



to said application and to use the equipment described in Exhibit "C".

Southern Pacific Company, American Railway Express Company, Western Auto Truck Line, and California Transit Company protested the granting of this application.

Applicant relies as a justification for the granting of a certificate of public convenience and necessity on the following grounds:

That certain wholesalers at Fresno and certain retail merchants at Hanford have requested additional service; that no service is being rendered by any truck line during the hours or at the times as outlined in the proposed time schedule as shown in Exhibit "B" of applicant's petition, and that the additional service will be a marked public convenience and advantage to the shippers in Fresno, Corcoran and the way points proposed to be served; that the authorized truck line between Fresno and Hanford renders an inadequate and unsatisfactory service and that the shippers in Fresno and Hanford have suffered by reason of such inadequate service.

The record shows that applicant prior to the filing of the instant application had been for about a year operating a freight line between Fresno and Hanford for the transportation of freight without any authority from this Commission. After appropriate proceedings commenced by V. L. Haynes and Fay Haynes, owners and operators of the Western Auto Truck Line, protestants herein, this Commission in Decision No. 18177, in Case No. 2257, dated April 6, 1927, ordered said applicant to immediately discontinue such freight service until he had obtained authority to lawfully conduct such a service.

The evidence in the present proceeding shows that applicant has since the rendition of the above decision conducted his freight operations under and by virtue of private written con-

tracts with at least seven of his patrons, five of whom are merchants at Hanford, one at Laton, and one wholesale merchant at Fresno.

Applicant testified in his own behalf to the effect that he has deferred entering into further private contracts with prospective customers at Hanford and elsewhere until the termination of the instant proceeding.

Applicant called as witnesses in support of his proposed additional service four or five representatives of the business firms with whom he holds private contracts for freight service and also several other retail merchants and business men operating stores and other business enterprises at Hanford, Laton and Corcoran. Fresno is the chief buying center for all of these Hanford merchants. The record discloses the fact that the Western Auto Truck Line, protestant, has operated its authorized service between Fresno and Hanford for many years last past and has maintained its time schedules as nearly as possible in response to and in conformity with the needs of its patrons in these communities. It appears that formerly the Western Auto Truck Line operated on a time schedule as now proposed to be conducted by the applicant, but it was shown that in response to requests of the majority of its patrons it changed this time schedule so that its trucks now leave Fresno in the early morning instead of Hanford, and deliveries are now and have been made in the forenoon at Hanford instead of in the afternoon.

It appears now from the testimony of many of the Hanford merchants called by applicant that they favor the proposed additional truck service primarily and almost solely upon the basis that an afternoon delivery will be more satisfactory and convenient than the morning delivery of the Western Auto Truck Line. The

reason for this is that these merchants who have been using the unauthorized and unlawful service of the applicant have availed themselves of the opportunity to give applicant their orders at Hanford in the morning before his departure for Fresno and thereby have their goods delivered in the afternoon of the same day at Hanford. It appears that this delivery of merchandise in the afternoon of the same day as ordered is often advantageous in rush or emergency shipments, as well as for the expeditious transportation of perishable goods.

Several of the merchants who have been using the truck service of applicant, either under private contracts or otherwise, complained at the hearing of various delayed and injured shipments transported by the Western Auto Truck Line, although the great majority of these complaints, whether trivial or otherwise, were never brought to the attention of the authorized truck line. The record discloses without contradiction that in almost every instance where a complaint was actually presented or a claim made immediate response was had in correcting the cause of the complaint or in settlement of claims. We deem it unnecessary to refer in detail to the several complaints in the record against the service of the protesting Truck Line. But we think it sufficient to note as to some of them that on one occasion of recent date a careless driver was at once discharged for injuring certain case goods while making delivery. On two other occasions some damage was caused to a shipment of sacked goods and to a consignment of glass jars, but in each instance an immediate offer for adjustment and settlement was made by the Western Auto Truck Company.

