

and a statement of the equipment to be used, consisting of five three-ton and two five-ton trucks. Applicants allege that they will perform a daily service throughout the year, as opposed to the weekly service of the Motor Transit Company during the winter months; that their rates are lower than those of the Motor Transit Company, which are unreasonably high; that the service of the Motor Transit Company is inadequate in that it has failed to furnish equipment sufficient to handle the tonnage offered; and that shippers prefer to patronize applicants, rather than Motor Transit Company, which is principally a passenger carrier.

The complaint of San Bernardino Chamber of Commerce, a voluntary civic association, against Motor Transit Company, a corporation, seeks the revocation of defendant's operative rights between San Bernardino, Redlands and all points in the San Bernardino Mountains which it now serves. In respect of this service, complainant makes the following charges against defendant, viz. (1) Discrimination in passenger operations between persons and places as to rates, fares and service; (2) giving free transportation or reduced fares to persons not entitled thereto; (3) unauthorized abandonment of through passenger service as to certain parts of its route; (4) abandonment of freight operations during the summers of 1922 and 1923; (5) inadequate freight service during the summer of 1924 in that much of the business was handled on trucks leased on a percentage basis, contrary to the Commission's orders; (6) granting of unlawful rebates to freight shippers; (7) loss of confidence by the communities served in defendant's ability to render adequate service; and (8) the failure and inability of defendant to render an adequate freight or passenger service to the mountain section. In its answer, defendant Motor Transit Company specifically denied all the allegations of the complaint, and also raised certain objections to the form of the complaint, particularly to the failure to state

the details of the acts or omissions charged. The parties, however, proceeded to trial upon the issues thus joined without further objection to the form of the pleadings, so these formal objections need not be considered further.

Public hearings were held at San Bernardino and the proceedings were consolidated for the purpose of taking testimony and for decision. Evidence was adduced, the matters were duly submitted following the filing of briefs and are now ready for decision.

I shall first discuss the application of Lingo Brothers for a certificate authorizing the operation of a freight service.

Application of Lingo Brothers

The territory proposed to be served is situated in the San Bernardino Mountains at an altitude of about 7000 feet above sea level. Consisting entirely of pleasure resorts, it has a summer population of over 7000, and about 500 in winter. In the summer season which begins in May and closes in October, about 67 resorts are open in the Big Bear section and thousands of cabins and private residences are occupied; in winter about 5 resorts are open in Big Bear and most of the private houses and stores are deserted. The population of the Arrowhead section is not definitely shown, however, it is much smaller than Big Bear. Since 1920 property values and the number of structures have increased greatly in both sections. The stores and other business places exist only to supply the needs of the mountain population, there being no industries of any importance. Hence practically all the freight business is inbound. There are four routes from San Bernardino to Big Bear Valley at the eastern end of the mountains, including Baldwin Lake and Big Bear Lake, viz., the City Creek road, a distance of 38 miles; the Mill Creek road, which is operated under control, a distance of 48 miles; the Rim of the World route, a distance of 65 miles; and the Desert route, a distance

of 96 miles. The latter is not used in summer, but during the winter it is the only feasible route, the others being impassable. Lake Arrowhead lying at the western end of the mountains is reached directly by the Waterman Canyon route, a distance of 23 miles from San Bernardino.

In 1920 the San Bernardino Mountain Auto Company, then operating a motor freight and passenger service to this territory, sold its right to Motor Transit Company which ever since has continued the service. The Motor Transit Company has protested the granting of the application, and has appeared as a defendant in the proceeding brought by the San Bernardino Chamber of Commerce.

The applicants propose a daily summer freight service via the City Creek route, to be continued in winter as long as the roads are open. When that route is impassable, they propose to use the Desert route, and to curtail their service as to the points reached. As far as possible trucks will operate daily throughout the winter. Higher rates will be imposed for operation over the Desert route in winter, but the summer rates will prevail so long as the summer route is open. Applicants proposed to use 10 trucks, comprising 3 5-ton trucks for heavy building materials, and 7 2½-ton trucks for other traffic. Of these they now have on hand 7 trucks including 2 5-ton, and 5 2½-ton trucks. But three or four of these trucks will be used during the winter, it being necessary to find additional employment for the rest of the equipment. It is estimated that about four trucks will be idle during the winter season. These trucks were purchased by applicants since 1920 at a total cost of about \$48,000, including all appurtenances, of which amount about \$8000 remains unpaid. The three trucks to be acquired will cost about \$15,000. Applicants estimate the present value of their equipment at from \$30,000 to \$35,000, from which they have deducted their total debts of about \$12,000, leaving a present worth of from \$18,000 to \$23,000. The purchase of this equipment was financed by Mr. E. M. Lach of Rialto and his associ-

ates. Mr. Lash testified that in the past Lingo Brothers had promptly met all payments on their trucks, and that he would finance them in purchasing three more trucks, which will be sold under conditional-sale agreements, the title to be retained by Mr. Lash until payment has been made.

