

Decision No. 22685

CONFIDENTIAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
J. A. STONE for certificate of public
convenience and necessity to operate
automobile truck service for vegetables,
etc., between Vista and Los Angeles.

)
)
) Application
) No.16142
)

COAST TRUCK LINE, Complainant,

vs.

)
) Case No.2799
)

J. A. STONE and ED PURVES,

Defendants.

Richard T. Eddy, for Applicant in Application
No.16142, and for Defendants in Case No.2799.

H. J. Bischoff, for Complainant in Case No.2799
and for Coast Truck Line, Protestant in
Application No.16142.

Edward Stern, for Railway Express Agency, Inc.,
Protestant in Application No.16142 and
Interested Party in Case No.2799.

Wm. F. Brooks, for The Atchison, Topeka & Santa Fe
Railway Company, Protestant in Application
No.16142, and Interested Party in Case
No.2799.

Geo. Helm, for Boulevard Express, Protestant in
Application No.16142 and Interested Party in
Case No.2799.

BY THE COMMISSION -

O P I N I O N

J. A. Stone, in Application No.16142, has petitioned
the Railroad Commission for an order declaring that public
convenience and necessity require the operation by him of an
automobile truck service as a common carrier of vegetables
and supplies for vegetable growers between Vista and Los
Angeles.

In Case No.2799, Coast Truck Line, a corporation, has filed complaint against J. A. Stone and Ed Purves alleging that said defendants are now engaged in operating, controlling or managing auto trucks used in the transportation of property as a common carrier for compensation over the public highways between Los Angeles on the one hand and Oceanside, Carlsbad, Vista and other points between Oceanside and Escondido on the other hand, in competition with the duly certificated service of complainant, and without having first obtained from the Railroad Commission a certificate of public convenience and necessity as required by the provisions of Chapter 213, Statutes of 1917, and effective amendments thereto. Complainant also alleges that defendants are successors to Pacific Coast Distributors Association, Inc., against whom complainant heretofore, on November 19, 1929, obtained an injunction in the Superior Court of San Diego County, restraining said Association from transporting property between the points hereinabove referred to until a certificate of public convenience and necessity had been obtained from the Railroad Commission as required by law. Complainant further alleges that defendant J.A.Stone purchased the business of said Pacific Coast Distributors Association, Inc., after said Association was enjoined by the Superior Court of San Diego County, and that defendant Ed Purves was a stockholder and managing agent of said Association at Vista, California, and was present in court when the decision of said Superior Court of San Diego County was made; that said defendants, notwithstanding the order of the Superior Court, have continued to transport property in the same manner as formerly transported by Pacific Coast Distributors Association, Inc., in violation of the decree of injunction of the Superior Court and in violation of the Auto Stage and Truck Transportation Act.

Complainant prays for an order of the Railroad Commission ordering defendants, and each of them, to desist from controlling, managing or operating auto trucks used in the business of transportation of property for compensation as a common carrier over the public highways between Los Angeles on the one hand and Oceanside, Carlsbad, Vista, and other points between Oceanside and Escondido, on the other hand, in competition with complainant, until such time as they shall have obtained from the Railroad Commission a certificate of public convenience and necessity, as required by Chapter 213, Statutes of 1917 and amendments thereto.

Defendants, J. A. Stone and Ed Purves, each filed their answers herein, said answers being general denials of all material allegations as set forth in the complaint.

Public hearings on the application and complaint were conducted by Examiner Handford at Oceanside, at which time the matters were consolidated for the receiving of testimony and for decision, were duly submitted and are now ready for decision.

Applicant in Application No. 16142 proposes to charge rates in accordance with a schedule marked "Exhibit A" as attached to the application and as amended at the hearings; to operate on a schedule leaving Vista at 6:00 P.M. daily, except Saturday; using as equipment 3 pneumatic tired Reo Trucks.

