James E. Carter, is without authority and in violation of law and therefore their petition to transfer the same should be denied:

That their petition for an order to transfer to H. M. Spencer a one-half interest in their automobile freight line between Provo and Eureka City, Utah, and intermediate points, not including points south of Payson, Utah, should be granted.

An appropriate order will be issued.

(Signed) E. E. CORFMAN,
THOMAS E. McKAY,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 184

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 30th day of July, A. D. 1923.

In the Matter of the Application of L. C. MORGAN and JAMES E. CARTER, for permission to transfer one-half interest in a certain automobile freight line between Provo and Eureka and Provo and Nephi, Utah, and intermediate points, to H. M. Spencer. } CASE No. 625

This case being at issue upon petition and protest and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and that applicants transfer to H. M. Spencer a one-half interest in their automobile freight line between Provo and Eureka City, Utah, and intermediate points, not including points south of Payson, Utah.

ORDERED FURTHER, That applicant, H. M. Spencer, before beginning operation, shall, as provided by law, file with the Commission and post at each station on the route a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of FRED STROHSAHL, for permission to operate an automobile freight truck line between Salt Lake City, Murray, Midvale and Sandy, Utah. | CASE No. 626 |

Submitted April 12, 1923. Decided July 20, 1923.

Appearances:

Homer Holmgreen, Attorney for Applicant.
VanCott, Riter & Farnsworth for D. & R. G. W. R. R.

## REPORT OF THE COMMISSION

By the Commission:

In an application dated April 12, 1923, Fred Strohsahl, a resident of Midvale, Salt Lake County, Utah, alleges that the following named communities, in Salt Lake County, to wit: Murray, Midvale and Sandy, have populations of 5000, 2500 and 1000 respectively, and that for some time the business houses and residents of these communities have resorted, as a matter of necessity and convenience and to make deliveries more expeditious, to the hauling of freight by automobile truck. That at no time has there been adequate automobile truck service for the needs of the communities and that the public needs in said communities demand that a truck line such as is contemplated by the applicant be established and maintained.

Further that each of the said communities is increasing and is in need of much better and more expeditious modes of transporting supplies and products to and from Salt Lake City and asks that a certificate of convenience and necessity be issued to operate an automobile truck line between the above named points.

Petitioner further alleges that he has the necessary equipment, or is able to acquire the same, and has had extensive experience in operating trucks; is familiar with the highways and is considered a competent and careful driver and operator.

The applicant, as a part of his petition, filed a schedule of charges for the rendering of the proposed service.

The Los Angeles & Salt Lake Railroad Company and the Oregon Short Line Railroad Company, in a protest, filed May 21, 1923, denied that there is any necessity for the establishment of an automobile freight truck

line as proposed in applicant's application, but to the contrary, assert that the various common carriers now operating between the points mentioned, have ample equipment to render such service as is demanded and required by the public, and further that the various rail carriers now operating between the points set out in the petition have private rights-of-way with railroad tracks thereon and each year are required to pay a large amount of taxes thereon and alleges that it would be unjust to allow the petitioner to enter into the competitive service with these carriers by making free use of the public highways, thereby escaping any taxes except as may be imposed on the vehicles that may be used by the petitioner in his proposed service.

The Receiver of the Denver & Rio Grande Western Railroad System filed its protest May 31, 1923, alleging that the Denver & Rio Grande Western Railroad furnished adequate daily freight service between Salt Lake and Murray, Utah, and twice a week, except Sunday, between Midvale and Sandy, and denies that public convenience or public necessity require the said application, but that the protestant affords full and sufficient freight service between Salt Lake City and Murray.

June 1, 1923, the B. & O. Transportation Company, operating an automobile freight truck line between the points set out in this petition, filed its protest, stating that by order of this Commission the said B. & O. Transportation Company now has a certificate of convenience and necessity authorizing it to conduct an automobile freight truck line between Salt Lake City, Murray, Midvale and Sandy, Utah, and alleges that protestant has at all times given adequate freight service to the above named communities.

Further, that it owns two two-ton trucks and one one and one-half ton truck, but at the present time, due to lack of business, there is only one truck operating. That during the four and one-half years which the protestant has operated the said truck line to the above towns mentioned, there has been at least one truck leave on schedule each and every day except on holidays and sundays, and that protestant is in a position, when business justifies, to increase its equipment. That protestant is willing to comply with any and all orders made by the Commission with respect to time of schedule and fares in the best interest of the public.

Further, that there is no need or necessity for another truck line and that should a certificate be granted to

the applicant, neither truck line could exist.

The case came on regularly for hearing before the Commission at the time, and in the manner as provided by law; testimony was heard in support of the application and of the protestants. Exhibits were presented and received. A petition filed by various residents and public firms in support of the application was filed.

As evidenced by the testimony of the applicant, the service proposed to be rendered by him, does not differ vitally from the service already being given by the present truck line. A difference of schedule is contemplated in the belief that some business concerns would be better served, but there is nothing developed to show that the present truck line, under the law, cannot give full and adequate service.

These communities are likewise served by several rail carriers, so that in view of all the material facts developed at the hearing, we are of the opinion and find that the applicant did not show that public necessity requires the operation of another truck line and the petition should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioner.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 20th day of July, A. D. 1923.

In the Matter of the Application of FRED STROHSAHL, for permission to operate an automobile freight truck line between Salt Lake City, Murray, Midvale and Sandy, Utah. } CASE No. 626

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having

on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Fred Strohsahl, for permission to operate an automobile freight truck line between Salt Lake City, Murray, Midvale and Sandy, Utah, be, and it is hereby denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of CHARLES J. ANDERSON, for permission to operate an automobile passenger and freight stage line between Grantsville, Utah, and Salt Lake City, Utah. | CASE No. 627 |

Submitted June 1, 1923 Decided August 9, 1923

Appearances:

Charles J. Anderson, Petitioner.

VanCott, Riter & Farnsworth, for Western Pacific Railroad Company, Protestant.

Frank T. Burmester, Protestant.

## REPORT OF THE COMMISSION

By the Commission:

The application of Charles J. Anderson, filed April 24, 1923, shows that he is a resident of Grantsville, Tooele County, Utah, and seeks authority to operate an automobile freight and passenger stage line between Grantsville and Salt Lake City, Utah; and states that Grantsville is removed approximately six and twelve miles, respectively, from direct connection with the Western Pacific Railroad and the Los Angeles & Salt Lake Railroad, and that there is no direct transportation connection with Salt Lake City and intermediate points; that the schedule of time of arrival and departure of trains from Burmester, Utah, on the Western Pacific, and Warner, on the Los Angeles & Salt Lake Railroad, occur at extremely inconvenient hours, and that the time between the arrival of the incoming train and the outbound train from Salt Lake City on said schedules, allows passengers but two or three

hours in which to transact any business in Salt Lake City; that a direct passenger service between Salt Lake City and Grantsville, Utah, could be arranged to greatly increase the convenience of passengers traveling between said points, afford better hours of departure and arrival, and greatly facilitate the transportation of both freight and passengers, and asks that a certificate to operate such an automobile stage line be granted.

May 31, 1923, there was filed a protest of the Los Angeles & Salt Lake Railroad Company, denying that there is any necessity for the establishment of an automobile passenger line such as is sought to be established by the applicant; but, to the contrary, asserts that the various common carriers now operating between the points mentioned in the petition have ample facilities to render and afford all such service demanded and required by the public; that the various common carriers now operating between the points set out in this application have private rights-of-way with railroad tracks thereon, and each year are required to pay a large amount of taxes thereon, and it would be inequitable to allow the petitioner to enter into competitive service with these carriers by making free use of the public highway, thereby escaping the payment of taxes, except such as may be imposed upon the vehicles used by the petitioner in the proposed service.

May 31, 1923, the Western Pacific Railroad Company filed its protest, alleging that the transportation service between Salt Lake City and Grantsville, Utah, is furnished by means of a railroad haul over the line of protestant from Salt Lake City to Burmester, and thence by automobile and other vehicles to said Grantsville; that an automobile freight and passenger line is now being operated by Frank Burmester, between Burmester, on the Western Pacific Railroad, and Grantsville, by virtue of a permit issued by this Commission; that the town of Grantsville is already furnished adequate freight and passenger service, and that neither public convenience nor necessity require the granting of this application.

The protest of the Western Pacfic Railroad Company further alleges that the freight and passenger service rendered by the protestant and the Burmester Truck line, is adequate and efficient; that protestant has arranged an improved service for Grantsville, so that freight will be received daily except on Mondays, in box cars, and that in addition thereto, protestant will load Grantsville perishables in iced refrigerator cars on Tuesdays and Saturdays; that the said protestant, Western Pacific Railroad Com-

pany, will also cause its agent to telephone the merchants at Grantsville each day and notify them of freight received at Burmester consigned to such merchants, all at the expense of said protestant.

There was likewise filed on May 31, 1923, protest of Frank Burmester, operating the automobile stage line between Grantsville and Burmester, alleging that the present service given by the railroad and connecting stage line is ample, as shown in the testimony before the Commission at the hearing of Bernard Castagno, Case No. 586, in August, 1922, and alleged that the applicant had been operating for the past six months without authority from this Commission.

The case came on regularly for hearing before the Commission, June 1, 1923, due notice having been given as provided by law. Evidence was received from the petitioner, Charles J. Anderson, in support of the application, and the various witnesses were likewise heard in protest. Various exhibits were received, including a petition filed by various residents of Grantsville, in support of the application. Applicant testified as to his financial responsibility, need for service, present train and stage line schedules, and the general condition of the roads.

Protestants generally supported the theory that present facilities were adequate, and that no necessity existed for further, additional or different service than that now being given.

We do not believe that there is real public necessity for such service in this section as is sought to be given by the applicant. The Western Pacific Railroad, but recently built, traverses and serves this section, which is, for the most part, sparsely settled. The amount of traffic destined to, and originating in this section, is comparatively small, and to deprive the carriers of the small amount accruing, would still further cripple it in its ability to give adequate service to the district generally.

After a full consideration of all material facts, we are of the opinion that the public interest will be best served by denying the application.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 9th day of August, A. D. 1923.

In the Matter of the Application of CHARLES J. ANDERSON, for permission to operate an automobile passenger and freight stage line between Grantsville, Utah, and Salt Lake City, Utah. } CASE No. 627

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the application of Charles J. Anderson, for permission to operate an automobile passenger and freight stage line between Grantsville, Utah, and Salt Lake City, Utah, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of J. E. BONTO, for permission to operate an automobile stage line between Helper and Garden City, Utah. } CASE No. 628

Submitted April 24, 1923. Decided July 20, 1923.

Appearance:

R. R. Hackett, Attorney for Petitioner.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission April 24, 1923, J. E. Bonto seeks a certificate of convenience and necessity to operate an automobile stage line between Helper, Utah, and Garden Creek, Utah.

This case came on for hearing at Helper, Utah, Friday, July 6, 1923.

R. R. Hackett, attorney for the applicant, appeared and made a motion to dismiss the case without prejudice.

The Commission is of the opinion that the case should be dismissed without prejudice.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Application of J. E. BONTO, for permission to operate an automobile stage line between Helper and Garden City, Utah. | CASE No. 628 |

ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed, without prejudice.

By the Commission.

Dated at Salt Lake City, Utah, this 20th day of July, A. D. 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of J. W. JOHNSTUN and CHRIS ANDERSON, for permission to operate an automobile stage line between Duchesne and Salt Lake City, Utah. } CASE No. 629

Submitted June 6, 1923. Decided June 14, 1923.

Appearances:

W. I. Snyder, for Petitioners.
Brigham Clegg, for Protestant.

## REPORT OF THE COMMISSION

By the Commission:

J. W. Johnstun, on behalf of himself, as the Dodge Stage Line, and Chris Anderson, filed a petition with this Commission, April 23, 1923, representing that a public necessity exists for a through stage line between Salt Lake City, in Salt Lake County, Utah, and Duchesne, in Duchesne County, Utah; that during the summer months a good road connects the two points, and time may be saved by people going into the Uintah Basin and from the Basin to Salt Lake City, by traversing this highway now known as the Daniels Canyon road.

Petitioner alleges he is able financially and has the necessary equipment to supply the transportation needs between the above mentioned places and intermediate stations; that it is the desire of petitioner to transport passengers between the following points, at the following rates:

| | |
|---|---|
| Duchesne to Fruitland | $ 3.00 |
| Dushesne to Soldier Creek | 4.00 |
| Duchesne to Baters | 5.00 |
| Duchesne to Heber City | 8.00 |
| Duchesne to Salt Lake City | 12.00 |

which rates apply respectively in the opposite direction.

The petition further alleges that it was the desire of petitioner to operate on the following schedule of arrivals and departures:

| | |
|---|---|
| Leave Salt Lake City | 7:00 A. M. |
| Arrive Duchesne | 2:30 P. M. |
| Leave Duchesne | 7:00 A. M. |
| Arrive Salt Lake City | 2:30 P. M. |

This case came on for hearing, June 6, 1923, at the

time and in the manner as provided by law, before the Commission, at its office in Salt Lake City.

The petition was protested by P. D. Sturn, filed June 2, 1923, showing that he is engaged in the operation of an automobile stage line between Salt Lake City and Heber City, by authority of a certificate of public convenience and necessity issued by the Public Utilities Commission; and alleged that the proposed operation of Johnstun and Anderson would seriously interfere with the operation of protestant between these points.

Protestant Sturn alleged that he has invested in equipment for the furnishing of service, approximately $3,500, and denies that a necessity exists for an additional automobile stage line between Salt Lake City and Heber City, even as a part of a through line between Salt Lake City and Duchesne; and alleged that he is equipped and can make connections at Heber City with any line operating from Heber City to Duchesne; but that if a through line is to be established between Salt Lake City and Duchesne, it should be established by extending the service at present rendered by the protestant, Sturn.

Protestant further alleges that in past seasons, applicant, Chris Anderson, operating a stage line between Heber City and Duchesne, failed to make connections with protestant's line at Heber City, and, as a result, protestant in many cases found it necessary to secure special equipment and operate special trips to care for the traffic which was neglected by petitioner Anderson.

It is further alleged that at this time applicant, J. W. Johnstun, operating the Dodge Stage Line from Helper and Price to Duchesne and Vernal and other points in the Uintah Basin, enjoys a complete monopoly of the passenger traffic into and out of the Basin, and that the granting to this petitioner of the exclusive privilege of operating over all routes in the Uintah Basin, would work an irreparable injury upon protestant.

Protestant further alleges that his equipment, schedule of operation and fares are sufficient, adequate and reasonable to furnish the traveling public all service, either necessary or convenient, over his authorized route, and the operation of an additional stage line between Salt Lake City and Heber City would deprive him of his passengers and the revenue derived therefrom.

Protestant Sturn refers to his own application previously filed with the Commission, for permission to extend his operation from Heber City to Duchesne, and alleges if

such a certificate be granted to connect with the Dodge Stage Line at Duchesne, that he will furnish ample and sufficient transportation facilities between Salt Lake City and Duchesne, and asks that the application of Johnstun and Anderson be denied.

Witness J. W. Johnstun testified as to his financial responsibility, ability to render service and necessity for a through line operating between Vernal and Salt Lake City, and admitted that for several days last past he had been operating without a certificate of convenience and necessity a stage service over the proposed route set forth in his application, and in violation of the law. The Commission expresses regret that one who has himself enjoyed the protection of the law in giving service for several years, would deliberately violate it by instituting an unauthorized service.

Witness Johnstun further testified that he is at present operating stage lines from Price and Helper through Duchesne to the Uintah Basin; that during the whole of last summer, but five proper connections were made at Duchesne with the stage line operated between Heber City and Duchesne. Witness Johnstun stated that his cars were operated on schedule, and that it was through no failure of his own that proper connections were not made. He testified further that it was his opinion that it would be necessary to have the entire operation under his own management, in order to assure proper connections, and that it was his intention to carry passengers between Salt Lake City and Vernal without change of cars.

Witness Johnstun testified that it is not his intention to transport intermediate passengers between Salt Lake City and Heber City, but his traffic was to be confined to through traffic, destined to and from the Uintah Basin.

Chris Anderson testified that he had operated a stage between Duchesne and Heber City, and that the service had not always been adequate, for the reason he had been unable to make proper connections at Heber City with the stage line operating between Heber City and Salt Lake City, and for that reason, joined with J. W. Johnstun in asking that a through service be initiated.

Protestant Sturn testified as to the history of operation of his own service; that it is proper and adequate insofar as he is concerned; but, due to the dilatory and improper methods of Chris Anderson, had been unable to make proper connections with the stage of said Anderson at Heber City, and, for that reason alone, the through

service to Duchesne had been inadequate and unsatisfactory in the past, and asked that his own application be heard, to extend his service beyond Heber City to Duchesne and there make connections with the Dodge Stage line.

Witness Sturn further testified that much of his traffic is destined to the Uintah Basin, and that if a through stage line were permitted, this traffic would be lost to him, without just reason, and the intermediate service between Heber City and Salt Lake City would be destroyed through loss of the through patronage, which is necessary in order to carry on the intermediate business successfully.

Letters were received and filed from the Roosevelt Commercial Club and the Duchesne Commercial Club, supporting the application of the Dodge Stage Line for a through service.

A petition was likewise filed, signed by many people of Heber City, stating that it is their belief that a franchise was being requested by the Dodge Stage Line and Chris Anderson, granting them the right to carry passengers from Heber City to Salt Lake City, and stating that the present holder of the franchise, P. D. Sturn, has in the past given satisfactory automobile stage line service between these points, and at this time had adequate equipment to care for the business, and asked that the present franchise be continued to P. D. Sturn, that he be allowed to carry all passengers between said points; and further, that if the Dodge Stage Line refuses or withdraws from operation of said line over the road between Heber and Duchesne, that the said P. D. Sturn be given a franchise to operate an automobile stage line between Heber City and Duchesne.

Likewise, a letter signed by Edwin D. Hatch was filed with the Commission, stating in substance that he has been employed by protestant Sturn to carry passengers destined to points beyond Heber City and in the Uintah Basin, because of the failure of petitioner Anderson to make proper connections with the protestant at Heber City.

Messrs. Ryan and Murdock, representing the Heber City Commercial Club, testified in substance that they were in favor of a through service being given between Salt Lake City and the Uintah Basin, and that, while they had no complaint to make of the service rendered by protestant Sturn between Salt Lake City and Heber City, they were of the opinion that it would be impossible to require two different stage lines to make proper connections at Heber City, so as not to inconvenience and delay traffic.

Various phases of the operations of these stage lines operating into the Uintah Basin have been before the Commission many times in past years. At the present time, the Dodge Stage Line, J. W. Johnstun, proprietor, has its termini at Price and Helper, on the Denver & Rio Grande Western Railroad, and Vernal, to the eastward, serving intermediate points. This service appears to be stabilized and is satisfactory at the present time.

We believe this is largely due to the management of Mr. Johnstun. During the summer months, it is possible to operate over a shorter route, by diverting traffic northward from Duchesne and via Daniels Canyon and Heber City to Salt Lake City. This road is open only four or five months of the year; but during this time it is a very convenient and necessary route, connecting the Uintah Basin with Salt Lake City.

During the past year or two, Chris Anderson has operated the stage line between Duchesne and Heber City, while P. D. Sturn operated the stage line between Heber City and Salt Lake City. The service rendered by Chris Anderson has not been satisfactory; but, to the contrary, the record in this case is affirmative, that the service rendered by P. D. Sturn is regular and generally satisfactory.

To grant through operation between Duchesne and Heber City, would largely deprive the service now being rendered by P. D. Sturn of revenues sufficient to carry on intermediate service. We do not believe that it is necessary in the interests of the traveling public to do this. Whether or not stage lines make connections, is a question of management. Heretofore there has been little or no co-operation among stage operators in making proper connections. The past records of J. W. Johnstun and P. D. Sturn are convincing that they are capable of making proper connections at Heber City, provided the service of J. W. Johnstun is extended over the route between Duchesne and Heber City.

In extending the service of Johnstun and Anderson between Duchesne and Heber City, it is the intention of the Commission that J. W. Johnstun shall have the management of the service. We believe that Heber City is as far as the service of J. W. Johnstun should extend for the present, until the matter of making connections at Heber City is given proper and fair trial.

The Dodge Stage Line may file its tariff and schedule showing time of arrival and departure at Vernal, Duchesne and Heber City, and the schedule of P. D. Sturn will be so

modified as to make reasonable and proper connections at Heber City. Johnstun and Sturn will confer together and select a proper meeting place at Heber City, at which place a register book will be kept, to be signed by the drivers, showing the time of arrival and departure of every stage. This register book will be kept for the information of the Commission's inspector; and if any stage arrives at Heber more than one hour late, it will be the duty of the driver to call the Commission's office on long distance telephone, notifying the Commission of the cause of such delay.

In the meantime, the application of P. D. Sturn, asking for authority to extend his service between Heber City and Duchesne, will be held in abeyance, pending results of a fair and reasonable test period in making connections at Heber City.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 177

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 14th day of June, A. D. 1923.

In the Matter of the Application of J. W. JOHNSTUN and CHRIS ANDERSON, for permission to operate an automobile stage line between Duchesne and Salt Lake City, Utah. } CASE No. 629

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That applicants, J. W. Johnstun and Chris Anderson, be, and they are hereby, authorized to operate an automobile stage line, for the transportation of passengers, between Duchesne and Heber City, Utah.

ORDERED FURTHER, That Certificate of Convenience and Necessity No. 152 (Case No. 530), issued to Chris Anderson, et al., granting them permission to operate an automobile stage line between Heber City and Duchesne, it hereby cancelled.

ORDERED FURTHER, That applicants, J. W. Johnstun and Chris Anderson, before beginning operation, shall file with the Commission and post at each station on their route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on their line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of WELLS R. STREEPER, for permission to operate an automobile freight line between Salt Lake City and Ogden, Utah, and intermediate points. } CASE No. 630

Decided November 16, 1923.

Appearances:

For Applicant:

Messrs. Morris & Callister and Hamilton Gardner.

For Protestants:

H. C. Allen, for Salt Lake-Ogden Transportation Co.

VanCott, Riter & Fransworth, for Denver & Rio Grande W. R. R.

George H. Smith, J. V. Lyle, Robert Porter and Chas. A. Root } for Oregon Short Line R. R. Co.

DeVine, Howell, Stine & Gwilliam, for Bamberger Electric Railroad Co.

### FINDINGS AND REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for hearing before the Public Utilities Commission of Utah, May 31, 1923, after due and legal notice given, upon the application of Wells R. Streeper, for a certificate of convenience and necessity authorizing and permitting him to operate and maintain an automobile truck freight line over the public highway between Salt Lake City and Ogden, Utah, and intermediate points, and the protests filed thereto and entered by the Salt Lake-Ogden Transportation Company, the Denver & Rio Grande Western Railroad System, the Oregon Short Line Railroad Company and the Bamberger Electric Railroad Company; and the Commission having heard the testimony adduced in behalf of the respective parties, and having duly considered the same, together with the records and files in the case, now finds, reports and decides as follows:

(1) That the applicant, Wells R. Streeper, is a resident of Salt Lake City, Utah, and that he proposes, if granted a certificate of convenience and necessity authorizing and

permitting him so to do, to organize a corporation, with sufficient capital to operate an automobile truck freight line between Salt Lake City and Ogden, Utah, and intermediate points.

(2) That said applicant formerly operated an automobile freight line between said points, and is now the owner of equipment which he proposes to transfer to the said corporation to be hereafter organized, if granted the certificate of convenience and necessity applied for by him.

(3) That the protestant, Salt Lake-Ogden Transportation Company, is an automobile corporation, organized under the laws of the State of Utah, having for its business purpose, among other things, the transportation of property, as freight and express, for hire, between the points applied for by said applicant.

(4) That the protestants, Denver & Rio Grande Western Railroad System and the Oregon Short Line Railroad Company, are organized railroad corporations, having for their business purposes, among other things, the transportation of property, for hire, and each of them is now, and has been for many years last past, engaged in carrying freight and express over their respective steam lines of railroad between Salt Lake City and Ogden, and intermediate points.

(5) That protestant, Bamberger Electric Railroad Company, is an organized railroad corporation, having for its business purposes, among other things, the transportation of property, for hire, and is now, and for several years last past has been, engaged in transporting freight and express over its electric line of railroad between Salt Lake City and Ogden, and intermediate points.

(6) That the protestant, Salt Lake-Ogden Transportation Company, and its predecessors in interest, for more than two years last past have been, and are now, engaged in the operation of an automobile truck line carrying freight and express for hire, over the public highway between Salt Lake City and Ogden, by authority and permission granted under Certificate of Convenience and Necessity No. 103 issued by the Public Utilities Commission of Utah, April 6, 1921.

