

**ORIGINAL**Decision No. 18187

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
G. C. SCRIBNER and GEORGE A. BIGARD,  
copartners, for a certificate of  
public convenience and necessity to  
operate an automotive transportation  
service as a common carrier of  
freight between Visalia and San  
Francisco and intermediate points,  
via Pacheco Pass.

Application No. 12847

Gwyn H. Baker, for Applicants.

L. N. Bradshaw, A. G. Schmitt and W. S. Johnson,  
for Southern Pacific Railway, Protestant.Edward Stern and George S. Reed, for American  
Railway Express, Protestant.E. T. Lucey, N. E. Asp, J. W. Walker and D. O.  
Collamer, for The Atchison, Topeka & Santa Fe  
Railway Company, Protestant.F. M. Hill, for Fresno Traffic Association,  
Interested Party.

BY THE COMMISSION:

O P I N I O N

G. C. Scribner and George A. Bigard, copartners,  
seek a certificate of public convenience and necessity from the  
Railroad Commission to establish and operate an automotive trans-  
portation service as a common carrier of freight between San  
Francisco, Oakland, San Jose and Gilroy, and points intermediate,  
on the one hand, and Los Banos, Visalia and points intermediate,  
on the other hand. No authority is sought to transport freight  
between San Francisco, Oakland, San Jose and Gilroy, or between  
Visalia and Fresno, or between Fresno and Madera.

Public hearings herein were conducted by Examiners  
Austin and Williams at Visalia and Fresno.

Applicants propose a freight service between San Francisco and other points north and west of Pacheco Pass for commodities moving from such points to points between Los Banos and Visalia, following the course of the State highway from Madera to Visalia. No local service is to be given between San Francisco and Gilroy or between Fresno and Madera. Local service between Fresno and Visalia is not proposed. Applicants expect to follow routing via Gilroy, Pacheco Pass and Madera, and no other routing. The distance between San Francisco and Visalia is approximately 240 miles, and between San Francisco and Fresno, by this route, approximately 201 miles.

Applicants propose to make this an over-night service by leaving San Francisco at 6:00 p.m., arriving at Fresno at approximately 6:00 a.m. the following day, and Visalia at 8:30 a.m. This schedule is called "through service" and is intended, according to the testimony of Mr. Bigard, to care for movements directly between San Francisco and points south, to and including Gilroy, Fresno and Visalia, without intermediate deliveries. Another service known as the "local" is to leave San Francisco 3:00 A.M., making deliveries at Los Banos, Chowchilla and Madera, and points west of Los Banos, and reaching Fresno at 4:00 p.m. the same day. Freight consigned to Visalia is delivered at 7:30 a.m. the second day.

Time schedules, routing, rules and regulations and tariffs of rates are filed as proper exhibits attached to the application. The rates are divided into five classes and are approximately 20 to 35 per cent higher than freight rates and from 10 to 50 per cent lower than express rates. Time schedules are based upon the use of pneumatic tired equipment and a speed efficiency of 25 miles per hour constant. Agencies are to be established at all points, according to Mr. Bigard's testimony, as well as free pick-up and delivery zones in San Francisco, San Jose, Fresno and

Visalia, with incidental pick-up service wherever found to be necessary after the operation has been established.

Applicants are experienced in truck transportation. Applicant Scribner now conducts a freight operation between Fresno and Visalia under authority of this Commission under Decision No. 8085 on Application No. 5644. Applicant Bigard has never been engaged in public transportation, but has conducted private transportation for about twenty years. The financial ability of the co-partnership to establish and conduct the service proposed was not challenged at the hearings, but the necessity and feasibility of the service were seriously disputed by all protestants.

According to the testimony of Mr. Bigard, while applicants propose to establish depots and pick-up and delivery zones "at all points", they have selected no terminal in San Francisco, although a zone bounded by Van Ness Avenue, Eleventh Street, Bryant Street, Army Street and San Francisco Bay is proposed. Applicants expect to use the union truck terminal at Fresno and Bigard's terminal at Visalia. No arrangements have been made as to agencies or deliveries at other points. Applicants expect to purchase six trucks, and testimony was offered that was satisfying as to their ability to procure adequate equipment.

