Decision No. [illegible]

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of PACIFIC MOTOR TRUCKING COMPANY for certificate of public convenience and necessity for the transportation by motor truck of property in the custody of other carriers between Pomona and Ontario, etc.	Application No. 21351
In the Matter of Application of PACIFIC MOTOR TRUCKING COMPANY for certificate of public convenience and necessity for the transportation by motor truck of property in the custody of other carriers between San Bernardino, Redlands, Crafton, Bryn Mawr, Loma Linda, Highgrove, Riverside, Arlington, Corona, Colton, Bloomington, Rialto, Patton, Highland, Crown Jewel and Sunkist.	Application No. 21360

ANSEL S. WILLIAMS, JR., for Applicant; and for Southern Pacific Company, and Pacific Motor Transport Company, Interveners in support of Applicant.

WALLACE K. DOWNEY, for Pacific Freight Lines, Keystone Express System, and Western Truck Lines, Ltd., Protestants.

JAMES J. BROZ and WALLACE K. DOWNEY, by Wallace K. Downey, for Valley Express Co., Protestant.

R. N. CHRISTENSEN & H. J. BISCHOFF, by R. N. Christensen, for Southern California Freight Lines and Southern California Freight Forwarders, Protestants.

BERNE LEVY, for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, Interested Parties.

JACKSON W. KENDALL, for Bekins Van Lines, Inc., and Bekins Van & Storage Company, Interested Parties.

RILEY, Commissioner:

OPINION

In these proceedings which were consolidated for hearing and decision, Pacific Motor Trucking Company, a wholly owned subsidiary corporation of the Southern Pacific Company, seeks certifi-

cates of public convenience and necessity authorizing operation as a highway common carrier between certain points, for the transportation of property to be offered by Southern Pacific Company, Pacific Electric Railway Company, Railway Express Agency, Inc., and any other carrier of the same class, serving only points, including intermediate points,(1) located on the rail lines of the Southern Pacific Company and Pacific Electric Railway Company. The Pacific Electric Railway Company is a wholly owned subsidiary of the Southern Pacific Company. Applicant would enter into joint rate arrangements with the two rail lines by concurrence in their respective tariffs currently on file with the Commission and in effect. Traffic of the Railway Express Agency, Inc., would be transported by applicant as an underlying carrier under a contractual arrangement between the parties.

As filed each of the applications also sought authority to handle traffic offered by the Pacific Motor Transport Company in addition to the Southern Pacific Company, Pacific Electric Railway Company and Railway Express Agency, Inc. However, the former carrier was authorized to abandon service as an express corporation under Section 2(k) of the Public Utilities Act subsequent to the filing of these applications.(2) As customary in applications of this character

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(1) Application No. 21351 does not seek authority to serve intermediate points, but in Application No. 21360 such authority is sought.

(2) On March 21, 1938, we granted Pacific Motor Transport Company, a wholly owned subsidiary of the Southern Pacific Company, authority to abandon service and, since August 1, 1938, such service has been conducted directly by the Southern Pacific Company and other transportation companies over whose lines the traffic moves under appropriate local and joint tariffs on file with the Commission. Re Southern Pacific Company, et al, 41 C.R.C. 166.

filed prior to the abandonment of service by the Pacific Motor Transport Company, applicant alleged that it proposed to transport property "in the custody of" the various railroad and express companies and at rates to the public as published in the current tariffs of the latter carriers. From all of the allegations it appears the primary purpose of the application is to utilize motor trucks for both line-haul and pickup and delivery service as supplementary and auxiliary to the present rail service.

Protestants have raised the objection that applicant seeks essentially to operate solely as an underlying carrier for all of the carriers previously mentioned, and that the Commission will take judicial notice of the fact neither the Southern Pacific Company nor Pacific Electric Railway Company is an express corporation or a forwarding company as those terms are defined in the Public Utilities Act. Therefore, it is contended, the Commission is without authority to grant the certificates here applied for.

In view of the facts adduced of record and the statement of applicant's counsel at oral argument, we believe this objection is not well taken. During oral argument it was made clear by applicant that the authority sought contemplated the operation of motor trucks under joint rate arrangements with the rail lines rather than as an underlying carrier for traffic moving in the custody of the rail lines, thus complying with our decision in Re Southern Pacific Company, et al, 41 C.R.C. 166. To this no objection was made by protestants and we regard it, therefore, as a restatement and clarification of the issues presented by the applications.

This Commission, in passing upon the nature and character of any proceeding before it, looks always through its form to

ascertain its substance and purpose. Re G. L. Morrison, 31 C.R.C. 219, 224.

In reaching a just determination of these proceedings we are not disposed to rest our decisions upon mere technical objections to the form of pleadings. Although applicant could well have clarified the issues by filing an amended application rather than doing so in the manner followed, nevertheless, the issues have been sufficiently defined and presented, and nothing has appeared which would indicate that any of the protestants were placed at a disadvantage under the circumstances, or that their interests were prejudicially affected thereby.

By Application No. 21351, as amended, authority is sought to operate common carrier truck service between Ontario, Chino, Upland, and Guasti, and between Alta Loma and Cucamonga, but not including any service at intermediate points.

By Application No. 21360, as amended, authority is sought to operate common carrier truck service between San Bernardino, Redlands, Crafton, Bryn Mawr, Loma Linda, Highgrove, Riverside, Arlington, Corona, Colton, Bloomington, Rialto, Patton, Highland, Crown Jewel, and Sunkist and intermediate points.

Of the twenty-two named points under both applications, store-door pickup and delivery service is now rendered on shipments at seven of the points by equipment of applicant and at eight of the points by local contract draymen, while shipments from or to the remaining seven points are now accorded only a rail-depot

service.[3]

The granting of the applications was protested by the Keystone Express System, Pacific Freight Lines, Southern California Freight Lines, Southern California Freight Forwarders, Valley Express Company, and the Western Truck Lines, Ltd. The latter two protestants submitted no evidence in support of their position. Appearances as interested parties were entered by The Atchison, Topeka & Santa Fe Railway Company, Santa Fe Transportation Company, Bekins Van Lines, Inc., and Bekins Van & Storage Company.

A public hearing was held at Los Angeles on March 1 and 2, April 26 and 27, 1938, and at San Bernardino, April 28 and 29,

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(3) The rail service now accorded these communities on less-carload merchandise traffic may be summarized as follows:

Community	Rail Location	Store-door Pickup and Delivery Service Available	Store-door Pickup and Delivery Service Performed By
Ontario	SP	Yes	Contract Drayman
Upland	PE	Yes	" "
Chino	SP	Yes	" "
Guasti	SP	No	Rail-depot service
Alta Loma	PE	Yes	Pacific Motor Trucking Co.
Cucamonga	PE	Yes	" " " "
San Bernardino	SP & PE	Yes	Contract Drayman
Redlands	SP	Yes	Pacific Motor Trucking Co.
Crafton	SP	No	Rail-depot service
Bryn Mawr	SP	No	" " "
Loma Linda	SP	No	" " "
Highgrove	SP	No	" " "
Riverside	SP & PE	Yes	Pacific Motor Trucking Co.
Arlington	PE	Yes	" " " "
Corona	PE	Yes	Contract Drayman
Colton	SP & PE	Yes	" "
Bloomington	SP	No	Rail-depot service
Rialto	PE	Yes	Contract Drayman
Patton	PE	Yes	" "
Highland	PE	Yes	" "
Crown Jewel	PE	No	Rail-depot service
Sunkist	PE	Yes	Pacific Motor Trucking Co.

1938,[4] and the matters submitted on briefs. Subsequently, by its order of January 16, 1940, the Commission set aside said submission and reopened the proceedings for oral argument before the Commission en banc in San Francisco, which was duly had on January 30 and 31, February 1 and 6, 1940. Following a full discussion of the contentions urged by the respective parties, the matters were again submitted and are now ready for decision.

These contentions will be dealt with herein following our recital of the facts bearing upon each of the two applications.

The rail lines of the Southern Pacific Company and Pacific Electric Railway Company extending eastward from Los Angeles parallel each other to a large extent in the territory proposed to be served by applicant. Of the twenty-two named points applicant proposes to serve, only San Bernardino, Colton and Riverside are now reached by both rail lines. The Southern Pacific Company serves nine and the Pacific Electric Railway Company ten of the remaining nineteen named points. There are a number of available highway routes between the points proposed to be served by applicant which would permit establishment of traffic connections between the parallel rail lines through the use of motor trucks.

Less-carload merchandise traffic now handled by the two rail lines from and to the territory involved is subject to delay in-transit because of the inflexible nature of through and local freight train schedules on which it moves. Especially is this so on traffic originating at or destined to points beyond Los Angeles via the Southern Pacific. Inbound shipments from points beyond Los Angeles are now delayed one day in most instances because the Southern Pacific merchandise trains arrive at Los Angeles in the

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(4) The hearing at San Bernardino was had before Examiner McGettigan.

morning from 2:00 a.m. to 8:10 a.m., too late to make connections with the local Southern Pacific freight trains serving the territory considered that day. Similarly outbound shipments do not reach Los Angeles early enough in the evening on local freight trains to make connection with the fast merchandise trains departing from Los Angeles during the night and are also delayed one day.

Additional delays occur on traffic handled between Los Angeles and points in the territory where local way-freight trains are used between terminals. An example is the rail service now accorded Loma Linda, Bryn Mawr and Crafton located on the Southern Pacific east of Colton. Shipments for these three points would leave Los Angeles on a night train arriving at Colton the following morning, but too late to connect with the local way-freight train that day. The same situation applies with respect to traffic moving to Guasti, Patton, Highland, Crown Jewel, and Sunkist. Traffic to other points in the territory originating at Los Angeles is delivered the first morning after shipment.

The practical difficulties encountered in adjusting through and local freight train schedules on a major system such as the Southern Pacific Company in order to avoid delays in-transit of shipments moving between both large and small communities, are illustrated on a movement from San Francisco to Colton which is typical of the service rendered at the majority of the points in the territory. Inbound traffic would leave San Francisco in the evening on a fast merchandise train arriving Los Angeles at 8:10 a.m. the following morning where it would be held over until that night, then departing on a freight train reaching Colton at 7:00 a.m. on the second day after shipment. To other points served by local way-freight trains, of which Crafton is typical, delivery would not be made until the third morning after shipment from San Francisco.

Likewise traffic from points other than San Francisco

arriving at Los Angeles in overnight merchandise trains encounters the same delays. Similar conditions prevail on the movement of outbound traffic, particularly when destined to points beyond Los Angeles.(5)

Application No. 21351

By this application it is proposed to improve and expedite the present handling of rail less-carload merchandise traffic at Ontario, Chino and Guasti, points located on the Southern Pacific. The improved service is to be accomplished by the operation of one motor truck between Ontario, Chino, Guasti and Upland as supplementary or auxiliary to and in coordination with, the freight train schedules of both the Southern Pacific and Pacific Electric.

Under the proposal merchandise traffic accumulated by the Southern Pacific during the day at Los Angeles would move on an overnight train to Ontario, there break-bulk and distribution made to consignees at Ontario, Chino and Guasti by truck during the morning of arrival. At the same time shipments would be picked up for

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(5) Partial schedule of trains carrying l.c.l. shipments to and from area involved:

	LOS ANGELES		ONTARIO	UPLAND	COLTON	
Southern Pacific Company	Ar	Lv	Ar	Lv	Ar	Lv
S.F.-L.A. via Coast	*8:10A	*8:00P				
L.A.-S.J.Valley (Fresno)	*6:40A	*8:35P				
L.A. via Yuma Gateway	*6:00A	*10:30P				
L.A. via Ogden Gateway	*2:00A to *4:00A	*12:01A				
L.A.-San Bernardino-Local	*3:00A	*11:00P	*5:00A		*7:00P	
" " " "		10:00P	12:01P			1:00A
" " " "		9:40P	11:28P			12:10A
" " " "		2:50P	5:00P			6:00P
" " " "		7:30A	9:32A			10:30A
" " " "		1:30A	3:34A			4:30A
Pacific Electric Railway						
L.A.-San Bernardino-Local	11:45A	*5:25P		*3:35P		

* From transcript pages 60, 61, 62, 109, and 201 - Others from working time schedules of Southern Pacific Company. Information not available on all schedules, i.e., some Southern Pacific and all Pacific Electric run as extras and not carded.

subsequent movement to Los Angeles and points beyond. In the early afternoon the truck would connect at Upland with a Pacific Electric box motor (an electric motor-car unit used for transportation of property) which had left Los Angeles that morning. This box motor would, in addition to other traffic, contain shipments originating at points beyond Los Angeles destined to Ontario and Guasti which would then be delivered by truck of applicant. Later in the afternoon applicant would deliver to the Pacific Electric at Upland all traffic from Ontario, Chino and Guasti destined to points beyond Los Angeles in sufficient time for that rail line to connect at the latter city with the fast overnight merchandise trains of the Southern Pacific leaving the same evening to points in the San Francisco Bay district, San Joaquin Valley and other territories.

