

Decision No. 22294

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. A. GRITSCH, doing business as OREGON - CALIFORNIA FAST FREIGHT, for a certificate of public convenience and necessity to operate motor vehicles for the transportation of property between San Francisco, Oakland, San Leandro and Sacramento, on the one hand, and points and places in the State of California, on the other hand.

ORIGINAL

Application  
No. 22294

In the Matter of the Application of FRED W. PETERS, doing business under the name and style of PETERS TRUCKING SERVICE, for a certificate of public convenience and necessity to operate an auto truck and freight service between San Francisco, Oakland and Sacramento as points of origin and destination, and Dunsuir, Castella, Mt. Shasta, Weed, Yreka, Hornbrook, Montague and intermediate points from Redding north.

Application  
No. 22553

WARE & BEROL by Edward M. Beroi and J. Everett Barr, for Oregon-Nevada-California Fast Freight, Inc., Applicant in Application No. 22294 and Protestant in Application No. 22553.

CARTER, BARRETT, FINLEY and CARLTON by Oliver J. Carter for Fred W. Peters, Applicant in Application No. 22553 and Protestant in Application No. 22294.

R. E. WEDEKIND and F. X. VIEIRA by F. X. Vieira for Southern Pacific Company, Pacific Motor Trucking Company, Railway Express Agency, Incorporated and Yreka Western Railroad Company, Protestants.

MCCUTCHEEN, OLNEY, MANNON and GREENE, by F. W. Mielke for The River Lines, Interested Party.

SACRAMENTO CHAMBER OF COMMERCE by W. G. Stone, Manager Transportation and Industrial Department, Interested Party.

THOMAS O'HARA for Sacramento - Corning Freight Lines, Ltd., Protestant in Application No. 22294 and Interested Party in Application No. 22553.

O. G. STEELE, Receiver, and J. P. CORREIA by J. P. Correia for Yreka Western Railroad Company, Protestant.

RILEY, Commissioner:

O P I N I O N

Oregon-Nevada-California Fast Freight, Inc.,<sup>(1)</sup> a corporation, and applicant herein, seeks authority to establish and operate an automotive service, as a highway common carrier, between

1. Dunsmuir and the Oregon - California State Line, serving all intermediate points;
2. Sacramento, on the one hand, and Redding and the Oregon - California State Line (excluding Redding) and points intermediate between Redding and the Oregon - California State Line, on the other hand,

via Highway U. S. 99, Highway U. S. 97, and old Highway U. S. 97, including the right to serve laterally two (2) miles on either side of said highways, as an extension and enlargement of, and to be consolidated with, applicant's existing highway common carrier right between San Francisco, Oakland, Berkeley, Alameda and Emeryville, on the one hand, and Red Bluff and Dunsmuir and all intermediate points (including Red Bluff but excluding Dunsmuir), on the other hand.

Fred W. Peters, an individual, operating under the fictitious name and style of Peters Trucking Service, herein seeks authority to establish and operate an automotive service,

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(1) The original application in this proceeding was filed in the name of J. A. Gritsch, operating under the fictitious name and style of Oregon-California Fast Freight. Subsequently, by Decision No. 32015, dated June 23, 1939, on Application No. 22668, the Railroad Commission authorized the transfer of Gritsch's properties to the corporate entity named, which thereby became the applicant of record in this proceeding.

as a highway common carrier, between San Francisco, Oakland and Sacramento, on the one hand, and Redding and the Oregon-California State Line and points intermediate between said termini, on the other hand, via Highway U. S. 99, subject to a restriction that no service will be performed between Sacramento and Redding, both points inclusive.

Public hearings in these proceedings were had in Yreka, Weed, Sacramento and San Francisco. The matters were submitted at San Francisco, January 18, 1940, on briefs duly filed with the Commission, and they are now ready for decision.

These matters, although concurrently heard, were not consolidated. Therefore, while an individual adjudication appears necessary, the complementary nature of the proceedings indicates that the matters may, without prejudice, be disposed of in a single decision. Such procedure will be followed.

Southern Pacific Company, Pacific Motor Trucking Company, Railway Express Agency, Incorporated, Yreka Western Railroad Company, and Sacramento-Corning Freight Lines, Ltd. appeared as protestants to the granting of the applications. The River Lines and Sacramento Chamber of Commerce appeared as interested parties in the proceedings.

