

Decision No. 25587

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of R. G. KNOLL, for certificate of public convenience and necessity to operate auto truck service for the transportation of property between the LONG BEACH HARBOR DISTRICT and THE CITY OF LOS ANGELES.)
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) Application No. 17272.
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In the Matter of the Application of J. A. CLARK DRAYING COMPANY, to extend their present operative rights so as to serve Long Beach Harbor District.)
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) Application No. 17310.
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)

- Sanborn, Roehl & Brookman, by E. E. Sanborn, for Applicant in Application No. 17272;
- Phil Jacobson for Applicant in Application No. 17310;
- Hugh Gordon for Tolson Transportation System, Inc., Richards Trucking & Warehouse Company, Lamb's Transfer Company, City Transfer & Storage Company and Zimmerman Bros., Protestants in both applications.
- R. E. Wedekind and J. L. Fielding for Southern Pacific Company, Protestant in both applications.
- E. C. Renwick for Los Angeles & Salt Lake Railroad Company, protestant in both applications.
- James F. Collins, C. E. Barry and Charles A. Bland for Harbor Commission of Long Beach, proponents for applicant in App. No. 17272.
- R. O. Baldwin for Long Beach Chamber of Commerce, interested party.
- R. E. Wedekind for Pacific Electric Railway Company and Pacific Motor Transport Company, protestants in both applications.

BY THE COMMISSION:

O P I N I O N

R. G. Knoll has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an auto truck transportation

service, as a common carrier of freight, between Long Beach Harbor District in the City of Long Beach and the City of Los Angeles, provided however that the freight which applicant proposes to transport shall consist entirely of water-borne traffic loaded or unloaded onto or from vessels at the docks within the Long Beach Harbor District or stored within the said district before or after being loaded or unloaded to or from such vessels.

Applicant proposes to charge rates and to operate under a time schedule in accordance with Exhibits A and B attached to said application. A description of the equipment to be used in said service is marked "Exhibit C" and attached to said application. The routes over which applicant proposes to operate and the territory comprising Long Beach Harbor District is designated upon a map marked "Exhibit D" and attached to said application.

J. A. Clark Draying Company has petitioned the Railroad Commission, in accordance with its amended application, for an order declaring that public convenience and necessity require the operation by it of an automobile truck line as a common carrier of water-borne freight between Los Angeles and Long Beach Harbor District, as an extension of its existing motor trucking service between Los Angeles, on the one hand, and Wilmington, San Pedro and intermediate points, on the other hand, as authorized under Decision No. 18150 of this Commission dated March 31, 1927.

Applicant proposes to charge the same rates and to operate under the same rules and regulations which are now in effect by said applicant between Los Angeles, Wilmington and San Pedro. Applicant proposes a daily service

under a time schedule which will be dependent on the loading and unloading of ships at Long Beach Harbor docks.

The route over which applicant proposes to operate between Los Angeles and Long Beach Harbor District and the territory proposed to be served is shown in exhibits A and B attached to said application. Applicant proposes to use the same equipment which he now has in operation under his present certificated service.

Public hearings on said applications were conducted before Examiner Satterwhite at Los Angeles, the matters were submitted upon briefs, and are now ready for decision.

Southern Pacific Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Pacific Motor Transport Company, City Transfer & Storage Company, Lamb Transfer Company, Richards Trucking & Warehouse Company, Tolson Transportation System and Zimmerman Brothers protested the granting of both applications. Each of the above named applicants protested the application of the other.

Applicant R. G. Knoll relies for justification of his proposed service upon the following primary contentions:

(a) That extensive harbor development has been and is being constructed at Long Beach within the Long Beach Harbor District;

(b) That two steamship companies now regularly dock at said harbor for the receipt and discharge of freight from state and interstate points and that an increasing number

of vessels carrying freight are docking at said harbor for the receipt and discharge of freight.

(c) That there are no transportation facilities existing which adequately and sufficiently take care or can take care of the transportation service of water-borne traffic.