(7) That at the time of the filing of the application herein, the Salt Lake-Ogden Transportation Company was, and is now, providing for and operating over said route, suitable and ample equipment and maintaining at its terminals proper depot facilities for the transportation and

handling of all freight and express tendered or received by it for that purpose, in accordance with its filed and published schedules, and in strict compliance with the rules and regulations of the Public Utilities Commission of Utah.

(8) That at the time of the filing of said application, the protestants, railroad corporations, were, and are now, affording to the shipping public ample facilities for the handling and transportation of all property tendered to or received by them for shipment between Salt Lake City and Ogden, and all intermediate points on the said route applied for by the applicant herein.

(9) That numerous shippers over the said route have signed and caused to be filed herein, a written petition requesting that the application of Wells R. Streeper for a certificate of convenience and necessity, be granted, upon the theory that a competitive automobile freight and express line service between Salt Lake City and Ogden would be for the best interests of shippers and the public in general.

(10) Some complaints have been made and filed in this case by shippers and consignees that the former service rendered by the Salt Lake-Ogden Transportation Company was unsatisfactory, for the reason that deliveries at the intermediate points on said route were made at the door or upon the sidewalk in front of the place of business of the consignee, instead of inside of the store-room or warehouse of the consignee.

(11) Complaints have also been made by a few shippers and consignees at the hearing of this case, that the present service of the Salt Lake-Ogden Transportation Company has been and is unsatisfactory, particularly because of loading and reloading of fresh meats before making deliveries to consignees at its terminals, Salt Lake City and Ogden. Some complaint is also made of its failure to call for shipments off the highway between Salt Lake City and Ogden.

(12) Complaint was also made at this hearing on the part of the protestant, Bamberger Electric Railroad Company, against the Salt Lake-Ogden Transportation Company, for its failure to promptly collect disputed freight and express charges, and also of the fact that it does call for and make deliveries directly from shippers to consignees, at their places of business, respectively.

(13) That there are some shippers who are not at the present time availing themselves of the transportation

services tendered by any of the protestants who have expressed a willingness to patronize the applicant, if granted a certificate of convenience and necessity, as applied for by him herein.

(14) That the applicant proposes, if granted a certificate of convenience and necessity by the Public Utilities Commission of Utah, to make at intermediate points on the route applied for, deliveries inside of store-rooms and warehouses of consignees, to call for shipments off the regular route, applied for, to avoid reloading before making deliveries, and to maintain the same schedules of rates as are now in effect and charged by the Salt Lake-Ogden Transportation Company.

(15) That there has been open and persistent violation of the provisions of the Public Utilities Commission Act of this State, in that divers persons have operated automobile freight trucks for hire over the public highway between Salt Lake City and Ogden, without certificates of convenience and necessity, and that some of the shippers who have testified in this case have knowingly encouraged said violations of the law by giving their patronage to such operators.

(16) That the City of Salt Lake has a population of approximately 118,000 people, Ogden 33,000, and the connecting highway between these points was paved throughout at a public expense of about $1,500,000.

(17) That the principal traffic over the said route or highway is directly between Salt Lake City and Ogden, and quick transportation and prompt deliveries at these terminals over the route applied for by the applicant, will be more or less interfered with by deliveries of freight or express at intermediate points, when carried by through bound trucks, more especially when intermediate deliveries are made inside store-room or warehouse.

From the foregoing findings of fact, the Commission concludes and decides that the present facilities afforded the public for the shipment of freight and express between Salt Lake City and Ogden by the several protestants herein are adequate to meet the needs and subserve the convenience of all shippers; that no necessity exists whatever for additional transportation facilities between said points, and that the granting of applicant's petition would mean the casting of an unnecessary burden upon the public highway by permitting two automobile truck lines to operate where one will fully suffice.

Primarily, with regard to the class of service now under consideration, it is the intent and purpose of the Public

Utilities Act to secure for the general public adequate, efficient and convenient service in the transportation of persons and property, at reasonable rates. For the accomplishment of these purposes, we are not permitted to give undue consideration to the desires of any particular individual or set of individuals, but of necessity must act for the general public good.

Time and experience have fully demonstrated that competitive service in the transportation field generally operates against the best interests of the public as a whole.

In the last analysis, the consumer always has to bear and pay the costs of transportation. It is idle to contend that the best interests of the public will be subserved by having the state highways burdened with the competitive operations of "automobile corporations" where one well organized, managed and regulated public utility can efficiently handle the traffic of a particular line or route.

Moreover, our Public Utilities Act, Section 4818, Compiled laws of Utah, 1917, expressly provides that "No * * * automobile corporation shall henceforth establish or begin the construction or operation of a * * * line, route * * * or system * * * without having first obtained a certificate that the present or future public convenience and necessity requires or will require such construction."

Manifestly, the intent and purpose of this provision of Section 4818 precludes our granting a certificate of convenience and necessity to an applicant, where, as in the present case, it is shown that there are already two steam railroads, one electric railroad and one automobile corporation operating in the territory to be served, and the present operators in their respective kind of service are found to be capable of and ready and willing to efficiently handle every pound of freight and express offered to them for transportation, between the points applied for by the applicant.

Just why the consuming and taxpaying public of this State should be subjected to the maintenance of any more transportation facilities, or be taxed for the running of needless freight and express trucks over the already heavily burdened and congested highway now under consideration, has not been made apparent to the Commission by the evidence adduced in behalf of the applicant in this case. If, as contended by the applicant, competition in this class of service, under the facts and circumstances disclosed, enures to the benefit of the public as a whole, then the

state highways ought to be thrown wide open to all who may desire to operate over them for hire, provided, of course, they are capable and have suitable equipment.

It is fair to assume that for a time, at least, applicant in this case would furnish good equipment and render efficient service; but, if after he had capitalized a corporation to the amount of $25,000 and invested it in property devoted to a public service, it was found that still another was seeking to occupy the same field unnecessarily, it is equally fair to assume that he would as vigorously object, as do the protestants in this case, whose investments for the purpose of rendering a public utility service between Salt Lake City and Ogden amount, in the aggregate, to millions of dollars.

Aside from the express limitations of the statute forbidding the issuance of certificates to applicants, unless "the present or future public convenience and necessity require," we are forced to the conclusion that it is for the best interests of the general public that public service agencies operating in a given field should be stabilized rather than be subjected to the ruinous hazard of competition. This principle seems to be in accord pretty generally, if not universally, with the conclusions arrived at by the Commissions of other states having jurisdiction over public utilities.

Re Gray, P. U. R., 1916-A, 33 (N. Y. Public Service Comm.)
Re Hurlick, P. U. R., 1919-D, 936 (N. H. P. S. C.)
Western Railroad Co., 286 Ill., 582.
Re F. A. Wilson Company (P. U. R., 1920-C, 635, Cal.)

In the Gray case, it was said:

> "In the last analysis, the protection of investments which have already been made in public utility enterprises in good faith will be seen to harmonize pretty well with the idea that the public ought always get the benefit of the very best there is in the way of transportation and other similar facilities. The best there is in most cases, can probably be most certainly achieved through the policy of protecting our well-managed public service corporations from the sort of competition that in the end leads to the bankruptcy of both competitors, to the public injury itself."

In Public Utilities Commission vs. Toledo, St. Louis and Western Railroad Company, supra, the Supreme Court

of Illinois, in commenting on the same doctrine, when brought before it for review, said:

> "It is not the policy of the Public Utilities Act to promote competition between common carriers as a means of providing service to the public. The policy established by that Act is, that through regulation of an established carrier occupying a given field and protecting it from competition it may be able to serve the public more efficiently and at a more reasonable rate than would be the case if other competing lines were authorized to serve the public in the same territory * * *. Where one company can serve the public conveniently and efficiently it has been found from experience that to authorize a competing company to serve the same territory ultimately results in requiring the public to pay more for transportation, in order that both companies may receive a fair return on the money invested and cost of operation * * * Whether the public convenience and necessity require the establishment of a new transportation facility is not determined by the number of individuals who may ask for it. The public must be concerned as distinguished from any number of individuals."

It is often times argued and contended, as it has been in the present case, that a different policy should be adopted by the commissions where the applicant seeks to render competitive service over the public highways; that every citizen should have the right to travel the public roads without interference or hinderance, which in a general sense and within certain limitations, may be admitted as true. However, it should not be forgotten that the citizen, in the exercise of this right, is always subjected to certain rules and regulations, designed to protect and subserve the best interests of the public. He may be restricted as to the type of vehicle, weight, kind of equipment, manner of using it, and in numerous other ways, by rules and regulations, making his rights to travel conditional and subservient to the general interests of the public. No one will question the propriety of such rules and regulations, because they are designed and enforced for the public good.

We have again endeavored to point out in this case that before an applicant can be permitted to occupy the highways of this State for the transportation of persons or property for hire, he must be able to show that he will be able to serve the needs and necessities of the general

signed, repeatedly.

public. This Commission has so held, with reasons as-

In the matter of the application of Wells R. Streeper, Case No. 545, decided October 2, 1922. (P. U. C. Rpts., Utah Vol. 5, Page 357.)

Re Frost, (P. U. R. 1919-E, 660).

In the matter of the application of Louis Panos, Case No. 612, decided May 31, 1923. (P. U. C. Utah, Vol. 6.)

In the matter of the application of D. M. Clark, Case No. 658, decided Sept. 13, 1923. (P. U. C. Rpts., Utah, Vol. 6.)

It may be that the convenience of the public at intermediate points between Salt Lake City and Ogden, would be better subserved by deliveries inside store-room or warehouse, that intermediate deliveries should be made by special trucks, in order to obviate delays at terminals, and that the present operator over the highway should be required to refrain from unloading and reloading certain perishable products that may be injured by transfers before making deliveries, but granting all, these are matters to be dealt with and taken care of by regulation upon proper complaints being filed and showings made before the Commission, rather than to be considered, in the first instance, as valid grounds for permitting the highways to be needlessly burdened with additional truck lines.

As to the complaint of the Bamberger Electric Railroad Company herein against the Salt Lake-Ogden Transportation Company, the failure of a public utility to promptly collect its charges for service mitigates against the best interests of the public. The rule is firmly established that all public utilities under regulation should be required to collect their charges either in advance or upon rendition of the service.

For the reasons stated, we think the application of Wells R. Streeper herein should be denied, and that the Salt Lake-Ogden Transportation Company should be required to forthwith collect all outstanding charges that may be due and owing to it for services rendered, by suit in the courts, if that be necessary.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 16th day of November, 1923.

In the Matter of the Application of WELLS R. STREEPER, for permission to operate an automobile freight line between Salt Lake City and Ogden, Utah, and intermediate points. } CASE No. 630

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of Wells R. Streeper, for permission to operate an automobile freight line between Salt Lake City and Ogden, Utah, and intermediate points, be, and it is hereby, denied.

ORDERED FURTHER, That the Salt Lake-Ogden Transportation Company be, and it is hereby, required to forthwith collect all outstanding charges that may be due and owing to it for services rendered its patrons, in the manner provided for under the rules and regulations on file with this Commission regulating and applicable to such practices of common carriers by rail.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of JAMES P. EGAN, for permission to operate an automobile stage line between Helper, Utah, and Kenilworth, Utah. } CASE No. 631

Submitted April 25, 1923. Decided July 20, 1923.

Appearance:

James P. Egan.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, April 25, 1923, James P. Egan requests permission to operate an automobile stage line between Helper, Utah, and Kenilworth, Utah.

This case came on for hearing Friday, July 6, 1923, at Helper, Utah.

Mr. Egan appeared in his own behalf and made a motion to dismiss the case without prejudice.

The Commission finds that case should be dismissed without prejudice.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of JAMES P. EGAN, for permission to operate an automobile stage line between Helper, Utah, and Kenilworth, Utah. | CASE No. 631 |

## ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed, without prejudice.

By the Commission.

Dated at Salt Lake City, Utah, this 20th day of July, A. D. 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of GEORGE SAMIS, for permission to operate an automobile stage line for the transportation of passengers, between Price, Utah, and Columbia, Utah. | CASE No. 632 |

Submitted May 2, 1923. Decided May 26, 1923.

Appearances:

L. A. McGee, for Petitioner.
Henry Ruggeri, for Protestants.

### REPORT OF THE COMMISSION

By the Commission:

This case came on regularly for hearing, at Price, Utah, May 2, 1923, in connection with Cases Nos. 602 and 611, and upon the protest of Stanislao Silvagni, Angelo Peparakis and Mike Sergakis, operators of the Arrow Auto Line.

Upon stipulation of the parties to the above named cases, testimony in each of the said cases will be considered in each and all of said cases, insofar as material.

The Commission having disposed of this cause in Case No. 602, the opinion will not be repeated here, but is made a part of the record in this case, and the application is accordingly denied.

An appropriate order will be issued.

(Signed) T. E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioner.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 26th day of May, A. D. 1923.

In the Matter of the Application of GEORGE SAMIS, for permission to operate an automobile stage line for the transportation of passengers, between Price, Utah, and Columbia, Utah. } CASE No. 632

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of George Samis be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of P. M. PAYNE, for permission to assume the operation of the automobile stage line between the towns of Delta, McCornick, Holden and Fillmore, Utah, formerly operated by Earl Veile. } CASE No. 633

Decided October 25, 1923.

Appearances:

P. M. Payne, Applicant.
J. H. Melville, for Los Angeles & Salt Lake Railroad Co., Protestant.

REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

The application of P. M. Payne, received April 30, 1923, sets forth that the Public Utilities Commission of Utah, had heretofore granted a certificate of public conve-

nience and necessity to Earl Veile, authorizing the operation of a motor vehicle passenger service between the towns of Delta and Fillmore, Utah.

The applicant alleges that on or about the 20th of January, 1923, the said Earl Veile abandoned his right to operate the passenger service and discontinued the same, and further, that since January 20, 1923, the said Earl Veile has not maintained any service between these points.

Applicant, P. M. Payne, further alleges that he now has a contract for transporting the United States Mail between the said towns, and can therefore serve the public by maintaining a passenger service as well. Further, that the Los Angeles & Salt Lake Railroad transports passengers between the said towns on Tuesdays, Thursdays and Saturdays, and for that reason, it is not profitable for any stage line to operate between the said points; but, by reason of the petitioner being compelled to make the trips in order to carry out his contract for transporting the United States Mail, he desires the privilege of being permitted to transport passengers and thereby pick up additional revenue as well as supply a needed service.

The Los Angeles & Salt Lake Railroad Company filed its protest, June 23, 1923, upon the following ground:

That the protestant has constructed and is operating a steam railroad line extending from Delta, Utah, to Fillmore, Utah; that it is required to and does pay a large amount of taxes upon its railroad line, operates over a private right-of-way, maintained at its own expense, and alleges it would be unjust and inequitable to allow the petitioner to enter into competitive service with the protestant, by making free use of the public highway without the payment of any taxes except as may be imposed upon the vehicles used by the petitioner in his proposed service.

Protestant states that it has no objection to the granting to the petitioner of a temporary certificate of convenience and necessity for the transportation of passengers between Delta and Fillmore, on Sundays, Mondays, Wednesdays and Fridays, the same to be terminated when the railroad furnishes daily passenger service between the said cities.

The hearing came on regularly as provided by law, June 28, 1923, at Fillmore, Utah, at which time P. M. Payne testified in support of his application to the effect that he possessed the mail contract for transporting mail for the next three years between the points mentioned in this

application; that the mail between Fillmore and Delta amounted to some eighteen hundred pounds per day; that he had one Ford touring car and one Reo truck; has had long experience in operating motor vehicles, but intended to act as manager and employ experienced operators. He testified further as to his financial ability to furnish all necessary equipment, and stated that the train service three times per week was insufficient to meet the necessities of the community, and desired to give service every day.

Protestant, Los Angeles & Salt Lake Railroad Company, by its witness, William H. Lee, Traveling Freight Agent, testified as to the train service then being rendered, its frequency and time of departure and arrival at Fillmore and Delta; amount of revenues and expenses accruing on the branch line since the beginning of operation in January; taxes paid by the carrier in Millard County; and cost of the but recently constructed railroad into Fillmore from Delta.

At the time of the hearing upon this application, train service consisted of a tri-weekly service. It was apparent from the Commission's own investigation, that the then service was not satisfactory to the community generally and did not meet fully the necessities of the traveling public. Since the hearing, however, daily passenger service has been conducted between Fillmore and Salt Lake City, via Delta, and the Commission has waited a reasonable time for the purpose of testing the sufficiency of the new service, and so far as the Commission is now informed, it appears to be satisfactory generally.

The Commission has the choice now of granting a certificate authorizing direct automobile stage competition with the new branch line, or of withholding its authorization of said service, thereby placing upon the carrier by rail the sole duty of transporting the public between Delta and Fillmore.

The record shows that the railroad had been much desired by the people of this section of the State, and they had for years enthusiastically worked for the consummation of this project. After much consideration, the branch line was finally constructed to Fillmore, at an estimated cost of roughly $700,000, and train service was instituted in January. About this time, the automobile stage service being rendered by Earl Veile ceased. The schedule of the service offered by the railroad and the automobile stage is the same, namely, one trip daily.

The frequency of service and running time being the same, railroad passenger service is superior, because it is more comfortable and roomy; because the railroad can carry more baggage; because the service is regular and dependable under practically all weather conditions. It has been demonstrated to be safer. If a passenger suffers injuries, there is a substantial corporation to respond in damages if any be due. Again, railroads operate on regular schedules and leave from and arrive at substantial depots, devoted solely to the carrier's business.

Furthermore, the new line of railroad has recently been constructed, and it will necessarily for a series of years require all the revenues that it can accrue to meet necessary expenses. To now authorize a competitive service, thereby reducing the revenues, would only tend to cripple the carrier in its ability to render proper service.

We do not find there is any public necessity for a competitive automobile service between the points named in the application, and the application is accordingly denied.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
Commissioner,

We concur:

(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 25th day of October, A. D. 1923.

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| In the Matter of the Application of P. M. PAYNE, for permission to assume the operation of the automobile stage line between the towns of Delta, McCornick, Holden and Fillmore, Utah, formerly operated by Earl Veile. | CASE No. 633 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on

the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of P. M. Payne, for permission to assume the operation of the automobile stage line between the towns of Delta, McCornick, Holden and Fillmore, Utah, formerly operated by Earl Veile, be and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of HOWARD J. SPENCER, for permission to resume operation of his stage line between Salt Lake City and Pinecrest, Utah. | CASE No. 634 |

Submitted May 29, 1923 Decided June 8, 1923

Appearance:
Howard J. Spencer, Petitioner.

## REPORT OF THE COMMISSION

By the Commission:

In the application filed with the Public Utilities Commission of Utah, May 3, 1923, Howard J. Spencer seeks permission to resume operation of an automobile stage line between Salt Lake City and Pinecrest, Utah, also to increase the passenger fare to one dollar each way.

Mr. Spencer appeared in his own behalf and stated that the reason for applying for a change in fares is that Pinecrest is a summer resort, situated in Emigration Canyon, thirteen miles from Salt Lake City, which is open only during the months of June, July and August; that in the past there has not been much traffic until July, and the rate of return on the investment has been almost insignificant during June, while that for the remaining months, under the old rates, was insufficient.

There were no protests to the application to resume operations of the stage line, or to advance the fares.

The Commission, after giving due consideration to all the material facts, finds that a certificate should be

issued to Howard J. Spencer, authorizing him to resume operation of the stage line between Salt Lake City and Pinecrest, Utah; and that the financial showing is sufficient to warrant the increase in fares.

The Commission also finds that a new schedule, in accordance with its rules and regulations, be filed immediately.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 176

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of June, A. D. 1923.

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|---|---|
| In the Matter of the Application of HOWARD J. SPENCER, for permission to resume operation of his stage line between Salt Lake City and Pinecrest, Utah. | CASE No. 634 |

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That petitioner, Howard J. Spencer, be, and he is hereby, granted permission to resume operation of the automobile stage line, for the transportation of passengers, between Salt Lake City and Pinecrest, Utah.

ORDERED FURTHER, That Howard J. Spencer be, and he is hereby, permitted to increase his fare to one dollar ($1.00) each way, for carrying passengers over this route.

ORDERED FURTHER, That applicant, Howard J. Spencer, before beginning operation, shall file with the Commission and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 5th day of May, A. D. 1923.

UTAH LAKE DISTRIBUTING COMPANY, et al.,
*Complainants,*

vs.

UTAH POWER & LIGHT COMPANY, a Corporation,
*Defendant.*

} CASE No. 635

Application having been made for an order extending the terms of order of March 29, 1922, Case No. 441, the rates or charges for pumping purposes, to October 31, 1923:

IT IS ORDERED, That rates or charges for pumping purposes as covered by order dated March 29, 1922, in Case No. 441, be in effect until October 31, 1923.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of HOWARD A. TUTTLE, for permission to operate an automobile stage line between Lucin, Utah, and Vipoint, Utah. } CASE No. 636

ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 16th day of June, A. D. 1923.

F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Application of JESSE A. HALVORSEN, for permission to operate an automobile stage line between Helper and Dempsey City, Utah. } CASE No. 637

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of JOHN W. HOGAN, for permission to operate an automobile express and messenger business between Bingham and Salt Lake City, Utah. } CASE No. 638

Submitted Aug. 20, 1923. Decided Oct. 17, 1923.

Appearances:

Straup & Nibley, for Applicant.

Dan B. Shields, for W. D. Allen and Bingham Stage Line.

REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, July 11 1923, John W. Hogan requests a certificate of Convenience and Necessity to operate an ex-

press and messenger service between Bingham and Salt Lake City.

This case was heard August 20, 1923, after due notice had been given to the interested parties.

Mr. Hogan states he is a citizen of the United States, and a resident of Salt Lake City; that he is in the employ of the Salt Lake Tribune Publishing Company, as its agent or carrier to deliver newspapers, daily, at Bingham and intermediate points; that in the performance of his duties he is required to make a daily trip from Salt Lake to Bingham and return; that on numerous occasions he has been requested to make purchases and deliveries of small articles, and that a demand for such service has been established.

A written protest was filed on the date of the hearing, by W. D. Allen, which protest states W. D. Allen is operating an automobile freight line between Bingham and Salt Lake City, under Certificate of Convenience and Necessity No. 141, issued by the Public Utilities Commission. This protest also alleges that Mr. Allen is thoroughly equipped to take care of the freight business between these points, and denies any necessity for additional service.

On August 20, 1923, there was also filed a protest by the Bingham Stage Line, a corporation organized under the laws of the State of Utah, stating that the Bingham Stage Line is operating an automobile passenger and express line between said points, under Certificate of Convenience and Necessity No. 61; that said corporation is thoroughly equipped to meet all demands of the traveling and shipping public; and that no necessity exists for such additional service as applied for.

The said protestants were represented at the hearing, and the above points were brought out through the testimonies of witnesses.

The Commission, after giving full consideration to all the relevant facts, finds:

That the present express service is adequate, and that the applicant did not establish before the Commission a necessity for an additional express line, and the application should, therefore, be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 17th day of October, A. D. 1923.

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| In the Matter of the Application of JOHN W. HOGAN, for permission to operate an automobile express and messenger business between Bingham and Salt Lake City, Utah. | CASE No. 638 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of John W. Hogan, for permission to operate an automobile express and messenger business between Bingham and Salt Lake City, Utah, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of J. H. O'DRISCOLL, for permission to operate an automobile stage line between Park City and Kamas, Utah. | CASE No. 639 |

Submitted May 16, 1923. Decided August 8, 1923.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, J. H. O'Driscoll, a resident of Kamas, Utah, requests a Certificate of Convenience and Necessity to operate an automobile stage line for the transportation of passengers and express, between Park City and Kamas, Utah.

Mr. O'Driscoll operates the United States Mail stage between Park City and Peoa and Kamas. He also holds Certificate of Convenience and Necessity No. 155, authorizing him to operate an automobile passenger and express line between Peoa and Park City.

No written or verbal protests were entered to the granting of this application.

The Commission finds, after considering all of the material facts, that a Certificate of Convenience and Necessity should be issued to J. H. O'Driscoll, granting him permission to operate an automobile stage line between Park City and Kamas, Utah.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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## ORDER

Certificate of Convenience and Necessity
No. 190

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of August, A. D. 1923.

In the Matter of the Application of J. H. O'DRISCOLL, for permission to operate an automobile stage line between Park City and Kamas, Utah. } CASE No. 639

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that J. H. O'Driscoll be, and he is hereby, authorized to operate an automobile stage line for the transportation

of passengers and express, between Park City and Kamas, Utah.