The reasons urged by applicants for the granting of the certificate are, repeated demands upon both of them in their public and private business for transportation facilities to and from the bay region points named in the application; that the rail service does not provide the adequate, dependable and expeditious service demanded by the public; that the service proposed includes free pick-up and delivery, which other carriers now established cannot give; and also, that applicants are able to provide a local "peddler" service between intermediate points, which the rail carriers cannot give.

Protestants herein sought to prove that the service of the rail carriers is adequate, efficient and expeditious, and that the public generally is satisfied therewith. There now exists no public transportation of freight by automotive power between the terminal points named, over the route proposed. There is, however, established truck service between Fresno and Visalia and Fresno and Madera.

In this connection, exhibit No. 2 filed by the Southern Pacific Railroad, shows that during the month of August, 1926, the gross movement of freight between all points concerned in this application, amounted to 4,743,000 pounds, and of this movement, 3,431,735 pounds was shipped from San Francisco to other points east of Pacheco Pass; 252,397 pounds from Oakland to the same points, and 157,194 pounds from San Jose. There were no shipments from Gilroy. This quantity approximated four-fifths of the entire tonnage hauled by this rail carrier during the month, the back haul consisting of 416,460 pounds, destined to San Francisco; 88,842 pounds destined to Oakland, and 15,931 pounds destined for San Jose. The remaining portion, 377,642 pounds moved between points in the San Joaquin Valley. The gross movement approximated 2,371 tons during the month. No similar exhibit was filed by the Santa Fe railroad, but similar movements probably were made over this system.

In support of the application, applicants produced fifteen witnesses from Visalia and seven from Fresno. Of these witnesses, only six presented demand for service from San Joaquin Valley points to the bay terminals included in the application, and the testimony in support of such a demand is so meager that it cannot be regarded as of much affirmative weight in determining necessity. Only four of the witnesses ship to San Francisco, the other two expecting to use the service only for deliveries at

Madera, Chowchilla and Los Banos. All of the witnesses introduced by applicants, however, except one or two, testified as to their need for a rapid service, particularly in emergencies.

The witnesses from Visalia included B. F. Linton, blacksmith and iron worker, who testified that he required service in emergencies from San Francisco and Fresno; E. F. Lambert, superintendent of the California Co-operative Canneries, who testified as to shipments to San Francisco Water carriers; M. J. Wheeler, automobile supplies; C. M. Burnett, automobile supplies; C. Bolier, manager of S. Sweet Company, implements; H. H. Gilmer, drugs; C. N. Sitton, retail sporting goods; C. W. Heartline, manager of Rosenthal's, general merchandise; R. K. Morey, automobile agency; Frank E. Johns, plumbing and metal manufacturing; W. J. McCormick, drugs; Kenneth S. Barber, traveling salesman for Coffin-Reddington Company of San Francisco, wholesale druggists; W. G. Ferguson, electrical goods; David Douglass, drugs and J. M. Hadley, undertaker.

The witnesses produced from Fresno were Edward H. Goodwin, tent and awning manufacturer, camp equipment and irrigation hose; E. W. Horton, agent for the California Spray Chemical Company, Watsonville; H. Larsen, blacksmithing and automobile body dealer; Chas. Monahan, manager of the branch house of Langley, Michels & Company, wholesale druggists of San Francisco; L. C. Taylor, agent of the Virden Packing Company of San Francisco (fresh and cured meats); Jack Wilson, manager of the branch of the Pacific Coast Paper Company of San Francisco, and R. N. Talbott, dealer in automobile tires.