Applicant contends further that a certificate should be granted him: First: By reason of three alleged private contracts involving the transportation of a very large tonnage which secures the co-operation of two steamship companies now operating a regular service at the Long Beach docks. Secondly: That he has modern equipment consisting of semi-trailers and tractors superior to the equipment of the protesting truck carriers. Thirdly: That his alleged private contract rates or charges have at all times been much lower than the authorized or published rates of the regulated truck carriers. Fourthly: That his alleged private contract charges now proposed to be charged as a common carrier between Long Beach Harbor and Los Angeles will be on a parity with rates in effect between Los Angeles and Los Angeles Harbor and finally that his proposed lower rates were proposed prior to the lowering of rates between the same points by the regulated truck carriers.

The protesting truck companies, as a group, contend that their services meet all the requirements as indicated by the tests heretofore laid down by this Commission to determine whether either or both of said applicants should be granted a certificate to operate an additional truck service in a field already served by the above named protesting rail and regulated truck carriers.

These protestants urged specifically:

(1) That they are all pioneers in the field of regulated truck transportation between Long Beach Harbor and Los Angeles;

(2) That they are rendering efficient service at reasonable rates commensurate with the volume of tonnage moving between said points.

(3) That they are fulfilling adequately the duty which, as public utilities, they owe to the public in that they have been diligent to provide added facilities for transportation and reasonable adjustments in their rates to meet all demands of the shipping public as soon as such demands became apparent.

(4) That in view of the large number of trucks and trailers available by protestants, the territory sought to be served by applicants is already served by the existing carriers to the point of saturation.

Applicant Knoll testified in his own behalf and called about six other witnesses consisting of officials of the Port Commission and the Chamber of Commerce of Long Beach and the owners or representatives of two steamship companies.

The evidence of applicant Knoll shows that for about ten years last past he has been operating as an alleged private contract carrier between numerous points and places in the State of California and the City of Los Angeles. At the time of the hearing of these proceedings he was operating a truck service by virtue of three private contracts with the Safeway Stores, General Food Products and the Lucerne Creamery and was transporting a very large volume of freight between Los Angeles and Long Beach Harbor.

Mr. Knoll owns and operates 12 semi-trailers, 4 tractors and 5 trucks. He testified that the semi-trailer type of equipment

is better, a little faster and more suitable than the regular truck and trailer type operated by the protesting truck lines by reason of the fact that it is mostly closed and can be loaded and returned to the docks faster than the other type. He stated that the semi-trailer type is better adapted to the handling of a large volume of freight or shipments from one point of origin to one consignee and is particularly advantageous in handling the shipments of the Safeway Stores and other such large concerns. Mr. Knoll now transports under his three alleged private contracts a very large tonnage and if he were granted a certificate he would be able to secure, as he testified, two or three thousand tons a month more for the reason that when he was approached by the Long Beach Port Commission and steamship companies he was assured that as a common carrier he could enlarge the volume of his alleged private transportation business by their co-operation, as well as increase the business of Long Beach Port by having his private contract traffic pass through that Port. The record shows that the Chamberlin Steamship Company was willing to change its operations to Long Beach if Mr. Knoll would secure a franchise to operate from that Port and concur in through tariffs. Mr. Knoll also stated that the Chamberlin Steamship Company desired a dependable truck line together with a through service, in order that they might meet the competition of other steamship lines operating through Los Angeles Harbor.

The Safeway Stores, one of the largest chain stores operating in the State of California, have been using for some time the Chamberlin Steamship Line and the Los Angeles-Long Beach Dispatch Line in the transportation of their goods and merchandise to and from the harbors of Los Angeles and Long Beach and Applicant

Knoll has hauled this merchandise exclusively under contracts to and from Los Angeles.