Such coordinated rail-truck service will eliminate the present delay of one day at Los Angeles on traffic moving from or to points beyond Los Angeles and Ontario, Chino and Guasti. The additional delay of one day on traffic from and to Guasti now handled by a local way-freight train operating out of Ontario will also be eliminated.

With respect to the present service at Upland no change will result from applicant's proposal as that point is merely where shipments will be consolidated for movement to Los Angeles and connect with merchandise trains without delay. Patrons at Guasti will be afforded pickup and delivery service by applicant not now offered by the Southern Pacific Company. Pickup and delivery service at Chino will continue to be performed by local contract draymen, but at Ontario it is proposed that this service will be performed by applicant. An exhibit submitted of all movements from and to the points of Ontario, Chino and Guasti discloses a monthly average of approximately 90 tons of less-carload merchandise traffic now trans-

ported by the Southern Pacific Company.

To render the improved service through the coordination of rail and truck facilities under the plan proposed, the record indicates that operating expenses would be increased $534 annually. This figure represents the difference between the estimated cost of operating the one truck in both line-haul and pickup and delivery service of $3,003 annually, and an estimated annual saving of $2,469 in the rail operating expenses.

Eight public witnesses testified in support of the proposed service. Keystone Express System, a protestant, called six public witnesses who testified that its service was adequate and satisfactory to meet their needs. This protestant offered testimony descriptive of its existing truck service between Los Angeles and the points of Ontario, Chino, Guasti, Upland and Cucamonga, and also between the latter five points and other points beyond Los Angeles, including the San Francisco Bay district and the San Joaquin and Sacramento valleys.

The proposal of applicant to serve Alta Loma and Cucamonga is not a part of the plan to improve existing rail service at these points. Cucamonga is an unincorporated community located contiguous to Alta Loma, a station point on the Pacific Electric. Since 1929 a store-door pickup and delivery service has been rendered at Alta Loma and the tariff description of such pickup and delivery zone includes a part of the community of Cucamonga. Applicant renders a twice-daily service to that part of Cucamonga here considered as a radial highway common carrier. It now appears such service is that of a highway common carrier requiring a certificate of public convenience and necessity to perform the present service. The applicant here seeks such authority. No change in the present schedules or service is proposed at Alta Loma and that part of Cucamonga within the tariff description of the pickup and delivery

zone.

We shall now consider the other application involved in these proceedings.

Application No. 21360

By this application it is proposed to operate a highway common carrier service over two routes between certain points located on the Southern Pacific and Pacific Electric as supplementary or auxiliary to, and in coordination with, the freight train schedules of both rail lines. Through such coordinated rail truck service applicant proposes to eliminate delays in-transit now encountered in the rail operations and provide an improved and expedited less-carload merchandise service.

The two routes will require one truck each to perform the contemplated operation. Both of the trucks intended to be used are now engaged in store-door pickup and delivery service for the rail lines at points covered by the application. One truck route will originate and terminate at Colton; the other at Riverside. For convenience they will be referred to as the Colton and the Riverside Lines, respectively, and described separately.

Colton Line

Under the proposed plan of operation over this route less-carload merchandise traffic from Los Angeles the previous day will arrive at Colton via the Southern Pacific and at San Bernardino via the Pacific Electric by 7:00 a.m. The truck will begin operation by loading inbound shipments at these two break-bulk points in order and proceed to make distribution that morning, and at the same time pick up such consignments as may offer, at Patton, Highland, Crown Jewel, Sunkist, Redlands, Crafton, Bryn Mawr, Loma Linda, and return to Colton in the early afternoon.

With the shipments that have been picked up on this trip destined to points beyond Los Angeles, the truck will then proceed to San Bernardino. These outbound shipments will there be delivered to the Pacific Electric in time to reach Los Angeles about 5:00 p.m. and make connections with the fast overnight merchandise trains leaving the same evening. The truck will then load inbound traffic at San Bernardino that arrived on a Pacific Electric box motor which left Los Angeles at 11:45 a.m. that morning. Such traffic will include shipments originating beyond Los Angeles and arriving at this point during the night and early morning hours of that day on the Southern Pacific merchandise trains. Delivery of these shipments will be made the same afternoon at all points served by the truck during the morning trip, except the points of Crafton, Bryn Mawr and Loma Linda.

During the afternoon trip, shipments destined to Los Angeles and other points will be picked up and delivered to the Pacific Electric at San Bernardino and to the Southern Pacific at Colton in the late afternoon for subsequent overnight rail movement to Los Angeles. Store-door pickup and delivery service on shipments will be afforded at Crown Jewel, Crafton, Bryn Mawr and Loma Linda by applicant not now offered by the rail lines. At Patton and Highland applicant will perform the store-door pickup and delivery service in place of the local contract drayman employed at present.

Riverside Line

Under the proposed plan of operation over this route, less-carload merchandise traffic from Los Angeles the previous day will arrive by rail at Riverside in the early morning. The Southern Pacific and Pacific Electric maintain a joint station at this point where the truck will begin operation by loading shipments destined to Corona and Arlington. After rendering a store-door pickup and

delivery service at those two points, the truck will return to Riverside to engage in store-door pickup and delivery service at this point.

Leaving Riverside at 1:00 p.m. with outbound traffic from the points served that morning, the truck will proceed to San Bernardino and en route perform a store-door pickup and delivery service at Highgrove, Bloomington, and Rialto. At San Bernardino the outbound traffic will be delivered to the Pacific Electric early enough for that carrier to reach Los Angeles about 5:00 p.m. and connect with the fast overnight merchandise trains leaving the same evening to various points in the state. The truck will then load inbound traffic at San Bernardino destined to Colton and Riverside which left Los Angeles on a Pacific Electric box motor at 11:45 a.m. that morning. Such traffic will include shipments originating beyond Los Angeles and arriving at this point on the merchandise trains during the night and the early morning hours of that day. The truck will then proceed to Colton and unload shipments for that point which will be delivered the same afternoon to the store-door of consignees by the local contract drayman. Proceeding to Riverside in mid-afternoon the truck will there engage in store-door delivery of shipments and also perform a pickup service on shipments for subsequent rail movement from that point the same evening to Los Angeles.

At Bloomington and Highgrove applicant will afford a store-door pickup and delivery service not now offered by the rail lines; and at Corona and Rialto the store-door pickup and delivery service now performed by a local contract drayman will be replaced by applicant's proposed service. No change in service will result at San Bernardino as that will be merely the interchange point between the proposed truck operation and the Pacific Electric.

The coordinated rail-truck service will eliminate the delay of one day now encountered at Los Angeles on traffic moving through that point, and also the additional delay of one day on some of this traffic while moving between Los Angeles and a number of the points now served by local way-freight trains.

Thus the proposed plan of operation will reduce the time in-transit on inbound shipments originating beyond Los Angeles two days when destined to Patton, Highland, Crown Jewel, Sunkist, and one day when destined to Colton, Redlands, Bryn Mawr, Loma Linda, Riverside and Highgrove. Time in-transit on outbound shipments destined to points beyond Los Angeles will be reduced two days when originating at Redlands, Crafton, Bryn Mawr, Loma Linda, Riverside, and Highgrove, and one day when originating at Colton, Patton, Highland, Crown Jewel, Sunkist and Bloomington.

Traffic originating at Los Angeles and destined to all of the points here considered will be delivered the first morning or early afternoon of the day following shipment under the proposal. Seven of these points are now accorded a second morning delivery after shipment as traffic is handled by local way-freight trains. Outbound traffic from all of the points proposed to be served and destined to Los Angeles will be delivered the morning after shipment, which makes possible a reduction of 24 hours in the time of delivery from nine of the points.

The bulk of the less-carload merchandise traffic which would be handled by the proposed truck service is inbound. It consists principally of shipments originating at Los Angeles and at San Francisco or points north thereof. An analysis of the traffic by applicant discloses a monthly average of approximately 188 tons inbound and 47 tons outbound now transported by both rail lines.

Applicant contends the improved and expedited service as proposed would be afforded at a net saving in the expense of handling this traffic of $626 per year. It is estimated that the cost of

operating the two trucks in the manner contemplated would be $3,804 annually. The saving in rail operating costs resulting from the proposed operation is estimated at $4,430 annually.

Testimony in support of applicant's proposed service was offered by twelve public witnesses. A shipper witness at Redlands, called on behalf of two of the protestants, testified as to the satisfactory service now afforded his shipments by existing motor carriers at that point.

Service now rendered by Pacific Freight Lines, Keystone Express System, Southern California Freight Lines, Southern California Freight Forwarders and Santa Fe Transportation Company between Los Angeles and the points embraced by this application was described by witnesses employed by those carriers. It appears two schedules daily are maintained at most of the points. It was further shown by the testimony of some of the protestants that they maintained an overnight merchandise service between the points proposed to be served by applicant and points located on the Coast route to and including the San Francisco Bay district, and on the San Joaquin Valley route to and including Sacramento, either with their own facilities or through connecting motor carriers.

The evidence of record dealing with both applications is similar in character to that introduced in many previous cases upon which we have rendered decisions during the past decade. It is also substantially the same as that presented in a number of applications now under submission. These latter applications[6] were orally argued with the two applications involved in the instant proceedings.

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(6) In re application of Pacific Motor Trucking Company, Applications Nos. 20685, 21023, 21083, 21604, 22357, 22921, and 22926.

Before passing to a discussion of the fundamental propositions involved we believe it appropriate at this point to briefly outline the history of rail-truck operations conducted by the Southern Pacific Company and Pacific Electric Railway Company in California.

<u>History of Rail-Truck Operations by Southern Pacific Company and Pacific Electric Railway Company</u>

In the summer of 1928 the Vice President and General Manager of applicant (then employed by the Pacific Electric Railway Company) recommended to Southern Pacific Company and Pacific Electric Railway Company that store-door pickup and delivery service be established on less-carload merchandise traffic for the purpose of improving their service to the public and more effectively meeting motor truck competition.(7) Approval of the recommended plan followed and the service was first inaugurated over the lines of the Pacific Electric Railway and later extended over the lines of the Southern Pacific Company and its other subsidiary rail lines in California.

In carrying out the general plan it was soon found that further improvements in the service could be made with a direct saving in operating expenses in most instances by the use of motor vehicles in line-haul operations as supplementary or auxiliary to and coordinated with the rail service between points on the rail lines in certain areas.

There is no question but that the Southern Pacific Company and its subsidiaries have continuously since 1931 been developing

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(7) See Decision No. 20578 (32 C.R.C. 499) on Application No. 15137, of Pacific Electric Motor Transport Co.; Decision No. 24289 (36 C.R.C. 866) on Application No. 16176, of George G. Harm and Harold B. Frasher; Decision No. 30723 (41 C.R.C. 166) on Application No. 21599 of Southern Pacific Co., et al; and Decision No. 31882 (41 C.R.C. 817) on Applications Nos. 18699, 18881, 19062, 19563, and 20297, of Pacific Motor Trucking Company.

and improving their store-door pickup and delivery service on merchandise traffic through the expanded use of coordinated rail-and-truck operations in California. The general plan that has been followed to hold this traffic to the rails and improve service to the public has been the operation of fast overnight merchandise trains between the larger communities such as between Los Angeles, San Francisco, and Oakland, via the Coast route, between Los Angeles, Bakersfield, and Fresno via the San Joaquin Valley route, and between Los Angeles and the Yuma Gateway; the movement of merchandise cars to centrally located concentration or break-bulk points where the most efficient and economical use of a coordinated rail-truck service can be made; and the distribution of shipments from these points by motor truck to final destination. Less-carload shipments originating in the areas served by motor vehicle receive the same rail-truck service in the reverse direction.

The rail-truck service eliminates as far as possible the use of local way-freight trains in the handling of less-carload merchandise traffic. Such trains are costly to operate and they cannot render the necessary expeditious, flexible, and convenient service to the small communities they are designed to serve. Not only has the coordinated rail-truck service provided a much faster, more dependable and satisfactory service to the public on less-carload merchandise traffic but on carload traffic as well.