Applicants have established a freight depot at San Bernardino and propose to open one at Redlands; no such facilities will be provided in the mountains as store door delivery is there contemplated.

A number of shippers testified in behalf of applicants as to the need for additional freight service between San Bernardino and the mountains. In the aggregate their shipments would amount to about 6½ tons a day. One of the applicants testified that during the summer they expected to handle from 8 to 10 truck-loads daily to Arrowhead and Big Bear; in the winter the shipments would aggregate from 3 to 4 tons daily to Big Bear, and from 1½ to 2½ tons daily to Arrowhead. In addition applicants expect to haul daily ^{one} tank-car load of fuel oil to Big Bear and another to Lake Arrowhead.

Several witnesses called by applicants described the need for hauling heavy commodities such as building materials and cement. John D. Bates, a contractor, stated he had requests for hauling three to five tons a week of building material; John Dexter, a sawmill operator, shipped in about five tons a month of building materials, all of which moved in the private trucks of the supply houses, as he had found that finished lumber products were damaged when hauled by the Motor Transit Company in mixed loads; such, also, was the testimony of J. F. Loughton, a contractor, who ships from six to ten tons a week of lumber and building supplies; D. C. Swartz, in charge of the San Bernardino County garage at Colton, stated that in 1924 Lingo Brothers hauled some heavy road machinery from Little Bear to San Bernardino which the Motor Transit Company would not handle, and he testified that the need for similar ser-

vice, would arise about twice a year; J. E. Heuck testified that Lingo Brothers hauled from 50 to 100 tons of building material for him to the Arrowhead district in 1923, and that he himself hauled a smaller quantity in 1924, none of which was handled by Motor Transit Company because of its inability to deliver the shipments direct to him. Similar testimony was given by others as to the need for heavy hauling.

One of the applicants related a conversation had during May, 1922, with Mr. C. S. Fuller, President and General Manager of Motor Transit Company, when the latter consented to Lingo Brothers hauling a large quantity of building material for the Arrowhead Lake Company in connection with a large building project, his testimony being corroborated by two witnesses who heard the conversation, and also by a representative of the Arrowhead Lake Company, who stated he had been advised by a representative of Motor Transit Company that the latter would not bid on heavy hauling. In explanation of this, Mr. F. D. Howell, Vice President and Assistant General Manager of Motor Transit Company, stated that they offered a lower bid than Lingo Brothers, but the latter were given the contract because the Arrowhead Lake Company could exact more from them in connection with this work than from Motor Transit Company. Mr. Lingo testified that applicants had been engaged in truck contracting and heavy hauling since 1919. Their operation, involving hauling under contracts between Colton and San Bernardino, on the one hand, were found illegal, and they were ordered to desist by the Commission's decision in MOTOR TRANSIT COMPANY vs. ED LINGO, et al., Case No. 1729, Decision No. 12907, decided December 7, 1923. During the winter of 1923-1924, the applicants hauled oil to Arlington Lodge, on Lake Arrowhead, at the request of the Manager, who preferred their service to that of Motor Transit Company which, he stated, was confined to express and mixed loads. Mr. Lingo stated that in so doing he

acted under the advice of counsel.

In this connection it appears that other operators, for the most part uncertified by this Commission, are handling about 30% of the total volume of freight moving to the mountains, at charges lower than those of the Motor Transit Company. One witness estimated that other operators, including the supply houses using their own trucks, handled three times as much building materials as Motor Transit Company.

As part of its service applicants offer a store-door delivery to all points on its route. Several of applicants' witnesses expressed a desire for this, stating that it would be a convenience and that Motor Transit Company had failed to accord them this privilege. One witness complained of the failure of Motor Transit Company to consolidate his shipments which in the aggregate exceeded 2000 pounds, the minimum which that company would deliver at his store. As a result the shipments were delivered at the depot, where he had to call for them, and minimum charges were assessed upon several of the packages resulting in charges higher than those which would apply were the shipments combined. Mr. Howell explained that wherever the combined load exceeded fifty pounds no minimum charge was imposed, but occasionally separate collect shipments were received after the truck was loaded which could not then be practically combined with other shipments destined to the same consignee. However, they were endeavoring wherever possible to combine the shipments. Mr. J. C. Skinner, Manager of Pine Knot Lodge at Big Bear, the largest shipper in that region, expressed satisfaction with the delivery of truck loads only at his door; for smaller shipments he was willing to go to the depot. Another witness in Bear Valley stated that store-door delivery would be a great inconvenience to him.