During the course of the public hearings in these matters, over 200 witnesses from practically all points in the territory proposed to be served were heard or had testimony stipulated into the record. In addition, a considerable number of exhibits were filed by the various parties hereto.

Between San Francisco Bay points and the Oregon border, applicant Oregon-Nevada-California Fast Freight, Inc. proposes to operate a scheduled service daily except Sundays and Holidays to the extent of three, and possible four, round trips leaving termini during late afternoon and evening hours (4:00 P.M. to 7:30 P.M., approximately). Between Sacramento and the Oregon border, one daily round trip, except Sundays and Holidays, is proposed which will likewise be an evening departure from termini (at approximately 7:00 P.M.). Pickup and delivery service is to be provided at termini and all intermediate points either by line haul or special equipment. With respect to lateral or "off line" operations, on-call service will be afforded. In addition, applicant proposes, if allowed to establish the service sought, to enter into joint through rates with existing connecting highway common carriers at Gazelle and Yreka. <sup>(2)</sup> The purpose of this joint rate arrangement, according to applicant, will be to afford shippers and receivers of freight in the so-called Scott Valley and Klamath River Country, a more direct and faster service than now available, and will further have the effect of affording the benefit of lower rates on through shipments by reason of a joint through rate arrangement, rather than a combination of local rates over Gazelle and Yreka now charged under present operative practices. In addition to its existing intrastate services, applicant Oregon-Nevada-California Fast Freight, Inc. <sup>(3)</sup> is also operating an automotive

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(2) Klamath Auto Stage Line between Yreka and Happy Camp via Oak Knoll, Hamburg and Seiad Valley. Snapps Auto Stage Line between Gazelle and Somes, via Callahan and Etna. Etna - Yreka Stage Line between Yreka and Etna via Forth Jones.

(3) Applicant now operates over 70 pieces of equipment, including refrigerated units necessary in handling perishables. At San Francisco, Oakland, Red Bluff, Redding, Weed, Yreka and Sacramento applicant now maintains terminals, pickup and delivery equipment and has its own employees. Additionally, at Dunsmuir and Mt. Shasta local draymen are now employed to handle its traffic.

service in interstate or foreign commerce between Oregon, California and Nevada points, over the same routes and between the same points which it is now serving, as well as the points it is now seeking to serve intrastate. In view of this condition, applicant contends that with little or no additional operating expense or organization increase, the proposed service can be readily established and integrated with presently conducted operations.

Applicant Fred W. Peters proposes to operate a tri-weekly service between the points named in his application and referred to above, leaving San Francisco in the early evening on the northbound trip, providing regular service to the scheduled points, and on-call service to the other points. On-call service will be provided on the following basis: tri-weekly service to Pollock, Vollmers, La-Moine, Castella, Edgewood and Grenada, bi-weekly to Montague and once a week to Hornbrook and Hilt. Pickup and delivery service is proposed by this applicant at all the points served and additionally, he has offered to enter into joint through rate arrangements with connecting highway common carriers at Gazelle and Yreka (see footnote No. 2).<sup>(4)</sup>

This applicant, who has been in the trucking business since 1929, is now operating under a permit as a highway contract carrier with some fifty-two written contracts covering the transportation of property between the San Francisco Bay Region and Sacramento, on the one hand, and Yreka, Dunsmuir, Weed, Mt. Shasta and Gazelle, on the other hand, with occasional commitments to

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(4) Leave northbound on Monday, Wednesday and Friday; leave southbound Tuesday, Thursday and Sunday (holidays excluded). Available for this service, applicant Peters has 2 Chevrolet trucks of 9 and 10 tons capacity, respectively.

render a similar service to Scott Valley points and other points in Siskiyou County. The bulk of this carrier's business, however, is destined to or originates at Yreka or territory immediately adjacent thereto.

This applicant alleges that it is his plan to continue this general type of service if the instant application is granted. He does expect, however, to increase his present volume of business by about fifteen per cent should his operations be certificated. Testifying in his own behalf, Mr. Peters stated that he believes he now transports the bulk of the less-than-carload truck freight movement into and out of this Siskiyou territory, from and to the San Francisco Bay Region and Sacramento and can foresee little increase except to the extent above mentioned.