Numerous applications for authority to operate motor truck service have been filed with us by subsidiaries of the Southern

Pacific and granted in whole or in part, or denied.[8] In some cases authority has been granted for the acquisition of operative rights of motor carriers already in the field.[9]

Applicant now operates approximately 3,100 truck route miles in California. The rail and truck routes are generally parallel and adjacent to each other. During the eleven years since store-

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(8) Typical of these are: Decision No. 22293 (34 C.R.C. 554) and Decision No. 22558 (34 C.R.C. 779) on Application No. 16228, of Pacific Electric Motor Transport Co.; Decision No. 24856 (37 C.R.C. 641) on Application No. 17892, Decision No. 25078 on Application No. 16228, Decision No. 25289 (38 C.R.C. 205) on Application No. 18010, Decision No. 25650 on Application No. 18651, Decision No. 25720 on Application No. 18758, Decision No. 25745 and Decision No. 25833 on Application No. 18752, of Pacific Motor Transport Co.; Decision No. 26134 on Application No. 18862, Decision No. 26260 on Application No. 18861, Decision No. 26262 on Application No. 18727, Decision No. 26619 on Applications Nos. 18871, 18880 and 18882, Decision No. 26693 on Application No. 19217, Decision No. 26717 (39 C.R.C. 185) on Application No. 18863, of Pacific Motor Trucking Company; Decision No. 26738 on Application No. 18315 of Pacific Motor Transport Company; Decision No. 26810 on Application No. 18865, Decision No. 26845 on Application No. 18982, Decision No. 26939 on Application No. 18881, Decision No. 27499 on Application No. 19670, Decision No. 27744 on Application No. 19598, Decision No. 28034 on Application No. 19996, Decision No. 28099 on Application No. 20046, of Pacific Motor Trucking Company; Decision No. 28287 (39 C.R.C. 470) on Application No. 19245 of Nevada County Trucking and Pacific Motor Trucking Company; Decision No. 29216 on Application No. 20817, Decision No. 29444 on Application No. 18871, Decision No. 29462 on Application No. 19888, of Pacific Motor Trucking Co.; Decision No. 29696 on Application No. 21067, of Pacific Motor Trucking Company and Pacific Motor Transport Company; Decision No. 29700 on Application No. 21123, Decision No. 30088 on Application No. 20297, Decision No. 30098 (40 C.R.C. 749) on Application No. 19563, Decision No. 30613 on Application No. 21755, Decision No. 31312 on Application No. 21570, Decision No. 31135 on Application No. 18981, Decision No. 31882 (41 C.R.C. 817) on Applications Nos. 18699, 18881, 19062, 19563, and 20297, Decision No. 32414 (42 C.R.C. 154) on Application No. 20806, and Decision No. 32603 on Application No. 20938, of Pacific Motor Trucking Company.

(9) See Decision No. 22183 on Application No. 16323, of California Transit Company and Pacific Motor Transport Company; Decision No. 23564 on Application No. 17236, of Union Terminal Warehouse Company and Pacific Motor Transport Company; Decision No. 27549 on Application No. 19708, of Oakland-San Jose Transportation Company and Pacific Motor Trucking Company; Decision No. 29004 on Application No. 20666, of Pacific Motor Trucking Company and J. K. Vanderhurst and E. K. Duda; Decision No. 29698 on Application No. 21088, of Pacific Motor Trucking Company and J. A. Keithly; Decision No. 30143 (40 C.R.C. 758) on Application No. 21438, of Pacific Motor Trucking Company and Valley Truck Line; and Decision No. 31974 on Application No. 22650, of Pacific Motor Trucking Company and Guida De Ghetaldi.

door pickup and delivery service of less-carload merchandise traffic was first started as an experiment, the Southern Pacific and its subsidiaries have extended and improved the service until today overnight store-door pickup and delivery of shipments is regularly provided between the majority of communities served by the rail lines. The same plan of coordinated rail-truck service is either now in effect or proposed between points in the States of Arizona, Nevada, and Oregon served by the Southern Pacific Company or its affiliates. Likewise The Atchison, Topeka & Santa Fe Railway Company has utilized motor trucks in coordination with its rail service to provide a fast and convenient less-carload merchandise service to the shipping public of California.(10)

In the field of interstate and foreign commerce we find numerous railroads and their subsidiaries operating motor vehicles as common carriers of property in conjunction with their rail lines. Following enactment of the Federal Motor Carrier Act, 1935, the Interstate Commerce Commission has had before it many applications filed by rail carriers or their subsidiaries seeking certificates of public convenience and necessity to operate as common carriers of property by motor vehicle, or for authority to acquire control or purchase of operative rights possessed by highway carriers already in the field. A review of the decisions by the Interstate Commerce Commission on such applications shows that some of them have been made subject to specific conditions, including among others, a requirement that the service to be rendered shall be

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(10) See Decision No. 25352 (38 C.R.C. 240) on Application No. 17880, of R. T. Howard; Decisions Nos. 27234, 30110, and 31682 (41 C.R.C. 817) on Application No. 19030, of Santa Fe Transportation Company; Decision No. 28449 on Application No. 20305, of R. T. Howard and Santa Fe Transportation Company; Decision No. 28945 on Application No. 20617, of F. A. Kent and A. K. Richards and Santa Fe Transportation Company; and Decision No. 28946 on Application No. 20618, of T. R. Rex and Santa Fe Transportation Company.

confined to service auxiliary and supplemental to that performed by the rail line in its rail operations and in the territory parallel and adjacent to its rail lines; that applicant shall not serve, or interchange traffic at, any point not a station on the rail lines; and that shipments transported by applicant shall be limited to those which it receives from or delivers to the rail line where there is a prior or subsequent movement by rail.(11)

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(11) The following cases are typical:
Pennsylvania Truck Lines, Inc.,-Control of Barker Motor Freight, Inc., 1 M.C.C. 101; 5 M.C.C. 9 and 49; Santa Fe Transportation Company-Purchase-T. R. Rex, 5 M.C.C. 1; Pennsylvania Truck Lines, Inc.-Purchase-John C. Cain, 5 M.C.C. 73; Pennsylvania Truck Lines, Inc.-Control-Alko Express Lines, 5 M.C.C. 77; Texas & Pacific Motor Transport Company-Purchase- W. A. Johnson, 5 M.C.C. 89; Burlington Transportation Company-Purchase-Bell Transfer, Inc., 5 M.C.C. 291; Pacific Motor Trucking Company-Control-Peoples Freight Line, Inc., 5 M.C.C. 302; Pacific Motor Trucking Company-Purchase-Humboldt Freight Lines, Inc., 5 M.C.C. 413; Rock Island Motor Transit Company-Purchase-White Line Motor Freight Company, Inc., et al, 5 M.C.C. 451; Texas & Pacific Motor Transport Company-Purchase-Southern Transportation Company, 5 M.C.C. 653; Burlington Transportation Company-Purchase-Roy A. Sand, 5 M.C.C. 658; Kansas City Southern Transport Company, Inc., Common Carrier Application, 10 M.C.C. 221; Texas & Pacific Motor Transport Company Common Carrier Application, Louisiana, 10 M.C.C. 525; Texas & Pacific Motor Transport Company Common Carrier Application, 12 M.C.C. 37; Illinois Central Railroad Company Common Carrier Application, 12 M.C.C. 485; Minneapolis & St. Louis Railroad Company- Purchase-Burton Brown, 15 M.C.C. 54; Missouri Pacific Freight Transport Company-Purchase-J. W. Allen, 15 M.C.C. 269; Northern Pacific Transport Company-Purchase-Fitzhugh, 15 M.C.C. 296; Southern Pacific Transport Company-Purchase-C. B. Sanders, 15 M.C.C. 299; Southern Pacific Transport Company-Purchase-Pilarczyk, 15 M.C.C. 309; Frisco Transportation Company-Purchase-Cooper, 15 M.C.C. 317; Frisco Transportation Company-Purchase-Hemm, 15 M.C.C. 320; Frisco Transportation Company-Purchase- J. A. Rose, 15 M.C.C. 323; Pacific Motor Trucking Company-Purchase-J. A. Keithly, 15 M.C.C. 427; Pacific Motor Trucking Company-Purchase-Peoples Freight Line, Inc., 15 M.C.C. 591; Santa Fe Transportation Company-Purchase-A. K. Richards, 15 M.C.C. 623; Rock Island Motor Transit Company-Purchase- White Line Motor Freight Company, Inc., et al, 15 M.C.C. 763; Seaboard Air Line Ry. Co. Motor Operation-Gaston-Garnett, S.C., 17 M.C.C. 413; Gulf, Mobile & Northern R.R. Co. Common Carrier Application, 18 M.C.C. 721; C.R.I. & P. Ry. Co. Extensions-Iowa, Mo., Kans., and Nebr., 19 M.C.C. 702; Missouri Pacific R.R. Co. Extension-Arkansas-Louisiana, 20 M.C.C. 563; and Southern Pacific Transport Co.-Purchase-Beckman, 25 M.C.C. 179.

The proposed service offered by the applications here is another step in the general plan of applicant and Southern Pacific Company toward the consummation of coordinated rail-truck service of less-carload merchandise traffic in the entire territory served by the two rail lines. The authority sought herein will provide the means for extending in part the rail-truck service previously authorized by us in numerous decisions (See Footnote (8), supra) eastward from Los Angeles to Ontario, San Bernardino, Redlands, Riverside, Colton, and other communities in that territory. In our previous discussion of the individual applications we have described in detail the operation of the proposed coordinated service at the points involved. We shall now consider the issues presented here.

The Issues

In these proceedings the parties of record have, on brief and at oral argument, raised many questions which are asserted to be essential to the proper disposition of the applications. The views of the parties are in sharp conflict both as to the facts and the law. Many of the questions presented here, if not all of them, have been urged upon us and dealt with in our prior decisions where a railroad or its subsidiaries have sought authority to operate highway vehicles in substitution of, or supplementary or auxiliary to, the rail operation.

The fundamental issues presented here for determination are, we believe, but few in number. As we view the problem they may be encompassed within the following propositions:

(1) Should a railroad or its subsidiary be authorized to operate motor trucks as a common carrier of property under Section 50-3/4 of the Public Utilities Act where it is supplementary or auxiliary to, or in substitution of, the rail service?

(2) If so, what showing must be made to justify the granting of such authority? In this connection what consideration must be given to the fact that existing motor carriers provide an adequate and satisfactory service and, themselves, are willing to furnish the proposed service under joint through rates with the rail line?

(3) In the granting of certificates of public convenience and necessity to railroads or their subsidiaries on the one hand and to non-railroad owned or controlled truck lines on the other hand, has the Commission applied the statute unequally or denied to such carriers the equal protection of the law?

These propositions will be discussed in the order indicated.

Operation of Truck Service by a Railroad or Its Subsidiary as Supplementary or Auxiliary to, or in Substitution of, Rail Service.

Here applicant states the question is not whether Southern Pacific Company and the shipping public are to be disadvantaged for some past dereliction of the railroad,[12] but whether the railroad should be permitted to go ahead with its plan of continuing to improve service by coordination of rail-truck facilities; that there is nothing in the law to prevent or prohibit the issuance of a certificate of public convenience and necessity to a railroad or

(12) The Commission in Re Harm and Frasher, 36 C.R.C. 866, 871, decided December 7, 1931, there said "it must be concluded from the record herein that the Southern Pacific Company, as well as the other rail carriers, have been almost incredibly dilatory in meeting changed transportation conditions."

its subsidiaries when a proper showing has been made; and that this Commission and the Interstate Commerce Commission in the granting of such certificates have consistently recognized the public benefits and advantages which flow from coordination of rail-and-truck services.

Protestant motor carriers contend the rail lines have been practically out of the business of transporting less-carload merchandise traffic for the past twenty to twenty-five years; that the rail lines should not now be permitted to reenter a field, from which assertedly they have largely withdrawn, by means of a new service conducted over the highways at the expense of the existing motor truck carriers who, it is alleged, have been in the past and are now providing an adequate and satisfactory store-door pickup and delivery of less-carload merchandise traffic at reasonable rates; that while the rail lines may improve their less-carload merchandise service by coordination of rail and truck facilities, they should do so only by using the facilities of existing motor carriers in the territory proposed to be served; that for the rail lines to accomplish such coordination through their own instrumentalities would constitute wasteful duplication; and that this Commission has long held that no new utility would be authorized to enter a field already served unless the existing facilities were inadequate.