Applicant relies as justification for the granting of the application on the following alleged facts; that many hundreds of acres in the vicinity of Vista have been planted to vegetables during the last few years, making the Vista area the center of winter vegetable growing in Southern California; that much of the output of the district is marketed locally in the city of Los Angeles, to which point it is transported either by contract haulers or by the trucks of the Coast Truck Line; that the Coast Truck Line has a certificate for the hauling of

general commodities between Vista and Los Angeles but the trucks operated by it over such route are usually trucks which have been made empty at San Diego and are returning enroute to Los Angeles, there to be loaded with merchandise for San Diego and intermediate points; and that the service of the Coast Truck Line is unsatisfactory to both growers and produce men, in that trucks do not reach the Los Angeles market in time for growers to procure the highest prices for their vegetables, or for produce men to satisfy the demands of their customers. Applicant proposes to confine his northbound hauling to the transportation of fruits and vegetables, and the southbound hauling to supplies used and needed in quantity by the vegetable growers, such as fertilizer, shock, sacks and pipe. Applicant proposes to specialize in the handling of vegetable products, to cooperate with the vegetable growers, to pick up shipments at the ranches with small equipment, thence transporting the pickup loads to Vista where they will be consolidated on trucks for prompt dispatch to, and unloading and delivery at Los Angeles. Applicant alleges that he recently entered into contracts with several growers for the hauling of their products from Vista to Los Angeles and has had many demands made upon him for service by other growers, which demands he has refused, but in the event of the granting of the application he proposes to serve all growers, as a common carrier, within a radius of 12 miles of Vista. Applicant now has three trucks suitable for the handling of vegetable shipments and is financially able to provide such additional equipment as may be necessary, and is also able to procure equipment on short notice by leasing same.

J. A. Stone, applicant in Application No. 16142, testified that he had 15 years experience in the trucking business and had been operating trucks between Vista and Los Angeles for three months. Witness estimated that there are about seventy five

vegetable growers in the Vista district producing a large quantity of squash, potatoes, peas, beans and lettuce, such vegetables being also grown as far south as Escondido. Witness proposes to use four trucks in the proposed service, two G.M.C. of 3½ ton capacity, one Sterling of 3 ton capacity and one small Reo as a pick-up truck. Witness is now hauling vegetables for ten growers and has had many requests to furnish service to others. Witness proposes to have his trucks leave Vista at 6:30 P.M. and arrive at Los Angeles at approximately 9:30 P.M. in time for the early market, the conditions and requirements of which he is familiar and has been since 1904. He proposes to go to ranches and other points off the highway to pick up shipments for consolidation with the through trucks leaving Vista, beginning the pick-up service about 4:00 P.M. and having a regular schedule for pick-up trucks in order to arrive at pick-up points at a regular time. Witness contends that early arrival at the Los Angeles market is essential for the securing of the best prices for the growers, Los Angeles being a distributing point for other communities adjacent thereto and as far distant as Santa Barbara or Bakersfield. Vista will be established as the central point of the pick-up operation, witness having arranged for a receiving warehouse at such point. Witness started working in this district for the Pacific Coast Distributors and when an action was decided against such organization in the Superior Court of San Diego County he made contracts with ten shippers for the transportation of their products to Los Angeles, witness having employed defendant Purves and still having him in his employment. Written contracts were executed with all of the shippers with whom witness made hauling agreements. Witness further testified that he had consulted and acted upon the advice of his attorney in the matter of the contract hauling, the contracts having been prepared and executed

prior to the decision rendered by the Superior Court of San Diego County in the action brought against the Pacific Coast Distributors.

G. J. Giguetta, residing in Twin Oaks Valley near San Marcos, testified that he was a vegetable grower, specializing in tomatoes and shipping from 150 to 200 boxes weekly to Los Angeles. Shipments are made in a container known as a Los Angeles lug, which is also used for the shipment of potatoes, sweet potatoes, rutabagas and occasionally for pears and beans. Witness had 30 acres of tomatoes last season and usually has from 30 to 50 acres of vegetables each season. Witness has shipped via the service of applicant and has received good service; has shipped via protestant Coast Truck Line in the past and at times has received efficient service and at other times service was not good, shipments arriving in Los Angeles too late for the morning market. Witness considers the proposed service to be a great advantage to growers and will continue to use the service of applicant, if authorized, rather than that of protestant, Coast Truck Line,