W. R. Chamberlin, President of the Chamberlin S.S. Company, testified in support of the Knoll service to the effect that he began operating permanently into Long Beach March 1, 1931, after making a try-out of the docks and that his steamers are now handling about four or five thousand tons of general cargo a month into and out of Long Beach Harbor. This Steamship line, it appears, formerly operated into Los Angeles Harbor, but moved over to Long Beach because the facilities at Wilmington were not so satisfactory. When this steamship company began to operate regularly on March 1, 1931, to Long Beach Mr. Chamberlin had never had any contact of any kind with, or had ever investigated at all, or heard of the service of the protesting certificated truck carriers. It appears that Mr. Knoll was recommended to him as a reliable unregulated truck operator who could take care of his transportation needs in a business-like manner, and after investigation he liked Mr. Knoll's equipment and his service and business policies.

J. K. Nelson, part owner of the Los Angeles-Long Beach Despatch Line, testifying for Mr. Knoll, stated that this steamship line since March 1, 1931, has also operated once a week a regular service into Long Beach Harbor and that his general cargo amounts to about eight hundred tons a trip, 75% of which goes to Los Angeles. It appears that 50 per cent of his cargo also consists of Safeway Stores traffic and that Applicant Knoll has the exclusive transportation of this merchandise under his contracts with

with the Safeway Stores. Prior to March 1, 1931, this steamship company also operated an infrequent or irregular service into Long Beach. This witness also testified favorably to the proposed service of J. A. Clark Draying Co. on the basis that this applicant has hauled satisfactorily from time to time from this steamship line a very substantial tonnage from the Long Beach docks.

James F. Collins, Port Manager, testified that the Port Commission was supporting the application of R. G. Knoll because of the substantial volume of traffic that had been brought to Long Beach through the energy and ability of Mr. Knoll. The trucking equipment of Mr. Knoll had also impressed the Port authorities, together with and in connection with his manner of handling the water-borne traffic. The following excerpt from the testimony of Mr. Collins indicates the position of the Port Commission:

Q. "Are you in a position to state what the position of the Port Commission is with reference to this particular application of Mr. Knoll?"

A. "The Port Commission's position is that this application should be granted because of the fact that, with all due respect to all of the other carriers now serving the Harbor District, a very great proportion of the traffic that has been brought over there has been brought about through the energy and the apparent ability of developing business that Mr. Knoll has exhibited * * * We are not in opposition to the rail lines and are not in opposition to any of the carriers; in fact, I am just as much interested in seeing one carrier develop traffic in there as another, but so far Mr. Knoll has certainly served us with what we consider as a public necessity in providing us a line of traffic that produces revenue."

C. E. Barry, Traffic Manager for the Long Beach Harbor, testified at considerable length on the service offered at the Long Beach docks, the development of Port business and the need for expeditious truck service between Los Angeles and Long Beach Harbor. His duties consisted of

co-operating with all interested parties to increase the traffic of the Long Beach Port. The testimony of this witness shows that the Chamberlin Steamship Company, prior to its regular service into Long Beach, demanded that the Port authorities co-operate with it for the purpose of creating a situation at Long Beach that would be on a par in every respect with the conditions at Los Angeles Harbor. It appears that Mr. Barry, thereafter, got in touch with Mr. Knoll and conferred with him about the matter of working and co-operating with the Chamberlin Steamship Company in a combination set-up. As a result of these negotiations, Mr. Barry testified, that it would be necessary for Mr. Knoll to obtain, if possible, a certificate of public convenience and necessity from this Commission and Mr. Knoll then agreed to institute this proceeding to secure such a franchise providing the Port authorities would support him. Mr. Barry testified that there was no appreciable volume of general cargo moving over the docks destined to Los Angeles prior to March 1, 1931, when the Chamberlin Steamship Company commenced its regular service to that Port. On several occasions prior to and after March 1, 1931, Mr. Barry had conversed with several of the representatives of the protesting truck lines and had suggested to them that these regulated lines should make more effort in going after the water-borne traffic, as well as contacting the steamship lines more actively and putting in rates that would accommodate tonnage moving over the Long Beach service. Mr. Barry was aware that the common carrier truck lines were only able to secure a very negligible tonnage as compared with the large tonnage that

Mr. Knoll was handling as an unregulated carrier under his contracts and was of the opinion that these regulated truck lines were more or less inactive about handling water-borne traffic and had more or less ignored this particular traffic. The testimony of this witness also shows that the following tonnage consisting of general cargo, other than lumber and oil, moved over the Long Beach Docks from November, 1930, to July, 1931, inclusive:

October, 1930-	- 2847 tons;	carried on 4 steamers;
November, 1930-	- 7428 tons;	carried on 9 steamers;
December, 1930-	- 3341 tons;	carried on 10 steamers;
January, 1931-	- 1621 tons;	carried on 6 steamers;
February, 1931-	- 4222 tons;	carried on 18 steamers;
March, 1931-	- 10029 tons;	carried on 26 steamers;
April, 1931-	- 9615 tons;	carried on 23 steamers;
May, 1931-	- 7525 tons;	carried on 21 steamers;
June, 1931-	- 8163 tons;	carried on 23 steamers;
July, 1931-	- 7717 tons;	carried on 24 steamers."

It appears that between October and July about eighty per cent of this tonnage moved to Los Angeles and that about ninety per cent or more moved to Los Angeles during March, April and May. Most of this tonnage had been handled by numerous unregulated carriers including Mr. Knoll. The certificated truck carriers had handled but a negligible portion of it.

Mr. Charles A. Bland, who has been traffic analyst for the Harbor Commission of Long Beach for several years, testified that he had made a study of the rates applicable by various transportation agencies, including truck companies from San Pedro, as well as Long Beach. He testified at considerable length as to the necessity of the rates being on a relative equality from Long Beach Harbor to the distributing area in Los Angeles with the San Pedro Harbor, in order that water-borne traffic

may be successfully handled through the Port of Long Beach. An exhibit was introduced by this witness (Applicant's Exhibit No. 6), showing that the rates of some of the certificated lines operating between Los Angeles Harbor and Los Angeles are lower than the rates of the present certificated carriers operating between Long Beach Harbor and Los Angeles, and that the proposed rates of Applicant Knoll are lower on commodities which are representative of a large movement through the Long Beach Port. This witness, however, had made no effort to ascertain exactly the rate situation in accordance with the tariffs of various carriers, protestants or others. It appears, that, in the various comparisons shown, the Long Beach carriers had maintained higher rates than the carriers serving Los Angeles Harbor. Mr. Bland admitted that he had not studied the rate situation to ascertain at all whether the existing rates of the carriers were too high or too low, nor did he contend or charge that the existing rates of the regulated carriers were unreasonable per se or otherwise.

J. A. Clark Draying Company owns and operates a trucking Company in San Francisco and Los Angeles and also operates a public utility warehouse at Los Angeles. It has several hundred customers and operates a large number of trucks and trailers both at San Francisco and Los Angeles.

Several witnesses were called by this applicant, consisting of representatives of shippers, who testified to the effect that they were using the services of applicant at San Francisco, San Pedro and Wilmington and that they would also use the proposed extended service to and from Long Beach if the steamship companies which now handle this applicant's shipments at San Pedro and Wilmington should in the future

changed their operations to Long Beach Harbor. The testimony of these witnesses was substantially in brief as follows:

W. L. Heggerty, of the Guitard Chocolate Company of San Francisco, testified that their shipments from San Francisco to Los Angeles were about a half to two million tons of chocolate per year and it was their desire that applicant J.A. Clark Draying Company take care of their truck transportation needs as they had previously done for several years. They prefer to continue their patronage with this applicant and were also attracted by the lower rates of the Los Angeles & Long Beach Steamship Company offered through Long Beach Harbor.

H. G. Hornblower, Traffic Manager for Johnson, Carvel and Murphy, manufacturers' representatives handling groceries and other goods, also testified to their desire to continue using this applicant's services rather than to change to another truck company. F. R. Deane, Broker, has been using the truck service of applicant through Los Angeles Harbor in the transportation of malt and syrups and would continue to patronize applicant if its proposed extension were granted. E.C. Nickerson, A. W. Stauber and T. E. Finn testified to the same effect as the former witnesses. E. A. Wright, Manager of Columbia Steel Company, extensive shipper of steel commodities, has been patronizing exclusively the service of the Clark Draying Company and desires to use applicant's proposed extended service to Long Beach if authorized.