One of the first proceedings before the Commission involving the use of motor vehicles by a rail carrier was an application filed by Southern Pacific Motor Transport Company, a wholly owned subsidiary of the Southern Pacific Company, for a certificate of public convenience and necessity to operate motor buses as a substitute for passenger trains between certain points in the Monterey-Santa Cruz area. There the protesting motor bus carriers objected to permitting the railroad or its subsidiary to operate motor buses as proposed, contending that a monopoly of this form of transportation should be

preserved to them because they had developed the business and that the rail lines should be "compelled to stick to the rails." One of the protestants claimed to have ample motor bus facilities in the field to perform any service necessary in transporting passengers handled by the passenger trains proposed to be discontinued and offered to contract on the same terms as those proposed between the applicant and the rail line. In Re Southern Pacific Motor Transport Co., 32 C.R.C. 331, 339, 340, decided October 23, 1928, the certificate sought was granted. We there said:

> The record, however, discloses that the protestants are not in position at the present time to perform all of the proposed service absolutely necessary and essential as a substitution for the train service, discontinuance of which is herein authorized.
>
> The protestants call to our attention many cases in which the Commission has held that, where a territory is amply supplied with adequate service at reasonable rates, competition will not be permitted. I have no quarrel with this doctrine but deem it inapplicable here for the reason that here we have two carriers, both of whom have dedicated property to public use for a transportation service and both of whom have been in the field for many years in the past, each, so far as the record is concerned, serving practically the same communities and each in its own field performing a reasonable, adequate, satisfactory service at reasonable rates. The railroad company now desires, because some of the property which it now operates in the service no longer returns to it any remuneration, to withdraw that property and, through its subsidiary, perform an identical service by dedication of other facilities to the performance of that service.

The Interstate Commerce Commission at that time in Motor Bus and Motor Truck Operation, 140 I.C.C. 685, 721, 745, decided April 10, 1928, said:

> Efficient and economical management of railroads will to a constantly increasing extent call for the utilization of motor vehicles for short hauls or as a feeder or distributing agencies.
>
> Steam railroads and electric railways are engaging more and more extensively, either directly or through subsidiaries, in motor vehicle transportation as supplementary to their rail operations to replace or curtail train operations

or as feeders or distributing agencies.(13)

In Re Pacific Motor Transport Co., 38 C.R.C. 874, 878, decided August 21, 1933, we granted applicant authority to operate motor trucks between railroad stations located on main and branch lines of the Southern Pacific Company in the San Joaquin Valley. With respect to the use of motor trucks by a railroad subsidiary in a field where there were existing carriers we stated:

> This is not a case of a new carrier entering an already overcrowded field. It is a question of improving and cheapening an existing service. There was ample evidence that that portion of the public now patronizing the rails desires the improvement. Convenience will unquestionably be greatly advanced. In this period of depression when it is difficult to pay for necessity, it could well be contended that convenience at additional cost is without economic justification. But this is a case where convenience brings with it reduced cost.
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> However, there can be no doubt that here is a real public need for more rapid and frequent transportation than the patrons of the Southern Pacific Company now enjoy at the points covered by this application.

Another proceeding bearing upon the contentions of applicant and protestants now being discussed was in Re Pacific Motor Trucking Co., 39 C.R.C. 185, 187, 188, decided January 10, 1934, wherein authority to operate motor trucks between certain points was rescinded and the application denied without prejudice. We there said:

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(13) Six years later in Motor Truck Club of Mass. v. Boston & Maine R.R., 206 I.C.C. 18, decided December 11, 1934, the Interstate Commerce Commission at page 24 said:

> A number of times in recent years the Commission has expressed its approval of experiments being made in the use of motor trucks and buses to supplement or in substitution for railroad service. ***

and cited Motor Bus and Motor Truck Operation, supra, wherein appears, so the Commission said, this clear statement of its attitude in this respect:

> Store-door delivery is today receiving the earnest consideration of railroad executives and shippers' representatives, as well as ours. Store-door delivery would mean quicker and better service to the shippers with a great saving of time, elimination of terminal congestion, consolidation of freight into fewer cars, and reduction in use of stations and cars for storage.

The protestant Motor Freight Terminal Company insists that because of the idle space in its equipment it can afford to, and will contract to perform the identical service proposed by the applicant at the same or at a less compensation than the applicant estimates it will receive. It also insists it would take no competitive advantage if it rendered such service. This truck carrier has a certificated right under which it could perform the service. Somewhat similar offers were made by other truck lines whose certificates cover part of the territory involved.

That the rail carriers should be permitted and encouraged to adapt the transportation services they offer to modern conditions is clear. It is equally clear that some use of truck transportation is appropriate to this end. The exact means by which progress is to be attained and the limitations and restrictions which should be made by public authority are not so clear. Every case is confused by the inevitable struggle between contending agencies for advantage. Just treatment of these agencies is important but subordinate to the larger aim of bringing about good and economical transportation to the shipping public.

There are at least two means of attaining the objective of improved service at lesser cost through substitution of truck movement of L.C.L. freight from depot to depot for the present slower and more costly rail movement:

First. Certificates of public convenience and necessity may be granted to a subsidiary of the rail line authorizing it to move the rail L.C.L. freight from depot to depot. This is the means thus far generally adopted with the approval of this Commission.

Second. The rail line may contract with a duly certificated truck line, not a subsidiary, to perform the line haul depot to depot service.

Public convenience and necessity is concerned more with the result achieved than with the particular means by which achieved. In a period where economic progress by a process of trial and error prevails to a large extent, it would seem appropriate that each of these means be given a trial. In some instances the one may prove the better, in some the other. The present seems to be a case where the second plan referred to may well be given a chance to prove itself. At best the record here is not persuasive of the existence of any public convenience and necessity for certificating a new truck service on the highways. The Commission might be justified in deducing its existence were it not for the fact that at no added expense and perhaps at a lesser expense the depot to depot movement can be effected through contract with a single existing certificated carrier.

However, when three-and-one-half years later the applicant and the certificated motor carrier still could not work out a mutually satisfactory contract, another application was filed to operate trucks between Santa Barbara and Montecito. We found that public convenience and necessity required the proposed service by applicant and the certificate was granted in Re Pacific Motor Trucking Co., 40 C.R.C. 749, decided September 7, 1937. Subsequently upon rehearing this decision was reaffirmed by Decision No. 31042, dated June 27, 1938, and again by Decision No. 31882 (41 C.R.C. 817) dated March 30, 1939.

Use of motor trucks as a supplementary or auxiliary service has not been confined to the railroads, but has also been taken advantage of by the water carriers in improving their service to the public and retaining traffic against rail and motor truck competitors.

In Re The River Lines, 37 C.R.C. 447, decided April 25, 1932, authority was granted to operate motor trucks in conjunction with inland common carrier service by vessel between certain points. By utilizing a water-truck service applicant could eliminate stopping its vessels at points to be served by truck and expedite service to other points, effect economies in operation and maintenance, and provide an improved service. (14)

Recently this same applicant sought authority to operate motor trucks between San Francisco, Oakland, and Berkeley on the

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(14) Also see Re The River Lines, Decision No. 26228, on Application No. 18016, decided August 14, 1933; Decision No. 26994 and Decision No. 27752, on Application No. 19088, decided April 30, 1934, and February 18, 1935, respectively; and Decision No. 28497, on Application No. 20308, decided January 13, 1936.

one hand, and Sacramento on the other hand, as an alternative and supplemental service to the existing vessel service between these points. By Decision No. 31209, on Application No. 20785, decided August 15, 1938, it was found that public convenience and necessity required the proposed service and the certificate was accordingly granted. Commenting on the contentions of protestant rail and motor truck carriers serving the territory involved we therein stated:

> It is true that the carriers now operating in this field are providing an adequate, efficient, and dependable service, and are well able to handle all the traffic offered. But even so, they are clothed with no equities which entitle them to demand that applicant, a pioneer in river transportation between San Francisco, Oakland and Sacramento, may not be permitted to improve its service. For this clearly is the essence of applicant's proposal - an improvement in its service. There is no substantial distinction between a truck line operated by a railroad or its subsidiary, as an auxiliary, supplemental, or substituted service, and one conducted by a water line. In either case the purpose is identical, viz., to supplement and improve the primary service performed by the carrier and permit it by such means to overcome deficiencies which militate against the full performance of its public obligations. In neither case is a new carrier thereby authorized to enter the field, thus generating competition which may be harmful to those already occupying it. Though no economies will be effected through the operation of the supplementary truck service, this does not serve to differentiate applicant's proposal from those cases where a railroad, through a subsidiary, has been authorized to improve its service. Such was the ruling of the Commission in the Placerville Case (In Re Pacific Motor Transport Co., Decision No. 26262, dated August 21, 1933, on Application No. 18727).

This Commission more than a decade ago first exercised the power vested in it to issue or deny certificates of public convenience and necessity to railroads or their subsidiaries for the operation of motor vehicles as supplementary or auxiliary to

or in substitution of rail service.(15)

Pronouncements of the Interstate Commerce Commission prior to being given jurisdiction and control over motor vehicles operated for compensation in interstate and foreign commerce by passage of the Federal Motor Carrier Act, 1935, that railroads should be encouraged to test the possibilities of trucks and other new facilities for use in coordination with rail service and their use of trucks in substitution for train service to the end that beneficial results in the public interest may be achieved by reducing costs and improving service,(16) have been subsequently followed in administering the Act.

In Pennsylvania Truck Lines, Inc.-Control-Barker Motor Freight, 1 M.C.C. 101, and 5 M.C.C. 9 and 49, hereinafter referred to as the Barker Case, the Interstate Commerce Commission approved the acquisition of a motor truck line by a railroad truck subsidiary. The primary purpose of the application was:

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(15) See Re Napa Valley Bus Company, et al, 29 C.R.C. 632, decided April 11, 1927; Re Southern Pacific Motor Transport Company, 32 C.R.C. 331, decided October 23, 1928; and cases cited in footnotes (8) and (9), supra.

(16) In Coordination of Motor Transportation, 182 I.C.C. 263, decided April 6, 1932, the Commission exhaustively covered the extent and character of transportation by motor vehicle, and particularly its relation to transportation by railroad, the extent of existing coordinated service, and of further coordination in the future. In its conclusions at page 379 the Commission stated:

> That transportation by motor vehicles, busses, and trucks, over the public highways is, within certain distances, and in certain respects a superior service, and that the rail and water lines should be encouraged in the use of this instrumentality of commerce wherever such use will promote more efficient operation or improve the public service.

Also see Motor Bus and Motor Truck Operation, 140 I.C.C. 685, and Motor Truck Club of Mass. v. Boston & Maine RR., 206, I.C.C. 18.

*** to permit vendee to establish a coordinated truck-and-rail service in Ohio similar to that now furnished by it in the territory east thereof. In line with this program, it is vendee's intention to establish zone or concentration stations to which less-than-carload freight will be handled from points contiguous thereto by truck and assembled in full carload lots and thence forwarded by rail to other such stations for distribution by truck to the consignees. *** (1 M.C.C. 105).

The Commission concluded that:

The proof is convincing that over some of the routes in question the railroad can "use service by motor vehicle to public advantage in its operations." The motor vehicle can undoubtedly be used as a very valuable auxiliary or adjunct to railroad service, particularly less-than-carload service, and the many opportunities for such use here have been pointed out of record and are clear. Such coordination of rail and motor-vehicle operations should be encouraged. The result will be a new form of service which should prove of much public advantage. Nor do we believe that the creation of this new form of service will "unduly restrain competition." On the contrary, it should have the opposite effect. (1 M.C.C. 111).

and issued its permissive authority indicating the character and scope of approved and disapproved operations; (17) and also the reasons for imposing the condition in the order that applicant's motor vehicles shall not render service from or to, or the interchange of traffic at, any point not a station on the railroad

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(17) "*** Approved operations are those which are auxiliary or supplementary to train service. Except as hereinafter indicated, nonapproved operations are those which otherwise compete with the railroad itself, those which compete with an established motor carrier, or which invade to a substantial degree a territory already adequately served by another rail carrier.

Approved operations are best illustrated by the substitution of trucks for peddler or way-freight service in what is commonly called 'station-to-station' service." (5 M.C.C. 11, 12).

For a discussion of different types of motor transportation by rail carriers, see Coordination of Motor Transportation, 182 I.C.C. 263, at page 336, et seq.

(1 M.C.C. 111-113, 5 M.C.C. 10-12, 14-15).[18]

Not only has the Interstate Commerce Commission permitted railroads or their subsidiaries to acquire operative rights of existing motor carriers[19], but it has also granted certificates of public convenience and necessity to railroads and their subsidiaries authorizing the establishment of motor truck service in a number of cases since 1935.

The leading case in point on the latter type of operation is Kansas City Southern Transport Co., Inc. Common Carrier

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(18) "The railroad does not, however, so far as the routes in question are concerned, propose to confine itself to motor-vehicle service auxiliary to its rail operations. It contemplates also the furnishing of motor-carrier service which would not be associated in this way with rail operations,***.

"***there is now an ample supply of independent operators (at least three on each route) in the territory for the furnishing of competitive service, we are not convinced that the way to maintain for the future healthful competition between rail and truck service is to give the railroads free opportunity to go into the kind of truck service which is strictly competitive with, rather than auxiliary to, their rail operations. (5 M.C.C, 10).