Some objection was voiced by resort owners and merchants to the late arrival of perishable freight by Motor Transit service. Its truck carrying perishables now leaves San Bernardino at 5 A.M., scheduled to reach the mountains before noon but, according to the evidence, it is frequently late. Applicants propose to operate two refrigerator trucks, one serving Big Bear and the other, Lake Arrowhead. Perishables will be picked up at Redlands at 5 P.M., and at San Bernardino at 6 P.M. and stored on the trucks overnight. The Big Bear truck will leave San Bernardino at 5 A.M. and the Arrowhead truck at 4 A.M., both reaching their destinations at 8 A.M. Several merchants testified they would find such a service convenient and would patronize it, in preference to the Motor Transit service, and to local peddlers selling produce in the mountains. The manager of the Lake Arrowhead branch of Youngs Market stated that the Motor Transit Company's truck carrying perishables arrived too late, hence they were obliged to use their own truck. A produce dealer at San Bernardino testified that the Motor Transit perishable service leaving that point at 5 A.M. was too early, inasmuch as he did not receive produce from Los Angeles in time to load it on the truck. In his opinion the 8 o'clock service formerly maintained by Motor Transit Company was preferable. He stated he would use applicants' proposed service, loading produce on the trucks on the evening before shipment. However, other dealers and resort owners in the mountains testified that the Motor Transit service was satisfactory, that no shipments had been damaged, and that an icing-truck service was unnecessary. Three of these witnesses, one of whom had formerly operated two produce markets, stated that applicants' proposed perishable service would be impracticable and unsatisfactory in that applicants would not be able to handle fresh produce, but only picked-over produce of the day before. They stated that fresh produce from the Los Angeles markets, which is the source of supply for all

produce sold in the mountains, could not be delivered earlier than at present.

Applicants propose to furnish a daily winter service as opposed to the weekly service now afforded by Motor Transit Company. The City Creek route will be used so long as it is passable; when it is blocked by snow, the Desert route will be used. While operating over the Desert route applicants will serve only Cedar Glen and the north side of Lake Arrowhead, where freight will be delivered. From this point the consignees will be obliged to transport their freight in boats to points across the lake. Three witnesses called by applicants testified to the need for more frequent winter service for the transportation of supplies, oil and gasoline, one of them complaining of the failure of Motor Transit Company to operate beyond Pine Knot. Various witnesses estimated the winter population in the mountains at from 350 to 500 people; over the holidays there is an influx of persons seeking winter sports, the extent of this movement not being clearly shown by the record, but their number is substantial. On behalf of applicants the Weather Bureau observer at Squirrel Inn, in the Arrowhead section, stated that although the period of snow continued from January to April, the roads were open daily if constantly used, but if travel ceased because of heavy storms the roads would be impassable for three months at a time. A resort owner near Pine Knot, who had remained in the mountains during seven winters, testified that he had been snowed in only once and then for two weeks. Mr. Lingo testified that the roads have been greatly improved since 1920, and daily operation will keep them open throughout the winter. Witnesses were called by Motor Transit Company who described the severity of the winters in the mountains, stating that the roads were blocked and daily operation impossible. A witness who had been in the valley nine winters said that daily truck operation was impossible.

Another witness stated that winter operation over the Desert route was extremely hazardous. However, one of protestants' witnesses admitted that an experienced driver could get through in winter. Two of protestants' witnesses expressed the opinion that daily truck service would not be profitable to the operator. On behalf of protestant, Mr. Howell stated that his company, in fulfillment of its promise, would inaugurate a tri-weekly service to Big Bear during the winter of 1924-1925.

Some complaints were made of the inadequacy of the Motor Transit service, such as discourtesy on the part of its San Bernardino representative, and its failure to adjust damage claims promptly. It was also charged that the Motor Transit Company discouraged the filing of damage claims by permitting and encouraging its drivers to create the impression among the shippers that the drivers themselves would ultimately bear the loss in all instances. This was denied by Mr. Howell, who stated that only in case of continued or culpable negligence, or willful act, of any driver was he personally held responsible. The charge of discourtesy was denied by the agent in question, who was called as a witness; and it appeared from a statement filed by protestant that most of the damage claims had been satisfactorily adjusted.

The protestant, Motor Transit Company, called fourteen witnesses from various parts of the mountains, who endorsed its service. Many of them are large shippers; so far as they were questioned regarding the volume of their shipments it appears that in the aggregate their shipments by Motor Transit amount to about 450 tons of freight during the season. In substance, they testified that the Motor Transit freight service was satisfactory, that there was not room for two competing freight lines in the territory, and that an additional competitive freight service might impair the present satisfactory passenger service.

I shall now consider the complaint of the San Bernardino Chamber of Commerce against the Motor Transit Company (Case No. 2036), seeking a revocation of defendants' operative rights in the San Bernardino Mountains.

The issues involved in this proceeding are substantially as follows:

(1) That the Commission is without jurisdiction in that the institution of the proceeding was unauthorized, and that the complaint shows on its face that we are without jurisdiction.