The record shows that the Los Angeles-Long Beach Despatch Line prior to commencing on March 1, 1931, a regular service to Long Beach Harbor, sought the aid and co-operation of J.A. Clark, the owner of Clark Draying Company, and, after conferences, Mr. Clark assisted this steamship line in making financial and other connections necessary at San Francisco and thereafter a

local and joint freight tariff of this steamship line in connection with the J. A. Clark Draying Company, naming class and commodity rates between San Francisco and Los Angeles via Long Beach, was prepared and issued as of March 6, 1931. This tariff was offered for filing with the Railroad Commission and was at once rejected for the reason that this applicant had no authority to operate as a common carrier between Long Beach Harbor and Los Angeles. This applicant, however, in spite of the rejection of this joint tariff, began on March 1, 1931, a truck transportation service as sought by its application herein and has continued to transport ever since then a very substantial tonnage weekly.

No evidence at all was offered by this applicant to show or tending to show that the existing authorized carriers, either truck or rail, were rendering an inadequate service or had ever failed or neglected or shown inability at any time to handle all shipments required to be transported to and from Long Beach Harbor.

The protesting rail carriers, as a group, called A. E. Norrbom who testified in behalf of the character and adequacy of the services of these carriers and several exhibits were introduced by this witness showing in detail the time schedules and tariffs of the railroad protestants between Long Beach and Los Angeles.

The evidence shows that the Pacific Electric Railway Company has a daily freight service from Los Angeles to Long Beach, leaving Los Angeles at 1:00 A.M. daily, except Sunday, leaving on Sundays at 10:00 P.M., while from Long Beach to Los Angeles, leaving Long Beach at 10:30 p.m. daily, except Monday, and on Monday service leaves at 4:00 A.M.

In addition, Pacific Electric Railway Company holds itself out to run such additional trains as may be necessary to accommodate the traffic.

The Los Angeles & Salt Lake Railroad Company also operates two trains daily between Los Angeles and Long Beach Harbor. One train leaves at 10:00 P.M. and the next train leaves at 2:00 A.M., so that water-borne traffic unloaded on the Long Beach Harbor dock up to 8:00 o'clock in the evening can be moved by this rail line to Los Angeles, to be delivered to industries in Los Angeles the next morning.

The Southern Pacific Company also operates a daily service in both directions between Long Beach and Los Angeles. The Pacific Electric Railway Company serves the Long Beach docks directly, performs the physical operations and switches the cars to either the Los Angeles & Salt Lake Railroad or the Southern Pacific Company for their line haul movement.

The Pacific Motor Transport Company also operates a service between Long Beach Harbor and Los Angeles and uses the Pacific Electric Railway line from station to station. Its pick-up and delivery service is performed both in Los Angeles and Long Beach by motor trucks and the pick-up zones are shown in detail in protestants' Exhibit No. 9. The class and commodity rates of the rail protestants are shown in Exhibit 10 and Exhibit 11. A study of Exhibit 10 shows that the proportional and local rates are different. The difference between these class rates is predicated on whether or not the traffic is received from or delivered to ocean carriers at the Long Beach Port. The local rates are applicable only to traffic originating at Long Beach, including the docks, destined to Los Angeles and not received

from ocean carriers and are the minimum schedule of class rates inaugurated during Federal control in the year 1918. The proportional rates are the actual class rates not subject to the minimum schedule and applicable to water-borne traffic. Exhibit 11 reflects the commodity rates applicable between Long Beach and Los Angeles in either direction which are 6 cents per hundred pounds or less and are similar to the six cent rate which Applicant Knoll proposes. These rail rates apply on minimum weights, as indicated in this exhibit. The record further shows that the rates as shown in Exhibits 10 and 11 are on a parity with the rates published by the protesting rail carriers from Los Angeles Harbor to Los Angeles. Long Beach is intermediated between Los Angeles Harbor and Los Angeles, via the Los Angeles and Salt Lake Railroad.