ORDERED FURTHER, That applicant, J. H. O'Driscoll, before beginning operation, shall file with the Commission and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

THOMAS LAWRENCE,
*Complainant,*

vs.

PACE TRUCK LINE,
*Defendant.*

CASE No. 640

Submitted October 17, 1923. Decided October 23, 1923.

Appearances:

Thomas Lawrence, Complainant.
Shay & Lunt, for Defendant.

REPORT OF THE COMMISSION

CORFMAN, Commissioner:

This matter came on regularly for hearing before the Commission, at Price, Utah, on the 17th day of October, 1923.

The complaint of the complainant sets forth that he sustained a loss on a shipment of roses consigned to him from Hemet, California, on the 13th day of March, 1923, through the American Railway Express Company, to Lund, Utah, and that through the failure of the Pace Truck Line, operating between Lund and Cedar City, Utah, to receive the said roses at Lund from the Express Company and deliver them to him at Cedar City, Utah, that the same were so badly damaged that they became worthless and he sustained a loss of approximately $100.00.

The defendant, Pace Truck Line, renders an automobile freight and express service between the said points, Lund and Cedar City, and has for some time past operated under a certificate of convenience and necessity issued by this Commission.

At the opening of said hearing, the Commission announced that it had no jurisdiction to pass upon the question of damages alleged to have been sustained by complainant, but that it would treat the complaint in the nature of a complaint against the defendant's service, and that it would take testimony for the purpose of determining the kind of service being rendered by the defendant to the public.

The evidence shows that the Pace Truck Line, in receiving freight or express from common carriers at Lund, has made a rule requiring all consignees to file with the transportation companies a written order authorizing the same to be delivered to the Pace Truck Company for carriage by them to Cedar City, and that the transportation companies, particularly the American Railway Express Company, have refused to make deliveries to the truck company until so authorized; that in this instance, the complainant had filed no authority with the American Railway Express Company, nor does the evidence show when the shipment moved from Hemet, California, to Cedar City, nor whether or not the alleged shipment ever arrived at Cedar City.

By reason of the foregoing facts, the Commission decides that the complaint of the complainant against the Pace Truck Company is ill-founded and that no neglect or failure to render proper service to the public on the part of the Pace Truck Company has been shown in this case. Therefore, the complaint should be dismissed.

An appropriate order will be issued.

(Signed) E. E. CORFMAN,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 23rd day of October, 1923.

THOMAS LAWRENCE,
*Complainant,*

vs.

PACE TRUCK LINE,
*Defendant.*

} CASE No. 640

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the complaint be, and it is hereby, dismissed.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of JOSEPH CARLING and T. M. GILMER, for permission to assign to T. M. Gilmer and associates, that portion of Joseph Carling's franchise to operate an automobile stage line for transportation of passengers and express between Salt Lake City and Payson, Utah.

} CASE No. 641

Submitted May, 22. 1923. Decided July 21, 1923.

## ORDER

Upon written request of the applicants dated July 10, 1923, and by consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 21st day of July, 1923.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the PACE TRUCK LINE, for permission to operate an automobile freight truck line between Cedar City and Parowan, Utah. | CASE No. 642 |

Submitted June 29, 1923. Decided September 12, 1923.

Appearances:

R. T. Forbes, for Applicant.
J. David Leigh, for Protestant.

## REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

The application of the Pace Truck Line, filed May 26, 1923, shows that Cedar City, Utah, is its principal place of business; that it proposes to operate an automobile truck line, for the purpose of transporting freight between Cedar City and Parowan, once each week and as often during said time as the volume of traffic will warrant, and submits as part of the application, a tentative schedule of rates applicable to various classes of freight, and asks the Commission to issue a certificate of convenience and necessity, authorizing the said service.

The case came on regularly for hearing, in the manner provided by law, Friday, June 29, 1923.

J. David Leigh, successor to the Leigh and Green Transportation Company, appeared as protestant at the hearing and later filed a written protest and a counter-application.

Testimony was received in support of the application to the effect that the recent construction of the branch line from Lund, Utah, to Cedar City, Utah, had changed transportation conditions in that section of the State to such an extent that the freight formerly transported by the Pace Truck Line between Lund and Cedar City now moved via the rail line, and freight destined to Parowan, Utah, some nineteen or twenty miles northward from Cedar City, would in the future have rail destination at Cedar City, instead of Lund, necessitating a truck common carrier service between Cedar City and Parowan.

J. David Leigh protested the granting of the application upon the ground that any freight moving to Cedar City, but with final destination at Parowan, would be virtually the same freight as has heretofore been transported by his truck line from Lund to Parowan, and alleges that he has sufficient equipment to handle all of the freight, and, in as much as it is the same freight as he now transports, but via another route, he should be granted a certificate to operate between Cedar City and Parowan, instead of the Pace Truck Line, and filed as part of his application a tariff which appears to be about on the same level as that offered by the Pace Truck Line.

There is no question but that a large part, if not all of the freight destined to Parowan, will move from the terminus of the branch line at Cedar City, instead of Lund. At the present time, however, it appears that freight is moving from both places.

The Pace Truck Line has its headquarters at Cedar City, while J. David Leigh is located at Lund, Utah.

All things considered, it appears that the Pace Truck Line should be in a position to give better attention to the details of the truck business, which, in the end, should mean better service to the public, and the application of the Pace Truck Line is accordingly granted.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 191

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 12th day of September, A. D. 1923.

In the Matter of the Application of the PACE TRUCK LINE, for permission to operate an automobile freight truck line between Cedar City and Parowan, Utah. } CASE No. 642

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and that the Pace Truck Line be, and it is hereby, authorized to operate an automobile freight truck line between Cedar City and Parowan, Utah.

ORDERED FURTHER, That applicant, Pace Truck Line, before beginning operation, shall file with the Commission and post at each station on its route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on its line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the EUREKA-PAYSON STAGE LINE, for permission to transport express between Payson and Eureka, and intermediate points. | CASE No. 643 |

Submitted August 8, 1923. Decided October 15, 1923.

Appearances:

Robert H. Wallis, for Applicant.

L. E. Gehan, for American Railway Express Co., Protestant.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed July 2, 1923, with the Public Utilities Commission of Utah, the Eureka-Payson Stage Line requests permission to transport express between Payson and Eureka, and intermediate points.

This case came on for hearing, August 8, 1923, after due notice had been given to all concerned.

Representatives of the American Railway Express Company appeared in protest, and a written protest of the same Company was filed at the time of the hearing.

Through the applicant's witnesses, it was brought out that the Eureka-Payson Stage Line is operating an automobile passenger stage line between Payson and Eureka, under a certificate of convenience and necessity issued by the Public Utilities Commission of Utah; that numerous requests have been made upon the applicant for express service between the above named points; that said applicant is financially able and has sufficient equipment to meet all demands; that shipments would consist largely of ice cream and moving-picture films; that in the event the application is granted, the express would be transported in the same automobile as is used to transport passengers; but, should occasion demand, an entirely separate truck would be used. It is anticipated that possibly truck-loads of fruit, in addition to small shipments of many other articles, would move. If necessary, refrigerator service will be established, as well as facilities provided for protection from frost.

The protest of the American Railway Express Company states that there is no necessity for additional express

service between the above named points; that, in the event the application is granted, the Eureka-Payson Stage Line would be unable to take care of shipments of valuables, explosives, perishables and numerous other articles. The Express Company maintains three offices at Payson and two at Eureka, and has a delivery service in Payson. The Express Company operates on four trains, daily, each way, over the Salt Lake & Utah Railroad, between Salt Lake City and Payson; one train daily, each way, between Salt Lake City and Eureka, over the Los Angeles & Salt Lake Railroad; and one train daily, each way, over the Denver & Rio Grande Western Railroad System.

After giving full consideration to all the material facts, the Commission finds:

That the express service between Payson and Eureka, and intermediate points, is adequate; that there is no necessity for an additional express line between these points; that in addition to the above express service, there is an authorized automobile freight line between Provo and Eureka which moves via Payson.

Therefore, the application should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 15th day of October, A. D. 1923.

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| In the Matter of the Application of the EUREKA-PAYSON STAGE LINE, for permission to transport express between Payson and Eureka, and intermediate points. | CASE No. 643 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on

the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of the Eureka-Payson Stage Line, for permission to transport express between Payson and Eureka, and intermediate points, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of WALTER K. JOHNSON, for permission to operate an automobile passenger line between Payson, Utah, and Eureka, Utah, and intermediate points. } CASE No. 644

Submitted June 14, 1923. Decided August 6, 1923.

Appearances:

Robert H. Wallis, for Petitioner.
Dana T. Smith, for Los Angeles & Salt Lake R. R. Co.
VanCott, Riter & Farnsworth } for Denver & Rio Grande Western Railroad System.

REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, May 29, 1923, Walter K. Johnson seeks permission to operate an automobile stage line, for the transportation of passengers, between Payson, Utah, and Eureka, Utah.

This case came on regularly for hearing, at the office of the Commission, June 14, 1923, after due notice had been given.

In connection with Case No. 608, the Commission issued a Certificate of Convenience and Neccessity to S. H. Bottom and J. S. McAfee, granting them permission to operate an automobile stage line for the transportation of passengers, between Payson and Eureka, Utah.

There were no protests filed regarding the issuance of a certificate to Walter K. Johnson. An affidavit was filed, June 15, 1923, by S. H. Bottom and J. S. McAfee, consenting to the cancellation of Certificate of Convenience and Necessity No. 175 (Case No. 608), issued to said S. H.

Bottom and J. S. McAfee, and to the issuance of a new Certificate of Convenience and Necessity to Walter K. Johnson.

After careful consideration of all material facts, the Commission finds that Certificate of Convenience and Necessity No. 175, issued to S. H. Bottom and J. S. McAfee, should be cancelled, and that a new certificate should be issued to Walter K. Johnson, granting him permission to operate an automobile stage line, for the transportation of passengers, between Payson and Eureka, Utah, and intermediate points.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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## ORDER

Certificate of Convenience and Necessity
No. 187

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 6th day of August, A. D. 1923.

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|---|---|
| In the Matter of the Application of WALTER K. JOHNSON, for permission to operate an automobile passenger line between Payson, Utah, and Eureka, Utah, and intermediate points. | CASE No. 644 |

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that Walter K. Johnson be, and he is hereby, authorized to operate an automobile passenger line between Payson, Utah, and Eureka, Utah, and intermediate points.

ORDERED FURTHER, That applicant, Walter K. Johnson, before beginning operation, shall file with the

Commission and post at each station on his route a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of P. D. STURN, for permission to operate an automobile stage line between Heber City and Duchesne, Utah. | CASE No. 645 |

ORDER

Upon motion of the applicant and with the consent of the Commission:

IT IS ORDERED, That the application of P. D. Sturn, for permission to operate an automobile stage line between Heber City and Duchesne, Utah, be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 28 day of June, A. D. 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of SAMUEL JUDD and FRANK JUDD, doing business under the firm name of Samuel Judd & Son, for permission to operate daily between St. George and Enterprise, Utah, instead of three times a week, as heretofore. | CASE No. 646 |

Submitted May 31, 1923. Decided August 7, 1923.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, May 31, 1923, Samuel Judd and Frank Judd, operating an automobile passenger stage line between St. George and Enterprise, Utah, under authority of Certificate of Convenience and Necessity No. 158 (Case No. 550) issued by the Commission, request permission to operate between these points daily, instead of three times a week, as heretofore.

This stage operates in connection with another authorized stage line between Enterprise and Modena, Utah, which is a railroad point.

June 4, 1923, F. N. Fawcett visited the Commission and protested the granting of this application, and on June 15, 1923, a written protest was filed with the Commission. Mr. Fawcett is operating with Charles C. Starr between St. George and Cedar City, under a Certificate of Convenience and Necessity issued by this Commission. This line interchanges with the line between Cedar City and Lund, operated by B. F. Knell, also under proper authority.

It appears that usually there are passengers at St. George who desire to board the train at Modena or Lund, for Salt Lake City and various points.

Mr. Fawcett enters his protest upon the ground that should this application be granted, the passengers who heretofore have traveled by stage to Lund, would take the other route, and the line operated by Mr. Starr and himself would be deprived of revenue which would otherwise come to them, and that it would be a discrimination against their line.

The Commission finds, after considering all the material facts, that the public would be greatly convenienced by the additional service requested, and should Messrs. Fawcett and Starr find that they cannot, under their pres-

ent schedule, compete with the other line, they should file an application with the Commission, requesting permission to make changes in their schedule.

Therefore, the Commission finds that the application should be granted, and Samuel Judd and Frank Judd authorized to operate their automobile stage line daily between St. George and Enterprise, Utah.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 7th day of August, A. D. 1923.

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|---|---|
| In the Matter of the Application of SAMUEL JUDD and FRANK JUDD, doing business under the firm name of Samuel Judd & Son, for permission to operate daily between St. George and Enterprise, Utah, instead of three times a week, as heretofore. | CASE No. 646 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that Samuel Judd and Frank Judd, doing business under the firm name of Samuel Judd & Son, be, and they are hereby, authorized to operate daily between St. George and Enterprise, Utah, instead of three times a week, as heretofore.

ORDERED FURTHER, That applicants, Samuel Judd and Frank Judd, before beginning operating their stage line daily, shall file with the Commission and post at each

station on their route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on their line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of SAMUEL JUDD and FRANK JUDD, doing business under the firm name of Samuel Judd & Son, for permission to operate an automobile freight and passenger line between St. George, Utah, and the Arizona, line. } CASE No. 647

Submitted May 31, 1923. Decided August 8, 1923.

REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, May 31, 1923, Samuel Judd and Frank Judd seek permission to operate an automobile passenger and freight line, under the firm name of Samuel Judd & Son, between St. George, Utah, and the Arizona State Line, serving the towns of Shem and Santa Clara, and intermediate points.

At the present time there is no stage service between these points, and no protests were filed to the granting of this application.

After due consideration of all material facts, the Commission finds that a public convenience and necessity exists for the operation of an automobile stage line between St. George and the Arizona State Line, and that the application of Samuel Judd and Frank Judd should be granted.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 188

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of August, A. D. 1923.

In the Matter of the Application of SAMUEL JUDD and FRANK JUDD, doing business under the firm name of Samuel Judd & Son, for permission to operate an automobile freight and passenger line between St. George, Utah, and the Arizona, line. } CASE No. 647

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that Samuel Judd and Frank Judd, doing business under the firm name of Samuel Judd & Son, be, and they are hereby, authorized to operate an automobile freight and passenger line between St. George, Utah, and the Arizona State Line.

ORDERED FURTHER, That applicants, Samuel Judd and Frank Judd, before beginning operation, shall file with the Commission and post at each station on their route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on their line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of B. L. COVINGTON and A. R. BARTON, for permission to transfer to Edwin O. Hamblin part of their interest in the automobile freight line between St. George and Lund, Utah, and St. George and Modena, Utah. | CASE No. 648 |

Submitted June 1, 1923. Decided July 27, 1923.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, June 1, 1923, B. L. Covington and A. R. Barton, operating an automobile freight truck line between St. George and Lund, Utah, and St. George and Modena, Utah, under certificate of convenience and necessity issued by the Commission, desire to transfer one-third of their interest to Edwin O. Hamblin, who made application for same under date of June 1, 1923.

After investigation of all facts that may or do have any bearing upon this case, and in view of the conditions, the Commission finds that the application should be granted.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 186

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 27th day of July, A. D. 1923.

In the Matter of the Application of B. L. COVINGTON and A. R. BARTON, for permission to transfer to Edwin O. Hamblin part of their interest in the automobile freight line between St. George and Lund, Utah, and St. George and Modena, Utah. } CASE No. 648

This case being at issue upon petition and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and B. L. Covington and A. R. Barton, be, and are hereby, authorized to transfer one-third of their interest to Edwin O. Hamblin, in their stage line between St. George and Lund, and St. George and Modena, Utah.

ORDERED FURTHER, That applicants, before beginning operation, shall, as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the BLUE & GRAY BUS LINE, for permission to operate an automobile bus line between Salt Lake City and East Mill Creek, Utah. } CASE No. 649

Submitted September 12, 1923. Decided October 6, 1923.

Appearances:

L. L. Bagley, for applicant.

J. F. MacLane and G. R. Corey } for Utah Light and Traction Co.

## REPORT OF THE COMMISSION

By the Commission:

The petition of the Blue & Gray Bus Line, filed August 7, 1923, shows that petitioner's post office address is Salt Lake City, Utah; and that petitioner desires to operate an automobile bus transportation system starting at 2nd South and State Streets, thence south on State Street to 33rd South Street, thence east on 33rd South Street to 23rd East Street, thence south on 23rd East Street to Evergreen Avenue, and thence east on Evergreen Avenue to East Mill Creek Ward House, and, in the summer, only, it is also the desire of petitioner to operate in Mill Creek Canyon.

Applicant desires that the operation of the route from 2nd South and State Streets to 33rd South Street, shall be an express service; that is to say, without discharging any passengers between said points.

Petitioner alleges that the purpose of the proposed transportation system is to serve and accommodate the employes of the Baldwin Radio Plant, which plant employs three to five hundred men, also the down town working people, fruit pickers and shoppers, who, it is alleged, have no transportation facilities. The population of the East Mill Creek district is alleged to be approximately six hundred people.

It is further alleged that sight-seeing parties and reunions have no means of transportation from and to Mill Creek Canyon at the present time; also many school children require transportation to and from the Granite High School, because there is no east and west transportation facilities, and likewise, many people going to the Granite Stake Tabernacle, require an east and west trans-

portation system, and petitioner asks that the Commission grant a certificate to operate an automobile bus transportation system over the above named route.

The case came on regularly for hearing, in the manner provided by law, August 21, 1923, at which time evidence was submitted by the applicant in support of its application.

Applicant submitted as exhibits, petitions signed by numerous residents of East Mill Creek and the territory surrounding that district, supporting the application of the Blue & Gray Bus Line.

Applicant's testimony was generally to the effect that a necessity exists for the transportation as outlined in its application. Rates of fare, frequency of service and probable number of people seeking transportation daily. Applicant testified it was the intention to start operation with four busses, adding four later, involving an investment of thirty-five to forty thousand dollars. Testimony as to its financial responsibility and the experience of its manager, J. H. Gregg, in operating an automobile stage line between points in Indiana, was also submitted.

After cross-examination by protestant, the said protestant asked that the case be continued, for the reason that the manager of protestant Company was out of the city and was a necessary witness in this proceeding.

Upon order of the Commission, the case was continued until the 12th day of September, 1923, whereupon, protestant filed a petition of intervention, which was accepted by the Commission, asking for a certificate of convenience and necessity to operate a cross-town bus or feeder line service, alleging that the intervener is a public service corporation, organized and existing under and by virtue of the laws of the State of Utah, owning and operating a street railroad system in Salt Lake City and its suburbs, which has been heretofore valued by the Commission at approximately $8,500,000, and is possessor of financial resources required for the purpose of its obligation.

Said intervener makes application for authority to operate a feeder or bus system through a subsidiary corporation to be organized by it, for that purpose. Said auto bus system is proposed to serve the district between 33rd South and State Streets and East Mill Creek Ward Meeting House, via 33rd South Street, and intervener alleges that the inauguration of this service is to furnish a cross-town bus line as a feeder to the existing street car line of petitioner, in lieu of the service proposed by the Blue & Gray Bus Line.

Protestant gave evidence in support of its petition of intervention and in protest to the application of the Blue & Gray Bus Line. Exhibits were presented showing net revenues from operation and deficits realized for the years 1921-1922 and the seven months of 1923; and exhibit showed comparison of number of revenue passengers carried by months, January, 1919, to July 31, 1923. Exhibits were also presented showing the number of revenue passengers carried in 1920 as contrasted with 1922, the the same showing a decrease of 4,700,000 passengers, and a further decrease for 1922 and the seven months' period of 1923 of over 1,000,000 additional passengers. At the average rate of fare, an annual decrease in earnings of approximately $400,000 is claimed. The decrease in traffic was attributed by Witness Dicke to the increased use of privately owned automobiles, and that the rate of return upon the valuation of the property fixed by this Commission for the year 1923 would only approximate 3 per cent.

The protestant, Utah Light & Traction Company, by its witness, admitted the necessity for a cross-town transportation system between State Street at 33rd South Street and the East Mill Creek Ward Meeting House; but denied any necessity for an express service as contemplated by the Blue & Gray Bus Line, 2nd South to 33rd South on State Street.

Testimony was to the effect that the State Street lines, 2nd South to 33rd South Street, the Wandamere Line, running to 33rd South Street, and the Holliday Line, will all be competitive with the proposed service, involving a total of approximately fifteen miles of track and an investment of roughly $900,000; further, that some 7,500 houses were now served by these lines, while but 199 were not so situated as to be served by the existing street car facilities, but would be served by the new service.

It was claimed that in order to profitably operate a bus line all the way into the city, that it must necessarily depend upon the patronage of many passengers now using the street car system, in order to make such a bus line self-sustaining. A check of passengers boarding and alighting from street cars at 33rd South on State street, 33rd South and 7th East street and 33rd South and Highland Drive, indicated that there were over 570,000 passengers per annum for whom the proposed bus line would be a direct competitor, which, translated into revenue, would amount to virtually $40,000 as the outside limit involved in the proposed competition.

Witness Dicke further testified that it was the plan to operate the busses on an hourly schedule, making connections with the north and south bound Murray, Sandy and Midvale cars at 33rd South and State Streets, also connecting with the South 7th East car on 7th East Street and 33rd South Street, and the Holliday car on Highland Drive, at 33rd South Street. The witness testified that it was the intention to place in service motor busses seating twenty to twenty-four passengers; that to secure the permanent equipment would probably take forty to sixty days, but arrangements could be made to give the service within not more than one week after the certificate had been granted. The rate of fare in connection with the street car system into the city would be substantially less than that proposed by the Blue & Gray Bus Line, the proposed fare of the Blue & Gray Bus Line being 25c from East Mill Creek to 2nd South Street and State Street, with a lower round trip fare; the cash fare via bus and street car would be 17c, being made up by 10c bus fare and 7c street car fare. The street car fare would entitle the passenger to a transfer to any point in the city. A passenger on an inbound bus line coming in to 2nd South and State, desiring to reach some other point in the city, would in addition, have to pay an extra street car fare, thus increasing the differential rate in favor of the street car system. It was stated that the Street Car Company would construct shelter stations, so that the people would be sheltered, in case either the bus or street car were late.

In the instant case, the Commission has the choice of approving an auto bus service extending from a district now admittedly without any regular service to and through portions of the city, now served by the existing street railway system to the business center of the city and offering a through service between said points, or of authorizing a bus system serving the outlying district and acting as a feeder to the existing street railway system. Under the latter method, through patrons use successively the bus system and the street car.

It was admitted by the witness for applicant, Blue & Gray Bus Line, that it would be necessary, from the viewpoint of profit to the operator, that a through service to the business center of the town be maintained, rather than to operate busses as feeders, but not in competition with the existing railway facilities.

In substance, this means that much of the revenue to make the through bus system profitable, must necessarily be derived from passengers now patronizing the

street railway system. It was claimed that this competition would not seriously interfere with the revenues of the street railway system, and that delays in making transfers between busses and street cars would make the proposed bus feeder system undesirable from the viewpoint of the traveling public.

Admittedly, it is more convenient for a through passenger to ride continuously to destination than to break the journey somewhere and transfer to another form of transportation, with the sometimes too frequent and oftimes unavoidable delay in making connections. This, however, is only one phase of the problem.

As heretofore indicated, to make a through system profitable, it must rely largely upon patronage of people who now patronize the street railway. The record shows that the outside limit of possible competition for passengers is approximately 570,000 people annually. Thus, the issue is raised as to the probable effect of this transportation upon the revenues of the street railway, and, consequently, its ability to give adequate and continuing service to the general public.

The record discloses that the net revenue of the street railway system is decreasing, and that in its present financial condition, it is unable to extend its rails into this district, which, in our view, would be more desirable than either a through or feeder bus system.

It must be obvious that a certain sum of money is necessary to carry on the street railway business. This money must be collected in the form of fares from the traveling public. There is no other hidden source from which it can be had, as is apparently presumed by some people.

To further deplete the revenues of the street railway system by authorizing a competitive bus service, would only result in further restricting the Company's ability to give service, and, if competition were carried to its logical conclusion, would utterly destroy the service so necessary to the many. It is the necessities of the general traveling public that must be considered, rather than the convenience of the few.

Upon this question, the New York Public Service Commission, 2nd District, P. U. R. 1920-E, at page 131, by its Commissioner Kellogg, has well said:

> "Of course it would be more convenient for the few passengers who wish to make the through trip to make it without transferring, and the consequent delay which frequently and unavoidably occurs to the

through travelers would be very slight and entirely insufficient to maintain the line. It would, of course, if permitted to operate, derive much of its revenue from passengers carried largely between intermediate points and thus be in direct competition with some one or the other of the local utilities now in operation.