The record in this proceeding reveals that the territory proposed to be served is primarily a consuming area devoted principally to mining, stock raising and agricultural pursuits and is sparsely populated north of Yreka. It is located conveniently close to both Oregon and Nevada markets which exert a strong competitive trade influence throughout. This influence must be met by the California distributing and producing points in the San Francisco Bay Region and Sacramento, if they are to compete for, and obtain, that portion of the existing business available in this territory which has been allegedly lost to the out-of-state markets. To accomplish this requires, among other things, the maintenance and operation of adequate, convenient and economical transportation services which, on this record, reveals recourse to proprietary or contract, as well as common carrier service. This competitive feature, plus the predominately one way movement prevailing in this area, has resulted in a considerable difference

of opinion, on this record, as to the respective merits of the existing and proposed services and the need therefor. This develops on the one hand, from the problem, facing consignees and consignors alike, of obtaining the most expeditious service at the lowest possible rate, and on the other hand, the equally important problem of retaining intact all existing transportation services.

On direct rail service operated to Dunsmuir, Weed, Montague and points north thereof for shipments originating in the San Francisco Metropolitan Area particularly, there exists little, if any, definitely established complaint as to such existing rail service. Pickup and delivery service performed at points Yreka and south to Redding (Mt. Shasta, Grenada and Edgewood) by the rail, either through the medium of its wholly owned subsidiary Pacific Motor Trucking Company, or by the employment of local draymen at points where Pacific Motor Trucking Company service is not available, came in for considerable, although not always authenticated, complaint as to split shipments and delay in actual time of delivery. The services of Yreka Western Railroad Company, both rail and truck, between Montague and Yreka in conjunction with Southern Pacific Company and Pacific Motor Trucking Company, have been satisfactory to the same extent and with the same exception as to delivery above noted. As to rail points north of Yreka, such as Dorris, Hilt, Hornbrook, Macdoel, Mt. Hebron, Bray and Leaf located on or immediately adjacent to both Highway U. S. 99 and Highway U. S. 97, main line depot-to-depot service (no pickup and delivery service is available) generally purporting to afford second day delivery, was considered fairly adequate when recognition is given to the fact that the district is rather sparsely populated

and only a comparatively small volume of traffic is offered in this territory. Under such circumstances, it would be uneconomical to maintain a rail service comparable with that given to more populous areas to the south. Southern Pacific Company and subsidiary truck service between Sacramento and most of the points here involved was also subject to criticism, not all of which could be directly attributed to the carrier as the record did not clearly indicate that rail and affiliated services were definitely at fault. The record did indicate, however, that a number of patrons had expressed dissatisfaction with and had ceased to use such facilities and had turned to proprietary and contract trucks upon the premise that a service sufficiently adequate to suit their needs both economically and physically could not be obtained from the Southern Pacific Company. In the entire territory, the proposed truck service of both applicants with promises of direct overnight early morning store-door delivery service, enlisted considerable public support.<sup>(5)</sup> Witnesses, although seeking and admitting a need for improved service, were, in a number of instances, frank in asserting that they desired that existing rail services not be hampered or impaired. This was particularly noted with respect to carload services rendered by both the Southern Pacific Company and Yreka Western Railroad Company. Contemplated agency station abandonments based upon anticipated diversion of current rail traffic to truck, also contributed to this attitude on the part of witnesses.

When attention is directed to the transportation situation

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(5) Resolutions of endorsement supporting applicants and protestants were filed by several representative civic, service and agricultural groups interested in and located at various points in the territory proposed to be served.



as regards "off-rail" points, with particular reference being made to communities such as Happy Camp, Horse Creek, Klamath River, Seiad Valley, Somes Bar, Callahan, Greenview, Etna and Fort Jones located in the Klamath River and Scott Valley areas, the situation is more acute. Residents of these areas, dependent particularly upon outside points to supply them with commodities, and also for a market to dispose of their products, have allegedly been confronted with the twofold problem of slowness and indirectness of rail-truck service, together with a disparity in rates resulting in their being assessed a considerably higher rate under current operating methods involving assessment of charges based upon a combination of local rates, than would be the case were joint through rates established.