K. Nackamora, a witness employed by United Farmers Association in Los Angeles, testified that together with his brother as a partner he employed eight men in the Vista District who were engaged in farming 250 acres; that ten farmers in Vista shipped their products to the association in Los Angeles, some moving via the trucks of the applicant and some via the facilities of protestant, Coast Truck Line; that witness personally sees the trucks arrive in Los Angeles and has observed that the trucks of applicant usually arrive first, having known the Coast Truck Line to arrive as late as 1:00 A.M., too late for the early market. Witness testified that the early opening of the market is made necessary for the convenience of buyers for points outside of Los Angeles. The service rendered by

applicant has been satisfactory and without complaint as to rates. Witness has no written contract with applicant covering the service heretofore rendered but has had a verbal agreement covering the transportation of his shipments.

I. Kermi, residing on the main highway approximately two miles from Vista, testified that he farmed 40 acres of general vegetables, shipping his products to the I. & I. Produce Co., at Los Angeles. Whenever he has full loads he hauls personally with his own truck, but small lots are now hauled by applicant, and have been for the past two months, formerly having been hauled by the Pacific Coast Distributors. Before his use of the Pacific Coast Distributors witness used the Coast Truck Line for about five years, and ceased using such service because shipments were late in arriving at the Los Angeles market in practically all instances. This witness is satisfied with the quality of service as rendered by the applicant and desires that same be continued.

Neal Dow, residing at Vista, testified that he cultivated a tract of 40 acres, having just started a new ranch, his shipments to Los Angeles commencing in the fall of 1929 and consisting of beans. Witness patronized the Pacific Coast Distributors until their service was suspended by court injunction, and then commenced shipping via the Coast Truck Line, which service was not satisfactory as the shipments were picked up about 3:00 P.M. which witness considers too early as it shortened the day for his employees. Witness endeavored to secure the service of applicant but was unsuccessful, applicant stating that he was hauling only for shippers with whom he had contracts. Witness would patronize applicant's service in the event of a certificate being granted, provided satisfactory service were to be given including a later pick-up of shipments than now available.

D. Fugita, residing near Vista and farming ten acres, testified that he raised peas, beans, squash and cucumbers, shipping to Los Angeles via the service of applicant. Witness began his shipping with Coast Truck Line but transferred to the Pacific Coast Distributors when they started, for the reason that Coast Truck Line would not come to his ranch for pick-ups. Witness has contract with applicant and prefers his service, both as to pick-up and earlier delivery in Los Angeles, also states that Coast Truck Line now offers to pick up his shipments at the ranch.

F. Y. Harnkase, farming 8 acres at Vista, ships peas to Los Angeles via the trucks of applicant. Witness used the Pacific Coast Distributors before that of applicant, and desires a trucking service where vehicles will come direct to his ranch to pick up his consignments.

Harry F. Guy, a vegetable grower of Vista, cultivating 7 acres and producing peas, beans, tomatoes and squash, has been shipping from the Vista district since 1927, shipping via Coast Truck Line until September, 1929, then using the Pacific Coast Distributors, and now shipping with applicant under contract. The service now received from applicant is entirely satisfactory and witness desires that it be continued.

M.O. Andrusi, a fruit and vegetable grower of San Marcos, ships his produce to Los Angeles twice or three times each week, and formerly used the service of Coast Truck Line. The service as proposed by applicant would be satisfactory and would meet his transportation requirements.

Mrs. Young, residing at Twin Oaks Valley, three miles northeast of San Marcos, farms 28.83 acres, growing beans and tomatoes, shipping to Los Angeles, Witness has used both Coast Truck Line and Pacific Coast Distributors, but now uses the truck service of Coast Truck Line and finds it necessary to have her shipments at San Marcos by 1 P.M. Witness prefers

service as proposed by applicant enabling shipments to be picked up on the ranch and at a later hour.

E. E. Raymond, residing two miles north of Vista and three-fourths mile off the highway, grows vegetables, principally peppers, on four acres. Witness formerly shipped via the Pacific Coast Distributors, but now uses Coast Truck Line, which is rendering excellent service.

