

corporation. Two certificates to operate trucks for the transportation of property have already been granted by this Commission to applicant.

In the present application it is asserted that both rail and water carriers serving between Sacramento and Rio Vista and the intervening points of Freeport, Hood, Courtland, Walnut Grove, Locke, Vorden, Ryde and Isleton provide inadequate facilities for the expeditious transportation of property consigned by shippers to the Delaware Company and that such expeditious transportation can be best provided by a truck service operated by applicant having as its sole duty the transportation of such consignments; that for the greater part these consignments are the perishable or fragile products of agriculture and horticulture produced in season in the area between termini; that unless the auxiliary service is established prompt shipment to market destinations, many remote from California, cannot be insured and the loss to the shippers will result; that in many cases a gain of 24 hours in reaching such destinations will accrue.

The testimony of Mr. A.L. Hammell, Superintendent of Transportation and Traffic of the Delaware Company for the eleven far western states, Hawaii, Alaska and parts of Canada and Mexico, I believe, shows how far reaching the service proposed will be, Mr. Hammell is also Superintendent of California Company, applicant herein. He testified that 95 percent of the products of the area to be served are destined to points beyond Sacramento, viz. Los Angeles, Los Angeles Harbor, Portland, Seattle, Chicago, New York, New Orleans, Kansas City and many others and the salability at these and other markets and the prosperity of the growers and shippers is dependent on certain train connections at Sacramento. The other five percent of volume moves to consignees in Sacramento. The figures are based wholly on movements by express

so that, if applicant is permitted to establish the service proposed, it will be simply adding its own physical facilities to conduct a pickup and delivery service to and from its own station in Sacramento. That this is common sense tactics is shown by the fact that certain connections with trains leaving Sacramento at 5:45PM and thereabouts, carry refrigerator cars in which perishables are transported to southern California and through that gateway to Arizona, New Mexico and Texas points and, ultimately New Orleans (Exhibit No.2), as well as to points in the far east and northwest. The certainty of connections at Sacramento is the key to favorable marketing of the products of this Delta area.

Exhibits filed by applicant show that the l.c.l. shipments from the points involved in May 1931 aggregated 1,031 in number, 44,681 pounds in volume and that 5.4 percent were purely local shipments. Similar shipments to the same points aggregated 1,109 in number, 66,150 pounds in volume and 4.0 percent purely local. The remainders were intrastate or interstate through Sacramento. It thus appears to me that the element of local competition is negligible and the record discloses that applicant will not increase its local haul owing to disparity of its rates with other services.

Exhibit No. 5 filed by applicant for the twelve months ending May 31, 1931, shows that May is an average revenue month, the peak being in February, March and April and the low points of subsidence the months between September and January inclusive. With a gross revenue, in and out, of \$37,613.05, for the year, (not including Sacramento) and with May revenue of \$2,749.91, May comes near the average of \$3,135. per month. The revenue moves up or down with the seasonal crop movements.

Through Mr. Hammell Exhibit No. 8 was introduced to show the cost of operation of the service as proposed. The equipment will be owned by Delaware Company and leased to California Company at the rate of \$45.25 per month. Operating costs are

estimated at \$397.81 per month, including rental. The revenues are estimated at \$457.88 a month (including \$50.00 a month paid by Delaware Company to California Company for delivery and pickup service at Rio Vista), thus showing an estimated profit of \$60.07. This estimate was questioned by protestant but Mr. Hammell testified that if the operation lost \$60. a month or more the service would still be maintained as the volume of long distance rates would justify absorbing such a loss; besides the abandonment of rail and water facilities saves \$91.55 per month. It does not seem to me that this feature of profit or loss is important, as it might well be if the service proposed were one involving financial prudence. Delaware Company is a common carrier in every state in the union and uses the most efficient facilities of rail, water, automobile and aircraft. The testimony of Mr. F.R. Maulsby, Superintendent of motor vehicles for both express companies, testified that Delaware Company is now using 9000 units of automotive equipment, many of them in similar service in other states, and that the costs of operation are well established. The use of trucks is an auxiliary method of sustaining expedition in behalf of shippers, especially where rail service has been abandoned or is inadequate.

Delaware Company now transports express over the mixed train service of Southern Pacific Company between Sacramento and Isleton. That this service is inadequate is shown by the testimony of P.W. Barnard, employed in the office of the vice-president of the rail carrier. He admitted that the time schedules are not kept in the operation of this branch and that there is no justification for more than a slow freight service, which could not at its best, meet the express company needs for expedition. California Transportation Company also carries express by steamers along

the Sacramento River to nearly all of the points served but it did not appear nor protest the application. It must appear, therefore, that there is in the record confession of inadequacy in the existing rail and water services.