(2) That Motor Transit Company has in part abandoned the operation of its passenger and freight service.

(3) That the service of Motor Transit Company has been inadequate, resulting in the loss of public confidence.

(4) That the Motor Transit Company has been guilty of unlawful discrimination, in respect to its rates and fares, including the granting of rebates and the unauthorized granting of free transportation or reduced fares, and also in respect to its service.

I shall discuss the evidence bearing upon these points.

Jurisdiction of the Commission.

The defendant asserts that the filing of the complaint and the prosecution of this proceeding was not authorized by the complainant, San Bernardino Chamber of Commerce, and that therefore the Commission is without jurisdiction to entertain the matter. The record shows that a committee was duly appointed by the Chamber of Commerce to consider the filing of this complaint, with full power to institute the proceeding should the committee in its discretion believe that such action was warranted. Furthermore, the committee's action in filing the complaint was ratified by the Chamber at a subsequent meeting. Therefore, I conclude that the filing of the complaint was authorized and that the matter is properly before the Commission.

Defendant also contends that inasmuch as this is a quasi-criminal proceeding, the complaint is too general in its allegations

to confer jurisdiction upon the Commission. This proceeding is in no sense criminal, the only relief sought being the forfeiture of defendant's certificate. While the complaint is not^{to} be commended as a model of precise pleading, nevertheless under the liberal rules of procedure which are followed by the Commission, I believe its allegations are sufficiently specific to apprise defendant of the charges against it. The ultimate facts are alleged, which is all that can be required.

Abandonment of Service.

The Motor Transit Company extended its lines to the San Bernardino mountains in 1920, when it acquired the operative rights and equipment of the San Bernardino Mountain Auto Line, which had served this territory since 1913. Complainant contended that defendant's service in this field had steadily decreased since 1920, notwithstanding the great increase in population and freight tonnage.

Perry Green, formerly one of the co-partners engaged in conducting the Mountain line, testified that in 1920 the company had 17 1½ and 2-ton White trucks, used for both freight and passenger service, having a total freight carrying capacity of 44 tons. In the absence of records, he could not state the tonnage handled. Dexter Jones, a truck driver employed by Lingo Brothers, testified that in 1920 the Mountain line operated from 15 to 20 trucks of a capacity of 2½ tons each, while in 1924 the defendant had but 6 2-ton and 1 ½-ton trucks in service. He was unable to state the tonnage handled. Max E. Green, formerly one of the partners conducting the San Bernardino Mountain Auto Line, and now defendant's traffic manager, testified that in 1920, 18 trucks were sold by the Mountain line to defendant of which only half were then in good condition. Mr. F. D. Howell, defendant's vice-president, described the equipment used in 1920 and subsequently, using the factory rating to gauge its capacity. A summary of the

statement submitted (Exhibit 7) shows the capacity of the equipment to be as follows:

1920,	25 tons,	274 passengers	(not including leased cars)
1923,	31 tons,	562 "	(including leased cars)
1924,	33 $\frac{1}{2}$ "	562 "	" " " "

This includes cars convertible into freight or passenger carrying vehicles, and represents the total capacity whether the cars be used for freight or passengers. It was necessary, he stated, to rebuild half the equipment acquired from the Mountain line in 1920. Since 1924 "de luxe" cars only have been used in the passenger service, which seem to be quite satisfactory. Much of this equipment must be retired from service in winter, because of the much lighter traffic. As these cars are specially geared for mountain operation and cannot economically be used on level roads, their idleness during the winter results in considerable loss which defendant is seeking to overcome by adapting the cars to both winter and summer use through the use of convertible transmissions. If successful, the resulting saving in operating costs will warrant a reduction in rates to the mountains, which may drive out some of the illegal operators who can thrive only by cutting the rates of the certified lines.

The leasing of equipment by defendant is also urged as an instance of its abandonment of service.

B. B. Tillitt testified that he had leased trucks to defendant during the three seasons of 1922 to 1924 inclusive. In 1922 his compensation was based on 85% of the freight receipts, a separate lease being executed for each trip, when the freight charges were determined and the amount of his compensation inserted in the lease. In 1923 he executed an agreement with defendant leasing six of his trucks, and fixing his compensation at 70% of the freight receipts. Occasionally he hired other trucks which he in turn leased to defendant. A separate lease was made for each

load, which fixed his compensation on a percentage basis. He provided the drivers and paid their wages. Defendant did not pay the drivers directly, but gave Mr. Willitt separate checks payable to him individually for the amount of their wages, which were deducted from the percentage agreed to be paid to him. Thus the total amount paid to him, including drivers' wages equalled 70% of the freight charges on the shipments handled in his trucks. In 1924 the leases provided a minimum trip rental of \$42 for each truck based on a guaranteed minimum load of 6000 pounds per truck; for loads in excess of 6000 pounds the rental was based on 70% of the freight charges on the excess load, which was added to the guaranteed minimum rental. Separate leases were made for each trip, when the amount of rental was agreed upon and inserted in the lease. Employer's liability insurance covering the drivers was carried by Mr. Willitt. Four witnesses who had leased their trucks to defendant during the period mentioned corroborated the testimony of Mr. Willitt.