"It has been lately held by the California Railroad Commission in re F. A. Wilson & Company, P. U. R. 1920-C, 635, decided February 11, 1920, that a certificate to operate an auto stage service will not be granted for the purpose of affording through service between designated points where existing lines render adequate service between intermediate points.

"This, I think, is consistent and entirely in line with the practice of this Commission to discourage competition where existing lines are rendering adequate service, and the position is not changed by the fact that the proposed line in question asks to render a through service where no such service may be availed of only by using a succession of established carriers.

"In this, as in other cases, competition, not demanded to serve a public necessity, will tend to the demoralization and perhaps destruction of the facilities now enjoyed, and thus, in the end, work to the disadvantage and not the convenience of the public."

Likewise, the Pennsylvania Public Service Commission, in re Thomas H. Quinn, 1922-C, at 515, discusses this question as follows:

"The Commission would not be justified, under the Public Service Company Law and the principles which protect the public against unfair and ruinous competition, in granting a certificate for a continuance of the operation of the bus line in question. The measure of public convenience involved in the operation of this and other auto bus lines under similar conditions is small in comparison with the public necessity and convenience involved in sustaining the service of existing carriers. If subjected to unfair competition, electric railway service deteriorates and fares increase to a point where public interest is seriously affected."

Insofar as traffic on State Street is concerned, the record is convincing that no additional bus system is needed in addition to present facilities.

Again, the evidence discloses that the same interests now operating the street railway system will undertake the operation of the bus feeder system, thus the public is

insured that in case of accident, the operators thereof are able to respond in damages, if any be due. This is not true to the same extent of the original applicant in the case. It was seriously stated that the intervener, Utah Light & Traction Company, had been importuned to give this service, but had neglected or refused to do so, and, therefore, had lost any natural preferential right it may have had to be considered as an applicant. We do not believe this is altogether well taken. We expect those responsible for the management of public utilities to be forward-looking and anticipate, so far as possible, the needs of the public. However, in this case, particularly in view of the depleted financial condition of the Street Car Company, it is only natural that time would be necessary to analyze questions involving expenditures to extend service.

From all of the foregoing, we believe that the general public would be best served by authorizing the Utah Light & Traction Company to inaugurate a bus feeder system from 33rd South Street and State Street to the East Mill Creek Ward Meeting House, via 33rd South Street, as outlined in its petition, and the application of the Blue & Gray Bus Line be denied.

Testimony was developed to show that numerous school children will patronize the new bus system, and, while the issue was not raised at the hearing, the Commission expects that the management of the bus system will file, along with its proposed tariff, a tariff covering charges for students, at relatively the same ratio to the proposed bus fare as the present street railway student ticket bears to the cash street car fare.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary

## ORDER

Certificate of Convenience and Necessity
No. 194

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 6th day of October, 1923.

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|---|---|
| In the Matter of the Application of the BLUE & GRAY BUS LINE, for permission to operate an automobile bus line between Salt Lake City and East Mill Creek, Utah. | CASE No. 649 |

This case being at issue upon application, petition of intervention, and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of the Blue & Gray Bus Line, for permission to operate an automobile bus line between Salt Lake City and East Mill Creek, Utah, be, and it is hereby, denied.

ORDERED FURTHER, That the petition of intervention be granted, and that the Utah Light & Traction Company be, and it is hereby, authorized to operate an automobile bus feeder system in connection with its street railway lines, between State and 33rd South Streets and the East Mill Creek Ward Meeting House, all as set forth in the report of this Commission. Said Utah Light & Traction Company may exercise the authority hereby granted through a subsidiary corporation to be organized by it for the purpose, and may transfer the rights evidenced by this order to such subsidiary corporation, when organized.

ORDERED FURTHER, That before beginning operation of such automobile bus feeder system, the Utah Light & Traction Company shall file with the Commission and post at each station on said automobile bus route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on its line; and shall at all times operate in accordance with the rules and regulations pre-

scribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of CLYDE TERRY, for permission to operate an automobile stage line between Draper and Sandy, Utah. } CASE No. 650

Submitted August 8, 1923 Decided Sept. 28, 1923

Appearance:

Bert L. Smith, for Applicant.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, June 1, 1923, Clyde Terry, having his principal place of business at Draper, Salt Lake County, Utah, requests a certificate of convenience and necessity to operate an automobile passenger stage line between Draper and Sandy, Utah.

This case came on regularly for hearing, at the office of the Commission, Salt Lake City, Utah, August 8, 1923, after due notice had been given to all concerned.

Clyde Terry, applicant, being unable to attend the hearing, was represented by Bert L. Smith, also a resident of Draper. There were neither written protests nor appearances against the granting of such certificate.

There was established before the Commission a necessity and convenience for such stage line, which it is proposed to transport passengers between Sandy and Draper, thereby serving as a feeder to the street cars.

In view of the material facts, the Commission finds the application should be granted and a certificate of convenience and necessity be issued.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest

(Signed) F. L. Ostler, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 192

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 28th day of September, 1923.

In the Matter of the Application of CLYDE TERRY, for permission to operate an automobile stage line between Draper and Sandy, Utah. } CASE No. 650

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is herby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that Clyde Terry be, and he is hereby, authorized to operate an automobile stage line between Draper and Sandy, Utah.

ORDERED FURTHER, That applicant, Clyde Terry, before begining operation, shall file with the Commission and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on his route; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of CLIFFORD B. ARDEN, for permission to operate an automobile stage line between Salt Lake City and Kelvin Grove, in Emigration Canyon, Utah. | CASE No. 651 |

ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 16th day of June, A. D. 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the LOS ANGELES & SALT LAKE RAILROAD COMPANY, for permission to cross at grade the tracks of the Denver & Rio Grande Western Railroad Company, Utah Railway Company and Salt Lake & Utah Railroad Company. | CASE No. 652 |

Submitted June 2, 1923 Decided June 7, 1923

REPORT AND ORDER OF THE COMMISSION

By the Commission:

The petition of the Los Angeles & Salt Lake Railroad Company, Denver & Rio Grande Western Railroad Company (Joseph H. Young, Receiver), Utah Railway Company and Salt Lake & Utah Railroad Company, sets forth that the Los Angeles & Salt Lake Railroad Company is a corporation, duly organized and existing under the laws of the State of Utah; that the Utah Railway Company is a corporation, duly organized and existing under the laws of the State of Utah; and that the Denver & Rio Grande Western Railroad Company is a corporation, organized and exist-

ing under the laws of the State of Delaware; that Joseph H. Young is the duly appointed, qualified and acting receiver of said Denver & Rio Grande Western Railroad Company; that the Salt Lake & Utah Railroad Company is a corporation, duly organized and existing under the laws of the State of Maine.

The petition further alleges that the Los Angeles & Salt Lake Railroad Company, one of the petitioners herein, is about to construct a railroad track of standard gauge, extending from the connection of its main line in Provo, Utah, southerly to a point at or near a certain proposed blast furnace plant which is being constructed by the Columbia Steel Company; that the said track is for the purpose of furnishing transportation service to the said Columbia Steel Company at its proposed plant.

The petition further alleges that in order to construct the said proposed track of the Los Angeles & Salt Lake Railroad Company, it is necessary to cross at grade the tracks of the Utah Railway Company, the Denver & Rio Grande Western Railroad Company, and the Salt Lake & Utah Railroad Company, and likewise, the public highway known as Infirmy Lane.

Petitioner, Los Angeles & Salt Lake Railroad Company, alleges that the land in the immediate vicinity of the proposed crossing is level, and that a separation of grade is unreasonable, unwarranted and unnecessary.

It is further alleged by the Los Angeles & Salt Lake Railroad Company that it proposes to install an all-electric type interlocking plant to protect this crossing at grade, the design of which is substantially as shown on the print attached to and made a part of the petition and marked Exhibit "B"; that the Los Angeles & Salt Lake Railroad Company proposes to construct the said crossings and install the said interlocking plant at its own cost and expense.

Petitioner alleges that the Utah Railway Company, Denver & Rio Grande Western Railroad Company and Salt Lake & Utah Railroad Company have each heretofore granted to the Los Angeles & Salt Lake Railroad Company the right to construct its said proposed track over and across their respective rights-of-way and track.

The Commission, having caused an investigation to be made and being fully advised of all the material facts, is of the opinion and finds that public convenience and necessity require the crossing of the track of the Los Angeles & Salt Lake Railroad Company over the tracks of the other carriers joining in this petition, and in the manner and

upon the terms as set forth in this petition, that is to say, that the proposed crossings shall be constructed at grade and all of the said railroad crossings shall be protected by all-electric type interlocking plant, constructed in substantial conformity with the design as shown on the said Exhibit "B."

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioner.

[SEAL]

Attest:

(Signed) F. L. Ostler, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of A. E. HANKS, for permission to operate an automobile stage line from Marysvale to Zion National Park, via Bryce Canyon and the North Rim of the Grand Canyon, to Cedar City and return. | CASE No. 653 |

Submitted June 29, 1923 Decided September 12, 1923

Appearances:

A. E. Hanks, Petitioner.
R. L. Judd, for Parry Brothers, Protestants.

## REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

The application of A. E. Hanks, filed with this Commission, June 7, 1923, shows that he is a resident of Marysvale, Utah, and is engaged in the transportation of United States Mail and passengers, between Marysvale and Kanab, Utah; and alleges that he has had seven years' experience as driver of motor vehicles, engaged in the transportation of passengers.

Applicant further alleges that he has one Buick automobile, which, at the present time, is adequate to care for the proposed service, and asks the Commission to issue a certificate authorizing this service, namely, Marysvale to Zion National Park, via Bryce Canyon and the North Rim of the Grand Canyon, and to destination, at either Cedar City or Marysvale.

The case came on regularly for hearing, in the manner provided by law, June 29, 1923, at Cedar City, Utah. Evidence was received in support of the application to the effect that while traffic at this time is rather meager, future increase is claimed to be sufficient to justify the additional service.

The application was protested on behalf of Parry Brothers, who at present hold a certificate authorizing the same service as is set out in this application.

The record shows thus far very little traffic has developed at the Marysvale terminus of the route. There is already an authorized stage line serving the proposed route, and likewise two competitive stage lines taking care of the local traffic between Marysvale and Panguitch, while still another local line has been authorized from Panguitch to Bryce Canyon, and beyond.

There appears to be ample accommodations for the traveling public, and it does not appear that an additional stage line is necessary, as that term is contemplated by the Public Utilities Act. The application is accordingly denied.

An appropriate order will be issued.

(Signed) WARREN STOUTNOUR,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 12th day of September, A. D. 1923.

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| In the Matter of the Application of A. E. HANKS, for permission to operate an automobile stage line from Marysvale to Zion National Park, via Bryce Canyon and the North Rim of the Grand Canyon, to Cedar City and return. | CASE No. 653 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the

parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of A. E. Hanks, for permission to operate an automobile stage line from Marysvale to Zion National Park, via Bryce Canyon and the North Rim of the Grand Canyon, to Cedar City and return, be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of W. E. OSTLER, for permission to transfer his franchise to Fred Houghton, to operate an automobile stage line between Eureka, Silver City and Mammoth, Utah. | CASE No. 654 |

Submitted June 14, 1923 Decided July 20, 1923

Appearances:
W. E. Ostler,
Fred Houghton.

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission, June 14, 1923, W. E. Ostler requests permission to transfer his certificate of Convenience and Necessity authorizing him to operate a passenger stage line between Eureka, Mammoth and Silver City, Utah, to Fred Houghton.

On July 11, 1923, Fred Houghton filed an application seeking permission to operate an automobile stage line over the above route.

This case came on for hearing Monday, July 2, 1923, at Eureka, Utah. Mr. Ostler testified he intends to go into the taxi business, also that he had sold his old equipment to Mr. Houghton, who is a competent driver.

In considering all the evidentiary facts, the Commission finds this transfer should be made and a new certificate

of convenience and necessity should be issued to Fred Houghton.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioner.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 180

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 20th day of July, A. D. 1923.

In the Matter of the Application of W. E. OSTLER, for permission to transfer his franchise to Fred Houghton, to operate an automobile stage line between Eureka, Silver City and Mammoth, Utah. } CASE No. 654

This case being at issue upon petition and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and W. E. Ostler be, and he is hereby, authorized to transfer his franchise to Fred Houghton, to operate an automobile stage line between Eureka, Silver City and Mammoth, Utah.

ORDERED FURTHER, That applicant, Fred Houghton, before beginning operation, shall as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedules showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of JOHN MORTENSEN and J. C. RASMUSSEN to withdraw from and MARION SMITHSON to assume the operation of an automobile stage line between Beaver and Parowan, Utah. | CASE No. 655 |

Submitted June 13, 1923 Decided Aug. 8, 1923

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, June 13, 1923, John Mortensen and J. C. Rasmussen seek permission to withdraw from and Marion Smithson to assume the operation of an automobile stage line between Beaver and Parowan, Utah.

Mortensen and Rasmussen have sold and delivered to Marion Smithson a portion of their equipment. Marion Smithson, a resident of beaver, Utah, is an experienced automobile driver and auto mechanic, and is in a position to purchase additional equipment, should the demand arise.

In view of the material facts, the Commission finds that John Mortensen and J. C. Rasmussen should be permitted to relinquish all rights to their stage line between Beaver and Parowan, Utah, and that a new Certificate of Convenience and Necessity be issued to Marion Smithson, authorizing him to operate said automobile stage line between Beaver and Parowan, Utah.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 189

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of August, A. D. 1923.

In the Matter of the Application of JOHN MORTENSEN and J. C. RASMUSSEN to withdraw from and MARION SMITHSON to assume the operation of an automobile stage line between Beaver and Parowan, Utah. } CASE No. 655

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted; that John Mortensen and J. C. Rasmussen be permitted to withdraw from and Marion Smithson to assume the operation of an automobile stage line between Beaver and Parowan, Utah.

ORDERED FURTHER, That applicant, Marion Smithson, before beginning operation, shall file with the Commission and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares, which rates and fares shall not exceed those now charged by said John Mortensen and J. C. Rasmussen, and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the HURRICANE TRUCK LINE, for permission to extend its line and to fix rates applicable thereto. | CASE No. 656 |

Submitted June 11, 1923. Decided July 20, 1923.

Appearance:

David Herschi, for Applicant.

REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

This application filed June 11, 1923, with the Commission shows that the Hurricane Truck Line's postoffice address is Hurricane, Utah, and is engaged in transporting freight, express and baggage between Lund, Cedar City, Toquerville, LaVerkin and Hurricane, Utah, alleges that the completion of the branch line from Lund, Utah, to Cedar City, Utah, now renders unnecessary the service between Lund and Cedar City, formerly rendered as a part of the general service extending to the above named towns, for the reason that freight destined to said towns will be received at Cedar City instead of Lund.

The application also alleges that a necessity exists to extend the service to Virgin, Rockville, Springdale and Zion National Park, and submitted a proposed schedule of charges for the service to be rendered.

The case came on regularly for hearing at Cedar City, Utah, Thursday, June 28th, 1923.

No written protests were received, neither did any protestant appear at the hearing. The application was amended so as to exclude the serving of Zion National Park. Testimony was received as to the necessity for the extension of the line to Virgin, Rockville and Springdale, Utah, and likewise the desirability of terminating the line at Cedar City instead of Lund, for the reason that freight destined to the interior towns would be received at Cedar City rather than at Lund.

After full consideration of all material facts developed in the testimony at the hearing, it appears that there is a necessity for the extension of this truck line to serve Virgin, Rockville and Springdale and that the terminus of the line may be made at Cedar City instead of Lund in the event that freight is received at the former place instead of the latter.

Applicant may file its schedule and tariff in conformity with its application, and an appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 181

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 20th day of July, A. D. 1923.

In the Matter of the Application of the HURRICANE TRUCK LINE, for permission to extend its line and to fix rates applicable thereto. } CASE No. 656

This case being at issue upon petition and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and the Hurricane Truck Line be, and it is hereby authoried to extend its line and to fix rates applicable thereto and to make the terminus of the line at Cedar City instead of Lund in the event that freight is received at the former place instead of the latter.

ORDERED FURTHER, That applicant, Hurricane Truck Line, before beginning operation, shall, as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance

with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the PACE TRUCK LINE, for permission to operate a freight truck line between Cedar City and Iron Springs, Utah. | CASE No. 657 |

Submitted May 26, 1923. Decided July 20, 1923.

Appearance:
R. T. Forbes, for Applicant.

## REPORT OF THE COMMISSION

STOUTNOUR, Commissioner:

The application of the Pace Truck Line filed May 26, 1923, with this Commission asked permission to serve Iron Springs, near Cedar City, Utah, with a motor truck freight service and submitted a proposed tariff setting forth charges for such service.

The case came on regularly for hearing at Cedar City, Utah, Thursday, June 28, 1923. At the hearing applicant appeared and asked that the case be dismissed.

An appropriate order will be issued in conformity therewith.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the PACE TRUCK LINE, for permission to operate a freight truck line between Cedar City and Iron Springs, Utah. } CASE No. 657

ORDER

Upon motion of the applicant, and by the consent of the Commission:

IT IS ORDERED, That the application in the above entitled matter be, and it is hereby, dismissed.

By the Commission.

Dated at Salt Lake City, Utah, this 20th day of July, A. D. 1923.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of D. M. CLARK, Agent for proposed Service Stage Line Corporation, for permission to operate an automobile stage line between Bingham and Midvale, Utah. } CASE No. 658

Submitted August 9, 1923. Decided September 13, 1923.

Appearances:

F. C. Loofbourow, for Applicant.
Dan B. Shields, for Protestant.

REPORT OF THE COMMISSION

By the Commission:

On June 20, 1923, D. M. Clark, a resident of Midvale, Utah, for himself and associates, and as agent for and in behalf of the Service Stage Line Company, a proposed corporation to be thereafter organized and created under the laws of Utah, filed an application with the Public Utilities Commission of Utah, for a certificate of public convenience and necessity, authorizing the said corporation, when organized, to operate and maintain an automobile

passenger stage line between the cities of Bingham and Midvale, Utah.

August 8, 1923, the Bingham Stage Line Company, an automobile corporation, filed its protest to the granting of said application by the Commission.

This matter came on regularly for a public hearing, before the Commission at Salt Lake City, August 9, 1923, upon said application and protest, and from the evidence adduced in behalf of the respective parties, and after full investigation, the Commission now finds and decides as follows:

1. That D. M. Clark, a resident of Midvale, Utah, for himself and his associates, proposes to organize a corporation under the laws of the State of Utah, to be known as the Service Stage Line Corporation, capitalized for $25,000, and having for its principal business purpose the transportation of passengers between the cities or towns of Midvale and Bingham, Utah, and in general "to engage in a general transportation business."

2. That the City of Midvale is an intermediate point between Salt Lake City and Bingham, and has a population of approximately twenty-five hundred people.

3. That Bingham City is situated in Bingham Canyon, in close proximity to numerous metal mines, where large numbers of miners and other working men are employed from time to time, some of whom make their homes in Salt Lake City, in Midvale and at other points between Salt Lake City and the city or town of Bingham.

4. That the said Service Stage Line Corporation, when organized, proposes to make for the accommodation of the public, thirteen automobile trips from the City of Midvale to the City of Bingham, and twelve automobile trips from Bingham to Midvale, daily, if granted by this Commission a certificate of convenience and necessity permitting it so to do.

5. That it would be, when organized, financially able to provide suitable equipment and furnish careful and experienced operators of automobiles to render such a service, temporarily, at least, for a reasonable charge against persons seeking transportation between the points mentioned.

6. That the protestant, Bingham Stage Line, is a corporation, organized under the laws of the State of Utah, having for its business purposes, among other things, the operation of an automobile stage line, carrying passengers and express, for hire, between Salt Lake City and

Bingham City, and is now operating over the public highways between said points, by carrying all persons presenting themselves and desirous of having transportation from Midvale to Bingham and from Bingham to Midvale, making between said points seventeen automobile trips, daily, during business or working hours; that said service is being rendered under Certificate of Convenience and Necessity No. 61, issued by this Commission, September 25, 1919; that said service is being rendered to the public in strict compliance with the rules and regulations of this Commission, under efficient management, with commodious and the most modern type of automobile stage line equipment, operated by courteous, careful and experienced drivers, on regular schedule time as published and on file in the office of this Commission.

That Midvale is an intermediate point on the public highways between Salt Lake City and Bingham, the distance from Salt Lake City to Midvale being twelve miles, and from Midvale to Bingham, sixteen miles; that the granting of a certificate of convenience and necessity to the applicant herein, would mean a duplication of the passenger service now being rendered by the protestant over the route applied for by the petitioner.

It has been argued and contended in this case that by reason of the Bingham Stage Line Company having, at the present time, the only right under a certificate of convenience and necessity to carry passengers over the route applied for by the proposed Service Stage Line Corporation, that it is being permitted to enjoy a monopoly of a public highway, by excluding competition, and that the exclusion of competition in this class of cases is detrimental to the public interest generally. It is also seriously contended by the applicant in this case that the permitting of a monopoly of a public highway by a public service corporation or utility, is incompatible with and repugnant to American ideals and constitutional rights of the citizens, and further that it was not the legislative intent by the enactment of our public utilities law that one public utility should be permitted in any event to operate to the exclusion of all others.

In the instant case, we think it has been conclusively shown that at the present time the traveling public over the route named in the applicant's petition, is being given regular, prompt, safe and efficient automobile passenger service by the protestant.

It may be that the applicant here, if granted a certificate of convenience and necessity so to do, would be capable

of and might render equally efficient service. However, be that as it may, there has been absolutely no showing made whatever that public necessity and convenience requires such additional service.

It is the purpose of the Commission, and we think it to be its duty and in line with legislative intent manifested by the provisions of our Public Utilities Law, not to permit the public highways to be encumbered with any more automobiles operated for hire than the convenience and necessity of the traveling public require.

It is not the province of this Commission to enter into any extended discussion here as to the wisdom of the legislative policy of classifying the automobiles used upon our public highways in carrying persons and property for hire as public utilities, and subjecting them to the same regulations as are telephone, electric power and light plants, steam and electric railroad systems, and many other well recognized public agencies that might be mentioned.

It must suffice to say that our legislature, in common with that of many other states, has seen fit to classify, without distinction, the automobiles used for the transportation of persons and property, for hire, over the public highways of the State as public utilities subject to the same supervision and regulations by this Commission as are many other instrumentalities used in service for the public, and therefore coupled with a public interest.

In our judgment, well managed transportation agencies rendering adequate, convenient, safe and efficient service to the public, should be stabilized and not be subjected to hazardous and ruinous competition, even though it be construed as fostering monopolistic privileges.

The public highways of the State are built and maintained at the expense of the taxpaying public, to facilitate prompt, safe and efficient transportation of persons and property between the communities they serve. The automobile for hire has become a well recognized transportation agency, and therefore our legislature has, in its wisdom, seen fit to classify it, when operating along established routes, as a public utility, subject to regulation as are all other public utilities.

If we correctly interpret our Public Utilities Act, particularly Section 4818, Compiled Laws of Utah, 1917, we are not to grant their owners permission to operate over established routes for private gain until the public convenience and necessity so requires, and then only when properly regulated so as to secure efficient service for the public, at reasonable rates. If the statute is repugnant to

American ideals, it should be repealed. If it offends against the constitutional rights of the citizen, the courts will readily afford the proper relief. Our plain duty as a Commission is to administer the law as we find it.

Cases may, and doubtless will, arise where the needs and necessities of the public will require additional service than that being given. In all such cases, under our statutes proper relief can be readily afforded.

No such a case has been presented by the present applicant. In our judgment, additional operation of a stage line over the route in question, would seriously impair, if not destroy, the present excellent service rendered by the protestant to the injury of the public.

For the reasons stated, we think the application should be denied.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 13th day of September, A. D. 1923.

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| In the Matter of the Application of D. M. CLARK, Agent for proposed Service Stage Line Corporation, for permission to operate an automobile stage line between Bingham and Midvale, Utah. | CASE No. 658 |

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of D. M. Clark, Agent for proposed Service Stage Line Corporation, for permission to operate an automobile stage line between

Bingham and Midvale, Utah, be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Application of the STATE ROAD COMMISSION OF UTAH, for permission to eliminate grade crossing at Price, Utah, by an underpass. } CASE No. 659

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of the UNION PACIFIC RAILROAD COMPANY, for permission to substitute an undergrade crossing for an existing grade crossing of a highway near Echo, Summit County, Utah. } CASE No. 660

Submitted July 28, 1923. Decided August 18, 1923.