In general, these witnesses testified to their individual needs for expedited service from San Francisco to Fresno and Visalia, and also as to the need of earlier distribution of shipments to Madera, Chowchilla and Los Banos. Many of them ex-

pressed satisfaction with existing rail service to Fresno and Visalia, and indicated that the service proposed by applicants would be useful chiefly in emergencies. Several witnesses, however, testified that if the proposed service were available they would transfer all their shipments to applicants. Analysis of the testimony also discloses that none of the witnesses testified to any movements between Oakland and Fresno and Visalia, or between Gilroy and the same points. One witness testified as to shipments of chemical spray between San Jose and Fresno in emergencies, and another testified to a desire to transport cured meats from South San Francisco to Fresno. These witnesses all based their support of the application upon the theory that the service proposed herein included prompt delivery at store-door, with similar pick-up. Their attitude was that although the rail service reaches both Fresno and Visalia at an early hour of the business day, distribution is not available for some time after arrival of the trains; also, that it is necessary to go to the depots for freight shipments, thus incurring additional charges for drayage. It was further contended that applicants would pick up shipments in San Francisco at a later hour than four o'clock (the hour at which rail carriers close receipt of freight at their depots), and thus late afternoon orders would receive attention and delivery the following day. Some of the witnesses indicated that a difference in rates would result in the lowest rate being accepted, but most of the witnesses testified that the service proposed by applicants was desired and the rate would not be objected to, especially in view of the fact that it would be paid by the ultimate consumer, in any event.

Applicant also produced Jesse J. Wilkinson of Fresno, a shipper of table delicacies, who testified that his distribution is made to Madero, Kings, Fresno and Tulare counties. He testified

that he is receiving sixty tons of shipment per month from San Francisco, of which about fifty tons comes by truck on contract basis. The witness testified that applicant's service would be useful to him, altho he is now benefiting by a truck rate that is less than the rail rate, also that he had asked for commodity rates from the Southern Pacific Railway, but he had not been given a favorable response. The witness said he could get shipments from the Santa Fe between 7:30 and 8:00 o'clock, but that rail arrivals in the morning were usually too late to reach the truck lines distributing the same day. This witness testified that he had occasionally got shipments of jack cheese from Gilroy.

B. R. Hoak of Fresno, traffic manager of the Sunland Sales Co-operative Association, representing raisin and fig growers, testified that packing houses are maintained by this organization at Fresno, Kingsburg, Dinuba, Fowler, Parlier, Selma, and Del Rey; and also for figs at Reedley and Hanford. Shipments from these plants are from Fresno, generally by rail in carload quantities, but there are some shipments L.C.L. by rail, and some by truck. Witness testified that the services proposed by applicant would probably be useful to the organization on short-notice shipments by water, and that, as a general proposition, the organization required truck service to supplement the other services available.

He also testified that prunes were frequently brought to the packing houses from Santa Clara Valley points by truck. The movement to San Francisco harbor was general throughout the year.

The volume of freight likely to be offered for transportation by the service proposed is not definitely fixed by witnesses for applicants, but analysis of their testimony indi-

cates that an average of four tons daily may be regarded as the maximum available, and a considerable portion of this tonnage is dependent upon emergencies, where the service of the rail lines is not regarded as sufficiently expeditious. No testimony was offered by applicants as to movements from Chowchilla, Madera, Fowler, Selma or Kingsburg, or as to any demand from those points for additional shipping facilities.

In behalf of protestants, the only witnesses produced were from Fresno. They included Roy Wolfington, manager of the branch house of Eagleson & Company of San Francisco; B. H. Jones, manager of the Cadco Supply stores, dealers in ranch supplies, insecticides, implements, furniture, groceries, etc; H.D. Rowell, assistant manager of Hobbs-Parsons Company, wholesale produce; Homer R. Halsey, manager of the Dwight Lumber Company branch; R. A. Johnson, manager of the J. D. Halstead Lumber Company; W. G. Firstenberger, proprietor of the Valley Foundry & Machine Works; Perry G. Lingren, Vice-President of the San Joaquin Materials Company, dealers in all classes of building materials; Leon I. Diamond proprietor of the Fresno Outfitting Company, furniture and household goods; Lewis L. Walker, manager of the Valley Lumber Company; Lee Alfred Rummelsburg, manager of the Cutler-Goldstein department store ( with branches at Hanford, Selma and Madera); M. J. Ryan, Jr., of M. J. Ryan & Company, ranch supplies, hardware and machinery; C. C. Buffington, Federal fruit distributors, packers and shippers; R. F. Carter of the Walworth-California Company, wholesale plumbing and pipes, and Albert L. Coates, of Harry Coffee, Inc., clothing and haberdashery.