During 1920 the Mountain Auto line leased but from three to five trucks, as contrasted with the operations of defendant.

The looseness of defendant's practices in 1922 and 1923 with respect to equipment leases was admitted by Mr. Howell. It was also admitted that the rental was based on a percentage of the freight charges. The lax methods relative to payment of the drivers' wages were attributed to incompetent clerical help. In 1924, however, a new plan of leasing trucks was adopted, contemplating the payment of rental on a trip basis. To protect the lessor against overloads, additional compensation was provided for shipments exceeding 6000 pounds, which was the basis for all leases. Leases for each trip, rather than for a longer term, were made for convenience in accounting. Defendant also carried compensation insurance covering the drivers of leased trucks. Mr. Howell stated that during 1923 the car mileage of defendant's straight freight cars, combination cars when in freight service,

and leased freight cars was as follows:

Motor Transit freight cars	18,990.1	car-miles
" " combination cars	34,994.8	" "
Leased freight cars	<u>45,158.7</u>	" "
Total -	99,033.6	" "

Defendant's cars operated 53,274.9 car-miles, and the leased cars, 45,158.7 car-miles.

This witness also stated that in the past defendant leased freight equipment so as to be in a better position financially to build up its passenger service. This, he asserted, has been accomplished, and defendant contemplates providing additional freight equipment sufficient to handle the traffic without resorting to leasing any trucks except in emergencies.

Mr. Howell also testified that defendant's direct investment in its mountain division was \$137,525.13. This, however, included large increases over the purchase price in the value of its station facilities at San Bernardino and Redlands. However, it appears that defendant has a substantial investment dedicated to this service. The record also shows that since 1920 there has been a substantial increase in the tonnage handled by defendant over its mountain lines. Between 1920 and 1923 its passenger revenues over these lines increased 55% and its freight revenues, 24%.

Complainant also charged that defendant had so altered the "Rim-of-the-World" trip as to amount to a substantial abandonment of that service. This trip, it was shown, leading from Redlands and San Bernardino along the crest of the mountains, has been advertised as possessing many unsurpassed scenic advantages. Defendant has altered the original route so as to include Lake Arrowhead. In the past there has been considerable controversy between complainant and defendant over the proper route to be followed. Dr. John N. Baylis, owner and proprietor of the resort known as Pine Crest, testified that defendant's present route did

not include those portions of the original route affording the most attractive scenery, and he charged the defendant with a deliberate effort to eliminate the "Rim-of-the-World" trip altogether. Several witnesses testified that the trip was too arduous to be completed in one day, and that because of the great development since 1920, Lake Arrowhead should be included in the schedule. Mr. Howell testified that an agreement had been reached with complainant as to the route to be followed which he stated had been carried out by defendant.

Inadequacy of Service

The testimony relative to defendant's alleged failure to accommodate heavy freight traffic, and dealing with service complaints, has already been discussed in connection with the application of Lingo Brothers. Most of the objections to defendant's passenger service is confined to its "Rim-of-the-World" operations.

Complainant offered testimony showing that defendant had failed to cooperate with the rail carriers reaching San Bernardino, particularly in respect to adjusting its schedules so as to afford reasonably close connections for passengers arriving at San Bernardino via the Pacific Electric Railway lines. Mr. Howell stated that he had endeavored to arrange for the accommodation of these passengers, but the railway company would not notify defendant when it had any passengers destined to mountain points, nor would it publish joint rates except for the "Rim-of-the-World" trip. He stated that defendant's schedules were to some degree inelastic because of the controls maintained on the mountain roads, it being necessary that the schedules be so arranged as to avoid delay at the control points.

Several witnesses called by defendant from the mountain territory involved, endorsed its service, both passenger and freight. Particular emphasis was laid on the passenger service which, they testified, had been greatly improved since 1923. Its

service was also approved by a resolution introduced in evidence, adopted by a mass meeting of citizens held in Big Bear. Considerable controversy revolved around this resolution. One witness testified that but one large shipper supported it, all the other substantial shippers being opposed to it; another witness stated that the views of both sides were presented and discussed before the adoption of the resolution.

In this connection it appears that if defendant's certificate is canceled, all points along the Mill Creek route will have no transportation service, inasmuch as Lingo Brothers propose to operate over the City Creek route only. Witnesses called by defendant testified that there are several resorts on the Mill Creek route having a substantial summer population, all of which need a freight and passenger service. Mr. Lingo testified that the points he desires to serve can be reached as quickly by the City Creek route as by the Mill Creek route. This, however, does not afford any relief to intermediate points on the Mill Creek road, which applicants do not propose to serve.