It also appears that although sidewalk delivery is all that is required of the authorized truck line it is their practice to drive in and make deliveries on premises of merchants at Hanford

whenever any complaint is made against sidewalk deliveries.

The record shows that applicant has not developed during the operation of his unlawful service any new business and that his entire patronage has been drawn almost wholly from the merchants and shippers who desire an afternoon delivery at Hanford.

Western Auto Truck Line offered evidence to the effect that it has always rendered an adequate and satisfactory service to the merchants at Hanford and intermediate territory proposed to be served by applicant and at all times has owned and operated ample equipment to meet the demands of all its customers and the general public. It appears that this protestant for several years has owned and maintained three trucks and two trailers to meet all the demands of its service and that as a rule two trucks have always been sufficient to handle all traffic offered, but that since the applicant commenced his unlawful service between Fresno and Hanford one truck has been sufficient, with some exceptions, to transport all freight offered between Hanford and Fresno.

The evidence shows that the authorized truck service averages now about thirty-five deliveries daily at Hanford and was considerably more before the applicant commenced his unlawful truck service between these communities.

During the hearing the Western Auto Truck Line introduced in evidence its new time schedule now on file with this Commission, which shows that two daily schedules are now provided to meet all the needs of its patrons and shippers at Hanford and other points. The record shows, without dispute, that at no time was any demand ever made upon this protestant for any increase in or change of time schedule and as soon as it appeared from the evidence during the instant hearing that an afternoon schedule to Hanford was desired Western Auto Truck Company prepared and filed its new time schedule with this Commission.

This amended time schedule provides a double service, one service leaving Fresno in the morning at 5 o'clock, arriving at Hanford at 7:30; another service leaving Hanford at 8 o'clock in the morning and leaving Fresno at 1:30 in the afternoon, arriving at Hanford at 4 p.m.

American Railway Express Company offered in evidence an exhibit showing the time of leaving and arrival of trains carrying express matter over the Southern Pacific and Santa Fe Railroads between Fresno and Hanford and other points proposed to be served. G. S. Reed, routing agent in charge of the district between Fresno and Bakersfield, testified as to the service rendered by this protestant at Fresno and Hanford. His testimony shows that at Fresno there is a pick-up service throughout the entire day within the business district and that shipments are picked up as late as 6 o'clock at the shipper's address and are delivered at Hanford the following morning not later than 9 o'clock. At Hanford two deliveries are made in the business section in the forenoon of express matter arriving on the Santa Fe train at 6 in the morning, and express matter arriving on the Southern Pacific at 10:15 a.m. A pick-up service is also rendered at Hanford in the forenoon and also one in the afternoon.

The Southern Pacific Company introduced evidence showing that the Southern Pacific Company has a daily freight car, except Sunday, from Fresno to Hanford which arrives during the night, the freight being available at 7:30 a.m. This protestant made a check of the merchandise tonnage moving during May between Fresno and Hanford by way of the Southern Pacific Company, and it appears that the average amount per shipping day amounted to 727 pounds. P. W. Barnard, testifying in behalf of this rail protestant, stated that he had made a particular study of the freight service between Fresno and Hanford and gave it as his opinion that this

particular merchandise service is considered a first class less-than-carload freight service.

This Commission has repeatedly held in applications for certificates of public convenience and necessity, particularly where an additional service is proposed which will virtually parallel existing carriers, that a clear and affirmative showing must be made that the existing transportation facilities are inadequate or unsatisfactory. We are clearly satisfied that there is no evidence in this case which shows that the existing transportation facilities either by rail or truck are in any way inadequate.

After a careful consideration of all the evidence in this proceeding we are of the opinion and hereby find as a fact that public convenience and necessity do not require the proposed additional service of applicant and that the application to establish the proposed service should be denied.

#### O R D E R

Public hearings having been held in the above entitled proceeding, the matter having been submitted and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity do not require the operation by Harry C. MacFarlane of an automobile truck line as a common carrier of freight between Fresno and Hanford and Fresno and Corcoran, serving Laton and Guernesey and all intermediate