The record shows that the Pacific Electric Railway Company and the other rail protestants have been operating for many years between Los Angeles and Long Beach or Los Angeles Harbors and have contributed in a very large way, both as to capital investment and long service, to the development of these ports and have rendered, as rail carriers, a satisfactory and adequate transportation service. Neither of the applicants offered any evidence of any complaints against or of any inadequacy of the rail service. Moreover, the record shows that the facilities and equipment of these rail carriers are amply sufficient to transport much more traffic than is now offered from and to Long Beach Harbor.

The five certificated truck lines as a group offered considerable evidence in support of the grounds of their protests as hereinabove specified.

The equipment of these truck companies consists of a large number of trucks of modern types and sizes, including tractors, semi-trailers/^{trailers} and other facilities for transporting all kinds of freight. The character and scope of the present truck service in brief is as follows:

The City Transfer and Storage Company has been engaged since 1917 in common carrier transportation service over the highways between Los Angeles and Long Beach, including Long Beach Harbor District, and between Long Beach and Los Angeles Harbor District, serving numerous intermediate points. It also operates four merchandise warehouses in Long Beach and maintains a general transfer and freight delivery business from Long Beach to numerous points within a radius of approximately 20 miles. Its equipment consists of 16 $1\frac{1}{2}$ -ton trucks, 14 $2\frac{1}{2}$ -ton trucks, 10 6-wheel 10-ton trucks, 2 tractors, 5 semi-trailers, 8 4-wheel trailers and 10 6-wheel trailers. This equipment has been kept up and maintained in a condition of high operating efficiency and approximately \$25,000.00 a year has been expended by the company for new equipment.

A representative of this company testified that the various types of equipment operated by this company are such as to permit the greatest efficiency in handling all kinds of tonnage required to be handled by a common carrier.

Richards Trucking and Warehouse Company has operated as a common carrier between Long Beach Harbor and Los Angeles, also between Los Angeles Harbor points and Los Angeles, for at least ten years last past. They have a total of 20 trucks, of which 18 are 5-ton and 2 10-ton capacity; 11 6-wheel trailers and 4 4-wheel trailers, also 8 5-ton tractors and 30 semi-trailers.

The record shows that its equipment is maintained in a state of high operating efficiency and approximately 50 per cent of it is available for transportation service between Long Beach Harbor and Los Angeles.

Tolson Transportation System has been operating as a common carrier since 1918 between Los Angeles and Long Beach, including Long Beach Harbor, Huntington Beach, Torrance, Gardena and various intermediate points. They have 26 trucks of various types ranging from 6-wheel Macks of 10-ton capacity down to Ford trucks of 1/2-ton capacity, all maintained in good operating condition. From one-fourth to one-half of this equipment is available for handling shipments between Los Angeles and Long Beach Harbor.

Zimmerman Brothers has been operating as a common carrier since 1925 between Los Angeles and Long Beach (including Long Beach Harbor), Compton, Watts, Lynwood, Huntington Park and intermediate points. They operate a total of 18 trucks and 6 trailers, 40% of which are licensed for common carrier service. For line haul service between Long Beach and Los Angeles, they use 2 G.M.C. 5-ton trucks, 2 Autocar 5-ton trucks and 1 Reo 3-ton truck, all of which are maintained in a good state of repair and high operating efficiency. Under present demands of business, these trucks are now being used to about 50% of their capacity.

Several representatives of the above protesting truck companies testified at length to the effect that the services being rendered by the present certificated truck carriers is efficient and entirely adequate to meet the demands of the shipping public. Considerable evidence was also introduced to the effect that rates of the protesting truck operators

had been maintained at levels commensurate with the volume of tonnage moved and commodities handled together with those factors determinative of the reasonableness of rates.

The record shows that on May 29, 1931, the truck carriers and each of them filed a uniform tariff of rates between Long Beach Harbor and Los Angeles substantially on a parity with the existing rates between Los Angeles Harbor and Los Angeles. This tariff was designed to meet the competition of the unregulated carriers in the handling of large shipments. The protestants admit, and the record indicates, that prior to the filing of this particular tariff (Protestants' Exhibit 12) the general level of rates was higher to Long Beach Harbor than to Los Angeles Harbor. One of the reasons for this difference of rates was shown by the protestants to be the very great difference in volume of freight handled through the two harbors.