Ed Purves, one of the defendants in Case No. 2799, testified that he had resided in Vista since 1917 and had been employed as a truck driver, formerly working for Coast Truck Line as a pick-up driver in the Vista district. Witness knows of 200 to 225 growers in the district who market a portion or all of their products in the Los Angeles market, there being four shipping districts in the area proposed to be served by applicant, as follows: Geo. Gunn Ranch of over 300 acres, located $2\frac{1}{2}$ miles west of Vista; the San Marcos district comprising about 250 acres; Twin Oaks Valley district located east of San Marcos and extending $3\frac{1}{2}$ to 4 miles from the main highway; and the Delphi district, the largest and oldest shipping district, comprising about 800 acres located about $1\frac{3}{4}$ miles west of the main highway leading to Bonsall. Witness described method of hauling to serve the various districts, leaving Vista between 5 and 6 P.M. and arriving at Los Angeles between 9:00 and 9:30 P.M. Witness has been employed as a driver for applicant Stone and expects to be employed as a manager in the Vista district in the event of granting of the pending application. Witness estimates that six trucks will be required to care for the pick-up and line haul operations of applicant and that a gross average revenue of \$22.50 per round trip will result from the proposed operation. Witness formerly worked for H.K. Prince, who later became president of Pacific Coast Distributors, and is now employed by applicant Stone.

The granting of the application is protested by the Coast Truck Line, Railway Express Agency, Inc., Boulevard Express, and The Atchison, Topeka & Santa Fe Railway Company.

H.B. Merry, General Manager of Coast Truck Line, testified that his company operated daily service from all points on its lines excepting some small communities located on the Inland Route, daily service being operated between Vista and Los Angeles. His company maintains terminals at Los Angeles, San Diego, Oceanside and Escondido, and agencies at different towns in the territory served, and has specialized in the transportation of vegetables and farm produce from the territory adjacent to Oceanside and Vista, such district comprising the area bounded by Del Mar to San Luis Rey, and from the Pacific Ocean to Escondido. Witness described the operating difficulties experienced in properly serving the area by reason of shipments being forwarded to different terminals, San Diego being a point of destination as well as Los Angeles. Approximately 100 units of equipment are available for the transportation of freight by protestant, being either owned by his company or readily available by securing equipment from affiliated companies. An average of 18 employees are maintained at Oceanside, under the direction of the agent at that point, and an agent is also employed at Escondido. An exhibit was filed (Exhibit 3), showing the vegetable tonnage handled through the Oceanside agency for the calendar year 1929, the total amounting to 3597 tons and including all vegetable tonnage originating at Del Mar, Solano Beach, Encinitas, Carlsbad, Oceanside, Vista and San Luis Rey. The peak movement occurs in December and January, and May, June and July of each year, shipments during the other months of the year averaging about 40% of the tonnage handled during peak months. Witness contends that his company is giving a satisfactory service, in an efficient manner, in the handling of seasonal transportation subject to variable

tonnage by reason of crop or climate conditions; that an ample reservoir of equipment is available to meet the sudden variations incidental to the transportation of vegetables, fruit and farm produce; and that in his opinion the limited amount of equipment proposed to be devoted to the service by applicant will not hold up to a proper efficiency under the schedules and service proposed. Also that his company has provided equipment to meet peak conditions in the handling of vegetables to meet the needs of the producers, much of which equipment cannot be utilized to a reasonable extent during the off-peak seasons, and that such equipment represents a substantial investment.

L. R. Sibbale, a witness for protestant Coast Truck Line, testified that he was for 2½ years in charge of the Oceanside agency, terminating his employment as agent about 5½ months prior to date of hearing. During his incumbency as agent he had supervision over the Vista territory and used 6 to 8 pick-up trucks, employing an average of 9 men, making pick-up of vegetables throughout the entire Vista area. Witness also frequently went over the district to enable him to arrange routings and generally supervise the work of drivers that the most efficient service might be given for the growers. He further testified that the production of vegetables was rapidly increasing during the last three years in the Vista district, irrigation having made it possible for new areas to be cultivated and several new roads having been opened, all of which required pick-up service.