"***Hence our order will provide, in connection with the routes here authorized, that service by applicant's motor vehicles may not be accorded to, or traffic interchanged at, any point which is not also a station on the Pennsylvania, but this restriction is without prejudice to subsequent modification as later explained." (5 M.C.C. 12).

(19) Following the Barker case, supra, the Interstate Commerce Commission in Rock Island Motor Transit Co.-Purchase-White Motor Freight, 5 M.C.C. 451, decided April 1, 1938, again at some length commented upon the use of motor trucks in a coordinated motor-rail service and the various contentions of protestant motor-carriers. Also see Santa Fe Transportation Co.-Purchase-T.R. Rex, 5 M.C.C. 1; Pacific Motor Trucking Co.-Control-Peoples Freight Line, Inc., 5 M.C.C. 302 and 15 M.C.C. 591; Texas & Pacific Motor Transport Co.-Purchase-Southern Transportation Co., 5 M.C.C. 653; Frisco Transportation Co.-Purchase-John Hamm, 15 M.C.C. 320; Pacific Motor Trucking Co.-Purchase-J. A. Keithly, 15 M.C.C. 427; and Santa Fe Transportation Co.-Purchase-A. K. Richards, 15 M.C.C. 623.

Application, 10 M.C.C. 221, decided November 12, 1938, wherein authorization was granted to operate a motor truck service over the highways supplementary and auxiliary to and coordinated with that of the rail lines, subject, however, to certain conditions imposed for the protection of existing motor carriers.[20]

The general plan of coordinated service was similar in character to that discussed in connection with the Barker case, supra. The Commission concluded:

> The railway is now furnishing a less-than-carload, or merchandise, freight service which is expensive and in many respects unsatisfactory and inefficient. Through applicant, * * * it proposes to use motor vehicles in coordination with its rail operations in such a way that a merchandise service can be provided that will be much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served. That these results can be achieved the record leaves no doubt. Moreover, it is clear that this coordinated rail-motor service will be a new form of service, utilizing both forms of transportation to advantage, and differing from the service given by the railway alone or by competing motor carriers alone. That Congress contemplated such coordination is shown by section 202(a) of the act, which declares it to be the policy of Congress, among other things, to "improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers." It is also shown by section 213(a)(1), which permits a railroad to acquire a motor carrier, provided we find that the acquisition will promote the public interest by enabling the railroad to "use service by motor vehicle to public advantage in its operations," without undue restraint of competition.
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> It follows that the new form of service "will serve a useful public purpose, responsive to a public demand or need." Is it necessary, however, that applicant be given the desired certificate in order to accomplish this purpose, or can it be "served as well by existing lines or carriers"? *** a number of independent motor carriers

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(20) The Commission required that applicant (1) perform service only which is auxiliary to, or supplemental of, the rail service; (2) not serve, or interchange traffic at, any point not a station on the rail lines; and (3) transport only those shipments which it received from or delivers to the rail lines under a through bill of lading covering, in addition to movement by applicant, a prior or subsequent movement by rail.

now afford service to and from most of the points applicant proposes to serve, and between some of the points they maintain several schedules each day. These motor carriers are protestants and they contend that whatever coordination of rail and motor service may be desirable can be accomplished by the railway through arrangements with them and utilization of their facilities, or, at all events, that this method of attaining the result sought should be tried before applicant is permitted to establish a new service.

The railway regards any such plan of coordination with independent motor carriers as impracticable. It goes so far, indeed, as to suggest that if it contemplated retirement from the handling of merchandise traffic it could do so more gracefully and at less expense than by entering into joint arrangements with parallel competing truck lines, from which the railway is convinced "it could reasonably expect no bona fide coordination or cooperation."

We are without jurisdiction to compel coordinated service between carriers by rail and carriers by motor vehicle. It could only be accomplished through the medium of through routes and joint rates and we have no power to require their establishment. It follows that any such plan must be dependent on voluntary cooperation. ***

It is evident that grave difficulties would be encountered.*** the protesting motor carriers *** would find it difficult to adjust their schedules to meet the needs of coordination with the rail service without disrupting or impairing their service to the off-rail points.

*** it is urged very strongly by the railway that, in order to accomplish satisfactory coordination and attain the desired flexibility of rail-truck operations, it is essential that the rail and truck lines have a unity of interest and be under a common management and control. In view of the close adjustment of schedules and interchange arrangements which good and dependable service would require, as well as the contemplated joint use of stations and employees, we believe that the railway has sound ground for this contention.

*** It remains to be determined whether, in accordance with the definition of "public convenience and necessity" in the Pan-American case, supra, "it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest."

*** protestants contend that if applicant be given the certificate which it seeks, they will suffer severely from the new competitive service which it will offer, not only in conjunction with the railway but on its own account. Competition is already so keen in the territory

concerned that protestants can ill afford any further diversion of business. *** Interpreting their views, the thought seems to be that railroad-controlled motor carriers might ultimately be able to prevail over independent competitors, not because of any superiority in service or operation, but through their ability to draw upon the financial and other resources of their parent companies, and that the motor-carrier industry is more likely to develop in inherent strength and efficiency if it continues, as in the past, to remain largely in independent hands.***

*** As we have seen, the conclusion is warranted that there is a public need for this coordinated service, that it is a new and different character of service which neither the railroads nor the trucks alone can supply, and that it cannot be furnished effectively and well except through the use of applicant's facilities. We do not believe that the development of this new form of service will seriously endanger the operations of protestants, but, in any event, the public ought not to be deprived of the benefit of an improved service merely because it may divert some traffic from other carriers. If that principle had been followed, indeed, no motor-carrier service could have been developed. (Pages 235-238).

We have deemed it advisable to quote at considerable length from this decision of the Interstate Commerce Commission for a number of reasons which are pertinent to the proposition now under discussion.(21) That the Interstate Commerce Commission has been confronted with the same difficult problems connected with the issuance of certificates of public convenience and necessity to railroads or their subsidiaries for the operation of motor trucks in a coordinated rail-truck service over routes already served by existing motor truck carriers as has this Commission over a much longer period of time, is clear. Equally clear is the fact that the two Commissions in the exercise of their administrative judgment have independently, where the facts and conditions shown of record are similar or substantially so, reached the same conclusions on the

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(21) Also in point, among others, are the decisions of the Interstate Commerce Commission in Texas & Pacific Motor Transport Co. Common Carrier Application-Louisiana, 10 M.C.C. 525, decided December 2, 1938; Texas & Pacific Motor Transport Co. Common Carrier Application, 12 M.C.C. 37, decided March 2, 1939; and Illinois Central Railway Co. Common Carrier Application, 12 M.C.C. 485, decided March 27, 1939.

question of permitting a railroad or its subsidiaries to operate motor trucks over the highways in a coordinated rail-truck service where there is a valid public demand and need for the proposed service.

That this Commission for many years has permitted the railroads, where such public need exists, to adapt the transportation services they offer to meet modern transportation conditions by the use of motor trucks in coordination with rail operations, is plainly evident from what has heretofore been said. There is no doubt but that coordinated rail-truck service has provided the public with a more expeditious, flexible, dependable, and satisfactory means of transporting less-carload merchandise traffic. In the proceedings at bar the protestant motor carriers who offered testimony conceded the right of the railroads to improve their service but where such improvement would be accomplished by using motor trucks in coordination with the rail operations, they contend it can and should be done through utilizing the motor carrier facilities already operating in the territory proposed to be served by the applicant under joint through rates. It seems to us that these protestants have by their willingness to enter into joint rates and through routes indicated, at least indirectly, the need for the coordinated rail-truck service sought herein. We shall later herein treat with protestants' offer that they are ready, willing, and able to provide the proposed truck service in coordination with the rail lines under joint rates.

Protestants' contention that the Southern Pacific Company and its rail subsidiaries have in past years withdrawn to a substantial extent from the transportation of less-carload merchandise traffic between points on the rail lines, is not supported by any evidence of record. On the contrary, it has been shown that the Southern Pacific Company for some ten years past has carried forward a general plan, of which the instant applications are a part, to improve service to the public on the class of traffic in question. The evidence indicates

that approximately 325 tons of less-carload merchandise traffic per month is now transported by the rail lines from and to points at which it is proposed to render an improved service by motor truck should the instant applications be granted.

In support of their contention that no new motor truck carrier should be permitted to enter a field which is said to be already adequately and satisfactorily served by existing motor truck carriers, protestants cite a number of decisions where applications for certificates of public convenience and necessity to operate new public utility services were denied by this Commission.(22) The case of Re Santa Clara Valley Auto Line, 14 C.R.C. 112, decided September 26, 1917, is relied upon as the leading case supporting the contention here urged.(23) In our opinion the conclusions therein reached do not apply to the facts in these proceedings.

There the applicant sought a certificate of public convenience and necessity authorizing automobile stage service between San Francisco and Palo Alto. Applicant failed to show by proper affirmative evidence that the public required the new service proposed in competition with existing stage carriers who were rendering a reasonably adequate service and the application was denied. In the instant pro-

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(22) The following cases are cited by protestants: Pacific Gas & Electric Co. v. Great Western Power Co., 1 C.R.C. 203; Re Oro Electric Co., 2 C.R.C. 748; Re Santa Clara Valley Auto Line, 14 C.R.C. 112; Bay Cities Transportation Co. v. Warren, et al, 26 C.R.C. 131; Re Los Angeles and Salt Lake R.R. Co., et al, 30 C.R.C. 857; Re United Parcel Service, 32 C.R.C. 82; Re Pacific Electric Motor Transport Co., 34 C.R.C. 554; Re Louis E. Smith, 38 C.R.C. 421; Re C. W. Carlstrom, 38 C.R.C. 770; Re Pacific Motor Trucking Co., 39 C.R.C. 185; Re Railway Express Agency, Inc., 40 C.R.C. 704; and Decision No.31135, on Application No. 18981 of Pacific Motor Trucking Company.

(23) As generally supporting the theory enunciated in the Santa Clara Valley Auto Line Case, supra, protestants cite Re Palo Verde and Imperial Valley Transportation Co., 17 C.R.C. 722; Re City Transfer and Storage Co., 32 C.R.C. 2; Re S. Brice Cowan, 33 C.R.C. 389; Re Twentieth Century Delivery Service, Inc., 38 C.R.C. 761; and Motor Transit Co. v. Railroad Commission, 189 Cal. 573.

ceedings applicant proposes to use motor trucks as supplemental and auxiliary to the rail operations in an integrated and coordinated service between only such points as are stations on the rail lines, thereby effecting some economies in operation and offering an improved service to the shipping public. The rail lines are the pioneer common carriers in the field at all points proposed to be served by the coordinated rail-truck service. Any diversion of traffic from existing motor carriers would be the result of the rail lines providing an improved service through utilization of the natural advantages of both types of transportation.

Upon the facts, as applied to the evidence in each case, must the Commission determine whether public convenience and necessity require the proposed operation. Where there is a conflict between public interest and private interest, the former is paramount and the latter must give way. This Commission has authorized the use of motor vehicles by steam railroads, electric railways, street railroads, and water carriers when the public interest would be better served.

In Re East Bay Street Railways, Ltd., 39 C.R.C. 252, 258, 259, we granted applicant authority to discontinue its street railway service and substitute motor bus service in competition with existing motor bus operators, stating "Applicant is seeking to continue this competition and not to inaugurate a new service." As to permitting applicant the right to substitute motor buses for rail service we there stated it would seem, as a fundamental principle, that:

> *** a utility in the field should be permitted to operate and serve its patrons in the most efficient and attractive manner. Where new devices or equipment have been perfected or methods of serving the public developed that are superior to the older ones, it is in the public interest to permit a utility to keep pace with such improvements within the limits of the district it serves.

In this case it is clear that if applicant is to be permitted to continue to serve the district *** in the most practical and efficient manner under present-day conditions, it should be allowed to substitute bus for rail service. This will not only be less costly to the carrier but will afford the public faster and better service. To deny this right to applicant would be the equivalent of telling it to incur unnecessary heavy expenses or surrender its business to its competitor.***

It has become increasingly apparent in recent years that the intense and virulent competition for all kinds of traffic by rail and motor carriers requires the coordination of services and facilities of both types of transport in the handling of freight and passengers to insure the use of each type of carrier in the service in which it is relatively more efficient and to prevent unnecessary duplication of services and disastrous competition, in the interests of both rail and motor carriers, as well as in the public interest. To do otherwise is uneconomical, illogical and unfair.