Richards Trucking Company, protestant and authorized carrier also to Los Angeles Harbor, showed a check of tonnage for eight months from November 4, 1930, to June 20, 1931, that it moved 15,952 tons to and from Los Angeles Harbor as against 282 tons to and from Long Beach Harbor. The protesting truck carrier companies offered considerable testimony in support of their contention that they had been diligent, not only in providing ample and efficient transportation facilities and equipment, but have also acted under all the circumstances with reasonable promptness in making the rate adjustments in response to the demands of the shipping public.

Only one contention made by Applicant R. G. Knoll merits serious consideration. He contends that the protesting truck lines failed to co-operate either with the municipal authorities or the steamship lines in developing water-borne

traffic to Long Beach Port and hampered and restricted its free and unrestricted movement by the maintenance of a rate barrier around the Port which prevented traffic moving that way. He also invokes the long established rule announced in case of Pacific Gas & Electric Company vs. Great Western Power Company, I-C.R.C. 203, viz.:

"That only until the time of the threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates."

The record affords an illustration of the struggle of regulated carriers against the competition on all sides by the unregulated carrier.

The recent investigation by this Commission in Case 3154 of freight transportation conditions in California disclosed the distressed conditions of transportation agencies; and as to the causes therefor, the Commission in its decision said in part:

"One class is under strict State regulation and another class without regulation; one class supervised and controlled as to its service, schedules and rates and prevented by law from bidding freely in an open market for business; the other unlimited in all these respects; one class required to show financial responsibility before engaging in business and then bound to continuity of service; the other obligated to nothing * * * and further, that an excess of transportation facilities is due in part to the entry into the field by truck operators attracted by the advantage over competitors that freedom from regulation gives them," and also

"The development of a freight solicitation under which these carriers are greatly handicapped by reason of their inability to change rates at will, a privilege which uncertificated trucks enjoy, and an advantage that they avail themselves of to the utmost."

The undisputed evidence herein shows that both the protesting rail and truck carriers have for a long period of years operated a transportation service within their respective spheres and are pioneers in the transportation field between Long Beach Harbor and Los Angeles.

The certificated protestants have in the aggregate modern equipment consisting of 104 trucks, 39 trailers, 10 tractors, 35 semi-trailers and many other necessary facilities required in the transportation of all kinds of goods, wares and merchandise. Although there is some conflict of opinion in the testimony as to the efficiency of the types of equipment used by the opposing interested parties, it appears that the semi-trailer type used by Applicant Knoll is particularly suitable to him under his private contract obligations in moving from one consignor to one consignee large volumes of freight. On the other hand, the protesting truck carriers, in order to meet adequately the demands of their general common carrier service, own and operate all kinds of equipment, not only the conventional type of trucks and trailers, but also the semi-trailer type, thereby being responsive to any general public demand.

Much of the truck equipment of the protestants ranging in percentages from 25 to 50 per cent is idle, attributable to the fact that the territory proposed to be served by said applicants is now served to the point of saturation by reason of the numerous unregulated carriers competing actively with the regulated carriers.

This Commission has repeatedly held that a certificated truck company will be protected in its operative rights unless an affirmative showing is made that the public convenience and necessity require an additional service on the basis that the existing facilities are inadequate, either as to the matter of service, or of rates. In application of United Stage Company, 16, C.R.C. 428, the Commission said in part:

"The Commission has repeatedly stated in its decisions on applications of this nature that where it is shown that satisfactory service is being rendered by an authorized transportation company over a specific route, and where an established company is willing and financially able to increase service to meet the varying demands of traffic, that the existing company will be protected in its operative rights. Upon this theory an affirmative showing must be made that the public convenience and necessity require additional service, which for any reason can not be or is not rendered by the established and authorized company. In this proceeding no showing of this nature has been made, but the protestants have offered to furnish all the service that the demands of the traffic may require. The desire of applicants to enter the business of a transportation company as a common carrier is not a measure of public convenience and necessity unless substantiated by evidence that public convenience and necessity will be served."