## REPORT OF THE COMMISSION

By the Commission:

The petition of the Union Pacific Railroad Company, filed July 11, 1923, shows that the petitioner, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, operates a steam railroad extending from Ogden, Utah, easterly through Weber Canyon and Echo Canyon, in the State of Utah, thence east to Omaha, Nebraska; that said railroad is crossed at grade by a public highway which extends from Echo City to Park City, Utah; that at the point of crossing of said highway with said railroad, petitioner is about to commence the construction of a second main track which will be approximately thirty feet northerly from its present main track, and the grade of which will be approximately five feet higher than the grade of the present track, the location of which is shown on blue print marked Exhibit "A," attached to the petition, and the grade of said tracks is shown on profile marked Exhibit "B," attached to the petition.

Petitioner alleges that it is impracticable and unsafe to maintain a grade crossing over petitioner's tracks, because of the difference in the grades of the existing main track and proposed main track, and that a change of grade is therefore advisable and necessary. Petitioner states that it will construct the said undergrade crossing at its own cost and expense; that the plans and specifications for the undergrade crossing will be furnished to the Commission at the time of the hearing of this application.

Petitioner asks that this Commission issue to the Union Pacific Railroad Company permission to substitute an undergrade crossing for the present grade crossing of said highway of petitioner's railroad, said petitioner to bear the cost of construction of the undergrade crossing, according to plans and specifications above referred to.

Under date of July 28, 1923, the State Road Commission of Utah, by its Chief Engineer, filed a protest, alleging that the State of Utah is now contemplating the construction of a federal aid project of about ten miles in length, on which it is proposed to eliminate seven grade crossings, the crossing in this petition being one of them, and that it is necessary before permanent construction is made at this point, that the survey of the aforesaid project be completed and the plans submitted to the Bureau of Public Roads, for their approval; and suggests that it may be feasible for this Commission to grant the Union Pacific Railroad Company the right to build a temporary underpass at this location, pending adjustment of the whole project; and states that it is necessary that the plan of the permanent structure be approved by the State Road Commission and the Bureau of Public Roads before construction is undertaken.

After investigation, and in view of the fact that this underpass is but one of a number involved in the reconstruction of the State Highway in this vicinity, and that surveys have not been completed, nor the final approval of the Federal Government obtained, we believe public convenience and necessity will be best served by issuing a permit to petitioner to construct at this time a temporary underpass at this point, at its expense.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) D. O. RICH, Acting Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 18th day of August, A. D. 1923.

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| In the Matter of the Application of the UNION PACIFIC RAILROAD COMPANY, for permission to substitute an undergrade crossing for an existing grade crossing of a highway near Echo, Summit County, Utah. | CASE No. 660 |

This case being at issue upon petition and protest on file, and having been fully investigated, and the Commission having, on the date hereof, made and filed a report of its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That applicant, Union Pacific Railroad Company, be, and it is hereby, granted permission, and is authorized, to construct a temporary underpass at the point at issue in this case, the expenses thereof to be borne by applicant.

By the Commission.

(Signed) D. O. RICH,
Acting Secretary.

[SEAL]

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## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of COVINGTON, BARTON and HAMBLIN, for permission to start on their route from Cedar City instead of Lund, Utah, and to change schedule of rates. | CASE No. 661 |

Submitted July 14, 1923 Decided July 27, 1923

## REPORT OF THE COMMISSION

In an application filed with the Public Utilities Commission of Utah, July 14, 1923, Covington, Barton and Hamblin request permission to haul freight and express between Cedar City and St. George, Utah, instead of between Lund and St. George, Utah.

The applicants are at present operating under Certificate of Convenience and Necessity No. 186, between

Lund and St. George, Utah. Lund, Utah, was heretofore one of the railroad points serving the Washington County and intermediate territories, but the Los Angeles and Salt Lake Railroad Company have recently constructed a branch line from Lund to Cedar City. This will mean that most of the freight for points south of Cedar City to and including St. George, will no doubt be transported by railroad to Cedar City instead of to Lund as heretofore.

The Commission after considering all the material facts, finds:

That the application should be granted and that Covington, Barton and Hamblin be permitted to operate a freight truck line between Cedar City and St. George, Utah.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 27th day of July, A. D. 1923.

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| In the Matter of the Application of COVINGTON, BARTON and HAMBLIN, for permission to start on their route from Cedar City instead of Lund, Utah, and to change schedule of rates. | CASE No. 661 |

This case being at issue upon petition and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted and that Covington, Barton and Hamblin, be, and are hereby, authorized to change their truck line from Cedar City to St. George instead of from Lund to St. George, Utah, and to change schedule of rates.

ORDERED FURTHER, That applicants, Covington, Barton and Hamblin, before beginning operation, shall as provided by law, file with the Commission and post at each station on the route, a printed or typewritten schedule of rates and fares, together with schedule showing arriving and leaving time; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of the UTAH POWER & LIGHT COMPANY, for a Certificate of Convenience and Necessity to exercise the rights and privileges conferred by franchise granted by the Town of Clearfield, Utah. | CASE No. 662 |

Submitted August 4, 1923 Decided October 3, 1923

## REPORT OF THE COMMISSION

By the Commission:

In an application filed with the Public Utilities Commission of Utah, August 4, 1923, the Utah Power & Light Company, a corporation of the State of Maine, represents it has secured from the Town of Clearfield, Davis County, Utah, a franchise authorizing it to serve said town and its inhabitants with electricity for light, heat, power and other purposes, and to construct, maintain and operate in the present and future streets, alleys and public places in that town, as well as serve persons and corporations beyond the limits thereof; and petitions the Commission for authority to exercise the rights and privileges granted by said franchise.

The Commission, having caused investigation to be made and being fully advised in the premises, finds:

That public convenience and necessity require, and will continue to require, the construction, operation and maintenance of electric transmission and distribution lines in the Town of Clearfield, Davis County, Utah, and the application of the Utah Power & Light Company should be granted.

That in the construction of such electric lines, applicant, Utah Power & Light Company, should conform to the rules and regulations issued by the Public Utilities Commission of Utah governing the construction of electric light and power lines.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

Certificate of Convenience and Necessity
No. 193

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 3rd day of October, A. D. 1923.

In the Matter of the Application of the UTAH POWER & LIGHT COMPANY, for a Certificate of Convenience and Necessity to exercise the rights and privileges conferred by franchise granted by the Town of Clearfield, Utah. } CASE No. 662

This case being at issue upon petition on file, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That applicant, Utah Power & Light Company, be, and is hereby, granted a certificate of convenience and necessity, and is authorized to construct, operate and maintain electric transmission and distribution lines in the Town of Clearfield, Davis County, Utah.

ORDERED FURTHER, That in the construction of such electric lines, applicant shall conform to the rules and regulations issued by the Commission governing the construction of electric light and power lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

## BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of J. H. WADE, for permission to operate an automobile stage line for the transportation of passengers between Price, Utah, and Columbia, Utah. | CASE No. 663 |

Submitted August 30, 1923. Decided September 15, 1923.

Appearances:

T. E. Banning for { J. H. Wade, Applicant, and Columbia Steel Corporation.
O. K. Clay, for Manos Klapakis, Applicant in Case 665.
Henry Ruggeri, for Arrow Stage Line, Protestant.

## REPORT OF THE COMMISSION

CORFMAN, Commissioner:

July 17, 1923, J. H. Wade filed an application with the Public Utilities Commission of Utah, for a certificate of convenience and necessity, authorizing and permitting him to operate an automobile passenger stage line between Price and Columbia, in Carbon County, Utah.

July 27, 1923, Manos Klapakis filed with the Commission a similar application for himself (Case No. 665.)

August 3, 1923, Stanislao Silvagni, Angelo Peparakis and Mike Sergakis, doing business as the Arrow Auto Line, filed with the Commission their written protest to each of the said applications.

August 30, 1923, each of the said applications and the protests thereto, came on regularly for hearing before the Commission, at Price, Utah, after due and legal notice given.

By stipulation of the parties, after consent given by the Commission, it was agreed that the two applications and the protests thereto, should be heard as one case, and that insofar as the testimony offered by and for the respective parties might be applicable, the same should be held to apply to each case.

From the evidence adduced at said hearing for and in behalf of the respective parties, and after due investigation had, the Commission finds, reports and decides as follows:

1. That the applicant, J. H. Wade, is a resident of Price, Utah, and that he now is, and for several years last past has been, engaged in successful operation of automo-

bile stage lines in Eastern Utah; that said applicant has the necessary equipment and the financial ability to successfully operate and maintain an automoblie stage line over the public highway between the points applied for in his application filed herein.

2. That the applicant in Case No. 665, Manos Klapakis is also a resident of Price, Utah, has had some experience in the operation of passenger automobiles for hire, and is financially able to provide the proper equipment for the successful operation of an automobile stage line between said points, Price and Columbia.

3. That the protestant, Arrow Stage Line, is now, and for several years last past has been, engaged in the successful operation of automobile stage lines out of Price, Utah, one of them over the public highway leading from Price to Sunnyside, Utah.

4. That the route applied for by the applicants follows the said Price-Sunnyside highway to a point within about three miles of Sunnyside, and from thence diverges over a newly constructed public highway, for a distance of about three miles directly to the town or coal camp of Columbia.

5. That Columbia is a recently opened coal mine, where large numbers of miners and other workmen are employed; a new town is being built, and, in all probability, said town in the very near future will have a population of not less than two thousand people; that at said place there is now, and will continue to be, great need of automobile passenger service between Price and Columbia.

6. That under Certificate of Convenience and Necessity No. 136, issued April 24, 1922, Case No. 519, the Arrow Auto Line and Mike Sergakis were granted permission to operate an automobile stage line between Price and Sunnyside, Utah, and, under date of May 26, 1923, the Commission issued Authority No. A-71, granting the said Arrow Auto Line permission to extend its stage line between Price and Sunnyside, to include Columbia, Utah; the Commission having, on May 26, 1923, denied the applications of Manos Klapakis (Case No. 602), J. H. Wade and H. F. Thomas (Case No, 611), and George Samis (Case No. 632), for permission to operate between Price and Columbia, Utah.

7. That since the granting of said authority to the said Arrow Stage Line, it has been, and is now, giving adequate automobile passenger stage line service to the

traveling public between Price and Columbia, Utah, although in diverging from the Price-Sunnyside highway to Columbia over a different road than the one applied for by the applicants.

It is agreed under a stipulation signed and filed herein by the respective parties, that the aforementioned newly completed road from Columbia, intersecting the Price-Sunnyside highway, is the best and shortest, and the only road that will be maintained and used by the public in the immediate future while traveling from Price to Columbia, after leaving the Price-Sunnyside highway, and is the one to which the applications and the protests herein shall be held to apply.

As pointed out in the Commission's Report in Case No. 602, the granting of a certificate of convenience and necessity to either of the applicants would mean a duplication of the service now being rendered between Price and Columbia, and casting an unnecessary burden upon the public highway over the route applied for.

As we interpret the provisions of our Public Utilities Act, particularly Section 4818, referred to in the Report of the Commission in said Case No. 602, this Commission is precluded, as a matter of law, from granting to an applicant the right and privilege of operating an automobile over the public highways, for hire, unless the present or future public convenience and necessity so requires. Further, we are of the opinion that, under all the facts and circumstances of this case, the abandonment of the present road by the public and the adoption of the newly constructed road to be used by the public for travel after leaving the Price-Sunnyside highway, as a matter of justice and right, should enure to the benefit of the protestants, and that the Arrow Auto Line, under its present certificate of convenience and necessity, is legally entitled to transport passengers over the same.

For the reasons stated, we think the applications of J. H. Wade and Manos Klapakis should be denied.

An appropriate order will follow.

(Signed) E. E. CORFMAN,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 15th day of September, A. D. 1923.

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| In the Matter of the Application of J. H. WADE, for permission to operate an automobile stage line for the transportation of passengers between Price, Utah, and Columbia, Utah. | CASE No. 663 |

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of J. H. Wade, for permission to operate an automobile stage line for the transportation of passengers between Price and Columbia, Utah, be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of the UTAH CENTRAL TRANSFER COMPANY, for permission to operate an automobile freight line between Provo and Levan, Utah, and intermediate points. | CASE No. 664 |

Submitted August 15, 1923. Decided August 29, 1923.

Appearances:

Robert H. Wallis, for Petitioner.
R. B. Porter, for Los Angeles & Salt Lake R. R. Co.
B. R. Howell, for Denver & Rio Grande Western R. R. System.
Ralph Jewel, for Salt Lake & Utah R. R. Co.

## REPORT OF THE COMMISSION

CORFMAN, Commissioner:

This matter came on regularly for hearing, after due and legal notice given, at Provo, Utah, August 15, 1923, upon the application of L. C. Morgan and H. M. Spencer, a co-partnership, duly authorized to and operating an automobile freight truck line between Provo and Eureka City, Utah, and intermediate points, under the firm name and style of Utah Central Transfer Company, and the protests thereto duly made and filed by the Denver & Rio Grande Western Railroad System, the Los Angeles & Salt Lake Railroad Company, and the Salt Lake & Utah Railroad Company, railroad corporations.

From the evidence adduced at the hearing for and in behalf of the respective parties, the Commission finds and reports as follows:

1. That the said applicants, L. C. Morgan and H. M. Spencer, now are, and for some time prior to the filing of the application herein, have been operating an automobile freight line between Provo and Eureka, Utah, under the firm name and style of the Utah Central Transfer Company, and that they and each of them are experienced and capable operators in the handling of freight and in rendering automobile freight line service to the general public, and that said applicants are financially able to furnish and provide suitable equipment and necessary facilities for the

successful maintenance and operation of a stage line as proposed in their said application.

2. That the protestant, the Denver & Rio Grande Western Railroad System, is now, and for many years last past has been, a steam railroad, which said railroad is a common carrier of freight for hire, between Provo and Eureka, Utah, and intermediate points, and also between Provo and Nephi, Utah.

3. That the protestant, the Los Angeles & Salt Lake Railroad Company, is also a common carrier of freight, for hire, and is now, and for many years last past, has been maintaining a steam railroad line between Provo and Levan, Utah, and intermediate points, and rendering thereby an efficient tri-weekly freight and daily express service for all points on the proposed line, as set forth in the application herein.

4. That the protestant, the Salt Lake & Utah Railroad Company, is the owner of, and is now and for many years last past has been engaged in the operation of an electric railroad, transporting freight between Provo and Payson, Utah, the latter being an intermediate point between Provo and Levan, and that in the operation of its said line, is a common carrier of all kinds of freight for hire.

5. That the said Los Angeles & Salt Lake Railroad, while it receives from and carries freight to all points on the automobile freight line sought to be established and maintained by the applicants, does not maintain agency freight stations at either Mona or Levan, points on said route, by reason of their small traffic and the limited population to be served.

6. That the public served at Mona and Levan reside in communities or villages some short distance from the stations of the Los Angeles & Salt Lake Railroad Company at said points, and that shippers and consignees, by reason of there being no agency stations at these places, have to give personal care and attention to freight delivered and received by the hands of said carrier at said points.

7. That the public highway over which the proposed automobile freight line would be operated and maintained by applicants between Provo and Levan, parallels the railroads of the protestants and would serve all intermediate and no other points than those now being served by the protestants.

8. That the shippers and consignees at the points to be served along the proposed automobile freight line are not now in need of any additional freight service than that now being rendered by the protestants, and that many of them appeared at said hearing and expressed their satisfaction therewith, by saying that it was both adequate and convenient.

From the foregoing findings, and after due investigation, the Commission concludes and decides that the present freight service being rendered by the protestants along the line sought for by applicants, is reasonably ample, convenient and efficient; that neither the needs nor convenience of the public require additional service; that in fairness and in justice to the protestants, the application of the Utah Central Transfer Company should be denied.

An appropriate order will be issued.

(Signed) E. E. CORFMAN,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 29th day of August, A. D. 1923.

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| In the Matter of the Application of the UTAH CENTRAL TRANSFER COMPANY, for permission to operate an automobile freight line between Provo and Levan, Utah, and intermediate points. | CASE No. 664 |

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the application of the Utah Central Transfer Company, for permission to operate an automobile freight line between Provo and Levan, Utah, and intermediate points, be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of MANOS KLAPAKIS, for permission to operate an automobile stage line between Price, Utah, and Columbia, Utah. } CASE No. 665

Submitted August 30, 1923. Decided September 21, 1923.

Appearances:

O. K. Clay, for Applicant.
Henry Ruggeri, for Arrow Stage Line.
T. E. Banning, for { J. H. Wade, Applicant in Case 663. and Columbia Steel Corporation.

## REPORT OF THE COMMISSION

CORFMAN, Commissioner:

This matter came on regularly for hearing, August 30, 1923, at Price, Utah, and was heard in connection with Case No. 663, application of J. H. Wade, for permission to operate an automobile stage line between Price and Columbia, Utah, wherein all the parties interested stipulated and agreed that the evidence adduced at said hearing for and in behalf of the respective parties, should be held applicable to this case insofar as the same might be material, and that the record in said Case No. 663 should be held to be the record in this case.

From the record in said Case No. 663, and the report of the Commission therein made and filed, the Commission finds that the applicant, Manos Klapakis, has failed to show that there is any public need or necessity for an additional automobile passenger stage line between Price and Colum-

bia, Utah, and, therefore, the application of Manos Klapakis herein should be denied.

An appropriate order will be issued.

(Signed) E. E. CORFMAN,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 21st day of September, A. D. 1923.

In the Matter of the Application of MANOS KLAPAKIS, for permission to operate an automobile stage line between Price, Utah, and Columbia, Utah. } CASE No. 665

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the application of Manos Klapakis, for permission to operate an automoblie stage line between Price, Utah, and Columbia, Utah, be, and the same is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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| In the Matter of the Application of JOHN PILLING, for permission to operate an automobile stage line for the transportation of freight and passengers, from Altonah, via Mt. Emmons and Boneta, to Duchesne, all in Duchesne County, State of Utah. | CASE No. 666 |

Submitted October 24, 1923 Decided October 31, 1923

Appearance:

John Pilling, Applicant.

REPORT OF THE COMMISSION

McKAY, Commissioner:

In an application filed with the Public Utilities Commission of Utah, August 8, 1923, John Pilling represents that his post office address and principal place of business is Duchesne, Duchesne County, Utah; and applies for a certificate of convenience and necessity to operate an automobile stage line, with daily service, except Sunday, for freight and passengers, from Altonah, via Mt. Emmons and Boneta, to Duchesne.

The case came on regularly for hearing, in the manner provided by law, October 24, 1923, at Duchesne, Duchesne County, Utah. Applicant, John Pilling, appeared on behalf of himself. No one appeared in protest to Mr. Pilling's application.

It was alleged by applicant that the distance from Duchesne to Altonah, via Mt. Emmons and Boneta, is approximately thirty-three miles; that the distance from Altonah to Mt. Emmons is approximately five miles, and the distance from Mt. Emmons to Boneta is approximately six miles. It was further alleged by applicant that the stage line which he proposes to operate will serve about five hundred homes in Altonah and vicinity, and that many more would be served by it, including the towns of Mt. Emmons and Boneta.

Applicant further alleged that he is an experienced driver of automobiles, and that he has been engaged in carrying the United States mail for about thirteen years, nine years of which time he has been carrying the mail from Duchesne to Altonah, and intermediate points; that he has in his possession one Reo one-ton truck, and one Oldsmobile one-ton truck, either of which can be equipped with additional seating capacity, adequate to care for the needs of

eight to ten passengers, and that he can secure other equipment, if necessary, to meet all future requirements. Applicant also stated that he has in his employ an experienced driver of automobiles to assist him in operating.

Mr. Pilling advised that during the past few years, various automobile drivers have been cerrying passengers for hire from Duchesne to Altonah, and intermediate points, without attempting to give regular service. If granted permission to operate, applicant advised that he does not anticipate more than one round-trip passenger per day, on an average, from Duchesne to Altonah.

If granted permission to operate, applicant proposes to assess and collect the following rates of fare for passengers:

One Way fare from Duchesne to Boneta.....$1.35
Round-trip ..... 2.50
One-way fare from Duchesne to Mt. Emmons..... 1.80
Round-trip ..... 3.00
One-way fare from Duchesne to Altonah..... 2.25
Round-trip ..... 4.00

Applicant also proposes to operate one round-trip daily, except Sunday, between Duchesne and Altonah, under the following schedule, if granted permission to operate.

Leave Altonah 7:00 A. M. Arrive Duchesne 9:30 A. M.
Leave Duchesne 1 to 3 P. M. Arrive Altonah 3 to 5 P. M.

On the morning trip, applicant proposes to arrive at Duchesne from Altonah in time to enable passengers to make connection with the stage for Heber City and Price. On the afternoon trip, applicant proposes to leave Duchesne for Altonah, after having secured all passengers arriving at Duchesne from Heber City and Price, desiring to go to Altonah, or intermediate points.

The Commission, after considering all material facts, finds:

That applicant, John Pilling, should be granted permission to operate an automobile stage line for the transportation of freight and passengers, from Altonah, via Mt. Emmons and Boneta, to Duchesne, Utah.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
Commissioner.

We concur:

(Signed) WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 195

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 31st day of October, 1923.

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|---|---|
| In the Matter of the Application of JOHN PILLING, for permission to operate an automobile stage line for the transportation of freight and passengers, from Altonah, via Mt. Emmons and Boneta, to Duchesne, all in Duchesne County, State of Utah. | CASE No. 666 |

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that John Pilling be, and he is hereby, granted permission to operate an automobile stage line for the transportation of freight and passengers, from Altonah, via Mt. Emmons and Boneta, to Duchesne, all in Duchesne County, State of Utah.

ORDERED FURTHER, That applicant, John Pilling, before beginning operation, shall file with the Commission and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

# BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of W. G. BLACK, for permission to operate an automobile freight line between Springville and Provo, Utah. } CASE No. 667

Submitted October 19, 1923 Decided November 5, 1923

Appearances:

M. R. Straw, for Applicant.
C. A. Root, for L. A. & S. L. R. R. Co., Protestant.
Ralph Jewell, for Salt Lake & Utah R. R. Co., Protestant
H. M. Spencer, for Utah Central Transfer Co. Protestant.

## REPORT OF THE COMMISSION

McKAY, Commissioner:

In an application filed August 11, 1923, with the Public Utilities Commission of Utah, W. G. Black requests a certificate of convenience and necessity to operate a motor freight line from Provo to Springville, Utah.

Written protests were filed by T. H. Beacon, Receiver for the Denver & Rio Grande Western Railroad System, under date of October 16, 1923; Salt Lake & Utah Railroad Company, on October 16th; and the Los Angeles & Salt Lake Railroad Company, October 17, 1923.

This case came on for hearing, at Provo, October 19, 1923, after regular notice had been given.

Mr. Black sets forth that he is a citizen of the United States of America; that he is a resident of Springville, Utah County, Utah; that he is the principal owner of the Lillywhite Roller Mills, and is engaged in the general business of milling and grinding grain. He also states that Provo is the general distributing point for the towns in Utah County; that Springville is situated approximately six miles south of Provo; that the population of Springville is between three thousand and four thousand people.

It appears the traveling salesmen visit the Springville business houses on Mondays and Thursdays, and Mr. Black transports flour, grain, etc., from his elevator at Springville to his customers at Provo on Tuesdays and Fridays, and, to avoid returning with an empty truck, he desires a certificate granting him permission to transport to Springville the goods which were ordered on the previous days.

Mr. Black testified that he intends to charge twenty cents per hundred pounds, in the event a certificate is issued to him, such rate to be subject to the approval of the Commission.

The protestants are opposed to the issuance of a certificate, on the grounds there is no need for such aditional service, for the reason there are, at the present time, three railroads, as well as an automobile freight truck line, operating between these points.

The Commission finds that the present freight service being rendered Springville and Provo is adequate, and that there exists no necessity for such additional service as applied for by W. G. Black; and, therefore, the application should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
Commissioner.

We concur:

(Signed) WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

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ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on on the 5th day of November, 1923.

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|---|---|
| In the Matter of the Application of W. G. BLACK, for permission to operate an automobile freight line between Springville and Provo, Utah. | CASE No. 667 |

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the application of W. G. Black, for permission to operate an automobile freight line be-

tween Springville and Provo, Utah, be, and it is hereby, denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

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|---|---|
| In the Matter of the Application of L. A. McDONALD, for permission to operate an automobile stage line between Cedar City, Utah, and Iron Springs, Utah. | CASE No. 668 |

Submitted October 17, 1923. Decided October 23, 1923.

REPORT AND ORDER OF THE COMMISSION

CORFMAN, Commissioner:

This matter came on regularly for hearing, before the Commission, at Cedar City, Utah, on the 17th day of October, 1923.