Concerning service complaints, the record indicates a material improvement in operating conditions would result from the entry of these applicants or either of them into this "off-rail" territory, provided these proposed services were co-ordinated. This would require that the schedules of the various operators be so arranged as to permit of a more or less continuous movement except for the allowance of a reasonable time to transfer shipments at the junction points, as well as providing equipment of suitable and adequate carrying capacity. The record indicates that improved

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- (6) Three to eight days elapsed time on shipments out of both the Bay Region and Sacramento. Not definitely established that the carrier was actually at fault. Delay may be attributed, in part, to shippers failing to get orders out promptly or to failure of orders to arrive in time to make proper carrier connections.
- (7) On San Francisco Metropolitan Area originations, rail to Dunsmuir or Montague, thence via Pacific Motor Trucking Company or Yreka Western Railroad Company for transshipment by connecting truck carriers to destination. Sacramento traffic allegedly moved by rail to Klamath Falls, Oregon and then back-hauled to California points such as Dorris, Mt. Hebron, etc. by local freight trains.

connecting schedules have already been arranged between Pacific Motor Trucking Company, Yreka Western Railroad Company and Etna-Fort Jones-Yreka Stage Line at Yreka and between Charlie Snapp and Pacific Motor Trucking Company at Gazelle. The record further indicates that a general speeding up of over-all service to this territory has taken place recently, with greater co-ordination being effected between schedules of the rails and the connecting carriers.

With respect to joint through rates, as proposed by applicants, the situation presents an entirely different aspect. Almost without exception, patrons of the various transportation services now available in the particular territory under discussion, referred to as "off-rail," complained of having to pay freight rates representing a combination of local rates over Gazelle and Yreka, respectively. This, they aver, has had a tendency to encourage and practically compel the use of proprietary or contract truck transportation facilities. These proprietary and contract operations have undoubtedly mitigated against a maintenance of a higher standard of service by the highway common carriers, as well as the rails offering service to this area. This situation could have been avoided, according to the record, by the filing of joint through rates between the rails and the various certificated highway operators. Testimony adduced indicates a desire and a willingness upon the part of most of said highway operators to enter into such agreements which found no counter part

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(8) W. Merrill, lessee and operator of Woodworth Stage Line, operating between Hornbrook and Happy Camp and intermediate points, testified that he could see no particular benefit or increase in traffic for his line resulting from joint rates. Service as now rendered was satisfactory in his estimation. Though joint rates might be of benefit but not impressed with necessity for them. Allegedly had no complaints, but admitted quite widespread use of proprietary and contract trucks.

in behalf of the Southern Pacific Company particularly, despite repeated efforts and offers to the company over a considerable period of time. The Yreka Western Railroad Company has likewise not seen fit to enter into such arrangements up to the present time. In defense, the Southern Pacific Company and also the Yreka Western Railroad Company<sup>(9)</sup> allege that certain inherent difficulties and obstacles, particularly as regards the inability of the parties concerned to find a common ground of meeting plus the involved matter of division of revenues, have thus far prevented and delayed the successful consummation of any or all of the proposals thus far made. The facts remain, however, that such a problem now exists and has existed for some time, and it is apparent that the lack of such an arrangement has had an adverse effect upon this district. Applicants have developed a plan for a joint rate arrangement with the connecting carriers involved and have indicated and alleged that matters have reached a point where successful consummation of their plans is assured, and intend, if given the required basic authority, to immediately proceed to put their plans into effect. With respect to this phase of the problem as here presented, there appears little doubt but that public convenience and necessity would be subserved by the establishment of the joint through rate arrangements proposed if a practical approach to the problem can be found.

Reverting now to a more detailed discussion of the various proposals of service here before us.

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(9) Etna-Fort Jones-Yreka Stage Line and Yreka Western Railroad Company, subsequent to the filing of and prior to the submission of the applications here involved, jointly applied for Commission approval of the transfer of the stage line to the railroad. This matter is now under submission to the Commission after hearings held contemporaneously with the instant applications.

Oregon-Nevada-California Fast Freight, Inc. with its offer of a minimum of three (and possibly a fourth) schedules daily except Sundays and Holidays, proposes to afford pickup service in the Bay Area up to one-half hour before the actual departure time of the individual schedule (this applies also to applicant's proposed service out of Sacramento which will be referred to later) which is undoubtedly of advantage to shippers in so far as it enables them to have more time in which to get their freight actually upon the vehicles of applicant. Southern Pacific Company provides a late evening (train No. 8 from Oakland, 9:10 P.M. -- Sacramento 10:15 P.M. connecting at Davis with No. 8) departure time with a receiving "dead line" of 5:45 P.M. (presumably applicable to both Bay Area points and Sacramento) with either first day or second day delivery at points in the territory involved, depending upon location. In so far as arrival time is concerned, it is not apparent, aside from those shipments which could make applicant's first schedule, that any material difference in delivery time resulting in substantially earlier receipt of goods by consignees would be effected based upon operating schedules of the principals herein. This arises from the fact that consideration must be afforded to ever present operating problems and fluctuating tonnages common to all types of transportation which may subject any carrier to delays and tend to eradicate all but a minor saving of time in this respect. As to the 4:00 P.M. schedule of applicant, there would unquestionably be considerable advantage in time accruing to patrons thereof over and above what could be expected from existing services. To a lesser degree, applicant's second and third schedules leaving at approximately 5:00 P.M. and 6:30 P.M.,