W. R. Crews, a witness for protestant Coast Truck Line, testified that he was employed as agent at Oceanside and had been since July, 1929. His duties require him to devote the majority of his time in the territory tributary to Oceanside, which includes the Vista district. He interviews shippers as to their requirements, investigates and adjusts complaints,

and has never refused to furnish pick-up service whenever requested. Witness has 9 men and 6 pick-up trucks under his supervision, all working out of the Oceanside terminal.

E. S. Hovley, residing at Vista, engaged in farming, and owner of one-quarter interest in the Vista Vegetable Growers Exchange, testified that the exchange had been operative for three years; the first year handling over 200 carloads, the second year 500 carloads, and the past year over 100 carloads, mostly tomatoes. The service of Coast Truck Line was used during the past year and was found to be very satisfactory, pick-up service having been available at witness' ranch, located about one and one-half miles from Vista.

M. Fleuret, residing on the Delphi ranch, two miles from San Luis Rey, and cultivating 60 acres, testified as to use of Coast Truck Line service, which he had found to be satisfactory, delivery being made to the truck station at Oceanside. Witness proposes to cultivate 60 acres during the coming season and to continue shipping via Coast Truck Line.

G. Miyata, residing at Vista, testified that he cultivated $3\frac{1}{2}$ acres of vegetables. Witness is also manager for the Vista Produce Company, which company farms 150 acres, producing beans, peas, squash and cucumbers, the majority of which are marketed in Los Angeles. Eighty acres of the Vista Produce Company holdings are northwest of Vista, the balance are located $2\frac{1}{2}$ miles north of Vista. Witness ships entirely by trucks of Coast Truck Line and finds the service to be satisfactory, having used it for the past $3\frac{1}{2}$ years.

T. Ono, a vegetable grower of Vista for the past $3\frac{1}{2}$ years, ships to Los Angeles via Coast Truck Line and has found the service good. Witness farms 20 acres, principally tomatoes, and has 2 acres in strawberries.

Geo. L. Cross, a vegetable grower of Vista for the past $1\frac{1}{2}$ years, testified that his ranch was located two miles

northeast of Vista, consisted of $\frac{1}{2}$ acres on which he raises peas, beans, bell peppers, eggplant and tomatoes. The service that he has received from the Coast Truck Line he considers the very best, shipments being assembled at a central point on his ranch from which they are picked up by Coast Line trucks, pick-up being made between 4:00 and 6:00 P.M.

C. E. Hughes, residing $2\frac{1}{2}$ miles west of Escondido on the Inland Highway, testified that he was superintendent of a 100 acre ranch devoted to vegetable raising, principally tomatoes with some peppers and rhubarb. Witness has used the service of Coast Truck Line for four years and finds it satisfactory, his shipments being picked up at a point three-eighths of a mile off the highway.

Mr. Dornes, residing $2\frac{1}{2}$ miles northeast of Vista, testified that he farmed from 4 to 10 acres, raising tomatoes, bell peppers and string beans. Witness has used Coast Truck Line, has received satisfactory service, and does not require the service as proposed by applicant.

J. E. Lacey, residing at Escondido and employed by the Paloma Nurseries located between San Marcos and Escondido, testified that he had used the facilities of Coast Truck Line for the shipment of vegetables; that he had received satisfactory service; and that he had no need for additional truck service. Witness assembles and packs his vegetables at a packing house located $\frac{3}{4}$ miles from the highway and hauls them to the highway for shipment.

E. W. Curtis, residing $1\frac{1}{2}$ miles northeast of Vista, farms four acres in vegetables and strawberries, using Coast Truck Line for his shipments and finding such service satisfactory. Witness hauls his products to the pick-up point at Vista and has no need for the service as proposed by applicant.

Ed Egley, residing four miles from San Marcos on the old Carlsbad road, testified that he cultivated forty acres in berries and general vegetables. Witness ships his products to Los Angeles via the Coast Truck Line and has found the service to be satisfactory. Witness hauls his shipments to the San Marcos Oil Station, and has no need for the additional truck service.