The applicant, by his attorney, George B. Hancock, applied for permission to withdraw the said application.

Mr. Chas. A. Root appearing as attorney for the Union Pacific Railroad System, protestant, consented to the application for withdrawal.

THEREFORE, IT IS ORDERED, That the said application for withdrawal be, and the same is hereby, granted.

(Signed) E. E. CORFMAN,
Commissioner.

We concur:

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

| | |
|---|---|
| In the Matter of the Application of KAMAS-WOODLAND TELEPHONE COMPANY, for permission to construct its electric light line into Francis and Woodland, Utah. | CASE No. 669 |

Submitted September 26, 1923. Decided November 3, 1923.

## REPORT OF THE COMMISSION

McKAY, Commissioner:

The Kamas-Woodland Telephone Company, in its application filed with the Public Utilities Commission of Utah, August 20, 1923, requests a certificate of convenience and necessity, granting it permission to extend its electric light line to Francis and Woodland, and to serve the inhabitants thereof.

This case was heard at Kamas, Utah, September 26, 1923, after due notice had been given to all interested parties.

The Kamas-Woodland Telephone Company is a corporation, having been incorporated under the laws of the State of Utah. Its principal place of business is at Kamas, Utah. Said Company is desirous of extending its electric light line into contiguous territory and serve the people in the towns of Francis and Woodland.

There were no protests to the granting of a certificate to the applicant to extend the line.

The Commission is, therefore, of the opinion that the towns of Francis and Woodland are in need of electric light service, and that a certificate of convenience and necessity should be issued, authorizing such extension.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
Commissioner.

We concur:

(Signed) WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 197

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 3rd day of November, 1923.

In the Matter of the Application of KAMAS-WOODLAND TELEPHONE COMPANY, for permission to construct its electric light line into Francis and Woodland, Utah. } CASE No. 669

This case being at issue upon petition on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof;

IT IS ORDERED, That the application be granted and applicant, Kamas-Woodland Telephone Company, be, and it is hereby, authorized to construct, operate and maintain distribution lines for the purpose of rendering electric service in the towns of Francis and Woodland, Utah.

ORDERED FURTHER, That applicant shall, in the construction of such distribution system, conform to the standard of construction heretofore prescribed by the Commission.

ORDERED FURTHER, That before rendering such service, applicant shall file with the Commission a schedule noming all rates, rules and regulations applying in the towns of Francis and Woodland.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Application of the EASTERN UTAH TELEPHONE COMPANY, for permission to put in effect certain increases in rates for exchange service. } CASE No. 670

PENDING

In the Matter of the Application of HARRY GRAYES, for permission to operate an automobile stage line between Bingham and Salt Lake City, Utah. } CASE No. 671

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of C. S. BRIMHALL, for permission to operate a truck and passenger line between Provo, Utah, and Steel City, Utah. } CASE No. 672

Submitted Oct. 19, 1923. Decided Oct. 31, 1923.

Appearances:
J. W. Robinson, for Applicant.
Ralph Jewell, for Salt Lake & Utah R. R. Co.
T. S. Hardy, for American Railway Express Co.

## REPORT OF THE COMMISSION

McKAY, Commissioner:

In an application filed with the Public Utilities Commission of Utah, September 8, 1923, C. S. Brimhall requests a certificate of convenience and necessity, authorizing him to operate an automobile truck and passenger line between Provo and Steel City, Utah.

This case came on regularly for hearing, at Provo, Utah, October 19, 1923, after due notice had been given to the interested parties.

Mr. Brimhall is and has been a resident of Provo for the past twenty years. He stated that the Columbia Steel Corporation is at the present time constructing furnaces, etc., at Steel City; that Steel City is approximately three miles from Provo; that at the present time, from four hundred to eight hundred men are employed there; that most of these men reside in Provo; that the men go to work in three shifts, at seven, seven-thirty and eight o'clock in the morning, and they discontinue work in three shifts, about a half hour apart. Applicant also testified that at the present time these employes do not avail themselves of the service offered by the Salt Lake & Utah Railroad, for the reasons that the trains are run at inopportune times; also because these trains would be unable to trans-

port them closer than one-half mile from the works. Mr. Brimhall stated that he intended to charge ten cents each way between Provo and Steel City, if the Commission grants him permission to operate said stage line.

Under date of October 16, 1923, the Salt Lake & Utah Railroad Company filed a written protest, and Mr. Jewell, its attorney, appeared at the time of the hearing. However, said Railroad Company waived the conditions of its protest at the present time, stating that at this stage of development, there is no demand for service which would require changing its present schedules; but it would, howhowever, like to be heard at such time as conditions would warrant such changes.

The American Railway Express Company, by T. S. Hardy, protested on the grounds that it can deliver all express. However, Mr. Hardy stated that the present demand does not warrant delivery service at Steel City. Without such service, the same objection would exist, i. e., the distance from the Salt Lake & Utah Railroad depot to the works at Steel City.

The applicant stated that it is his intention, in the event a certificate is issued to him, to confine his freight busness to emergency orders, such as tools, etc., and that same would not interfere in any way with the business of the Salt Lake & Utah Railroad Company.

The Commission finds, after careful consideration of all material facts, that a certificate of convenience and necessity should be issued to C. S. Brimhall, authorizing truck and passenger service, as requested.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
Commissioner.

We concur:

(Signed) WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:

(Signed) F. L. OSTLER, Secretary.

## ORDER

Certificate of Convenience and Necessity
No. 196

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 31st day of October, A. D. 1923.

In the Matter of the Application of C. S. BRIMHALL, for permission to operate a truck and passenger line between Provo, Utah, and Steel City, Utah. } CASE No. 672

This case being at issue upon petition and protests on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application be granted, and that C. S. Brimhall be, and he is hereby, authorized to operate a truck and passenger line between Provo, Utah, and Steel City, Utah.

ORDERED FURTHER, That applicant, C. S. Brimhall, before beginning operation, shall file with the Commission and post at each station on his route, a schedule as provided by law and the Commission's Tariff Circular No. 4, naming rates and fares and showing arriving and leaving time from each station on his line; and shall at all times operate in accordance with the rules and regulations prescribed by the Commission governing the operation of automobile stage lines.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

In the Matter of the Application of KENDALL GIFFORD, for permission to operate an automobile truck line between Virgin, Rockville, Springdale and Zion National Park, Utah. } CASE No. 673

PENDING

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In the Matter of the Application of A. E. HANKS, for permission to operate an automobile stage line from Marysvale, Utah, to Bryce Canyon and return. } CASE No. 674

PENDING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of STANISLAO SILVAGNI, ANGELO PEPERAKIS and MIKE SERGAKIS, doing business as the ARROW AUTO LINE, a partnership, requesting the transfer of the certificates of convenience and necessity now held by them, to the Arrow Auto Line, a corporation. } CASE No. 675

Decided October 23, 1923.

REPORT AND ORDER OF THE COMMISSION

By the Commission:

In an application filed October 5, 1923, with the Public Utilities Commission of Utah, Stanislao Silvagni, Angelo Peperakis and Mike Sergakis, doing business as Arrow Auto Line, a partnership, request permission to transfer certificates of convenience and necessity to the Arrow Auto Line, a corporation.

The Arrow Auto Line is operating an automobile passenger stage line between Price and Sunnyside, Utah, between Price and Columbia, Utah, and between Price and Hiawatha, Utah, subject to the rules, regulations and supervision of the Commission.

The Arrow Auto Line has recently been incorporated in the State of Utah, and is in a position to render better service to the traveling public than it was heretofore, under a partnership.

After due consideration of all material facts, the Commission finds that the application should be granted, and that the certificates of convenience and necessity now in the possession of the Arrow Auto Line, a partnership, be transferred to the Arrow Auto Line, a corporation.

IT IS THEREFORE ORDERED, That the certificates of convenience and necessity now in the possession of the Arrow Auto Line, a partnership, be, and they are hereby, transferred to the Arrow Auto Line, a corporation.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
E. E. CORFMAN,
Commissioners.

[SEAL]

Attest:
(Signed) F. L. OSTLER, Secretary.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF UTAH

In the Matter of the Application of GEORGE KAMPROS and H. M. NICHOLSON, for permission to operate an automobile passenger stage line between the Towns of Bingham, Highland Boy and Copperfield, Utah. } CASE No. 676

Submitted Oct. 22, 1923. Decided Nov. 8, 1923.

Appearances:
McCarty & McCarty, for Applicants.
Dan B. Shields, for { Bingham State Lines Co.
Parley Jones, Mike Garvalock,
Roy Wilcox, Harry Goldsworthy
and John Smith, Protestants.

REPORT OF THE COMMISSION

By the Commission:

This matter came on regularly for hearing before the Commission, at Salt Lake City, October 22, 1923, upon the application of George Kampros and H. M. Nicholson, for a certificate of convenience and necessity authorizing and permitting them to maintain and operate an automobile passenger stage line over the public highways between the towns of Bingham, Highland Boy and Copperfield, in Salt

Lake County, Utah, and the protests made thereto by the Bingham Stage Lines Company, Parley Jones, Mike Garvolock, Roy Wilcox, Harry Goldsworthy and John Smith; and the Commission, having heard the proofs of the respective parties, and considered the same, together with the records and files in the case, now finds, reports and decides as follows:

(1) That the applicant, George Kampros, is a resident of Copperfield, and applicant, H. M. Nicholson, is a resident of Bingham, Salt Lake County, Utah; that said applicants are capable and experienced operators of automobiles for hire, and are at the present time the owners of three Studebaker, seven passenger touring cars, which they propose to use in the service, if granted a certificate of convenience and necessity to operate over the public highways between the points as applied for by them.

(2) That the protestant, Bingham Stage Lines Company, is an automobile corporation, organized under the laws of Utah, and it is at the present time engaged in carrying passengers over the public highway, for hire, between Salt Lake City and the town of Bingham, Utah, under a certificate of convenience and necessity granted to it by this Commission in 1919.

(3) That the protestants, Parley Jones, Mike Garvalock, Roy Wilcox, Harry Goldsworthy and John Smith, are now, and have been for some time last past, engaged, each for himself, in an automobile taxi-cab service, carrying persons for hire out of the town of Bingham to such points on the public highways of the State as their patrons may direct. The applicants herein have been for some time past engaged in a like service, operating out of Highland Boy and Copperfield, as well as Bingham.

Bingham Canyon is about twenty-eight miles distant from Salt Lake City, in the western range of mountains skirting Great Salt Lake Valley, where numerous metal mines have been opened and are being operated; that in said canyon, within a radius of about two miles at or in close proximity to the mines, the towns of Bingham, Copperfield and Highland Boy, with a combined population of about 6,000 people, are situated, Bingham having a population of about 4,000; Copperfield, 1,200; and Highland Boy 800 people. Bingham is the business and social center of the mining district, and is the first town arrived at upon entering the canyon from Salt Lake Valley, and it is also the terminal of the hereinbefore maintained stage line route of the protestant, Bingham Stage Lines Company.

At Bingham, the public highway forks, one branch leading to Copperfield, the other to Highland Boy.

The applicants propose to operate from Bingham to Copperfield, from Bingham to Highland Boy, and also between Copperfield and Highland Boy, via Bingham, if granted a certificate of convenience and necessity by the Commission permitting them so to do.

It will be readily seen and appreciated that the three points sought to be served by the applicants constitute, practically speaking, one community or mining center, and that the passenger traffic between the points named and applied for will be made up largely by the passengers transported from Salt Lake City and intermediate points, by the Bingham Stage Lines Company, to Bingham. While many of the residents of the district live at Bingham and are employed at the mines at Copperfield and Highland Boy, and go back and forth each day, it is an admitted fact that, owing to the short distance to be traveled between points, they would walk rather than incur the expense attendant upon their riding in a bus or stage, when not otherwise provided with a means of conveyance.

However, the evidence conclusively shows that the present taxi-cab service rendered by the individual protestants, and the applicants out of Bingham and Copperfield offers ample facilities for transportation to any point within the district for as many persons as may desire transportation for hire.

It further appears from the records and files of the office of the Commission that in Case No. 65, on July 30, 1918, one Eugene Chandler was granted a certificate of convenience and necessity to operate an automobile bus line over the routes applied for by the applicants, and that after trial, the patronage was insufficient to properly maintain said service, and for that reason was subsequently abandoned and discontinued.

On the whole and for the reasons stated, the Commission thinks that the applicants in the present case have failed to make a proper showing that public convenience and necessity require the service sought to be rendered by them, and that, therefore, the application herein should be denied.

An appropriate order will be issued.

(Signed) THOMAS E. McKAY,
WARREN STOUTNOUR,
[SEAL] E. E. CORFMAN,
Commissioners.

Attest:
(Signed) F. L. OSTLER, Secretary.

## ORDER

At a Session of the PUBLIC UTILITIES COMMISSION OF UTAH, held at its office in Salt Lake City, Utah, on the 8th day of November, A. D. 1923.

In the Matter of the Application of GEORGE KAMPROS and H. M. NICHOLSON, for permission to operate an automobile passenger stage line between the Towns of Bingham, Highland Boy and Copperfield, Utah. } CASE No. 676

This case being at issue upon petition and protest on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings, which said report is hereby referred to and made a part hereof:

IT IS ORDERED, That the application of George Kampros and H. M. Nicholson, for permission to operate an automobile passenger stage line between the towns of Bingham, Highland Boy and Copperfield, Utah, be, and the same is hereby denied.

By the Commission.

(Signed) F. L. OSTLER,
Secretary.

[SEAL]

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In the Matter of the Application of W. D. ALLEN, for permission to amend schedule of rates on his stage line operating between Salt Lake City and Bingham Canyon, Utah. } CASE No. 677

PENDING

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In the Matter of the Application of the MOAB PIPE LINE COMPANY, a Corporation, for permission to raise and adjust rates on basis of water used by its patrons. } CASE No. 678

PENDING

| | |
|---|---|
| In the Matter of the Application of the HYRUM CITY MUNICIPAL ELECTRIC PLANT, for permission to increase the rates for lighting and fuel, and to enforce original schedules Nos. 13 and 14 for electric service within the Corporate limits of Hyrum City, Utah. | CASE No. 679 |
| | PENDING |
| In the Matter of the Application of CHARLES STARR, to be released from franchise No. 166 (Case No. 570), automobile passenger line from St. George to Cedar City, Utah, in connection with Fred Fawcett. | CASE No. 680 |
| | PENDING |
| In the Matter of the Application of the OAK CITY ELECTRIC COMPANY (Proposed), for permission to erect and operate a hydro-electric power plant with transmission line and distributing system. | CASE No. 681 |
| | PENDING |
| In the Matter of the Application of EDWIN EARL HALL, for permission to operate an automobile freight and passenger stage line between Price, Utah, and Vernal, Utah. | CASE No. 682 |
| | PENDING |
| In the Matter of the Application of CHARLES E. DUNCAN, for permission to operate a freight truck line between Meadow and Fillmore, Utah. | CASE No. 683 |
| | PENDING |
| In the Matter of the Application of the RECEIVER OF THE DENVER & RIO GRANDE WESTERN RAILROAD SYSTEM, for permission to discontinue passenger trains between Salt Lake City and Bingham, Utah. | CASE No. 684 |
| | PENDING |

## APPENDIX I.

### Part 2—Ex Parte Orders Issued.

During the period covered by this report, the Commission issued 193 Special Permissions. The major portion of these were for reductions in existing rates or fares. They may be classified as follows:

| Name | Number |
|---|---|
| Denver & Rio Grande Western Railroad | 46 |
| Oregon Short Line Railroad Company | 29 |
| Union Pacific Railroad Company | 2 |
| Los Angeles & Salt Lake Railroad Co. | 29 |
| Western Pacific Railroad Company | 10 |
| Southern Pacific Company | 10 |
| Utah-Idaho Central Railroad | 8 |
| Pacific Freight Tariff Bureau | 9 |
| B. W. Dunn, Agent | 1 |
| Bingham & Garfield Railway Company | 1 |
| Local Utah Freight Bureau | 22 |
| Utah Power & Light Company | 3 |
| G. J. Maguire | 2 |
| Salt Lake, Garfield & Western Railroad Co. | 1 |
| Salt Lake & Utah Railroad Company | 1 |
| Carbon County Railway Company | 1 |
| Bamberger Electric Raliroad Company | 1 |
| Bingham Stage Line | 1 |
| Salt Lake-Ogden Transportation Co. | 1 |
| Utah Central Truck Line | 1 |
| Joseph Carling | 1 |
| E. J. Duke | 2 |
| J. C. Denton | 2 |
| Howard Hout | 2 |
| Arrow Auto Line | 1 |
| James Neilson | 1 |
| William Lund | 1 |
| Howard Spencer | 1 |
| Eureka-Payson Stage Line | 1 |
| C. G. Parry | 1 |
| J. W. Johnstun | 1 |
| Total | 193 |

## APPENDIX I.

### Part 3—Special Dockets—Reparation

| Number | | Amount |
|---|---|---|
| 56 | Inland Crystal Salt Co. vs. Denver & Rio Grande Western Railroad Co. and Salt Lake, Garfield & Western Railroad Co.. | $ 27.34 |
| 57 | Mrs. A. W. Allen vs. Utah Gas & Coke Co. | 21.00 |
| 58 | Gunnison Valley Sugar Co. vs. Denver & Rio Grande Western Railroad Company | 117.63 |
| 59 | Sylvan Simon vs. Utah Gas & Coke Co.... | 6.30 |
| 60 | R. J. Glendenning vs. Utah Gas & Coke Co. | 5.16 |
| 61 | T. J. Lloyd vs. Utah Gas & Coke Company | 10.15 |
| 62 | Utah-Idaho Sugar Co. vs. Denver & Rio Grande Western Railroad and Western Pacific Railroad Co..... | 4,543.90 |
| 63 | Mrs. D. M. Wheelan vs. Utah Gas & Coke | .96 |
| 64 | F. L. Whiting vs. Denver & Rio Grande Western R. R..... | 44.75 |
| 65 | Mrs. Leona Thorson vs. Utah Gas & Coke Co. ..... | 8.00 |
| 66 | Samuel Weitz vs. Utah Gas & Coke Co... | 6.99 |
| 67 | M. E. Lipman vs. Utah Gas & Coke Co... | 36.00 |
| 68 | Inland Crystal Salt Co. vs. Denver & Rio Grande Western Railroad Co. and Salt Lake, Garfield & Western Railroad Co.. | 4.70 |
| 69 | Utah-Idaho Sugar Co. vs. Oregon Short Line Railroad Co. and Southern Pacific Co. ..... | 497.49 |
| 70 | Utah-Idaho Sugar Co. vs. Salt Lake & Utah Railroad Company..... | 790.04 |
| 71 | Mrs. Alma Rowley vs. Utah Gas & Coke Co. ..... | 12.00 |
| 72 | Utah Salduro Co. vs. Western Pacific R. R. Co. ..... | 98.72 |
| 73 | D. B. Stewart vs. Utah Gas & Coke Co... | 18.47 |
| 74 | Frank E. Rickey vs. Utah Gas & Coke Co. | 6.68 |
| 75 | Perry Canning Co. vs. Oregon Short Line R. R. Co. ..... | 69.06 |
| 76 | Utah Salduro Co. vs. Western Pacific R. R. Co. ..... | 70.00 |
| 77 | L. Marcus vs. Utah Gas & Coke Co..... | 11.37 |
| 78 | Daniel Stevens vs. Los Angeles & Salt Lake R. R. Co..... | 89.37 |
| 79 | Utah Granite & Marble Co. vs. Denver & | |

| Number | | Amount |
|---|---|---|
| | Rio Grande Western System | 326.56 |
| 80 | D. P. Felt vs. Utah Gas & Coke Company. | 3.00 |
| 81 | Mrs. E. W. Taylor vs. Utah Gas & Coke Company | 4.11 |
| 82 | United States Smelting, Refining & Mining Co. vs. Los Angeles & Salt Lake Railroad Co. | 618.75 |
| 83 | Mrs. Nan C. Dobb vs. Utah Gas & Coke Co. | 8.18 |
| 84 | V. U. Umberger vs. Utah Gas & Coke Co. | 3.95 |
| 85 | Utah-Idaho Sugar Co. vs. Salt Lake & Utah R. R. Co. | 291.00 |
| 86 | Gunnison Valley Sugar Co. vs. Denver & Rio Grande Western Railroad System. | 95.21 |
| 87 | Nephi Plaster & Manufacturing Co. vs. Denver & Rio Grande Western Railroad System | 126.94 |
| 88 | Weber Packing Corporation vs. Oregon Short Line Railroad Company. | 32.13 |
| 89 | Becker Products Co. vs. Oregon Short Line Railroad Company | 57.25 |
| 90 | Geo. E. Romney vs. Utah Gas & Coke Co. | 7.62 |
| 91 | W. J. Burton vs. Utah Gas & Coke Co. | 4.00 |
| 93 | Western Heat & Sheet Metal Works vs. Utah Gas & Coke Company | 22.27 |
| 94 | Charles J. Piercy vs. Utah Gas & Coke Co. | 1.31 |
| 95 | Protection of double-deck carload rate on two single-deck cars from Iron Springs to Salt Lake City. | |
| 96 | Columbia Steel Corporation vs. Salt Lake & Utah Railroad Company, protection of rate of $1.00 per gross ton, on six carloads of second-hand rails from Provo to Ironton. | |
| 97 | Columbia Steel Corporation vs. Salt Lake & Utah Railroad and Denver & Rio Grande Western R. R. | 27.95 |
| 98 | Gunnison Valley Sugar Co. vs. Denver & Rio Grande Western Railroad | 27.20 |
| 99 | Utah Salduro Co. vs. Western Pacific Railroad Co. and Denver & Rio Grande Western Railroad | 226.26 |
| | Total | $8,379.77 |

# APPENDIX II

## Part 1.—Grade Crossing Permits.

The Commission issued nine Highway Grade Crossing Permits during the period covered by this report. These permits granted authority to construct grade crossings and prescribed the necessary safety precautions established by the Commission.

The permits were issued as follows:

| No. | Issued to | Location |
|---|---|---|
| 71 | Oregon Short Line Railroad Co. | Salt Lake City |
| 72 | Los Angeles & Salt Lake R. R. Co. | Between Lund and Cedar City |
| 73 | Los Angeles & Salt Lake R. R. Co. | Between Lund and Cedar City |
| 74 | Denver & Rio Grande Western Railroad Company | Salt Lake City |
| 75 | Los Angeles & Salt Lake R. R. Co. | Provo |
| 76 | Bamberger Electric Railroad Co. | Salt Lake City |
| 77 | Salt Lake & Utah Railroad Co. | Spanish Fork |
| 78 | Oregon Short Line Railroad Co. | Salt Lake City |
| 80 | Union Pacific Company | Near Park City |

# APPENDIX II

## Part 2—Certificates of Convenience and Necessity.

### Certificates of Convenience and Necessity were issued as follows:

| Certificate Number | Case Number | Classification | Between | And *At | To Whom Issued |
|---|---|---|---|---|---|
| 171 | 587 | Passenger Stage | Milford | Utah-Nevada State Line | Hyrum Davis |
| 172 | 609 | Truck Line | Beaver | Milford | R. C. Murdock |
| 173 | 615 | Truck Line | Salt Lake City | Garfield | Butters & Speers |
| 174 | 600 | Passenger Stage | Price | Emery | Alma C. Jensen |
| 175 | 608 | Passenger Stage | Provo | Eureka | Bottom & McAfee |
| 176 | 634 | Passenger Stage | Salt Lake City | Pinecrest | Howard J. Spencer |
| 177 | 629 | Passenger Stage | Duchesne | Heber City | Johnstun & Anderson |
| 178 | 624 | Passenger Stage | American Fork | American Fork Canyon | Pitts & Hatch |
| 179 | 623 | Passenger Stage | Mammoth | Eureka | W. E. Ostler |
| 180 | 654 | Passenger Stage | Eureka | Mammoth | Fred Houghton |
| 181 | 656 | Truck Line | Extend Line | | Hurricane Truck Line |
| 182 | 621 | Passenger Stage | Lehi | Topliff | J. C. Russell |
| 183 | 604 | Truck Line | Holden | Greenwood | Vorda McKee |
| 184 | 625 | Truck Line | Provo | Eureka | Morgan, Carter & Spencer |
| 185 | 614 | Passenger Stage | Salt Lake City | Timpanogas Cave | Salt Lake Transportation Co. |
| 186 | 648 | Truck Line | St. George | Lund and Modena | Covington, Barton & Hamblin |
| 187 | 644 | Passenger Stage | Payson | Eureka | Walter K. Johnson |
| 188 | 647 | Freight and Passenger | St. George | Arizona State Line | Samuel Judd & Son |
| 189 | 655 | Passenger Stage | Beaver | Parowan | Marion Smithson |
| 190 | 639 | Passenger Stage | Park City | Kamas | J. H. O'Driscoll |
| 191 | 642 | Truck Line | Cedar City | Parowan | Pace Truck Line |
| 192 | 650 | Passenger Stage | Draper | Sandy | Clyde Terry |
| 193 | 662 | Electric | | *Clearfield | Utah Power & Light Co. |
| 194 | 649 | Passenger Stage | State St., Salt Lake | Mill Creek | Mill Creek Bus Line |
| 195 | 666 | Freight and Passenger | Duchesne | Altonah | John Pilling |
| 196 | 672 | Freight and Passenger | Provo | Steel City | C. S. Brimhall |
| 197 | 669 | Electric | | | Kamas-Woodland Telephone Co. |

# APPENDIX III.

## COURT DECISIONS.

### IN THE SUPREME COURT OF THE STATE OF UTAH

CITY OF ST. GEORGE,
*Plaintiff,*
vs.
THE PUBLIC UTILITIES COMMISSION OF UTAH and DIXIE POWER COMPANY,
*Defendants.*

FRICK, J.