respectively, would also be advantageous. Such advantages as do accrue, however, appear definite only as to those points where applicant will actually operate its own service. When applied to connecting carrier functions and phases of these proceedings it is not clearly shown, under the existing schedule and operative limitations of the connecting carriers, that any schedule other than the 4:00 P.M. schedule of applicant would or could effect a material reduction in time in transit. <sup>(10)</sup> This schedule, however, imposes a receiving "dead line" of approximately 3:30 P.M., which, under the general buying and ordering practices, would be rather difficult to take advantage of because in a great many instances orders for shipments may not be received until 4:00 P.M. of any working day. Even if received at a considerably earlier hour, time must still be allowed for checking, billing, packing and other prerequisites to the advance preparation of shipments for transportation. As to the specific points of Dunsmuir, Mt. Shasta, Weed and Yreka, reference to applicant's schedules 2 and 3 in comparison with Pacific Motor Trucking Company's schedules (Exhibit No. 74) show arrival times which are quite comparable as to Bay Region departures. <sup>(11)</sup> Likewise, on the one schedule proposed from Sacramento it appears from the record that although basic arrival times of applicant Oregon-Nevada-California Fast Freight, Inc. will be approximately two and one-half hours earlier at Mt. Shasta, Weed

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(10) Times shown do not reflect actual time of delivery to consignees, but only arrival times at termini.

(11) Arrival Time From San Francisco Bay Points:

	Schedule	Schedule	P.M.T.
<u>Oregon-Cal.</u>	<u>No. 2</u>	<u>No. 3</u>	<u>(Ex. No. 74)</u>
Dunsmuir	7:45 A.M.	8:45 A.M.	8:00 A.M.
Mt. Shasta	8:35 A.M.	9:35 A.M.	8:28 A.M.
Weed	9:05 A.M.	10:05 A.M.	9:18 A.M.
Yreka	10:30 A.M.	11:30 A.M.	10:43 A.M.

and Yreka than those now available, a sufficiently conclusive improvement in service is not produced thereby when the differential between actual arrival and delivery times is computed and considered.

Were we concerned here solely with the earlier time of arrival promised by applicant, particularly to the more important and larger points, this record would indicate a rather limited field of improvement hardly conducive to a finding that public convenience and necessity would require the establishment of the proposed new services on such a basis alone.

Less-than-carload local rail service of Southern Pacific Company from Redding at 11:45 A.M. to the majority of the points north thereof with which we are here concerned is operated on a daily except Sunday and Holiday basis, according to Exhibit No. 81.

Comparing arrival times for this service with those of applicant at the various points, shows that as to a Monday departure by the Southern Pacific Company compared with Tuesday morning departure of applicant (no service Sunday night, so Tuesday arrival time of applicant from Bay Area nearest comparable to use) it is found that less-than-carload freight in the custody of the Southern Pacific Company for movement Monday out of Redding will arrive at points Pollock to Dunsmuir, inclusive, on Tuesday; points Mt. Shasta to Hornbrook on Wednesday; and points Bray to Dorris on Thursday. Less-than-carload freight ready for the custody of Oregon-Nevada-California Fast Freight, Inc. at Redding upon its scheduled arrivals early Tuesday morning of its Monday night schedules out of the Bay Area, shows that as to points

Castella to Dunsmuir, Mt. Shasta to Hornbrook, and Bray to Dorris that such shipments are scheduled to arrive at the most distant point (Dorris) no later than early Tuesday afternoon. (12)

From such comparison it is clearly shown that as to the less-than-carload movement of freight from Redding to points Pollock to Hilt and Dorris, including points on both Highways Nos. 97 and 99 applicant Oregon-Nevada-California Fast Freight, Inc.'s proposed service will afford a substantial improvement in time of arrival.