Discrimination

In support of its allegation that defendant's rates and fares applicable to the mountain service were discriminatory, complainant introduced a comprehensive tabulation prepared by Mr. H. K. Blair, showing many instances where charges for the longer haul were less than those for the shorter, the points involved being situated on the same route, and also indicating that the rates to some sections were on a higher plane than the rates to other sections. This compilation is in the nature of a tariff study, made without regard to the physical conditions surrounding the rates. There is no testimony from any shipper that the practical application of the rates resulted in undue prejudice or damage. Mr. Howell admitted that the rates, which in part had been inherited from the

Mountain Auto line, were inharmoniously adjusted, and stated that an early revision of the tariffs would be made.

It is further charged that defendant's agents were the recipients of free transportation and reduced freight rates for - bidden by law. Defendant's agents at some points are merchants who also receive their own inbound freight over defendant's lines. As compensation for their services these agents are paid 10% of the proceeds of tickets sold and 2½% of the receipts from inbound freight, the latter including freight which they themselves receive. These agents devote but a small part of their time to the performance of their duties as agents. In addition to their commissions these agents receive passes entitling them to free transportation over portions of defendant's lines. Mr. Howell, explaining this situation, testified that wherever possible, defendant utilized full-time employees as its agents, but at small points where the business was insufficient to justify the expense, defendant selected merchants as its agents, paying them as compensation a percentage of the revenue received from tickets sold and the outbound freight. In some instances even this was not enough, so in addition such agents were paid a percentage of the inbound freight. To promote closer relations with the accounting department, passes were issued to these agents, good only in connection with company business, authorizing free transportation to Los Angeles, the headquarters of defendant's system where the auditor's office was situated. Passes issued to such agents in the San Bernardino mountains were good only as far as San Bernardino, the division headquarters. These agents, he testified, usually found their duties so exacting that the commissions paid were wholly inadequate. However, they received an indirect advantage through their ability to extend their contact with the public. When the business at these places developed sufficiently to sustain an agent, full time employees were appointed. Mr. Fuller, President of defendant company, offered to discontinue the practice should

it meet with the Commission's disapproval. Several shippers from the Arrowhead district testified that defendant delivered at their door all shipments, regardless of weight, notwithstanding a provision in defendant's tariff that such delivery service would be accorded only to shipments weighing 2000 pounds or more. In explanation of this discrepancy Mr. Howell stated it has become customary for defendant to provide free delivery for all shipments in the Arrowhead section, which is thinly populated, and nearly all freight is delivered to consignees on the main street of the village. Defendant's freight station at Arrowhead is quite small, consequently store-door delivery is more convenient. However, at Big Bear traffic density has increased to such a degree that store door delivery, either in the town or at roadside points, is no longer feasible; there it has become necessary to deliver freight at stations in population centers where it can be redistributed. He stated that as population increases defendant will be obliged to adopt this method of delivery at all points, including Arrowhead. Otherwise, it will be impossible to maintain the schedule, particularly as regards perishable products.

As another instance of unauthorized departure from the published tariffs, complainant referred to an agreement made during 1921 between defendant and the management of four newspapers, one published in San Bernardino and three in Los Angeles, for a special rate of \$16 a day on the combined shipments of these newspapers to the San Bernardino Mountains. Mr. E. S. Webster, business manager of the San Bernardino "Sun", testified that newspapers moved under this rate from July to September, 1921, when the newspaper companies found the service too expensive and consequently abandoned it. He further stated that no rebate was sought by any of the newspapers concerned. Mr. Howell testified that the newspaper companies, finding that an early delivery

of their papers in the mountains was impossible under the existing schedules, approached the defendant with a view to establishing an earlier service, in which they were supported by the resort owners and the Big Bear Chamber of Commerce. Relying on the management's estimated daily tonnage of 1600 pounds, and in the expectation of developing additional business, defendant put on an early morning car for this service, charging the newspapers a rate of one cent a pound. The shipments were pooled and the charges pro-rated among the newspapers, one of them paying all the transportation charges monthly. The newspapers found the rate too high, and the anticipated additional freight movement did not develop, so consequently the service was abandoned after being operated at a loss. In assessing the freight charges, an estimated weight was used, although occasionally the weights were checked. Mr. Howell admitted that the tariff did not permit freight charges to be assessed on this basis.