The City of St. George, hereinafter called plaintiff, pursuant to the provisions of our Public Utilities Act, made application to this court for a writ of review for the purpose of having reviewed certain orders made by the Public Utilities Commission of this state, hereinafter called Commission.

The record upon which this application is based shows that in August, 1921, the Dixie Power Company, hereinafter called Company, a corporation organized for the purpose of furnishing electrical energy for power and lighting purposes, made application to the Commission for permission to increase its rates for electrical energy as indicated by new schedules then filed with the Commission. The increase in rates as proposed by the Company would affect the plaintiff as well as its inhabitants, and it also affected the surrounding towns and communities and the inhabitants thereof. A hearing was therefore ordered upon the Company's application and after such hearing was had the Commission made an order allowing the Company to increase its rates for electrical service in certain particulars which resulted in certain modifications in a certain contract existing between the plaintiff and said Company respecting the furnishing of free light for street lighting by the Company to the plaintiff.

No complaint is made in this proceeding respecting the reasonableness of the rates as fixed by the order of the Commission.

After the order aforesaid was made, upon the application of the plaintiff a rehearing was had by the Commission at which the order allowing an increase of rates was affirmed, but the Commission made an additional order in which the plaintiff was allowed a credit to the amount of $9,907.00 as compensation for its loss of free lights under the existing contract between it and the Company.

It further appears from the record that in 1916 the plaintiff was the owner of a power and light plant which it operated; that at that time one A. L. Woodhouse offered to purchase said plant, with the appurtenances thereof, from the plaintiff for the sum of $13,500.00, which sum was subsequently reduced to the sum of $12,000.00; that the sale of the power plant was effectuated for said $12,000.00 and pursuant thereto a contract was entered into between the plaintiff and said Woodhouse in which, among other things, stating it in counsel's language in their brief, it was agreed:

1. "That neither of said parties nor their heirs nor assigns would ever charge during the term agreed upon by said parties and said City of St. George, to-wit, a term of twenty-five years from said October 18, 1916, for electrical energy furnished to the inhabitants of the City of St. George, rates exceeding the following: (Schedule of rates attached.)

2. "That the said parties and their heirs and assigns would furnish free of charge to said City of St. George during said period of twenty-five years, 15 K.W.H. or 20 H.P. electrical energy for the operation of its street lighting or for other strictly municipal service."

The contract, by its terms, was made binding upon the heirs, successors and assigns of said Woodhouse. The company, subsequently, and before the application for an increase of rates was made as hereinbefore stated, succeeded to all the rights of Woodhouse under said contract and became bound by all its terms and conditions.

Plaintiff had erected a power plant pursuant to the authority of the provisions found in Chapter 120, Sections 206x20 and 206x87, Laws, Utah, 1911, and had sold the same under the authority of and pursuant to the provisions of Chapter 69, Laws, Utah, 1913.

We remark that in view that plaintiff was the owner of the plant it perhaps had the right to sell the same without the authority conferred in the later Act.

Section 206x20 of Chapter 120, Laws, Utah, 1911, by authority of which plaintiff erected its power plant, reads as follows:

> Section 206. "The city council shall have the powers" * * * * * * * *
>
> Section 206x20. "To provide for the lighting of streets, laying down of gas pipes, and erection of lamp posts; to regulate the sale and use of gas, natural gas, and electric or other lights, and electric power, the charge therefor, and the rent of meters within the city, and to regulate the inspection thereof; to prohibit or regulate the erection of telegraph, telephone, or electric wire poles, in the public grounds, streets, or alleys, and the placing of wires thereon; and to require the removal from the public grounds, streets, or alleys, of any or all such poles, and the placing underground of any or all telegraph, telephone, or electric wires."

Section 206x87 aforesaid merely contains general provisions respecting the passage of ordinances by the cities of this state for the purpose of effectuating the general powers conferred upon them and has no special bearing here.

On behalf of plaintiff it is vigorously contended that the legislature, in adopting Section 206x20, supra, had divested itself and the State of Utah of the right to interfere with the rights of the plaintiff under the contract aforesaid respecting the furnishing free of charge any "electrical energy for the operation of its street lighting or for other strictly municipal service," as provided in said contract. In support of that contention counsel cite and rely on Vicksburg v. Vicksburg Water Co., 206 U. S. 496; Los Angeles v. Los Angeles City Water Co., 177 U. S. 558; Walla Walla v. Walla Walla Water Co., 172 U. S. 1; New Orleans Waterworks Co. v. Rivers, 115 U. S. 674, and Freeport Water Co. v. Freeport, 180 U. S. 587.

It is true that in those cases it is held that the right to exercise the governmental function of regulation may be surrendered by the State to the municipalities and in case it has thus surrendered its powers, contracts entered into by and with the municipalities respecting rates for water, light and other service, will be enforced, notwithstanding a subsequent attempt by the State to regulate rates. It is, however, made quite clear in the opinions in those cases that the contracts referred to will not be enforced unless the State has in express terms, or by unavoidable implication, surrendered to the municipalities

its right to govern in such matters. In referring to this subject, the court, in Freeport Water Co. v. Freeport, supra, said:

> "We do not mean to say that if it was the declared policy of the State that the power of alienation of a governmental function did not exist, a subsequently asserted contract would not be controlled by such policy."

In other words, if it is the policy of the State to regulate the rates for the services rendered by public utilities through the exercise of the police power, then contracts respecting rates will not prevent the State from subsequently authorizing a change in the rates stated in the contract so as to prevent them from being unfair or discriminatory on the one hand or from being unjust or confiscatory upon the other.

Moreover, it is further held in the case quoted from that if the language of the law or act by which it is claimed the State has surrendered its sovereign right be doubtful, or is open to two constructions, then of the two constructions that must be adopted which is the most favorable to the public, not that one which would so tie the hands of the council that the rates could not be adjusted as justice to both parties might require at a particular time."

In this connection it is also well to remember that there are many decisions emanating from very respectable courts of last resort in which it is held that the State can under no circumstances surrender its governmental function of regulating the rates for public utilities' services at any and all times to the end that rates shall be just and fair to all and that no one can be permitted to obtain an advantage whether for a short or for a long period of time and whether contractural or otherwise.

Again, it has been the declared policy of this State that the regulation of rates for public utilities' services "is a governmental function which cannot be surrendered or suspended by the city council." And it is further held that "municipalities in this State cannot enter into binding contracts regarding rates for services rendered to the public for the right to regulate and fix rates cannot be surrendered in the absence of constitutional or statutory authority." See Brummit v. Waterworks Co., 33 Utah 285, 93 Pac. 829. The policy there announced has been in force in this State for more than fifteen years and has been enforced by numerous recent decisions of this court. We shall here refer to the following cases only, in which

the foregoing doctrine has been enforced: Salt Lake City v. Utah Light & Tr. Co., 52 Utah 210, 173 Pac. 556; U. S. Smelting Ref. & M. Co. v. Utah P. & L. Co., 58 Utah 168, 197 Pac. 902; Union Portland Cement Co. v. Utah P. & L. Co., 58 Utah 165, 197 Pac. 912; The Utah Hotel Co. v. Public Utilities Commission, 59 Utah 389, 204 Pac. 511.

The case of Union Portland Cement Co. v. Utah P. & L. Co., supra, was, by writ of error, taken to the United States Supreme Court and was there affirmed without opinion upon the authority of prior decisions by that court, as shown in 258 U. S. 609.

It would be a work of supererogation to refer to, or to attempt to review, the other cases of this court to show that there is no decision emanating from this court in which it is intimated, much less held, that the State has to any extent or at any time surrendered is sovereign right to exercise its governmental function for regulating rates for public utilities' service.

Neither is there anything in Sec. 206x20 of Chapter 120, supra, that by a fair interpretation can be held to constitute an alienation of the State's right to regulate rates for public utility service, not excepting the rates fixed by municipalities whether by contract or otherwise.

Upon the other hand, the legislature of this State has always acted upon the theory that the police power inherent in the State has never been surrendered. That such is the case is clearly manifested in the Public Utilities Act itself and in the subsequent amendments thereof, as will hereinafter appear.

It is insisted by plaintiff's counsel that the contract in question, by which plaintiff was to receive electrical energy for lighting its streets and for other municipal purposes, is foreign to the question of regulating rates under the Public Utilities Act. It is contended that the regulation of rates for public utility service is limited to rates affecting the public as contra-distinguished from rates that are intended for a municipality for its own use as such. In support of their contention counsel cite People v. Public Service Commission, 225 N. Y. 216, 121 N. E. 777. In that decision it is said that a distinction exists "between a contract made by a gas company to furnish the municipality *itself* with light and the terms and conditions upon which a municipality grants a franchise to furnish gas to its *inhabitants*. In the first instance the arrangement may be a contract pure and simple protected by the Constitution, both federal and state, from subsequent abrogation even

by the legislature unless such power be reserved. Such was the case of King's County Lighting Company v. City of New York (176 App. Div. 175, Aff'd 221 N. Y. 500)."

See also 162 N. Y. 581 where the contract referred to in the foregoing decision is set forth in full.

An examination of the decision in that case, however, discloses that it could have no application here in view of the policy and laws of this state. The New York decision is based upon a contract to supply the Town of New Utrecht with gas by a gas company. The town was subsequently annexed to and became a part of the City of New York, which succeeded to all the rights and assumed all the liabilities of the contract that existed between the Town of New Utrecht and the gas company. Subsequent to such annexation the legislature of New York passed a special act by which the price of gas furnished to New York City from any source was limited to 75 cents per 1,000 cubic feet, which was less than the price fixed in the contract entered into between the Town of New Utrecht and the gas company. New York City then refused to pay the contract price for the gas but offered to pay the company only 75 cents per 1,000 cubic feet, the price fixed by the legislature. The gas company sued to recover the contract price and the court held that the act of the legislature did not abrogate the price fixed in the contract. In this connection it is important to keep in mind that the legislature of New York, in passing the law fixing the price for gas used by New York City, did not attempt to exercise the police power of the State nor to regulate the price of gas to the public generally. That such was not the nature or purpose of the law is clearly indicated by the court in the opinion referred to. The court, in referring to the nature or purpose of the legislative act, in the course of the opinion, said: "This act touched the right of no other consumers. In no sense was it an exercise of the police power as it was not for the general public but for the defendant's (New York City's) relief, standing apart from general local consumers." In view, therefore, that the act was one merely for the benefit of New York City, the court held that in passing the act the legislature did not intend to exercise the police power of the State and did not do so, and hence the price fixed in the contract that had existed between the Town of New Utrecht and the gas company, which was assumed by New York City, should prevail. It is perhaps needless to add that under our Constitution an attempt to fix the price for any public utility service for one community only

would be of no effect since private or special laws are prohibited in this State, while such is not the case in the State of New York. The New York case can therefore have no controlling influence here.

It is, however, also insisted that the Supreme Court of Washington, in the case of State Ex Rel City of Seattle v. Seattle & R. V. R. Co., 194 Pac. 820, 15 A. L. R. 1194, sustains the contention that contracts for free public utility service to municipalities will be upheld. In that case, however, it is merely held that the Public Utilities Act of Washington does not affect the question of free public service and that there was nothing in any law of the State of Washington that did so. That such is the holding in that case is amply confirmed by reference to the annotator's notes in 15 A. L. R., supra. Moreover, if any other construction were given the decision in the Washington case just referred to, the decision would be in conflict with the decision in State ex rel Seattle v. Public Service Comm., 103 Wash. 72, 173 Pac. 737. That such would be the case is at least impliedly stated by the writer of the opinion in the case first cited from the Supreme Court of Washington. The Washington case, therefore, is likewise of no importance to a decision of the case at bar.

Referring, now, to our Public Utilities Act. We find nothing there which lends any color to plaintiff's contention. Upon the other hand, the Act teems with provisions which lead to a contrary conclusion. For example: Municipal corporations, in express terms, are included in the Act and they are there treated precisely the same as all other corporations or persons that are affected or controlled by the Act. Then again, the question of free utility service is expressly mentioned and provided for in the Act itself. Comp. Laws, Utah, 1917, Sec. 4787, among other things, provides that the Commission shall not "prevent the carrying out of contracts for free or reduced rate passenger transportation *or other public utility service* heretofore made, founded upon adequate consideration and lawful when made." (Italics ours.) The foregoing provision of the Act was before this court for construction in the case of U. S. Smelting, Ref. & M. Co. v. Utah P. & L. Co., supra. Without pausing now to add to the reasons there given why the majority of the court construed the foregoing provision as there appears, it must suffice to say that from events arising since that opinion was announced the writer at least is confirmed in his opinion that the construction there given to the foregoing provision of the statute is not only sound but is entirely practicable.

The case at bar affords a striking example of the correctness of the foregoing statement. In the case at bar it appears that although the electrical energy furnished plaintiff under the contract is stated as being "free of charge," yet the real fact is that plaintiff paid an actual consideration for such service and the Commission allowed it the sum of $9,907.00 as a part of the consideration it had paid therefor. If the construction had been given the free service provision as contended for in that case, or if the provision had been held invalid as there suggested, we would now be required to hold that the plaintiff must pay the increased rates and not be entitled to any credit whatever by reason of the provisions of the contract.

In one view that might be taken the Commission would have acted entirely within the provisions of the Utilities Act if it had permitted the company to enforce its increased rates, and in view that the Commission found that the plaintiff had in fact paid the company for the so-called free service, and had required the company to carry out the provisions of the contract respecting the furnishing of electrical energy for street lighting and other strictly municipal purposes free of charge. The Commission, however, did not pursue that course for the reason that it found that the amount paid by the plaintiff for the electrical energy for the purposes aforesaid was not an adequate consideration as that term is construed in the smelting case, supra. The Commission, after investigation, found that while the plaintiff was entitled to credit for the amount allowed, yet that that amount was less than the cost of the electrical energy required by the plaintiff for the service aforesaid according to the rates for such service which all others were required to pay. If, therefore, the Commission had enforced the contract strictly as written, it would have been forced to discriminate in favor of the plaintiff, which the Commission declined to do, but attempted to make a proper and equitable adjustment by allowing the plaintiff the credit hereinbefore stated.

The view that the Commission took is, impliedly at least, authorized by the decisions of this court to which reference has been made and is in accordance with the purposes of the Utilities Act. The purpose of that Act is to require all those who are similarly situated to pay the same rate for public utility service to the end that all shall share the burdens of such service equally and to deter public utilities from practicing favoritism. Take this case as an example. If, under plaintiff's contract, which it seeks to have enforced, it would obtain electrical energy

for less than it cost to develop and to distribute it to the plaintiff, then other cities and communities who are less fortunately situated would necessarily have to pay for what the plaintiff receives free. While such a result often arises under ordinary contracts, such cannot be tolerated under contracts for public utility service in view of the provisions of the Public Utilities Act. It is for that reason that the public utilities acts are held not to be subject to existing contracts except where the sovereign has expressly or by unavoidable implication surrendered its right to interfere with existing contracts. That, as we have seen, is not the case in this jurisdiction.

It is, however, insisted that the Commission was without power to interfere with the particular provisions of plaintiff's contract for the reason that the Commission's acts are contrary to the provisions of our Constitution, namely, Secs. 27 and 29 of Article 6. Those sections read as follows:

> Sec. 27. "The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability or obligation of any corporation or person to the state, or to any municipal corporation therein."
>
> Sec. 29. "The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions."

We can see nothing in either of those sections which prevents the State from enforcing its governmental function to regulate rates for public utility service. Section 27 clearly refers to obligations which arise out of contracts other than those pertaining to public utility service. It has so often been held that it would be useless to cite the numerous authorities that unless the sovereign has in express terms or by unavoidable implication surrendered its governmental function to regulate rates for public utility service such surrender will be held not to exist. Moreover, where the language of an act in which it is claimed the sovereign right is surrendered is open to two constructions that construction must prevail which upholds the right of the sovereign to regulate rates for public utility service. Constitutional provisions like, or very similar to, those contained in our Constitution, are, however, found in the constitutions of many states, and we are not aware

of any decision of any court of last resort where it is held that such provisions stand in the way of the sovereign's right to regulate the rates for public utility service. Upon the other hand, there are decisions which hold the contrary. See State v. Billings Gas Co. (Mont.) 173 Pac. 799; Public Service Commission v. Helena (Mont.) 159 Pac. 24; Denver & South Platte Ry. Co. v. City of Engelwood (Colo.) 161 Pac. 151; City of Pawhuska v. Pawhuska Oil & Gas Co., 250 U. S. 394, 166 Pac. 1058; City of Durant v. Consumers' Light & P. Co. (Okla.), 177 Pac. 361. See also McQuillin, Mun. Corps., Secs. 189 and 229a, 229b, 229c, where the subject is discussed at some length.

In view, therefore, that the Commission has acted in accordance with the powers conferred upon it by the Public Utilities Act, and in further view that it is not shown or even contended that the rates approved by the Commission for the public utility service here in question are unreasonable or discriminatory, we are powerless to interfere. While, as before suggested, the Commission might perhaps have been justified in enforcing the provision in the contract for free service, yet if the Commission was convinced, as it undoubtedly was, that in so doing the plaintiff would receive an advantage over other cities and communities similarly situated by being required to pay less for a public utility service the Commission was amply justified in modifying that provision of the contract as was done.

Nor is the fact important that we, or anyone else, might arrive at a different conclusion so long as the orders of the Commission are neither unreasonable nor discriminatory.

In view of what has been said, therefore, it follows that the orders of the Commission should be, and they accordingly are, sustained and affirmed at plaintiff's cost.

We concur:

(Signed) A. J. WEBER, C. J.
S. R. THURMAN, J.
J. W. CHERRY, J.

GIDEON, J. (Concurring):

I assent to the views expressed in the court's opinion that the Public Utilities Act gives the Commission plenary powers to fix rates to be charged for services by a public utility in this State such as the Dixie Power Company, regardless of existing contracts for such services so long as the rates fixed are not arbitrary, unreasonable or confis-

catory. I agree with Mr. Justice Frick in his reasoning and the conclusions reached by him respecting the sections of the Constitution quoted in the opinion and relied on by the plaintiff.

However, I consider it extremely doubtful whether the legislature has the constitutional power to give, or whether by the Public Utilities Act it has given, or attempted to give, to the Commission any authority to adjust the rights of parties growing out of existing contracts. In other words, the Commission is authorized, in my judgment, to fix rates to be charged by the utilities of the State and its orders are binding upon both the utilities and those receiving services. When the Commission has done that, it has reached the extent of its authority. I therefore withhold my concurrence in the holding of the court, at least inferentially expressed in the opinion, that the Commission was acting within the scope of its authority when it fixed the amount the utility in this case was required to pay plaintiff in the nature of damages for a breach of contract or as additional compensation for the electric plant conveyed to the predecessor of the Dixie Power Company. This latter, in my opinion, is making a new contract between the parties for the purchase and sale of property.

# APPENDIX III

## Part 2—Opinion Attorney General

November 26, 1923

Public Utilities Commission of Utah,

Gentlemen:

I am in receipt of your favor of the 16th ultimo, in which you submit the following question, and request an opinion from this office thereon:

> "This Commission desires an opinion regarding its jurisdiction over municipally-owned water works."

In reply to your inquiry I wish to direct your attention to an opinion upon the same subject given in response to a request directed by your Honorable Body to my predecessor in office, the opinion being dated January 26, 1920, and a copy of the same appearing on page 128 of volume 3 of the report of the Public Utilities Commission for the period covering January 1, 1920, to December 31, 1920. The opinion above referred to is an answer to the query presented by your letter of the 16th instant, and is as follows:

> "In response to your communication of the 17th instant, relative to the power of the Commission to regulate charges and rates of service for municipal water works, you are advised that after careful consideration of the provisions of the constitution and the Public Utilities law, we are of the opinion that the provisions of Article 11, Section 6, and Article 6, Section 29, of the constitution, grants a continuing power in cities to maintain, regulate and supervise municipal water works systems, where such are owned and controlled by the city and that the part of the Utilities law which places water corporations under the jurisdiction of the Utilities Commission should be confined to private ownership.
>
> "By Article 6, Section 29, of the Constitution, it is provided that 'the Legislature shall not delegate to any *special commission,* private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust, or otherwise; to levy taxes to select a capitol site, or to perform any municipal functions.'

"This section read in connection with Section 6 of Article 11, would seem to place the power of control of municipal water works with the city administration, and while neither of these sections are clear on the issues raised by your letter as might be desired, it would seem to have been the intent of the makers of the constitution to recognize the right of cities to regulate without interference from created commissions *such powers as are usually delegated to incorporated cities.*

"As a matter of public policy, it would seem to us that interests of the public could best be served in the matter of municipal regulation by city officers who are acquainted with local conditions and we believe that such was the intent of the makers of our constitution by incorporating therein the provisions referred to above."

The foregoing opinion expresses the views of my predecessor in office, and while I have due regard and respect for his ability and his able opinion, nevertheless I am unable to arrive at the same conclusion as was reached by him on the question presented.

In order to arrive at the conclusion I have reached and in justice to my predecessor in office, a consideration of the above quoted opinion is necessary, and I shall hereinafter discuss and analyze the opinion above referred to, and in so doing I approach a consideration of the same with the utmost deference and respect.

That law commonly known as the Public Utilities Act was enacted by the State Legislature in 1917; that the Legislature had the power to enact such a law is beyond all question, since our supreme court decided the cases of Salt Lake City vs. Utah Light and Traction Company, 173 Pac. 556; U. S. Smelting, Refining and Milling Company vs. Utah Power and Light Company et al, 197 Pac. 902; Union Portland Cement Company vs. Utah Power and Light Company, 197 Pac. 912.

The act itself will not be set forth herein but only such parts of it as are material for the purposes of this opinion.

Subdivisions "C" and "D" of Section 1, Article 2, of the Act declare that:

C. "The term 'corporation' when used in this title, includes a corporation, and association, a *municipal corporation* and a joint stock company having any powers or privileges not possessed by individuals or partnerships."

D. "The term 'municipal corporation' when used in this act, shall include all cities, counties, or towns or other governmental units created or organized under general or special law of this state."

Subdivisions X, Y and AA of the same section and article define a "water system," a "water corporation" and a "public utility" and are as follows:

X. "The term 'water system' when used in this act, includes all reservoirs, tunnels, shafts, dams, dykes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement of water for power, fire protection, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use, provided, this shall not apply to private irrigation companies engaged in distributing water only to their stockholders."

Y. "The term 'water corporation' when used in this Act, includes every corporation or person, their lesses, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system for compensation within this State; provided, this shall not apply to private irrigation companies engaged only in distributing water to their stockholders."

AA. "The term 'public utility' when used in this Act. includes every common carrier, gas corporation, automobile corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, heat corporation and warehouseman, where the service is performed for or the commodity delivered to the public or any portion thereof. The term 'public' or any portion thereof, as herein used, means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, to which the service is performed or to which the commodity is delivered, and whenever any common carrier, gas corporation, automobile corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, heat corporation or warehouseman, performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common car-

rier, gas corporation, automobile corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, heat corporation and warehouseman, is hereby declared to be a public utility, subject to the jurisdiction and regulation of the commission and the provisions of this Act. Furthermore, when any person or corporation performs any such service or delivers any such commodity to any public utility herein defined, such person or corporation and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction and regulation of the commission, and to the provisions of this Act.

"Any corporation or person not being engaged in business exclusively as a 'public utility' as hereinbefore defined, shall be governed by the provisions of this Act in respect only of the 'public utility' or 'public utilities' owned, controlled, operated or managed by it or by him, and not in respect of any other business or pursuit."