(12) Comparison Arrival Times, Southern Pacific Company l.c.l. and Oregon-Nevada-California Fast Freight, Inc.:

		A			B				
From Redding	Lv:	Mon. : 11:45 A. M. : S. P. Co. :	Day	2:30A : Tues. : :ONC(1):	Day	4:30A : Tues : :ONC(2):	Day	5:30A : Tues : :ONC(3):	Day
to(Pollock	Ar:	11:45A:	Tues	:	:	:	:	:	:
(Delta	"	12:45P:	"	:	:	:	:	:	:
(Castella	"	2:00P:	"	5:00A:	Tues:	7:00A:	Tues:	8:00A:	Tues
(Dunsmuir	"	2:30P:	"	5:45A:	"	7:45A:	"	8:45A:	"
(Mt. Shasta	"	8:28A:	Wed	6:35A:	"	8:35A:	"	9:35A:	"
US(Weed	"	9:18A:	"	7:05A:	"	9:05A:	"	10:05A:	"
99(Edgewood	"	2:24P:	"	o.c.	:	o.c.	:	o.c.	:
(Gazelle	"	10:42A:	"	7:45A:	Tues:	9:45A:	Tues:	10:45A:	Tues
(Grenada	"	1:18P:	"	o.c.	:	o.c.	:	o.c.	:
(Montague	"	11:30A:	"	o.c.	:	o.c.	:	o.c.	:
(Yreka	"	10:43A:	"	8:30A:	Tues:	10:30A:	Tues:	11:30A:	Tues
(Hornbrook	"	8:00A:	"	9:45A:	"	11:45A:	"	12:45P:	"
(Hilt	"	:	:	:	:	:	:	:	:
(Bray	Ar:	1:30P:	Thurs:	8:55A:	Tues:	10:55A:	Tues:	11:55A:	Tues
US(Mt. Hebron	"	12:05P:	"	9:30A:	"	11:30A:	"	12:30P:	"
97(Macdoel	"	11:37A:	"	9:45A:	"	11:45A:	"	12:45P:	"
(Dorris	"	10:52A:	"	10:20A:	"	12:20P:	"	1:20P:	"

A - Southern Pacific Company - departure from Redding at 11:45 A.M. Monday.

B - Oregon-Nevada-California Fast Freight, Inc. - departure from San Francisco Bay Area Monday night - Departing from Redding Tuesday morning.

at all points. Points Castella to Weed will benefit particularly from schedules Nos. 2 and 3, while points Edgewood to Hilt and Bray to Dorris will be able to participate in the earlier arrival time advantages from all three schedules. All things considered, service from Redding to the Oregon line under applicant's proposal presents a considerable improvement over that which now exists.

As to service to points on Highways Nos. 97 and 99 north of Redding and two (2) miles laterally each side thereof to the California-Oregon State Line from both San Francisco Bay Area points and Sacramento, the real advantage lies in the fact that there is proposed a direct and comparably, if not always materially faster, overnight store-door service without transshipment of goods as opposed to protestants' services requiring dependence upon either more slow moving local freight trains or train-truck service involving rehandlings of freight between train and truck with alleged attendant delays at junction and terminal points. Establishment of this proposed service, according to the record, will undoubtedly assist in the recovery, by California producers and manufacturers, (Sacramento particularly) of considerable freight tonnage (estimated at approximately five tons per day) now being purchased for the most part in the southern Oregon points of Klamath Falls and Medford. Additionally, it is contended that, as to intrastate business in this territory, transportation facilities superior to either proprietary or contract service now being used will be made available to the advantage of all concerned, if the proposals here before us are favorably acted upon. From testimony adduced it appears that this territory now has available direct overnight service by truck from southern Oregon in addition to rail or



rail-truck service comparable to or better than that afforded from various California points to this area.

With respect to the connecting services with other carriers proposed at Yreka and Gazelle, certain inherent disadvantages and operating limitations suggest the thought that a considerable degree of improvement must necessarily be brought about between the various operations involved before the rather optimistic position of applicant Oregon-Nevada-California Fast Freight, Inc. can be realized with respect to providing an overnight service to such territories as Scott Valley and the Klamath River Country. On this matter of making connections with certain carriers at Yreka and Gazelle as proposed by applicant, it appears that, though difficulties exist, they are not insurmountable. It appears that if a degree of co-operation in consonance with the attitude of the parties particularly involved be achieved, considerable improvements in service may be attained which will react to and benefit public interest. This observation is aside from and independent of any advantage which may be derived from the joint through rate proposals herein involved. As indicated heretofore, such proposals appear to be of definite advantage to the shipping public interested and, if practicable, should be placed in effect.