Coordination does not imply the subordination of any carrier to any other carrier or of any class of carriers to any other class of carriers, or the uneconomic restriction of the sphere of activity of any carrier or class of carriers so as to artificially protect the special interests of any other carrier or class of carriers. It means the conservation of the best interests of all types of carriers and the public interest by combining all types of carriers into a harmonious and integrated system of transportation, all parts of which are subject to reasonable public regulation and in which each type of carrier performs the services which it can render most efficiently under conditions of equality of opportunity. In the last analysis coordination connotes an integration of various types of carriers, under common or diverse ownership, in which all types of carriers work toward a common objective without destructive competition and best serve the public

interest.

Plainly the use of motor trucks by a railroad or its subsidiary should be authorized as supplementary or auxiliary to and coordinated with rail service when shown to be in the public interest. The decisions reviewed demonstrate, we are convinced, the soundness of this conclusion. The facts of record in these proceedings impel the conclusion that public convenience and necessity require the coordinated use of rail-and-truck facilities in the territory proposed to be served. To be determined, however, is the question whether it shall be accomplished under common or diverse ownership of the transportation agencies utilized. This question will be disposed of in the following discussion of the second proposition previously stated herein, that is, what showing of public convenience and necessity must be made by a railroad or its subsidiary to justify the granting of a certificate to operate motor trucks.

Considerations Present in Determining
Whether Public Convenience and Necessity
Require the Proposed Service by Applicant

Applicant contends that it has in all respects met the requirements of the statute pertaining to the issuance of a certificate of public convenience and necessity. This has been done, it is claimed, by showing (1) that the rail lines are the pioneer common carriers in the field; (2) that the primary purpose of applicant's proposal is to improve the existing rail service through the operation of a coordinated truck service; (3) that economies of operation can thus be effected; and (4) that there is a public demand and need for the proposed service.

On the other hand, the protesting motor carriers urge (1) that they are now rendering an adequate and satisfactory service in

the field; (2) that the proposed service of applicant will not be compensatory; and (3) that any coordination of rail and truck services between the points involved which may be found to be required in the public interest, should be accomplished through the medium of protestants to avoid unnecessary and wasteful duplication of facilities.

Before commenting on these contentions we shall first review the considerations present in determining the existence of public convenience and necessity within the meaning of Section 50-3/4 of the Public Utilities Act. Under paragraph (c) of this section of the Act no highway common carrier can begin to operate "without first having obtained from the Railroad Commission a certificate declaring that public convenience and necessity require such operation"; it further provides that said Commission shall have power "with or without hearing, to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity require."

The Supreme Court of this State has expressed itself on the meaning of the phrase "public convenience and necessity" in the leading case of San Diego and Coronado Ferry Company v. Railroad Commission, 210 Cal. 504, which involved Section 50(d) of the Act. This section deals with the issuance of certificates of public convenience and necessity to common carriers by water which can be granted only after a public hearing and is substantially similar to Section 50-3/4(c) except that under the latter section certificates can be granted to highway common carriers with or without hearing. In the case cited the court stated:

The phrase "public convenience and necessity" cannot be defined so as to fit all cases. The word "necessity" must be taken in a relative sense.

The court then proceeded to quote with approval from the opinion of the Supreme Court of Illinois in Wabash C. & W. Ry. Co., vs. Commerce Comm., 309 Ill. 412, 141 N.E. 212, 214, wherein it is said:

> When the statute requires a certificate of public convenience and necessity as a prerequisite to the construction or extension of any public utility, the word "necessity" is not used in its lexicographical sense of "indispensably requisite." If it were, no certificate of public convenience and necessity could ever be granted. The first telephone was not a public necessity under such definition, nor was the first electric light. Even the construction of a water works system in a village is seldom necessary, though highly desirable. However, any improvement which is highly important to the public convenience and desirable for the public welfare may be regarded as necessary. If it is of sufficient importance to warrant the expense of making it, it is a public necessity. *** A thing which is expedient is a necessity. *** Inconvenience may be so great as to amount to necessity. *** A strong or urgent reason why a thing should be done creates a necessity for doing it. *** The word connotes different degrees of necessity. It sometimes means indispensable; at others needful, requisite, or conducive. It is relative rather than absolute. No definition can be given that would fit all statutes. The meaning must be ascertained by reference to the context and to the objects and purposes of the statutes in which it is found. *** Public utilities are expected to provide for the public necessities not only today, but to anticipate for all future developments reasonably to be foreseen. The necessity to be provided for is not only the existing urgent need, but the need to be expected in the future, so far as it may be anticipated from the development of the community, the growth of industry, the increase in wealth and population and all the elements to be expected in the progress of a community.

It is plain from this expression of the court's views that in granting or denying certificates of public convenience and necessity we cannot follow any mathematical formula which can be rigidly applied to all cases alike. To the contrary the Commission in the exercise of its administrative judgment is to be controlled only by the public interest which in all cases is paramount. Clearly there is no single test by which public convenience and necessity

may be ascertained; in the light of the court's decision, no fact or group of facts may be used generally as a measure by which to determine what showing is necessary to prove the existence or non-existence of public convenience and necessity. Considerations that reasonably guide us in the determination of one case may properly be accorded little or no weight in other cases. In the language of the court public necessity may be deemed to exist when it has been shown that an improvement of existing service is "highly important to the public convenience and desirable for the public welfare"; or when "expedient"; or when "inconvenience may be so great as to amount to necessity"; or when there appears a "strong or urgent reason why a thing should be done." The word (necessity) "connotes different degrees of necessity" (Pages 511, 512).

A similar question was before the Supreme Court of the United States in Chesapeake & Ohio Ry. Co. vs. U. S., 283 U.S. 35, wherein the court upheld an order of the Interstate Commerce Commission made under Section 1 (18)-(20) of the Interstate Commerce Act authorizing construction and operation of a line of railroad. The underlying facts may best be stated in the language of the court:

> The construction of the Gilbert-Wharncliffe line will enable the Norfolk to compete with the Chesapeake for westbound traffic originating on the Virginian and will give the latter greater independence in respect of such shipments.
>
> The construction of the line of the Virginian from the upper Guyandot to a connection with the Chesapeake at Gilbert would immensely improve the position of the latter in respect of the westbound movement of coal originating on the Virginian. It is also plain, indeed so obvious as scarcely to require statement, that the construction of the Gilbert-Wharncliffe connection is necessary in order to enable the Norfolk to continue, on conditions that are tolerable, to compete with the Chesapeake for that traffic. The construction of that connection cannot reasonably be regarded as an intrusion by the Norfolk into territory already being well served by the Chesapeake. On the contrary the Norfolk already hauls about four fifths of the Virginian's westbound coal. By this relatively short connection, it will be able to give a better outlet for that traffic, to make substantial saving in the cost of handling, and to

remain in position, at relatively slight disadvantage, to compete for traffic in which it long has had a large share. And shippers will have the benefit of such competitive service. (Pages 40, 41).

Appellant contended that the Commission was not empowered to authorize the new construction solely for the purpose of enabling carriers to compete on more equal terms for the traffic. Holding that Section 1 (18)-(20) of the Act could not be reasonably so construed the court said:

> There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction. Under the act it was the duty of the Commission to find the facts and, in the exercise of a reasonable judgment, to determine that question. Texas & P. R. Co. v. Gulf, C. & S. F. R. Co., 270 U.S. 266, 273, 70 L. ed. 578, 582, 46 S. Ct. 263.
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> Undoubtedly the purpose of these provisions is to enable the Commission, in the interest of the public, to prevent improvident and unnecessary expenditures for the construction and operation of lines not needed to insure adequate service. In the absence of a plain declaration to that effect, it would be unreasonable to hold that Congress did not intend to empower the Commission to authorize construction of new lines to provide for shippers such competing service as it should find to be convenient or necessary in the public interest. *** (Page 42).

The term "public convenience and necessity" has been held by us to be synonymous with public interest. Re Pacific Motor Trucking Company, 41 C.R.C. 817, 820. "Public interest," as used in Section 5 (2) of the Interstate Commerce Act relating to the acquisition of control of one carrier by another, was defined by the Supreme Court of the United States in New York Central S. Corp. v. U. S., 287 U.S., 12, 25, in the following language:

> *** the term "public interest" as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred. So far as constitutional delegation of authority is concerned, the question is not essentially different from that which is raised by provisions with respect to reasonableness of

rates, to discrimination, and to the issue of certificates of public convenience and necessity.

In discussing the issues before it the court said: "The public interest is served by economy and efficiency in operation" (page 23). These views were repeated by the court in Texas vs. United States, 292 U.S. 522, 530, 531, wherein it was stated that the primary aim of the policy expressed in the Interstate Commerce Act, as amended by the Transportation Act, 1920, was: "to secure the avoidance of waste," and that avoidance, "as well as the maintenance of service, is viewed as a direct concern of the public." (24)

Since this Commission was first empowered to certificate highway common carrier motor vehicle operations (25) it has many times considered the effect of a proposed service upon carriers already in the field and the rightful protection that should be accorded them in determining whether a certificate of public convenience and necessity should issue or be denied. One of the early cases where this question squarely presented itself was in Re Hodge Transportation System, 24 C.R.C. 703. Though we there reaffirmed the well-established principles of regulation laid down in Pacific Gas & Electric Co., vs. Great Western Power Co., 1 C.R.C. 203, and again announced in Re Santa Clara Valley Auto Line case, supra, we thus differentiated between motor truck operation and certain other types of public utilities such as those providing power, light and gas services:

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(24) In granting certificates of public convenience and necessity or approving acquisition of control of carriers by a railroad or its subsidiary, the Interstate Commerce Commission has followed the policy enunciated by the court. See Atlanta & St. A. B. Ry. Co. Application, 71 I.C.C. 784, 792; Construction of Line by Wenatchee Southern Ry. Co., 90 I.C.C. 237, 255-257; San Antonio & A. P. Ry. Co. Construction, 111 I.C.C. 483, 493; Great Northern Ry. Co. Construction, 166 I.C.C. 3, 38-40; Pennsylvania Truck Lines, Inc.-Control of Barker Motor Freight, Inc., 1 M.C.C. 101, 109, et seq., Pan-American Bus Lines Operation, 1 M.C.C. 190,202; Kansas City Southern Transport Co., Inc. Common Carrier Application, 10 M.C.C. 221, 234-239; Illinois Central R.R. Co. Common Carrier Application, 12 M.C.C. 485, 490, 491.

(25) By the enactment of the Auto Stage and Truck Transportation Act, Statutes 1917, Chapter 213, which was subsequently repealed and the provisions thereof, in substance, incorporated in the Public Utilities Act.

When, however, we deal with highway transportation and particularly with motor truck operations, we have to consider additional factors not characteristic of the service of stationary utilities.

*** it is more difficult to determine when motor truck transportation has reached a point of adequate service or saturation in a given territory than in the case of an electric light and power, or a gas, or a telephone utility. *** a wider latitude exists in the field of motor transportation than perhaps in any other branch of public utility service for the exercise of discretionary judgment by the Commission as to what constitutes reasonable competition or rightful protection of operative rights.

*** Competition that tends to break down superior and essential service provided by existing agencies is not to be encouraged, but competition, whether applied to service or to rates that can better serve public convenience and necessity in its broad sense as related to the class of utility involved, must have due consideration.

Accordingly, *** the four main principles (as enunciated in the Pacific Gas & Electric Co. case, supra) affecting pioneer or prior operation, lowest reasonable rates, adequacy and efficiency of service offered and rendered, and the degree of saturation realized by existing utility operations in the territory involved, as applicable to all utilities, including motor transportation, *** must be interpreted and applied appropriately to the history, conditions and special characteristics of this latter form of service, and in accordance with the public interests of the locality to be served, which must be the ultimate basis of determination in this matter. (Pages 709-710).

We have similarly differentiated between the operation of passenger stage corporations and utilities which may be termed natural monopolies such as telephone, electrical and gas corporations, in Re Santa Fe Transportation Co., 41 C.R.C. 239, 276,

280, et seq.[26]

From what has been said, it seems clear that the generality of the standards embraced within the term "public convenience and necessity," as used in the Public Utilities Act and interpreted by the plain language of the California Supreme Court, contemplates a broad exercise of administrative discretion. Neither is the Interstate Commerce Commission restricted by any specification of the considerations by which it is to be governed in determining public convenience and necessity. Under the appropriate statute, as construed by the United States Supreme Court, it is the duty of that Commission "to find the facts and, in the exercise of a reasonable judgment, to determine that question." (Chesapeake and Ohio Ry. Co., ~~vs.~~ U. S., supra).