Complainant also charged that during 1923 defendant hauled large quantities of building materials and supplies for the Lakewood Lumber Company at Arrowhead Lake at rates lower than those provided by the tariff. Complainant called Mr. C. W. Monahan, referee in bankruptcy at San Bernardino, who produced the original verified claim in bankruptcy filed by defendant in the bankruptcy proceedings involving the Lakewood Lumber Company. This shows that between April and July, 1923, defendant hauled building materials at a rate of 50 cents per 100 pounds, and also hauled supplies such as groceries at a rate of 75 cents per 100 pounds. Defendant conceded that the 50-cent rate on building materials was lower than the rate published in its tariff for this service. These shipments amounted to from 10,000 to 20,000 tons, the record being uncertain as to the exact quantity. Mr. Fuller testified that because of the large volume of business offered, a special contract was made with the Lakewood Lumber Company to transport building material to its yards and designated delivery points near

Lake Arrowhead at a special rate of 50 cents per 100 pounds. Defendant hauled the shipments from San Bernardino, Colton, Victorville and other points. The Lakewood Lumber Company maintained its principal yard in San Bernardino, where other lumber companies also had their plants. Mr. Howell further stated that the right of a truck carrier to contract specially with an individual for the transportation of property was then an open question, it being the opinion of some attorneys with whom he had consulted that such an arrangement was legal. It was not until later, he stated, that the Commission ruled it had jurisdiction over such contracts. He testified that no other similar contracts were made by defendant. He also stated that for this reason defendant did not object to Lingo Brothers hauling building material under contract for the Arrowhead Lake Company (whose attorneys also reached the same conclusion), and defendant complained only when Lingo Brothers commenced hauling miscellaneous loads for others. When the Commission decided it had jurisdiction over contract carriers, he testified, defendant promptly ceased quoting special rates except as authorized by the Crittenden Amendment of 1923 (Stats. 1923, Chapter 510), relating to the transportation of farm products. He stated that in entering into this contract with the Lakewood Lumber Company, defendant acted on advice of counsel. The testimony of Mr. Herbert W. Kidd, defendant's attorney, substantially corroborated that of Mr. Howell.

I have endeavored to summarize the enormous mass of testimony introduced at the hearing, and have pointed out its relation to the various issues involved. In presenting my conclusions, any attempt to restate the evidence would unduly lengthen this opinion.

In my judgment the evidence shows a need for a truck service devoted to the handling of heavy commodities, such as building materials, cement and similar commodities. In this respect defendant's service has been inadequate; as to express matter and

small shipments, defendant's service appears satisfactory. Nor does there seem to be any need for an additional perishable service, as suggested by applicants.

It therefore, recommend that a certificate be granted to Lingo Brothers permitting the hauling of heavy commodities in truck loads only. It will be necessary, of course, in view of such decision, for applicants to modify their proposed time and rate schedules.

In my opinion, the evidence herein does not sustain the complaint of the San Bernardino Chamber of Commerce.

The leasing of equipment by defendant was not of such a character as to indicate an abandonment of its service. This appears to have been done to enable defendant to concentrate on the development of its passenger service; in the meantime freight shippers were adequately served. Moreover, it appears that defendant will install its own freight equipment, which will obviate the necessity of leasing any equipment. Defendant's methods of leasing equipment in vogue during 1922 and 1923 are not to be commended. In 1924 it eliminated most of the objectionable features of its leasing methods, but it has retained in part the practice of leasing on a percentage basis. This practice will not be tolerated. In future, defendant will be required to comply strictly with the provisions of the Commission's General Order No. 67 regulating the leasing of equipment.

It also appears that defendant has complied substantially with the understanding reached with complainant as to the operation of the "Rim-of-the-World" drive. In this respect its service has not been abandoned. Nor does the evidence show that defendant's service is inadequate to a degree warranting the revocation of its certificate. The record shows that its passenger service is adequate; its freight service, except as to the handling of heavy commodities, also appears to be sufficient. It appears, however, that defendant has not properly cooperated with

other carriers in conducting its mountain operations. In the future, defendant will be expected to coordinate its schedules with those of other carriers, particularly the Pacific Electric Railway Company, and to perfect better arrangements for handling passengers transferred from that carrier.

The question of rates is one that should have prompt attention. They should be revised, as promised by defendant, so as to prevent any undue preference of any section of the mountains. The tariff discrepancies do not appear to be sufficiently important to justify a cancellation of defendant's rights.

The issuance of free transportation, either passenger or freight, to agents who are at the same time shippers or receivers of freight is expressly prohibited by law. (Public Utilities Act, Sec. 17, sub.3; Auto Stage and Truck Transportation Act, Sec.6(b), Stats.1921, Ch.840). Therefore, defendant cannot legally issue passes to agents who are also shippers, or pay them commissions on the freight handled where it would result in a reduction in the charges on the freight personally received or shipped by such agents. I am satisfied that in the past defendant had no intention of granting rebates to these agents, its only purpose being the reduction of operating costs at points where the business was insufficient to justify the employment of salaried agents. Hence, I do not believe that defendant's act in this regard will justify a cancellation of its certificate. But the practice should be discontinued at once, and some other method adopted which will not conflict with the statutory law.