An interesting phase of this proceeding is the not inconsiderable amount of tonnage (estimated at approximately 15 tons per day) now allegedly being transported into the territory herein involved by proprietary and contract trucks and thus lost to the common carrier facilities, both rail and truck. This, by reason of certain deficiencies in service and level of the rates. Applicant

Oregon-Nevada-California East Freight, Inc. expects to divert to itself a goodly portion if not all of this class of freight through the establishment of its proposed operations which would provide this territory with a service superior to that now being offered. On the record it may be concluded that some basis exists for believing that such a diversion would take place not only to applicant, but also to the rails due to the stabilizing effect of the advent of a regular certificated automotive service into this area, which appears definitely committed to and dependent upon truck transportation.

The record shows that Fred W. Peters is now and has for some time past been operating under a permit (47-182 H.C.) as a highway contract carrier <sup>(13)</sup> generally between San Francisco and Sacramento, on the one hand, and Yreka and adjacent territory, on the other hand. This service has been conducted through the operation of two trucks. As stated above, this applicant proposes to provide a tri-weekly service to practically the same territory as he now serves as a contract carrier. The record contains little save a confirmation of the fact that, as to those using his service with its personalized aspect, his performance has been satisfactory. That his service which will remain practically unchanged would or could serve the public need as well or better than that which now exists or is proposed, is not confirmed by this record. From this record, it appears that the primary motive of this applicant is to cloak his present operations with the more permanent and less vulnerable mantle of a public utility service. The record discloses a definite tendency toward, if not

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(13) Fred W. Peters also holds a permit to operate as a radial highway common carrier (47-181).

an outright entrance into the highway common carrier field by this carrier sans the sanction of this Commission. It appears that little would be gained by a further discussion of the fifty-two contracts which this carrier has in effect, nor would it be gainful to further enlarge upon the implications contained in his testimony to the effect that he was, literally, engaged in the transportation of most, if not all, of the intrastate less-than-carload freight not transported by the rails into this territory from the San Francisco Bay Area and Sacramento. The Commission has long held that public convenience and necessity may not be established through evidence of operations unlawfully conducted. The answer, I believe, is obvious. His application should be denied.

The application of Oregon-Nevada-California Fast Freight, Inc. may not be so readily disposed of. Undoubtedly, considerable merit may be attached to this applicant's offer of service. In experience, past performance, and general all-around relationship with the shipping public, Oregon-Nevada-California Fast Freight, Inc. has unquestionably earned itself a definite place in the northern California transportation field.

However, Southern Pacific Company, Pacific Motor Trucking Company, Yreka Western Railroad Company, Pacific Greyhound Lines and Railway Express Agency, Incorporated collectively, are rendering an adequate service in this territory, particularly to the points of Yreka, Montague, Weed and Dunsmuir.

Individually, Pacific Greyhound Lines and Railway Express Agency, Incorporated afford this territory a limited service as to property transportation by reason of certain operative limitations

for the one and allegedly higher rates by the other, respectively. Within their respective fields, no complaint has been made as to their services, which, however, cannot be considered as directly comparable to that proposed by applicant.

Likewise on this record, Yreka Western Railroad Company has, within its operating limitations, adequately discharged its duty to the public.

Southern Pacific Company, in so far as its main line operation is concerned, to points here involved, is generally affording a reasonably adequate service. Such criticism as may be and was directed against the company results apparently from operating difficulties and costs inherent in the type of service presently conducted in this territory by rail alone, and also that which requires the use of co-ordinated and integrated truck and rail facilities resulting, at times, in delay because of multiple handlings of freight while in transit. This may be particularly pointed out with respect to the handling of rail freight out of Dunsmuir by Pacific Motor Trucking Company to points such as Edgewood, Gazelle, Grenada, Mt. Shasta and Yreka. As to rail line services operated locally between Redding and Dunsmuir particularly, service has proven rather inadequate (although probably commensurate with service demands from the rail viewpoint) in comparison with the comparably faster and more flexible store-door truck operations. Inability of the Southern Pacific Company to maintain or secure pickup and delivery facilities has, as a consequence, also been a factor of some importance to various rail patrons. Non-agency stations at a number of points have also contributed to the dissatisfaction expressed for this service. Admitting the difficulties surrounding the rendering of a complete and