Section 1 of Article 4 of the Act defines the general jurisdiction of the Commission and is as follows:

"The Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this State, as defined in this Act, and to supervise all of the business of every such public utility in this State, and to do all things, whether herein specifically designated, or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction."

Sec 34 of Article 5 declares that:

"Sections 454, 455 and 456, Compiled Laws of Utah, 1907, and all acts or parts of acts inconsistent with the provisions of this Act are hereby repealed."

That a city or municipality furnishing water is a public utility within the definition above quoted, I think there can be no question, and a municipality owning, maintaining and operating a water plant comes clearly within the provisions of the utilities act and is a public utility within the definition above quoted. Furthermore, it answers all the tests laid down by the courts in determining whether or not a business is a public utility. This being true it is on the same footing in these matters as any other corporation engaged in similar callings. The cases hold that is a public utility.

In the case of Brumms Appeal, 12 Atl. 855, the court said:

"A municipal corporation which supplies its inhabitants with gas or water does so in its capacity of a private corporation and not in the exercise of its powers of legal sovereignty. If this power is granted to a borough it is a special private franchise made as well for private emolument and advantage of a city as for the public good. In separating the two powers, public and private, regard must be had to the object of a legislature in granting them. If granted for public purposes exclusively they belonw to the corporate body in its public, political or municipal character; but if the grant was for purposes of private advantage and emolument, though the public may derive a common benefit therefrom, the corporation *quo ad hoc* is to be regarded as a private company. It stands upon the same footing as would any individual or body of persons upon which the like special franchise had been conferred. * * * It would seem necessary to follow from the authorities, that an ordinance regulating the supply of water by a municipal corporation has the same force and no more, of a by-law of a private corporation, whose powers in this respect are of a like character and conferred for the same purposes."

In passing upon the duty of a city owning and operating a water plant to furnish water without discrimination to all persons who apply therefor, the district court of appeals of California, after citing the Brumm case, supra, said:

"Like a private corporation, it is the duty of the city to furnish without discrimination to all its inhabitants who apply therefor, a supply of water upon such applicant's compliance with such reasonable rules and regulations as may be lawfully established for the conduct of the business." Nourse vs. City of Los Angeles, 143 Pac. 801.

This in effect was holding that a city was on no different basis when operating a water plant than a private corporation, since if it was not engaged in a public service no duty would be implied to furnish service to all who might apply.

It is a popular rule of law, recognized by all the authorities, that a municipal corporation has two distinct capacities; one political or municipal, by which it exercises governmental functions; the other a private or proprietary function, and that when a municipality engages in the operation of a municipal plant it acts in the private or proprietary capacity and stands upon the same footing as

a private individual or business corporation similarly situated.

McQuillins Municipal Corporations, Sec. 1801.
3rd Dillon's Municipal Corporation, 5th Ed. Sec. 1303.
Milligan vs. Miles City, 153 Pac. 276, and cases there cited.

In view of what has been said heretofore we do not think it can be disputed that a municipality in its ownership of property devoted to a public use, does so as a legal individual subject to all the rights and liabilities to which any other person or corporation owning property of a like nature is, and in owning and operating a water works system to supply itself and its inhabitants with water, the city is not exercising its governmental or legislative powers but rather its business or proprietary powers. The purpose is not to govern its inhabitants, but to obtain a private benefit for the city itself and its inhabitants. Illinois Trust and Savings Bank vs. Arkansas City, 34 L. H. A. 525; 3 Dillon's Municipal, 5th Ed., Section 1303.

I think there could be no question at the present time as to the powers of the state to regulate, by means of its police power, persons or corporations engaged in a business charged with a public interest. The basis of this power is placed upon various grounds, one of which is that the user by the corporation of the franchise granted by the state and the power of eminent domain make it amenable to public control. The leading case upon this question is that of Munn vs. Illinois, 94 U. S. 113, and in that case the court, after reviewing the cases upon the question of power of the state in these matters, said:

> "When therefore one devotes his property to a use in which the public is interested, he, in effect, grants to the public an interest in that use and must submit to the control of the public for the common good to the extent of the interest he has thus created." Madison vs. Madison Gas and Electric Co., 108 N. W. 65.

And the cases universally hold that water companies come within this rule. In Spring Valley Water Works vs. Schottler, 110 U. S. 347, the court used this language in the course of its opinion:

> "That it is within the power of the government to regulate the price at which water shall be sold by one who enjoys a virtual monopoly of the same, we do not doubt. That question is settled by what was dedecided on full consideration in Munn vs. Illinois."

The cases supporting this doctrine and showing that water works systems are subject to control, are too numerous to cite here, but they may be found in a case note in 61 L. R. A., pages 99, 100, 116.

It is now well established that whenever there is any doubt as to the reservation of the power of regulation in the state, it must always be resolved in favor of the public. It is equally well settled that the regulation of municipal public utilities is the exercise of a sovereign power (Milwaukee Electric Railroad and Light Company vs. Railroad Commission, 238 U. S. 474; Pond on Public Utilities, Section 418) and that a delegation of any such power must appear in clear and unmistakable terms. Pond on Public Utilities, Sec. 418; Home Telephone and Telegraph Company vs. Los Angeles, 211 U. S. 265; Salt Lake City vs. Utah Light & Traction Company, 173 Pac. 556; State vs. Billings Gas Co., 173 Pac. 799; City of Woodburn vs. Public Service Commission, 161 Pac. 391; State vs. Burr, 84 So. 61-79.

The rule is well stated by Mr. Pond in his work on Public Utilities, Section 418, in the following language:

> "The power of the state to regulate municipal public utilities, which includes the power to fix and control the maximum rates that they may charge for their service, however, is a sovereign power which our courts hold can be delegated to municipal corporations only in express terms of by clear or necessary implication. While the legislature has the right to fix the price at which gas, water, electric lights or any other municipal public utility service shall be supplied by one who enjoys the special privilege of providing such service by reason of the grant of special franchise rights to that effect, the courts will not presume that such a right is vested in the municipality unless it has been granted by the legislature expressly or by clear implication. The right, however, may be delegated by the state to municipalities or other agencies or commissions in the absence of a constitutional limitation to that effect and except as to vested interests and valid outstanding contract rights."

The rule is again stated in the following language by the United States Supreme Court:

> "This power of regulation is a power of government continuing in its nature, and if it can be bargained away at all, *it can only be by words of positive grant* or something which is in law equivalent. If there is reasonable doubt it must be resolved in favor

of the power. In the words of Chief Justice Marshall in Providence vs. Billings, 4 Peters, 514, at page 561: 'its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon does not appear.' This rule is elementary and cases where it has been considered and applied are numerous."

Freeport Water Co. vs. Freeport, 180 U. S. 587.
City of Benwood vs. Public Service Commission, 83 S. E. 295.

In the light of the above quoted provisions of the Public Utilities Act, there can be no reasonable doubt that the legislative intent was to make the public utilities act the supreme law of the state in the regulation and supervision of public utilities. This being true it follows as a necessary sequence that all prior laws whether in the form of statute or ordinance, inconsistent with the powers thus conferred, must be held to be superseded. Therefore the municipality or its water works department in supplying water, being in the nature of a public service corporation as to rights and service, is subject to the supervision and regulation of the Commission under the Public Utilities Act,—unless, by virtue of a constitutional provision, it is exempt from the operation of those provisions, and that notwithstanding the express and positive declaration of the Utilities Act, the municipality, in selling and supplying water, is engaged in a business of purely municipal and local concern, which matters are by the constitution intended to be committed to local self-government and that this is especially true of the regulation and fixing of water rates and service because this concerns affairs only of internal municipal government and that therefore the city, in performing such service, is consequently entirely free from state regulation and supervision.

This leads us then to a consideration of the question as to whether or not such power has been and is conferred upon the municipality by the provisions of the constitution, since if it exists at all it must be by reason of a constitutional provision, and it also leads to a consideration and discussion of the opinion of my predecessor in office, which has heretofore been set forth.

In the consideration of the provisions of the Constitution it must be borne in mind that the provisions of our state constitution express the *limitations* which the people set upon the governmental agencies. This rule has been aptly stated by the Montana Supreme Court in the case of the Public Service Commission vs. Helena, 159 Pac. 24.

"Our state constitution was intended to express the limitations which the people set upon the various agencies of government, even upon themselves. All political power is vested in and derived from the people, and therefore we should not expect to find in the constitution any grant of power from the people to themselves either directly or through any governmental agency. Though some provisions assume the form of grants, in reality they but delimit the power or authority to which they refer. * * * The elaborate provisions for the security of the people of the state and of every political subdivision against their own possible improvidence constitute one of the distinguishing features of our fundamental law. Since it is the rule that the constitution limits rather than grants power, any provision open to construction should be held to be within that general rule, unless a contrary conclusion is forced by the circumstances of the particular case."

There are also certain well defined rules which apply in determining whether or not the power of regulation is conferred by the provisions of the constitution. The rule and reason has been simply stated by Mr. Justice Scott in the case of City and County of Denver vs. Mountain States Telephone and Telegraph Company, 184 Pac. 604-616, in the following language:

"There are two universally accepted rules of construction by which the court must be governed in determining whether or not these provisions of the constitution, or any one of them, may be held to confer upon the city the rate regulating power over public utilities within the city. The first of these is that the provision or provisions of the constitution must appear to as clearly express the power claimed to have been conferred upon the city, and in language as free from ambiguity as those provisions of the state alleged to be in conflict with the organic law.

"The second rule is that laid down by the supreme court of the United States in the case of Milwaukee Railway Company vs. Wisconsin Railway Commission, 238 U. S. 174. 'The fixing of rates which may be charged by public service corporations of the character here involved is a legislative function of the state, and while the right to make contracts which shall prevent the state, during a given period, from exercising this important power has been recognized and approved by judicial decisions, *it has been uniformly*

*held in this court that renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction.* This proposition has been so frequently declared by the decisions of this court as to render unnecessary any reference to the many cases in which the doctrine has been affirmed. The principle involved was well stated by Mr. Justice Moody in Home Telephone Company vs. Los Angeles, 211 U. S. 265. 'The surrender by contract of a power of government, though in certain well defined cases it may be made by legislative authority, is a very grave act and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature (in this case the legislature of the state) has the authority to make such a surrender unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality or of any other political subdivision of the state are not sufficient. Specific authority for that purpose is required.' This language was spoken of granted by the legislature as representative of the sovereign power of the state. If it shall apply in such case then with what greater force should it be regarded when applied to constitutional grants of power."

The first constitutional provision which it is said deprives the Commission of jurisdiction over municipally-owned water works systems is section 6 of Article 11, which reads as follows:

"No municipal corporation shall directly, or indirectly, lease, sell, alien or dispose of any water works, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such water works, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, that nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water rights, or sources of water supply, for other water rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants."

The very language of the above quoted section of the constitution shows conclusively, I think, that it was in-

tended to be, and is in fact, a direct limitation of the power of the municipality, rather than a grant of power to it. Note the language used, "no municipal corporation shall directly or indirectly lease, sell, alien or dispose of any water works, water rights or sources of water supply now owned or to be owned or controlled by it; but all such water works, water rights and sources of water supply now owned or hereinafter to be acquired by any municipal corporation, *shall* be preserved, maintained and operated by it for supplying its inhabitants with water at *reasonable* charges."

The whole tenor of the provision is nothing more or less than an express limitation of power and an inhibition against any municipality disposing of its water works to the detriment of the welfare of its citizens; in other words, it simply guarantees to the citizens of a municipality that water supply which is so essential for their welfare, and thus the municipality may not deprive them of either, by directly or indirectly disposing of it, nor may it charge excessive or unreasonable rates. The use of the word "reasonable" in this section carries with it a limitation of power rather than a grant of same and to my mind shows conclusively that the power of regulation and supervision was intended to be and is, reserved in the state. Our own supreme court has in effect so held in the cases of the United States Smelting and Refining Company vs. Utah Power & Light Company, supra; City of St. George vs. Public Utilities Commission, * * * Utah * * * .

In the case of Winfield vs. Public Service Commission, 118 N. E. 535, a question somewhat kindred in its aspect to the one here considered was there before the court. The statute under which a contract was made by a city with a public service corporation was under consideration. The statute under which the contract was made, empowered the Board of Public Works to authorize * * * telephone companies to use any street, alley or public place in such city and erect necessary structures therein, to prescribe the terms and conditions of such use and to fix, by contract, the price to be charged to patrons, subject to the approval of the common council. With reference to this the court said:

> "Such general provisions are held not to grant authority to cities to make contracts binding the state to any exemption therein stated in favor of public service commission from state regulation."
>
> Milwaukee Railway Company vs. Commission, 238 U. S. 174;

City of Benwood vs. Commission, 83 S. E. 295. And later in the same opinion, the court said this:

> "Section 8938 further provides, in substance, that in such franchises the cities and towns shall also provide for the terms on which such water * * * electricity, etc., shall be supplied to the city or town, and to its inhabitants, as well as reasonable license fees or other compensation to be paid such city or town for any such franchise or privilege * * * The city and the utility company are not at liberty, under this section, to contract as they please, independent of the state's supervisory powers. The power to declare what is reasonable in such matters is primarily a legislative function, hence the force of the provisions that such fees and compensation *must be reasonable. The state gives up by this provision, none of its power or right to determine what is a reasonable fee or compensation, but reserves this right and power, and by the use of the word "Reasonable" restricts the power of the city.* Milwaukee Electric Company vs. Commission, 238 U. S. 174."

Our own supreme court in the traction case, supra, and the case of the City of St. George vs. Public Utilities Commission, ————Utah———— are to the same effect.

Pursuing an analogy of reasoning, may it not be said with equal force that if the municipality cannot exercise the power of regulation to the exclusion of the state where a contract of fixed rates is involved between the city and the Public Service Corporation under the language above quoted—that it cannot exercise this same power to the exclusion of the state simply because it owns the utility? May a municipality exercise a power to the exclusion of the state, which is denied it in one instance where a third party is concerned, where in the other instance it stands in the same position as that third party? I think not. If it could, then the municipality by the simple expedient of ownership of the utility eludes and escapes that power of regulation and control which remains with the state at all times, it being an attribute of sovereignty.

There is still another and cogent reason why this section of the constitution is not a grant of power to the municipality to regulate. As we have heretofore seen, such a grant must be in clear and unmistakable terms. Can it be said with any force that this supposed grant meets this test? Where are the terms which are clear and unmistakable? The only language that could possibly serve

as a basis for the contention that such a grant of power was intended, is the following:

> "shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges."

As has been heretofore said and pointed out, the very use of the word "reasonable" negatives the idea of the surrender of the power of regulation, even if we were to assume, which we do not, that this power could be delegated or surrendered.

Numerous courts have had occasion to pass upon language similar to that above quoted and in many respects much stronger for the purpose of determining whether or not such language expressly or by necessary implication conferred the power to regulate to the exclusion of the state, and in practically every instance it has been held that it did not.

In the case of the Public Service Commission of Montana vs. Helena City, 159 Pac. 24, which is a case nearly on all fours with the question here involved, the city owned its own water system and declined to submit to the jurisdiction of the Public Service Commission, contending that because of certain constitutional provisions, which are similar to those under consideration here, the Commission was without jurisdiction. It was there contended and urged that that part of Section 6, Article 13, of the Montana State Constitution, which reads as follows, deprived the Commission of jurisdiction:

> "When such increase is necessary to construct a sewerage system or to procure a supply of water for said municipality, *it shall own and control said water supply* and devote the refund derived therefrom to the payment of the debt."

It was there urged, that the constitution by the use of the words "own and control" had taken from the legislature all power of whatsoever nature over such plants. The court declined to adopt such a construction and in the course of its opinion said:

> "If the language of the concluding sentences of section 6, article 13 above, should be held to secure the City of Helena, the control of its water system to the exclusion of everyone else, the state included, it follows of course that the state has surrendered to the city all police power with reference to such system and that if it should transpire that the water supply became contaminated, spreading contagious disease

generally, the state would be helpless and could not interfere. We decline to adopt such a construction, since, as we view it, the language of the constitutional provision does not lead to that conclusion."

There are innumerable cases where the language used in the constitution was much broader in its terms than used in section 6 of our constitution, and it has been universally held that it did not confer either expressly or impliedly, the power to regulate to the exclusion of the state's power in that regard. A few of such cases are as follows:

Salt Lake City vs. Utah Light & Traction, 173 Pac. 556.

Cleveland Telephone Co. vs. City of Cleveland, 121 N. E. 701.

Traverse City vs. Railroad Commission, 168 N. W. 481.

City of Portland vs. Public Service Commission, 173 Pac. 1178.

State ex rel. vs. Telephone Company, 86 S. W.41.

City of Woodburn vs. Public Service Commission, 161 Pac. 391, A. C. 1917 (E) 996.

Milwaukee Electric Co. vs. Railroad Commission, 238 U. S. 174.

Freeport Water Company vs. Freeport, 180 U. S. 587.

Benwood vs. Public Service Commission, 83 S. W. 295.

The rule is laid down by McQuillin in his work on corporations as follows:

"Power conferred on a municipality to regulate the use of its streets does not authorize it to regulate the charges of a public service corporation, nor does power to regulate the manner of construction, nor does power to regulate public service corporations, coupled with the power to license and tax them, nor can a municipality regulate rates because of a general welfare clause in its charter, so since the power to regulate rates *is not a power pertaining to the government of the municipal corporation,* it does not follow as an incident to a grant of power to frame a charter for a municipal government. 4 McQuillin Municipal Corporation, Sec. 1736, Page 3707; State ex rel Webster vs. Superior Court 120 Pac. 861."

It will hardly be contended that the municipality is not liable as any other owner of property would be for

torts committed in the operation of its plant. The use of the words "preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges" do not, therefore, take it out of the class of private as distinguished from public or municipal functions of the municipality. This leads to the conclusion that the language in Section 6, Article 11 of the constitution, even when given its broadest and most comprehensive meaning, means no more than the water works are private property and that the municipality maintains and operates them as a private corporation and that it may not lease, sell, alien or dispose of them to private interests, nor charge unreasonable rates.

Therefore, I do not think that the language of this section abrogates the power of the state to control the city or municipality in the use of its property devoted to a public use. Exemption of such control can only be assumed from clear and express grant, never by implication. The state must not be held to have granted away or abrogated its police power if there is any other reasonable construction to put upon the language.

Freeport Water Company vs. Freeport, supra.

The second proposition of the constitution which it is said forbids the Commission from exercising jurisdiction is Section 29 of Article 6, quoted below. This contention is evidently based upon the theory that the legislature was inhibited by this section from delegating or giving jurisdiction to the commission. The section reads:

> "The legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions."

Manifestly the foregoing section has no application here. By its very language it relates to improvements among property or effects owned or held by the municipality in its governmental or public capacity, not to property held by the city in its proprietary capacity or as a private corporation. Likewise the functions which the legislature is prohibited from delegating to a special commission are municipal functions. But in the ownership and operation of a municipal plant the city is not performing municipal or governmental functions. Helena Consolidated Water Company vs. Steele, 20 Mont. 1;

49 Pac. 382; Orcutt vs. Pasadena Land and Water Company, 93 Pac. 490; Milligan vs. Miles City, 153 Pac. 276.

While ownership and operation of a municipal water plant may be one of the things a municipality can do, it does not necessarily follow that it is a municipal function because it does so.

Nor is the Commission a special commission within the terms of the constitutional provision above quoted.

Public Service Commission vs. Helena City, 159 Pac. 24;
Salt Lake County vs. Salt Lake City, 134 Pac. 560.
McQuillin Municipal Corporations Suppl. Vol. 7, Sec. 189.
Star Investment Company vs. City and County of Denver. Pur. 1920 B. 684-692.

In case of the Public Service Commission vs. Helena, supra, the court in discussing a section of the Montana Constitution practically identical with ours, held that:

> "Laws of 1913, shapter 52, creating and defining the powers of the Public Service Commission, does not infringe constitution, Article 5, Sec. 36, prohibiting delegation of powers to special commissions; the Public Service Commission not being a 'special commission' within its terms."

McQuillin on Municipal Corporations also lays down the same rule in the following language:

> "The constitutional provision existing in many states that municipal functions shall not be delegated to Commission or special commissions, is not violated by legislative acts, * * * creating public service or utility commissions and conferring upon such commissions all powers relating to service and rates of all public service commissions or operating utilities operating in the state, including those operated and owned by municipalities."
>
> McQuillin Municipal Corporations, Suppl. Vol. 7, Sec. 189.

A number of other states have constitutional provisions identical with or equivalent to Section 29, and a review of the cases decided where that particular section was involved, fails to disclose a single case in which it has been held that it was a limitation upon the rate regulating power of the state or the Commission.

In view of the foregoing, I think that two things are quite apparent: First: That the Utilities Commission is

not a special commission within the meaning of Section 29, Article 6.

Second: That the provisions of this section do not apply to a property held by a municipality in its capacity as a private corporation. Hence control by the public utilities commission of the service and rates rendered by a municipality in operating a water plant are not supervision or interference with municipal improvements, moneys, property or effects or the performance of a municipal function within the meaning of Section 29, Article 6.

It was stated in the prior opinion from this office, set forth above, that because of these constitutional provisions that "it would seem to have been the intent of the makers of the constitution to recognize the right of cities to regulate without interference from creative commissions such powers as are *usually delegated* to incorporated cities." The answer to that proposition is quite simple and is this,—that since the power of regulation is a sovereign power, it cannot be and is not usually delegated to cities or municipalities to the exclusion of the state.

As was said by Mr. Justice Frick in the case of the City of St. George vs. Public Utilities Commission,———— Utah————:

> "It would be a work of supererogation to refer to or to attempt to review, the other cases of this court to show that there is no decision emanating from this court in which it is intimated, much less held, that the State has to any extent or at any time surrendered its sovereign right to exercise its governmental function of regulating rates for public utilities' service.
>
> "Neither is there anything in Sec. 206x20 of Chapter 120, supra, that by any fair interpretation can be held to constitute an alienation of the State's right to regulate rates for public utility service, not excepting the rates fixed by municipalities, whether by contract or otherwise.
>
> "Upon the other hand, the legislature of this State has always acted upon the theory that the police power inherent in the State has never been surrendered. That such is the case is clearly manifested in the Public Utilities Act itself and in the subsequent amendments thereof, as will hereinafter appear."

I take the view that all municipalities have the right of local self-government, with all incidental powers, in-

cluding full control and supervision of other local and municipal matters, but that the regulation of public utilities not being a local or municipal matter that power has been reserved by the state, and has been conferred upon the public utilities commission, and our own supreme court has so held in several cases heretofore referred to.

Obviously the purpose of the Public Utilities Act was to establish a complete and uniform system throughout the state and for the supervision and regulation of public utility service, whether furnished by individuals, corporations or municipalities and to create an administrative agency of the state for the enforcement of such powers as were conferred by that statute.

As aptly stated by the Missouri Supreme Court the act "is an elaborate law bottomed on the police power and intended to provide a complete rounded scheme for dealing with the business of public utilities at every spot where the shoe pinches the public utility." State ex rel. Barker vs. Kansas City, 163 S. W. 854.

This conclusion does not mean that a municipality may not under its police power prescribe reasonable regulations as a protection to the health, lives, property and safety of its inhabitants and all who may be within its corporate boundaries even as applied to public service corporations, but such regulations are incident to the police power and must be so restricted. Under the guise of a police power a municipality cannot, any more than a public service corporation, undertake to prescribe water rates containing inequalities, unjust discrimination, undue preferences or advantages contrary to the public utilities act and free from state investigation and regulation by the commission. Under the express terms of the statute the regulation of the rates and service is the exclusive function of the Public Utilities Commission. The Legislature has so declared and what the law making body does within the limits of its power, becomes a rule of action binding upon all branches of government, state or municipal, and upon the people as well. York Water Company vs. York, 95 Atl. 396.

My conclusion, therefore, is that the Public Utilities Act of Utah is the supreme law of Utah and supersedes all other laws in whatever form for the supervision and regulation of the service and rates of all public utilities of the state, whether owned or operated by individuals, private corporations or municipalities, and that the constitutional provisions hereinbefore referred to in no way

inhibit the state or the Commission from exercising the powers conferred upon them by the act, and that there is nothing in the constitution or in the theory of self government inconsistent with the provisions of the Utilities Act and the authority vested in the commission created thereby, and that therefore within the terms of this law the Commission has the jurisdiction to supervise and regulate the rates and service of municipally-owned water works systems.

I trust that the foregoing fully answers your query and gives you the desired information.

Yours very truly,

(Signed) HARVEY H. CLUFF,
Attorney General.

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