In our administration of the statute we have enunciated certain principles believed to be fundamental in guiding us to the exercise of a reasonable judgment in the public interest. We have either reviewed or cited herein the decisions where these pronouncements appear and have also called attention to the decisions of the Interstate Commerce Commission where substantially the same principles have been declared. What we said sixteen years ago in the Hodge Transportation System case, supra, is, in

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(26) See decisions of this Commission in Re Southern Pacific Motor Transport Co., 32 C.R.C. 331, 337, 339, 340; East Bay Street Railways, Ltd., 39 C.R.C. 252, 258; Re Pacific Motor Trucking Co., 39 C.R.C. 185, 187, 188; Re Southern Pacific Golden Gate Ferries, Ltd., 40 C.R.C. 709, 729-732; Re Pacific Motor Trucking Co., 40 C.R.C. 749, 750-752; Re Pacific Motor Trucking Co., 41 C.R.C. 817, 820; Re Pacific Motor Trucking Co., 42 C.R.C. 154, 159-161; Re Pacific Freight Lines, 42 C.R.C. 496, 500; Decision No. 27898 on Application No. 18237 of Valley Motor Lines, Inc.; Decision No. 30107 on Application No. 21104 of Napa Transportation Co.; and Decision No. 31209 on Application No. 20785 of The River Lines. The first two cases cited deals with motor bus operations and the balance with motor truck operations.

our opinion, still applicable to motor truck transportation as conducted under present conditions and in point here.

As heretofore indicated we have also said in later decisions it would seem to be a fundamental principle that a common carrier, who is rendering a useful and necessary public service, should be permitted and encouraged to adapt that service to meet modern conditions in the most practical, efficient and economical manner possible. That this includes some use of motor truck transportation by a rail carrier to improve its service to the public is clear.

Particularly is this true in the handling of less-carload merchandise traffic where expedited movement from the shipper's store-door to that of the consignee is highly essential in providing an adequate and generally satisfactory service to the public. Here the rail carriers are confronted with the difficult problem of picking up numerous small shipments from many shippers, assembling them into carload quantities for transportation in line-haul movement, then distributing the shipments again in small lots among numerous consignees.

In light of the principles which should guide us in determining whether public convenience and necessity require the proposed operation as herein reviewed, we now come to a consideration of the record before us.

Applicant though legally a separate corporate entity, may be deemed to be in substance the motor truck division or department of its parent, the Southern Pacific Company. In other words, applicant is merely an agency or instrumentality employed by the Southern Pacific Company to conduct its highway operations; in short, applicant is but the alter ego

of the railroad company. Pioneer Express Company, et al, vs. Pacific Motor Transport Company, et al, 37 C.R.C. 102, 108.

The Southern Pacific Company and its subsidiary, the Pacific Electric Railway Company, as common carriers by railroad have served all the points under consideration as the pioneers in the field for many decades and there is no question as to the ability, financial or in any other respect, of applicant to render the proposed service.

The proposed coordinated rail-truck service will connect up the two paralleling rail lines, permit the effective use of the combined freight train schedules on both rail lines, and offer to the public an improved and expedited service to all points to be served by truck.

Time in-transit on less-carload merchandise traffic originating at or destined to points on the rails of the Southern Pacific Company and its connections beyond Los Angeles, which constitutes a large part of the total traffic involved, will, in practically all instances, be reduced at least one business day. All of the points proposed to be served are stations on the rail lines. The majority of the points to which the proposed coordinated service will be extended are small communities. They will be accorded the same overnight service as is now rendered by the rail lines to the larger points in the area by coordinating the rail and truck schedules between Los Angeles and the territory involved with the schedules of the fast overnight merchandise trains.operating between Los Angeles and points north and east thereof.

The record amply indicates that only through a coordinated rail-truck service will these smaller communities be furnished a service commensurate with their needs on a basis comparable to that now rendered at the larger communities. Due to the difficulty of adjusting schedules of through merchandise trains operated over the rail system of the Southern Pacific Company, which of necessity are inflexible in nature, applicant's proposal offers the most practical and feasible method of providing the public in the territory involved with improved service to which it is properly entitled. Similarly less-carload merchandise traffic now moving locally between Los Angeles and some of the points in the territory by local way-freight trains will, through the proposed coordinated service, be substantially expedited.

Shipper witnesses testifying in support of the applications expressed the view that the expedited and improved store-door pickup and delivery service would be helpful to them. Certain of these witnesses testified that they preferred to use the rail service to the greatest extent possible because of the single responsibility involved and the fact that it was first in the field. Others testified as to the inadequacy of the present rail service to meet their needs because overnight service was not afforded shipments, or store-door pickup and delivery was not made at their places of business, which in some instances caused them to use other carriers in the field. The testimony of record is convincing that the present rail service alone

is not adequate to meet modern merchandising methods requiring expedited schedules from the store-door of the shipper to the store-door of the receiver. Applicant's proposed operation contemplates that all less-carload merchandise traffic moved from, to or between all the points to be served will be accorded store-door pickup and delivery service.

To provide the improved and expedited coordinated service, the record indicates a net saving in the expense of handling this traffic of approximately $92 per year would result. Applicant submitted estimates of conducting both the present rail operation and the proposed truck operation on an out-of-pocket cost basis. Protestants argue that it is essential to show that the proposed operation should yield full costs; furthermore, they contend that if costs incurred by applicant in providing the service may properly be measured on an out-of-pocket basis, then no existing utility could ever be protected against the invasion of its territory by a new utility. The latter, it is asserted, by using only out-of-pocket costs and omitting to take into consideration general overhead and other expenses, could always show that its proposed service would be operated for less cost than that of the existing utility.

In answer to these contentions applicant points out that it has sought to compare the cost of performing the proposed truck operation with the existing rail operation and in so doing has merely used the out-of-pocket basis as a standard of measurement. Should the full cost basis be used the final result would be substantially the same because in each in-

stance the additional items of expense going to make up full cost figures are practically equal whether the transportation is performed by the rail lines or the applicant. Were this not so, it would be of little significance here since the allocation of expense items over and above out-of-pocket costs can be said to represent nothing more than interdepartmental bookkeeping by the Southern Pacific Company, the latter bearing all the costs of operating the motor trucks in any event.

Apparently some confusion has arisen in the minds of protestants as to the proper application of the out-of-pocket cost theory under the facts of record. We are not here concerned with the reasonableness of freight rates, nor with a new carrier seeking to invade a territory served by existing carriers. To the contrary, the pioneer carriers in the field, the rail lines, now competing with the existing motor carriers at every point involved, propose no more than the improvement of their service by utilizing motor trucks as supplemental and auxiliary to, and in coordination with, the rail operation.

The out-of-pocket cost estimates were submitted, and properly we believe, to indicate that improved and coordinated rail-truck service could be provided without incurring expenditures wholly disproportionate to the public benefits. While the net saving from the proposed operation is quite small, economies in operation of a service conducted by an existing carrier are not a controlling element, though important, in proving the existence of public conveni-

ence and necessity. In the past we have many times required improvements in the service and facilities afforded by common carriers, even though it was shown that substantial expenditures would have to be made, when found necessary in the public interest.(27)

It appears there is no economical and efficient method by which the Southern Pacific Company and the Pacific Electric Railway Company can afford the public an improved and expedited service from and to each point in the territory other than by a coordinated rail-truck service. A service conducted entirely by rail from and to each point equivalent to that here offered could only be provided at a cost so excessive that it could not be justified. To handle the relatively small volume of less-carload merchandise traffic from and to each point wholly by local way-freight trains in a manner comparable to the proposed coordinated

(27) For example, see San Mateo and Burlingame Merchants Association vs. Southern Pacific Company, et al, 3 C.R.C. 1005; D. D. Harlan, et al, vs. L. A. and S. D. Beach Ry. Co., 3 C.R.C. 1134; Re L. A. and S. D. Beach Ry. Co., 4 C.R.C. 100; Town of Sisson vs. Southern Pacific Company, 4 C.R.C. 355; Re A. T. & S. F. Ry. Co., 6 C.R.C. 250; City of Oakland vs. Southern Pacific Co., et al, 19 C.R.C. 359; Marvelous Marin vs. Northwestern Pacific R. R. Co., 31 C.R.C. 400; and A. T. & S. F. Ry. Co., et al, vs. Railroad Commission of California, et al, 283 U. S. 380.

service, would entail an expense entirely out of proportion to the public benefits and in addition would cast a burden on other traffic.

While it has been shown that there is a public demand and need for the proposed store-door pickup and delivery service as supplemental and auxiliary to, and coordinated with, the rail operations, the record also discloses that the motor carriers appearing as protestants now afford a reasonably adequate and satisfactory store-door merchandise service to the points applicant proposes to serve, and at some of the points they provide two schedules daily. In addition, the Santa Fe Transportation Company, a wholly owned subsidiary of The Atchison, Topeka & Santa Fe Railway Company, operates a highway common carrier service between Los Angeles, Colton, San Bernardino, Redlands, and Highland, and certain intermediate points, in coordination with the rail service of its parent company,(28) with two schedules maintained daily from Los Angeles to some of the points applicant proposes to serve, as well as locally between some of the points. This carrier offered no objection to the granting of the instant application.

There are but three methods available to the rail lines by which a coordinated rail-truck service can be provided. They may (1) purchase or acquire control of an existing motor carrier serving the territory; (2) secure a certificate of public convenience and necessity in a manner as here undertaken; or (3) enter into joint rates and through routes with the existing motor carriers. While the record is silent as to any offer of applicant to purchase or acquire control of any existing motor carrier in the field or of the latter's willingness to sell, it, nevertheless, does show that the protestant truck carriers

(28) The operative right was acquired by purchase as authorized by Decision No. 28946, on Application No. 20618, of T. R. Rex and Santa Fe Transportation Company, decided June 29, 1936; and such right was subsequently extended and enlarged by Decision No.30562, on Application No. 21569, of Santa Fe Transportation Company, decided January 31, 1938.

have no objection to the rail lines improving their service in the manner proposed through the purchase or control of existing truck carriers. These protestants endeavor to justify this position by contending that, since they already have had to face that competition, the number of carriers in the field would not be increased nor would the quantum of competition be enlarged. Yet on the other hand, protestants also contend that the second method, which is the one here proposed by applicant, would inject a new carrier into the field and enlarge the quantum of competition offered. They assert this is so even though the rail traffic would be transferred from the rail lines to the highways.

Protestants insist that if a railroad finds it necessary to improve service, this should be achieved only through operation of the necessary number of freight trains, and if the cost of doing so is uneconomical or prohibitive, then the proper method of improving the rail service would be to utilize existing motor truck services in coordination with such rail operations as may be economical. It has been shown by competent evidence that for these rail lines to afford an all-rail service comparable to that contemplated by coordinated use of both rail-and-truck facilities would be enormously costly and, as stated in a brief filed by one of the protestants, it "would be the height of madness to attempt such an uneconomical improvement."

It follows that in the final analysis the question refines itself down to one of fact as to whether, in order that the public demand and need for the coordinated rail-truck service be afforded, it is necessary that applicant be given authority to operate motor trucks as proposed, or can the result sought be attained by utilizing the facilities of truck operators already serving the points involved.

Protestants hold to the view that coordination is not synonymous with duplication, and that the proposal of applicant would constitute unnecessary and wasteful duplication of existing truck services. They assert that in other territories where a railroad-controlled truck operation was established in competition with existing truck services experience has shown that the former has attracted business from the latter, and that similar results can be expected from the proposed operation should it be authorized. It is further asserted that the existing motor carriers have pioneered motor-truck transportation in the territory and that such carriers should not now be forced to divide their traffic with a new carrier, especially when their service is adequate and rendered at little, if any, profit from the operations. Indeed, protestants go so far as to say that they can ill afford to lose any business in the territory without incurring an out-of-pocket loss, and in fact it is claimed traffic moving between some of the smaller communities involved is even now handled at an out-of-pocket loss.

Protestants contend applicant would not improve service in any manner that cannot as well be accomplished by coordinating the existing truck services with the rail services, and that applicant has failed to show affirmatively that public convenience and necessity require the proposed operation. They argue that if it is in the public interest to have a coordinated rail-truck service then the truck operators serving the points involved should be given the opportunity of coordinating their service with the rail lines before permitting a new carrier to enter the field. Protestants state they are ready, willing and able to handle the rail traffic at each point in the territory by entering into joint rates and through route arrangements with the rail lines; and where the carriers cannot mutually agree upon division of the joint rates, time schedules and other features pertinent to a coordinated service, such matters can be submitted to

the Commission for determination.[29]

It is replied on behalf of applicant that the proposed service cannot properly be said to result in additional transportation facilities entering the territory involved nor in wasteful duplication of services presently rendered by motor carriers; that it does not propose to invade any new territory and divert traffic from other carriers, but merely proposes an arrangement to improve a common-carrier service which has for many years served each of the points involved and similar in character to that now furnished by it in other territories reached by the rail lines of Southern Pacific Company and Pacific Electric Railway Company; and that the maximum degree of improvement and efficiency the proposed service would attain cannot be accomplished by coordinating the existing truck services with the rail services.