Nick Phantalas, residing $3\frac{1}{2}$ miles northeast of Vista, testified that he farmed 50 to 75 acres, all in vegetables. Witness has used the service of Coast Truck Line for four years and has found it satisfactory. Witness has his own loading platform located on the county road at a distance of $1\frac{1}{2}$ miles from the main highway, which platform is used by neighboring growers in stormy weather. Shipments must be ready by 3:00 P.M. but such service is, and has been satisfactory and no need for additional service exists as regards this witness' requirements.

Louis Varbis, a witness residing $3\frac{1}{2}$ miles northeast of Vista, testified that he farmed 114 acres, shipping his products to Los Angeles via the Coast Truck Line. Witness has received satisfactory service and sees no need for the additional service proposed by applicant.

A. C. Fulton, a witness residing at Oceanside and growing vegetables south of that city, testified that he farmed from 10 to 50 acres in beans, squash and peas. He ships to the Los Angeles market and has used the facilities of Coast Truck Line for four or five years, finding the service to be satisfactory and having no need for additional service. Witness delivers his shipments to the Oceanside terminal of Coast Truck Line for forwarding.

E. J. Allin, a witness residing south of Oceanside, testified that he had been a vegetable grower for six years, owning ten acres upon which he raised lima beans and squash. His shipments are delivered to the highway and then transported

to Los Angeles by the Coast Truck Line. The service has been satisfactory and without complaint during the four years that it has been used. Witness has no need for additional truck service.

Jas. A. Scott, a witness residing at North Carlsbad, testified that he farmed eight acres producing squash and lima beans, marketing in Los Angeles and San Francisco. Witness has used Coast Truck Line for his shipments to Los Angeles, has had good service, and sees no need for the additional service proposed.

F. L. Cole, a witness residing south of Oceanside and one-quarter mile from the highway, cultivates 20 acres, his crops being asparagus in the spring and lima beans in the fall. Witness has used the service of Coast Truck Line since they began operation and has always received satisfactory service. Has no need for additional truck service as proposed, having no complaint as to present service available.

C. E. Helliger, residing at South Oceanside, farms 5 acres in beans, used Coast Truck Line service which he finds satisfactory, and has no need for the additional truck service as proposed by applicant.

G. Andersen, a witness residing near Carlsbad, testified that he farmed two and three-quarters acres, shipping eggs, beans and squash to Los Angeles via Coast Truck Line, from whom he receives satisfactory service. Witness has no need for the additional service proposed.

T. R. Pennington, residing at South Oceanside, cultivates 15 to 20 acres producing beans, potatoes and squash. This witness has used the service of Coast Truck Line for shipments to Los Angeles for the past six years, has always found the service satisfactory, and has no need for the service of applicant.

Mr. Young, residing near Vista, and farming 5 acres, grows vegetables, principally tomatoes, ships to Los Angeles via Coast Truck Line. Has received satisfactory service and does not need the proposed service of applicant.

J. D. Litchfield, residing at Carlsbad, farms two acres and specializes in the raising of cucumbers under glass. Ships to Los Angeles via Coast Truck Line and has received satisfactory service. Does not require additional truck service as proposed.

F. J. Ramsay, residing at Carlsbad and a buyer and shipper of vegetables, has used the service of Coast Truck Line since its inauguration, finding it satisfactory, and has no need for additional service.

No evidence was offered on behalf of protestants, The Atchison, Topeka & Santa Fe Railway Company, Railway Express Agency, Inc., and Boulevard Express.

We have carefully considered the evidence and exhibits in these proceedings.

As regards the application, the record shows a rapid development of the vegetable industry in the Vista district and that due to the effect of recently established irrigation large tracts are now receiving water, are being subdivided and placed under intensive cultivation, two or more crops of vegetables and garden truck being raised each year. The rapid development of the territory and the considerable area served renders it difficult to satisfactorily provide transportation to the Los Angeles market, it being the desire of all growers to have their products reach Los Angeles for the early market that the best possible price may be obtained. We do not find that the evidence supports the contention of applicant that existing transportation facilities do not afford a reasonable and satisfactory service for the transportation of vegetables from the area proposed to be served by the applicant as a common carrier.