fully rounded service to a territory such as herein involved, with its sparsely settled and mountainous terrain, dotted with small communities incapable of producing any great volume of traffic, it is quite conceivable that, with the limitations imposed both by these factors and the operating limitations peculiar to railroads faced with a condition such as here exists, the Southern Pacific Company may impute some mitigating circumstances for not more fully serving this area. However, the rather widespread use of proprietary and the often less dependable and infrequently operated contract trucks on the part of shippers, together with the expressions from Sacramento witnesses particularly, indicate a public demand for an improved service. I am well aware that the sparsely settled and mountainous condition of a great portion of this territory has imposed and will continue to impose operating difficulties and expense of operation upon any carrier attempting to serve such territory. It is also recognized that the Southern Pacific Company has employed special freight equipment for use on fast passenger trains at a cost allegedly in excess of \$80,000 per year in improving its less-than-carload merchandise services into this territory. Notwithstanding this effort, the record still shows, I believe, that the resulting improvements and benefits are necessarily applicable for the most part only to that portion of the territory adjacent to and within comparatively short distances of its main line and not even to all of this.

However, this should not be taken to mean that the territory as a whole, though not particularly productive of lucrative tonnage, may be denied required improvements in transportation mediums rendered necessary by changing operative and economic

conditions when offered by another carrier reasonably assured of successful operation through experience and the use of more adaptable, flexible and economical transportation facilities. Applicant Oregon-Nevada-California Fast Freight, Inc. is here seeking to establish such a service in territory as above described where, based upon this record, existing carriers are not, at least to certain portions of said territory, in a position to render a comparable or as effective a service.

Summarizing the record in these proceedings, it was shown in general that trucking facilities were and are necessary to and required by this area. Particularly, I believe, that a public need exists for a truck service such as proposed by applicant between points on its existing system and all points named in its application except Dunsmuir, Weed, Yreka and Montague. As to these points existing services provide, except for minor defec-tions which could be remedied by closer co-operation between Southern Pacific Company, Yreka Western Railroad Company and Pacific Motor Trucking Company, a reasonably adequate service commensurate with average public need. A further need exists for the establishment of applicant's proposed truck service between Sacramento and Redding, on the one hand, and points intermediate between Redding and the Oregon-California State Line, on the other hand, via Highways U. S. 99, 97 and the so-called old 97. Compar-able protestant rail and rail-truck service on freight of both Sacramento and Redding origin destined to the territory herein involved have, on this record, evidenced an inadequacy of perform-ance hardly compatible with the full needs of the consignees and consignors dependent thereon for expeditious and effective movement of their merchandise.

Therefore, I believe, after a full consideration of the entire record in these matters, that Oregon-Nevada-California Fast Freight, Inc. should be authorized to establish and operate, as hereinabove delineated, limited and restricted, a highway common carrier service within the territory discussed. I recommend the following form of order.

Oregon-Nevada-California Fast Freight, Inc. 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 had in the above-entitled proceedings, evidence having been received, the matters having been duly submitted, briefs therein having been filed, and the Commission now being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Oregon-Nevada-California Fast Freight, Inc. of an automotive service as a highway common carrier between,

A. Dunsmuir and the Oregon-California State Line and all intermediate points;

B. Sacramento, on the one hand, and points intermediate between Redding and the Oregon-California State Line, on the other hand, excluding Redding,

via Highways U. S. Nos. 99 and 97 and via old Highway U. S. No. 97 including the right to serve laterally two (2) miles on either side of the highways traversed, as an extension and enlargement of and consolidated with the existing rights of Oregon-Nevada-California Fast Freight, Inc., subject to the following restriction:

No shipments may be transported to or from Dunsmuir, Weed, Montague and Yreka, provided, however, that this restriction will not apply to shipments having point of origin or destination at either Sacramento or Redding.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Oregon-Nevada-California Fast Freight, Inc., subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
3. 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.
4. Applicant shall file, in triplicate, 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.



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 obtained.

6. 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.

7. 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.

IT IS HEREBY FURTHER ORDERED that Application No. 22553 be and the same hereby is denied.

The effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California:

Dated at San Francisco, California, this 9<sup>th</sup> day of July, 1940.

Ray L. Remy  
Ralph W. Baber  
Justice J. Calver  
COMMISSIONERS