Store-door deliveries at Arrowhead and the arrangement made in 1921 to carry the newspapers to the mountains, appear to be departures from the tariffs published by defendant. But in this respect defendant's actions appear to be due rather to loose methods than to any guilty purpose of favoring some shippers at the expense of others. Hereafter the defendant will be expected to adhere strictly to its tariffs. If occasion arises for the

reduction of a rate for some particular service, the matter can readily be handled by the publication of a commodity rate.

The evidence shows that defendant hauled building material for the Lakewood Lumber Company at rates lower than those published in the tariff. A substantial part of the shipments moved from San Bernardino over a regular route of defendant for which rates were provided in its tariffs. Defendant admits that a special contract was made for this service, but asserts that it did so on advice of counsel. When these shipments were made (between April and July, 1923) opinion differed as to the Commission's power to regulate carriers transporting property under private contract, some branding as unconstitutional the amendment of 1919 to the Auto Stage and Truck Transportation Act (Stats. 1919, Ch.290) which purported to confer that power upon us. At that time the Commission had not passed upon the question; it was not until later that a definite ruling was made, holding that the Commission had jurisdiction in such cases -

Motor Transit Co. vs. Ed. Lineo, et al., Decision No.12907, Case No.1789, decided December 7, 1923; Bolton et al., vs. Olson & Rouch, et al., Case No.7787, Decision No.12700, decided October 13, 1925.

The matter is now pending in the California Supreme Court, where a review is sought of certain Commission decisions involving this question, no decision having yet been rendered by the court. I mention these matters to show the state of legal opinion upon this question, the extent to which it has differed, and the seriousness of the controversy which has not yet terminated. This is important in that it indicates that defendant acted in good faith when it made and performed the contract. The record shows that subsequent to the Commission's decisions no similar contracts were made. Before such decisions were rendered, defendant was entitled to rely on the advice of counsel as to the validity of the contract. Viewing the matter in this light, I cannot say that defendant was guilty of granting an

unlawful rebate when it made or carried out this contract.

Upon full consideration of the evidence I am of the opinion and hereby find as a fact that public convenience and necessity require the operation by Lingo Brothers, a co-partnership, consisting of Edward F. Lingo and Charles P. Lingo of an automotive truck service for the transportation of the following commodities only, to-wit: building materials and supplies, lumber and finished lumber products, cement and machinery, in not less than full truck load quantities, also fuel oil in not less than tank carloads between San Bernardino and Redlands, on the one hand, and Arrowhead Lake and Cedar Glenn resort, on the other hand, including intermediate points; and between San Bernardino and Redlands, on the one hand, and Big Bear Lake and Baldwin Lake resorts, on the other hand, including intermediate points; and including also points within three miles on either side of the main highways traversed.

Upon full consideration of the evidence, I am of the opinion and hereby further find as a fact that none of the allegations of the complaint filed herein by San Bernardino Chamber of Commerce against Motor Transit Company, are sufficiently sustained by the evidence to warrant the relief sought; consequently, said complaint should be dismissed.

I suggest the following form of order:

O R D E R

A public hearing having been held in the above entitled matter, the same having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact as appearing in the opinion which precedes this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Lingo Brothers, a co-partnership consisting of Edward F. Lingo and

Charles P. Lingo of an automotive truck service for the transportation of the following commodities only, to-wit: building materials and supplies, lumber and finished lumber products, cement, and machinery, in not less than full truck load quantities, also fuel oil in not less than tank carloads between San Bernardino and Redlands, on the one hand, and Arrowhead Lake and Cedar Glenn resorts, on the other hand, including intermediate points; and between San Bernardino and Redlands, on the one hand, and Big Bear Lake and Baldwin Lake resorts, on the other hand, including intermediate points; and including also points within three (3) miles on either side of the main highways traversed.

IT IS HEREBY ORDERED, that a certificate of public convenience and necessity be and the same is hereby granted, subject to the conditions as hereinafter set forth:

- 1- Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, tariffs of rates and time schedules satisfactory to the Commission within a period of not to exceed twenty (20) days from date hereof; and shall commence the operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.
- 2- The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
- 3- No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS FURTHER ORDERED, that in all other respects the application of Lingo Brothers, a co-partnership consisting of Edward F. Lingo and Charles P. Lingo, be and the same is hereby denied.

IT IS FURTHER ORDERED, that the complaint filed herein by San Bernardino Chamber of Commerce against Motor Transit Company be and the same is hereby dismissed.

IT IS FURTHER ORDERED that for all other purposes, except as hereinabove stated, the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of July, 1925.

W. H. Brundage

W. S. Sawyer

George W. Squires

Ernest W. Scott
Commissioners.