The application was protested by Beverly Gibson (River Auto Stages), operating authorized passenger and freight service between Sacramento and Rio Vista. He operates six passenger stage schedules each way daily to Rio Vista, one additional to Walnut Grove and one freight schedule each way daily, except Sunday. On passenger stages he is limited to 100 pounds per shipment, but on trucks no limit has been imposed. One of his schedules between Sacramento and Rio Vista is practically the same as the single schedule offered by applicant (Revised Exhibit "A") which leaves Sacramento at 7:30AM and reaches Rio Vista at 9:50AM returning at 2:30PM and reaching Sacramento at 5:10PM. Delaware Company has never used this service. Protestant in a letter to applicant (Exhibit No.9) under date of June 17, 1931, called attention to its specific operation and offered to "work out a proper coordination of our facilities". The offer was rejected by California Company (Exhibit No.10) on the ground that "we feel the only way this can be accomplished satisfactorily to all interests concerned is through our own operation of this auxiliary or feeder service".

Thus California Company elects to establish and maintain (even at a loss) this service, exclusively for its own cargoes, in preference to rail, water or automotive. Delaware Company is a common carrier not only between Rio Vista and Sacramento but to every rail point in the United States. Exhibit No. 6 shows fully the interstate shipments sent and received over its service by persons in the Delta area, and displays shipments from or to practically every state in the Union. Intrastate shipments are shown to almost every county in California. The exhibit represents only the month of May, 1931, which we have already

shown is slightly less than the average. The business is that of the Delaware Company and the Company, through its subsidiary, proposes to assure expedition under its own control by complying with the law of California, while in some other states it is free to do so without authorization.

Added to this showing is the testimony of fourteen shipper witnesses produced at the hearing. They were unanimous in their support of applicant, though reasons varied. Some wanted to avoid hauling their shipments to Elk Grove, Galt or Sacramento to make train connections; others wanted certainty of delivery expeditiously to markets where their crops are sold; others wanted the service for transmission of valuables and money, which no carrier now transports, and store-door delivery of merchandise, which now costs them local drayage. All who had used service of protestant Gibson said it was satisfactory but as express shippers they required through express receipts, which they could not get by protestant's service.

Protestant urges in his brief that this Commission is without authority to grant the certificate sought by applicant California Company because it is a wholly owned subsidiary of Delaware Company, alleging that although applicant is a California corporation it is a mere subterfuge for the purpose of evading Section 5 of Chapter 213, Stats. of 1917, as amended, which forbids granting any certificate to a foreign corporation. The same point was urged in Application No. 13775 of Southern Pacific Motor Transport Company, a California subsidiary corporation wholly owned by Southern Pacific Company, a Kentucky corporation. Our decision sustaining the right of this subsidiary to receive a certificate in that case, we believe, holds in the present instance and the point urged is denied. (CRC Vol. 32, p.331)

Protestant also urges that in Decision No. 22853 on Application No. 13807 and others, Southern Pacific Motor Transport Company was denied a certificate to carry express between Sacramento and Gerber under similarity "in practically all of its

aspects". (CRC Vol. 35, p. 172) The record and decision in this matter does not, I believe, present analogous facts and is of little influence in the instant matter in justifying denial of applicant's request. In the matter cited the proposed withdrawal of two train schedules, precipitated several applications for passenger service, carrying express, but all applications were denied except the one permitting discontinuance of the train schedules.

In the instant matter applicant cannot be an effective competitor of protestant for local traffic, first because its offer is limited to the transportation of shipments tendered to Railway Express Agency, Inc. of Delaware, a common carrier, and no other property; second, the difference in rates almost precludes use of applicant for local purposes, as the following table shows:

COMPARISON OF RATES BETWEEN RIO VISTA AND SACRAMENTO

(In cents per 100 pounds)

	<u>1</u>	<u>2</u>	<u>3</u>	<u>Min.</u>
*Applicant	1.00	75	72	43
Protestant	22.5	20	15	15

*(1) Merchandise N.O.S.; (2) Articles food, drink N.O.S.;
(3) Butter, cheese, eggs, etc.

After carefully reviewing the entire record I am of the opinion that public convenience and necessity require the service proposed by applicant herein, and do so find as a fact.

Railway Express Agency, Incorporated, of California, is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

Upon the foregoing finding I recommend the following form of order:

O R D E R

Railway Express Agency, Incorporated, of California, a corporation, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate motor vehicles for the transportation of express matter for Railway Express Agency, Inc. or its successors, between Sacramento, Freeport, Hood, Courtland, Walnut Grove, Locke, Worden, Ryde, Isleton and Rio Vista, and intermediate points, 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 requires the establishment and operation by Railway Express Agency, Incorporated, of California of motor vehicles for the transportation of express matter consigned to it by Railway Express Agency, Inc., of Delaware, or its successors, and for no other property, between Sacramento and Rio Vista, and all intermediate points, including Freeport, Hood, Courtland, Walnut Grove, Locke, Worden, Ryde, Isleton and Rio Vista, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to applicant subject to the following conditions:

1- That applicant shall confine its operations to the transportation of express of Railway Express Agency, Inc. of Delaware.

2- Applicant shall file in duplicate and make effective within a period of not to exceed thirty (30) days from the date hereof a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted.

3. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

4. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.

5. 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.

6. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 19th day of October 1931.

Leon Overbury
W. J. Carr
W. B. Harris
Fred G. Stewart
COMMISSIONERS.