These witnesses testified that the existing rail service from San Francisco to Fresno is adequate and efficient, that additional service is not necessary, that the express serves all the purposes of expedited transportation, with free delivery in Fresno,



and that they do not require additional transportation facilities of any kind. Some of the witnesses expressed hostility to any disturbance of what they regarded as a very satisfactory transportation situation. Many of them are large shippers, some of them shipping as high as 150 tons a month, and others having small shipments daily, and, like some of the witnesses for applicants, many of them have spur tracks at their places of business. All expressed satisfaction with their ability to receive shipments at an early hour of the business day from protestant Santa Fe Railway.

In behalf of protestant Southern Pacific Railway, P. W. Barnard, representing the general manager's office, testified as to investigations made by him of transportation by this carrier to San Joaquin Valley points. Through this witness an exhibit (Exhibit No. 1) was introduced, showing the service maintained by this protestant between San Francisco and other points, and each of the points sought by applicants, and also an exhibit (Exhibit No. 2) showing the movement of L.C.L. tonnage between the points during August, 1926.

A. G. Schmitt, traveling freight agent of the Southern Pacific, testified that no complaints had been received as to the service rendered by this protestant. He also testified that the Santa Fe Railway has first-day delivery at Visalia, which is a service that protestant Southern Pacific does not perform, and that shippers have been well pleased with this service since it was established. In behalf of the same protestant, W. S. Johnson testified as to classifications of rates presented by Exhibits Nos. 3, 4 and 5.

For protestant Santa Fe Railway, N. E. Asp, division freight agent at Fresno, testified that the Santa Fe receives

freight, as do the other protestants, until 4:00 p.m. each day at its freight house in San Francisco, transporting it out of San Francisco the same night, available at Merced at 7:00 a.m. the first day, available at Fresno at 8:00 a.m. the first day, and available at Visalia at 12:00 noon the first day. In addition, this protestant operates between Fresno and Merced and intermediates, straight cars six days a week, leaving Fresno at 8:00 a.m. and reaching Merced at 10:00 a.m.

In behalf of protestant American Railway Express, George H. Baker, special representative of this protestant, and for thirty-six years familiar with its business in San Francisco, testified that the service is open for the receipt of shipments 24 hours every day in the year; that frequent daily pick-up delivery service is maintained in San Francisco, in order to give further expedition to the express service; and that shipments may be delivered at the express office at the ferry station as late as 10:00 p.m. and be delivered in Fresno and Visalia the following morning.

The record herein discloses no desire by any portion of the public for the establishment of the service except between San Francisco and Fresno and Visalia, and this demand is largely for a one-way movement to Fresno and Visalia, with practically no assured movement from those points or intermediates to San Francisco. The record is practically silent as to any demand for any movement from Oakland, and the movement testified to by witnesses from San Jose is so meager as to be negligible. The bulk of any back-haul, as shown by the testimony, is now moved under contract and at rates more advantageous than those proposed by applicant, and without assurance that the business would be offered applicant at higher rates. The testimony of the witnesses presented by applicant concerns movements from San

Francisco and South San Francisco to Fresno and Visalia, and points intermediate, with an incidental showing as to probability of use of the service between Fresno and Madera and Chowchilla and Los Banos. We are, therefore, confined by the record to consideration of the testimony as to the need between San Francisco and the San Joaquin Valley points only. So far as Fresno is concerned, the testimony of witnesses for both applicant and protestant possesses about even weight. In addition we have the showing of protestant rail carriers of their ability to perform practically the same service between San Francisco and Fresno over night that applicant proposes to establish. The following table shows a comparison of this service, and also to Visalia:

EXPEDITED SERVICE

	<u>Close S.F.</u>	<u>Arrv.Fresno</u>	<u>Available</u>	
			<u>1st day Fresno</u>	<u>1st day - Visalia</u>
*Applicant	6 00 p.m.	6 00 a.m.	7 00 a.m.	8 30 a.m.
*American Railway Express	10 00 p.m.	6 35 a.m.	8 30 a.m.	8 35 a.m.
Santa Fe	4 00 p.m.	6 to 7a.m.	8 00 a.m.	12 00 noon
Southern Pacific	4 00 p.m.	7 30 a.m.	8 30 a.m.	None

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\* Applicant proposes and American Railway Express now maintains free delivery at Fresno and Visalia. Rail lines deliver at depot.

