

corporation, and (2) between certain points serving the public directly. More specifically, the operative rights sought may be thus described:

First: To operate as an underlying carrier handling express matter for Valley Express Co., an express corporation, between Fresno, on the one hand, and the points which it now serves under certain certificates previously granted by the Commission,⁽¹⁾ including Coalinga, Kettleman City, Avenal, Stratford, Lemoore and Hanford, via Goshen and U. S. Highways Nos. 99 and 198, as an alternative route, in addition to the routes presently used by applicant in its operations as such underlying carrier;

Second: To operate as a highway common carrier serving the public directly between Hanford and Corcoran, as an extension of applicant's present operative rights between Fresno and Hanford.

No objection was raised to the authorization of an alternative route via Goshen which would permit the improvement of applicant's service in the territory where it presently operates. However, the extension of the service to Corcoran was opposed by The Atchison, Topeka and Santa Fe Railway Company and Railway Express Agency, referred to hereinafter as the Santa Fe and the Express Agency, respectively.

Public hearings were had before Examiner Austin at Fresno and Corcoran, when evidence was offered, the matter submitted, briefs filed, and it is now ready for decision.

(1) Decisions Nos. 20721, 20794, 21402, 21495, 21684 and 22811.

Applicant conducts extensive highway common carrier operations in the territory south and west of Fresno, under certificates granted by this Commission. In this territory, he serves Valley Express Co., an express corporation, as an underlying carrier. Freight originating at Los Angeles moves via Pacific Freight Lines to Fresno where it is interchanged with applicant. Traffic destined to points located in the southern part of the territory reached by applicant as underlying carrier, including Hanford, Lemoore and Avenal, under the present method of operation, must first be carried to Fresno, there interchanged, and then hauled back south by applicant. By establishing the proposed alternative route via Goshen, this back haul will be avoided, and earlier delivery of Valley Express shipments within this territory will become possible. Applicant does not propose to transport any property between Goshen, on the one hand, and Hanford and Fresno, on the other hand, or between intermediate points. The only traffic which he seeks to transport via Goshen consists of that now moving under through Valley Express billing.

It is evident that public convenience will be served by authorizing applicant so to handle Valley Express shipments. Protestants urge no reason for denying such right; in fact, their protest is expressly limited to the proposed extension of applicant's service to Corcoran.

Dealing with that phase of the application, it appears that Corcoran, situated in an agricultural district, and having an average population of 2,500 people, which during the harvest season is substantially increased by an influx of farm labor, is not served by any highway common carrier. Its only common carrier service is that provided by the Santa Fe. By interchanging at Goshen freight originating at Los Angeles through connecting carriers and destined to Corcoran, applicant will be able to provide first-day delivery. When the

application was filed, and at the time of the first hearing, freight originating at Los Angeles was accorded second-day delivery, and Fresno traffic was frequently delivered in the late afternoon of the first day.

The need for the establishment of this service was voiced by seventeen public witnesses. Their testimony was directed largely to three points, viz., first, the existing service is insufficient to accommodate shipments of fresh meat and dairy products; second, the existing service is insufficient properly to handle emergency shipments; and, third, the existing service is not as flexible or as efficient in connection with pickup and delivery as that proposed by applicant. Evidence bearing upon these needs was received from representatives of packing houses, such as the Cudahy Packing Company and Swift & Company; from wholesale grocers, including Haas Brothers; from wholesale dealers in candy, tobacco and liquor; from dealers in tires, batteries and automobile accessories (all located in Fresno); and from various retail dealers in Corcoran. In substance, their testimony shows that the existing service is inadequate to meet their needs and that were applicant's proposed service established, they would use it.

On behalf of protestants, evidence descriptive of their service was offered. Between the first and the second hearings in this matter, the Santa Fe service from Stockton and from Los Angeles, which originally provided second-morning delivery, was improved and expedited. In determining the need for applicant's proposed service, the Commission must, of course, give due consideration

to the belated improvement in protestant's service. The service accorded by the Express Agency, though good, does not meet the needs of all the shippers. For many commodities, its rates are higher than those which the shippers are willing to pay.

It is apparent that applicant has shown a public need for its proposed operation, and the application will therefore be granted.

George Harm 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.

O R D E R

A public hearing having been held in the above entitled matter; evidence having been received; the matter having been duly submitted; and the Commission now being fully advised in the premises;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the establishment and operation by GEORGE HARM of an automotive service for the transportation of property as a highway common carrier as defined in Section 2-3/4 of the Public Utilities Act:

(a) As an underlying carrier transporting express matter for Valley Express Co., an express corporation, via U. S. Highways Nos. 99 and 198, via Goshen, as an alternative route, in addition to that now used by said applicant in the performance of such service as an underlying carrier between Fresno, on the one hand, and Coalinga, Kettleman City, Avenal, Stratford, Lemoore, Hanford, and other points now served by said applicant under certificates heretofore granted by this Commission, in and by Decisions Nos. 20721, 20794, 21402, 21495, 21684 and 22811;

(b) Serving the public directly, and not solely as an underlying carrier, between Hanford and Corcoran, as an extension of and in connection with applicant's existing operative rights between Fresno and Hanford.

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

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, 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 in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicant shall file in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, a time schedule or time schedules

covering the service herein authorized in a form satisfactory to the Railroad Commission.

4. 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 obtained.

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

6. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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 8th day of

August, 1938.

Robert W. Johnson
Frank A. Kelly
James D. Hill
Ray C. Rice

COMMISSIONERS.