In application of R. A. Conyes, 35 C.R.C. 517, it was said:

"The evidence amply proves that existing carriers are adequately and efficiently serving the terminals involved and that traffic conditions do not justify a service which, while it may meet demands of a certain type of shipper would, on the whole, but serve to impair services which, at this moment, are meeting the demands of every type of shipper."

The evidence in this record does not warrant the conclusion that the protesting truck carriers have not been diligent in providing adequate service at reasonable rates to meet the demands of the shipping public. Neither applicant offered any affirmative evidence to show that there was ever any complaints, either formal or otherwise, against the service of protestants, or that the rates of existing carriers were excessive or unreasonable. Mr. Bland, rate analyst, admitted that his general study and analysis of rates, as shown in Exhibit 6, only indicated that the Long Beach rates were generally higher than the Los Angeles Harbor rates to Los Angeles.

Prior to March 1, 1931, at which time the first regular steamship service was inaugurated at the Long Beach

docks by the two steamship companies above mentioned, there had only been an uncertain and irregular movement of water-borne traffic and the facilities for handling l.c.l. shipments at the Port were only made available in October, 1930, upon the completion of the new transport sheds. During the period from October, 1930, to May 29, 1931, at which date the protesting truck lines filed a uniform tariff of rates (Applicant's Exhibit No. 12) on a parity with Los Angeles Harbor rates, they had carried on an investigation and made a diligent study of traffic conditions with which they were confronted. The numerous unregulated carriers have had, and continue to have since the regular steamship service, a virtual monopoly of the large shipments of various commodities landed at the Long Beach dock.

Applicant Knoll testified in part as follows:

Q. What percentage of that tonnage are you getting—how does it compare with the total tonnage being moved from Long Beach into Los Angeles?

A. On some of the boats I get 50 per cent of what they bring in.

Q. And some times more or less?

A. Some times more and sometimes occasionally we have gotten a solid boat load.

Q. Do you know what percentage the common carriers are getting that are now operating between Long Beach Harbor and Los Angeles? A. It is very small."

It clearly appears that, for at least six months prior to the advent of the regular steamship service into Long Beach Port on March 1, 1931, and subsequent thereto, the protesting truck carriers gave earnest consideration to the matter of freight adjustments of water-borne traffic by active solicitation among shippers and customers, by interviews and contracts with Port officials and representatives of the steamship companies. A close scrutiny was kept on the shipments and the volume and the character of freight traffic moving

over the docks with the result that it was found that unregulated carriers were transporting most of the cargo from the ships at rates lower and unknown to the protestants. Solicitation and investigation were carried on with a view of ascertaining and making necessary fair rate adjustments or better service. The competition of the contract and unregulated carriers was endeavored to be met by the publication, with reasonable promptness, of the rates, as shown in protestant's Exhibit No. 12.

We feel that the record in this proceeding warrants the Commission in again emphasizing that when an existing utility is charged with having fallen short of its full duty to the public, not only shall all the conditions and circumstances with which it is confronted be given careful consideration, but the utility should not be penalized unless its conduct clearly shows that it has been slow and dilatory in rendering adequate public service.

We have carefully considered all the evidence in these proceedings and are of the opinion and hereby find as a fact that the public convenience and necessity do not require either the proposed service of R. G. Knoll or the proposed extended service of J. A. Clark Draying Company.

O R D E R

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

IT IS HEREBY ORDERED that the said application of R. G.

Knoll be and the same is hereby denied, and

IT IS HEREBY FURTHER ORDERED that the application of
J. A. Clark Draying Company for an extension of service be and
the same is hereby denied.

Dated at San Francisco, California, this 23^d day
of January, 1933.

C. C. Leary
Leon A. White
M. A. Carr
H. B. Lewis
McDonough
Commissioners.