It does appear, however, that protestant Coast Truck Line, has been fully aware of the rapid development of the territory and has so increased its pick-up trucks and other facilities to keep pace with the needs of the shippers and growers. Testimony of a considerable number of satisfied growers and shippers cannot be disregarded when weighing the offer of this protestant to continue the enlargement of its facilities, the re-arrangement of its pick-up and other schedules and other incidental items of operation to satisfactorily meet the growing demands for prompt transportation of vegetables and farm products which are the result of intensive cultivation and development in the Vista District. We are of the opinion, based on the evidence herein, that no showing justifying the granting of the application has been made, and that the service of Coast Truck Line, and other protestants, should be augmented to meet the demands of the rapid development, it appearing that a much greater tonnage will require transportation in future, and unless and until a satisfactory and affirmative showing be made that existing and authorized carriers are not meeting, reasonably and satisfactorily, the demands and requirements of the growers and shippers, additional and competitive service will not be authorized.

Such showing has not been made as regards the instant application, and it will, therefore, be denied.

We will now consider the issues as presented by the complaint in Case No. 2799.

But little direct evidence was presented in substantiation of the allegations of the complaint, such material facts as may be present having been developed through the examination of witnesses principally interested in the application.

As to defendant, Ed Purves, the records shows said defendant to have been employed by defendant J. A. Stone as a driver and in connection with the business heretofore conducted by said Stone since the discontinuance of the operations of Pacific Coast Distributors. We conclude, from the record herein, that his status at all times during the period covered by the complaint has been that of an employee of defendant Stone and not as an independent operator or as a co-partner of said Stone. The complaint, therefore, insofar as same refers to defendant Ed Purves, will be dismissed.

As to defendant J. A. Stone, the record shows that after the discontinuance of the operations of Pacific Coast Distributors, said operation having been ordered discontinued by the Superior Court of San Diego County, this defendant under contract or agreement with ten shippers in the Vista District transported their products to Los Angeles and that he refused to contract and transport for others who desired his services. Defendant presented an exhibit (Exhibit No.1) consisting of the form of contract under which he was operating, although there is no evidence showing the individuals or shippers that were parties to such form of contract. This form of contract has been considered by the Commission and from such consideration it is our opinion that it is not a contract which would enable defendant Stone to operate a truck service between Vista and Los Angeles and relieve him of the necessity for compliance with the provisions of the statutory law as contained in Chapter 213, Statutes of 1917, and effective amendments. In view of the record and evidence as herein applicable to the complaint as regards defendant Stone, we are of the opinion and hereby find as a fact that the operation as heretofore conducted by defendant J. A. Stone in the transportation of vegetables and farm produce between the Vista District and Los Angeles is an

operation over regular routes and between fixed termini and in violation of the provisions of the statutory enactment, (Chapter 213, Statutes of 1917), in that said operation was commenced prior to a certificate of public convenience and necessity having been applied for or granted by this Commission.

O R D E R

Public hearings having been held on the above entitled proceedings which were consolidated for the receiving of testimony and for decision, the matters having been duly submitted and the Commission being now fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the operation by J. A. Stone of an automobile truck line as a common carrier of vegetables and supplies for vegetable growers between Vista and Los Angeles, and

IT IS HEREBY ORDERED that Application No. 16142 be and the same hereby is denied.

IT IS HEREBY ORDERED that the complaint in Case No. 2799, insofar as same refers to defendant Ed Purves, be and the same hereby is dismissed.

IT IS HEREBY FURTHER ORDERED that defendant J. A. Stone immediately cease and desist operation of automobile trucks over the highways of this state between Los Angeles and Vista and adjacent territory in the transportation of fruit, vegetables and farm products and not resume such operation unless and until said J. A. Stone will have received from this Commission a certificate of public convenience and necessity in accordance with the provisions of Chapter 213, Statutes of 1917, and effective amendments.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission be and he hereby is directed to forward a certified copy of this order to the District Attorneys of the Counties of Los Angeles, Orange and San Diego.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 7th
day of July, 1930.

[Signature]

[Signature]

M. A. Cur
COMMISSIONERS.