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Local Service Schedules

	<u>Leave S.F.</u>	<u>1st Day</u>		
		<u>Arrv.Fresno</u>	<u>Visalia</u>	
Applicant	3 00 a.m.	4 00 p.m.	7 30 a.m.	Second day
Santa Fe	4 00 p.m.	8 00 a.m.	12 00 noon	First day
Southern Pacific	4 00 p.m.	8 30 a.m.	8 00 a.m.	Second day

The contrast shown by this table, we believe, discloses that the rail carriers are now making efficient use of the facilities provided by them for the rapid transportation and delivery of both L.C.L. movement and express. The advantage offered by the applicant is the ability to arrive earlier, to make cities earlier, and to make deliveries at the very door, which now must be made by private drayage concerns at cost additional to freight service, and this is particularly true in Fresno, Visalia, the most populous points served. Rail carriers, however, make their shipments available at Fresno at the beginning of the business day and at a time when there is sure to be someone to receive the shipment. In this respect, applicant's service would have little advantage, considering the difference in rates.

Applicant proposes a first-day delivery at Visalia, at 8:30 in the morning, about the time the American Railway Express arrives. The protestant Santa Fe Railroad, makes a first-day delivery of freight at its depot in Visalia at noon. The difference between applicant and this freight service is a little more than three hours. Herein, protestant, Southern Pacific, is on an equality with the Santa Fe in arrival and availability at Fresno, but makes only second day delivery at Visalia.

The analysis of the complete record herein and fair consideration of all the facts urged by applicant and protestants herein leads us to the conclusion that the rail service now maintained by protestants is adequate and adjusted to the needs of the shippers. The investment in this service is very great and the revenue necessary to maintain and

support continuation of it must be preserved unless absolute inadequacy is shown. As compared with the railroad investment and facilities, applicant's investment would be almost negligible. It is our belief that the rail carriers have nearly met all the demands of the shipping public; that if it should be true that the freight at Fresno and Visalia is not made available promptly, the remedy for shippers, we believe, is not multiplication of services, but direct complaint to this Commission, requiring these carriers and truck lines to re-adjust their schedules to meet altered conditions. If applicant's service were established, it would do no more than first-day delivery at Fresno, and would do little more than three hours better in the first-day service at Visalia and points between these cities. Fresno is a distributing center, and many truck lines operate under authority of this Commission to distribute locally and at some distance mass shipments received at Fresno by rail. One of these carriers is one of the applicants herein, G. C. Scribner, who has for several years conducted freight service between Fresno and Visalia and intermediate points. If his service is not adjusted to the needs of shippers between Fresno and Visalia, it should be adjusted at once. It is also true that an established service exists between Fresno and Madera - Ireland's Truck Line - serving intermediately Herndon and other points. This service could readily be extended to include Chowchilla and Los Banos if demand therefor is properly shown.

In alluding to these services, we are not losing sight of the fact that applicant proposes to make direct delivery from his main line service at all points, and to conduct no in-

termediate local business, but the record seems clear that this is not a sacrifice on the part of applicant, as there appears to be very little freight movement between intermediate points. It would, however, probably work injury to the established carrier. The apparent effect of the introduction of the service proposed by applicant would be to penalize the effort of the present carriers to maintain fast service, and encourage impairment of that service. Under the facts before us, we do not believe such penalty is justified, and, therefore, the application should be denied.

O R D E R

G. C. Scribner and George A. Bigard, copartners, having made application to the Railroad Commission to establish truck freight service between <sup>San</sup> Francisco, Oakland, *Hem.* San Jose and Gilroy, on one hand and Fresno and Visalia and certain intermediates on the other hand, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the service herein proposed and

IT IS HEREBY ORDERED that the application be and the same hereby is denied.

Dated at San Francisco, California, this 7<sup>th</sup> day of April, 1927.

[Signature]

[Signature]

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