Applicant contends that its showing of a substantial reduction in time required in making delivery on a large portion of the rail less-carload merchandise traffic moving from and to the territory involved, together with the improved and more efficient handling of all such traffic now moving over the rail lines,alone is sufficient to establish the public need for the proposed service. To support its contention that protestant motor carriers cannot furnish the proposed service in the manner contemplated, the applicant points out that such protestants are not only direct competitors of the rail lines for the short-haul traffic moving locally between the points proposed to be served and between such

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(29) Section 33 of the Public Utilities Act provides, in part, that:

> The Commission shall have the power to establish and fix through routes and joint rates, fares or charges over common carriers and stage or auto stage lines which may not be otherwise subject to the provisions of this act, and to fix the division of such joint rates, fares or charges.

points and Los Angeles, but that they compete directly, or through connecting carrier lines, for the long-haul traffic moving from or to points beyond Los Angeles and the territory involved as well. Applicant is of the view that the operations of protestants are primarily based upon giving service to their own patrons at all points reached by them or through connecting motor carrier lines, and the most that the rail lines could expect from an attempt to coordinate rail operations with protestant competitors would be secondary consideration.

Such adverse competitive interests could not, it is urged, be reconciled to provide a coordinated rail-truck service properly synchronized as here proposed by applicant, and it is claimed that past experience proves the point. Applicant argues that this dual form of transportation, in order to be used to the greatest advantage, must necessarily be accomplished by a common control and management.

Applicant states the rail lines could not be expected to turn over their merchandise traffic at consolidation or break-bulk points or between local points to their direct competitors, and vigorously objects to any such method of improving rail service for a number of reasons. To do so means surrendering a portion of sorely needed rail revenue and control of shipments to truck carriers who, it is said, are primarily interested in maintaining and improving their own competitive position for traffic available against the rail lines. It is the contention of applicant that these direct competitors can hardly be expected to refrain from attempting to divert traffic now moving by rail to their own truck lines for the longest possible haul, because to do otherwise would be against their own interests. In this connection applicant points out that practically all of the traffic which would be

handled by the proposed operations originates at or is destined to points outside the territory involved, and the improved and expedited handling of such traffic which moves by rail is the primary purpose of the proposed operations.

In appraising the weight of the arguments advanced in support of the respective contentions, there are certain circumstances and conditions which we think must be taken into consideration.

The record does not indicate the amount of traffic now moving by rail locally between the points proposed to be served exclusively by truck, however, applicant on brief states such traffic is "infinitesimal in amount and unimportant." It follows that the transportation service which applicant seeks to render would consist almost wholly of traffic receiving a movement by rail either prior to or subsequent to the movement by truck, and that the proposed operations will be supplementary and auxiliary to and coordinated with the rail operations. Is it to be reasonably expected that the rail lines will receive from the protestant motor carriers that degree of cooperation necessary to execute a fully integrated and satisfactory coordinated service which can and will be obtained from the applicant? Superficially the answer may appear to be in the affirmative, but upon further consideration of the facts of record the difficulties in the successful execution of such a plan become apparent. Where a similar situation presented itself in Re Santa Fe Transportation Company, 41 C.R.C. 239, 293, we said:

> It is self-evident that coordination requires cooperation and a centralized administration with no conflict of interest between the integrated agencies.

Protestants compete directly or through connecting motor lines with the rail lines on both long and short-haul traffic moving from or to each of the points proposed to be served by applicant. In addition to such points the protestants also serve other points in the same or adjacent territory, including off-rail points. To satisfy the obligations that protestants owe to their own patrons and connecting motor carriers, they must primarily operate and maintain schedules designed to meet those needs. They cannot afford to disrupt or impair the service necessary to the proper handling of their own traffic by adjusting schedules to also meet the needs of a coordinated rail-truck service as here proposed.

The territory embraced by applicant's proposal constitutes but a small part of the whole area served by the transportation system operated by both the rail lines and protestants. Since the operations conducted by protestants are not confined to the local points involved but compete generally with the rail lines throughout the major portion of the State, their operations are not comparable to those of an existing motor carrier depending primarily, if not wholly, upon traffic moving locally between the points. Considerations of broad public interest may require that a motor carrier of the latter type be protected against the competition of a coordinated rail-truck service to be operated by a railroad or its subsidiary. This the Commission may do by directing the rail lines, when the existing rail service is to be improved through the use of motor trucks, to enter into arrangements for the establishment of joint rates and through routes, thus preserving an essential local truck service and at the same time affording the public an improved rail service.

Under such an arrangement the local motor carrier may expect that its division of such joint rates will yield revenue equivalent to that which it would receive from a connecting motor carrier on the same class of traffic. No conflict of interest arises here as the local motor carrier can interchange traffic with the rail lines on terms no less favorable than those exacted by connecting motor carriers. But this is not true should protestants provide the truck service in coordination with the rail operations as they offer to do.

It must be remembered that these protestants now compete with the rail lines for the longest possible haul on practically all of the traffic moving. Since this competition would necessarily continue even though protestants should provide the truck service for the rail lines, it is obvious they would be placed in the position of competing with themselves. Self-interest of both rail lines and protestants demands that each carrier endeavor to transport traffic entirely on its own lines if possible and if necessary to interchange with another carrier, retain the traffic for the maximum haul.[30] The distance which the traffic would move by the proposed truck operations is small, and in some instances insignificant, in proportion to the total length of the

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(30) The difficulties encountered where one carrier must turn its traffic over to another when both are in competition between the same points, is evidenced by our Decision No. 28199 on Application No. 19976 of H. Frasher (an officer of the Valley Express Company, a protestant in the proceedings at bar). There the applicant sought and was granted authority to operate motor trucks as an underlying carrier for traffic of the Valley Express Company between certain points because, it was asserted, the Valley Express Company had suffered great shrinkage in the volume of traffic formerly handled because the consignments were transported by Pacific Motor Trucking Company (the applicant in the proceedings at bar) a subsidiary of a (rail) competitor.

combined rail-truck hauls, hence any fair division of the joint rates would produce relatively little revenue compared to that which protestant would receive if it transported the traffic wholly on its own lines.

There appears to be much foundation for applicant's claim that the protestants are and must be principally interested in the long-haul traffic. It seems unnecessary to comment further upon the conflict of interests between the carriers which would inevitably arise were the rail coordinated truck operations performed by protestants. From the facts of record we are convinced that any plan compelling the rail lines to short-haul themselves and turn traffic over to their principal motor truck competitors, the protestants, would not be conducive to providing in full measure an adequate and effective coordinated service to which the public is entitled. In our judgment we must conclude that this can be accomplished here only through the medium of the rail lines' instrumentality, the applicant. Moreover, shippers and receivers of less-carload merchandise traffic, as evidenced by the testimony offered by public witnesses, including some called by protestants, desire and need an adequate and satisfactory service by rail-truck as well as by all-truck. See Decision No. 27898 on Application No. 18237 of Valley Motor Lines, Inc.

The service now rendered by the all-rail operations may, when measured by the older transportation standards, be considered adequate and sufficient to handle less-carload merchandise traffic, but it is inadequate and unsatisfactory in many respects when compared to the more efficient and expeditious service that may be provided today by utilizing and coordinating motor trucks with the rail freight trains in certain circumstances. The latter service being more satisfactory and responsive to the requirements of the

shipping public, it follows that a valid demand is made for such dual form of transportation service. In certain cases it may well be the circumstances and conditions are such that truck-and-rail coordination in the public interest may and should be accomplished through the use of existing independent truck lines for the handling of both long and short-haul merchandise traffic, rather than authorizing truck operation by a railroad or its subsidiary. The determination of this question must necessarily be controlled by the facts adduced of record in each case.

We do not hold the view that the proposed operations would result in a new and independent carrier entering a crowded competitive field to the serious injury of existing motor carriers as urged by the protestants. The rail lines are the pioneer common carriers in the field and have had to meet the competition of the protestants at each of the points involved for less-carload merchandise traffic. Through the applicant they seek to improve and expedite the handling of that traffic now moving on rail freight trains by a coordinated rail-truck service. Applicant's (in reality the rail lines) proposed service will be entirely supplementary and auxiliary to that of the rail lines.

Certainly the protestants could not be heard to complain of competition from, and the loss of traffic to, the rail lines if it were possible for the latter to offer the same improved service solely by all-rail facilities without incurring unwarranted costs as that offered by the proposed coordinated rail-truck facilities. Here no added costs are involved but, as we have indicated, the cost of the improved service will not exceed the savings in rail operating costs to be realized from the consummation of the plan proposed.

Any diversion of traffic from other agencies, including protestants, would be the result of old and established carriers offering an improved service to the shipping public, and must be regarded as incidental to and a necessary consequence of the utilization of both forms of transportation to advantage.

We do not believe the proposed service will be sufficient to materially injure or impair the ability of protestants to perform their duty to the public. But, in any event, the public should not be denied the benefit of an improved and expedited service merely because other carriers may lose some traffic. Had we followed that plan since being given jurisdiction over highway common carriers twenty-three years ago, obviously the vast system of motor carrier services which now gridirons the entire State would never have been developed.

As we have seen, the record warrants the conclusion that public convenience and necessity require the establishment by applicant of the proposed service supplementary and auxiliary to, and coordinated with, the rail service of the Southern Pacific Company and the Pacific Electric Railway Company, but it does not establish a need for service by applicant which is not required in such coordinated operations. It appears that the existing motor carriers provide an adequate and satisfactory all-truck service locally between the points proposed to be served, and the record does not disclose any public need for the applicant to render an additional all-truck service between the same points. The evidence submitted by applicant and the shipper witnesses who testified with respect to the need for improving service between points on both rail lines was entirely in connection with the movement of traffic originating at or destined to points outside of the territory involved. Such traffic would move partly by rail and partly by motor truck under the plan proposed.

Therefore we are of the belief that any certificate should be so conditioned as to prevent applicant from handling traffic other than that which has moved or will move in part by either one of the two rail lines. The authority granted will be limited, as sought by applicant, to service at points which are stations on the lines of the two rail carriers and also to the interchange of freight at those stations. Thus applicant's operations will be restricted to those supplementary and auxiliary to the rail service.

We are not unmindful of the fact that the condition requiring traffic to receive a prior or subsequent movement by rail, in addition to movement by applicant, will necessitate the operation of costly local way-freight train service should any traffic be offered for transportation between local points. Though the rail lines may ultimately seek to withdraw from such purely local service, that question is not before us in these proceedings. The present record, as indicated, does not justify the operation of a local truck service by applicant. If the interests of the shipping public are such as to require local service by applicant, this fact should be established by proper showing.

We shall now consider the contention raised by Bekins Van and Storage Company and Bekins Van Lines, Inc.. On their behalf it is urged that any certificate granted herein should preclude the applicant from transporting household goods not packed or crated in accordance with the requirements prescribed in the tariffs and classification (including exception sheets) currently on file with the Commission and in effect to which the two rail lines are parties. From what has already been said it is apparent that applicant will handle only that traffic which the two rail lines hold themselves out to transport under applicable tariffs and classification.

It appears the rail lines have not, except possibly in rare instances when tariff penalty charges apply, engaged in the past in the transportation of unpacked or uncrated household goods. Until the rail tariff schedules are amended to permit the movement of such traffic, the truck carriers of household goods cannot suffer any injury from rail competition. Should the rail lines undertake to so amend their tariff schedules as to transport and compete for this class of traffic, it would then be appropriate to pass upon this question. Under the circumstances, therefore, we see no reason why any restriction such as that suggested should now be made part of the order in these proceedings. It may be noted that no evidence was offered in support of their contention.

This brings us now to the third and final proposition, namely, has the Commission in the administration of the statute governing the issuance of certificates of public convenience and necessity applied the law equally.

Statute Governing Issuance of Certificates of Public Convenience and Necessity has been Applied Equally by the Commission to All Highway Common Carriers.

Protestants assert that in the administration of those provisions of the Public Utilities Act governing the issuance of certificates of public convenience and necessity to highway common carriers, the Commission has not applied the law equally. More specifically, it is contended that in the determination of applications for certificates presented by railroad subsidiaries, such as the instant applications, different rules have been applied from those observed in the determination of applications filed by truck operators not connected with any railroad.

As a result, it is claimed, more favorable treatment has been accorded the railroad subsidiaries than the independent truck

operators. This, protestants allege, is violative of Section 11, Article I of the State Constitution directing that: "All laws of a general nature shall have a uniform operation," and it is also said to be repugnant to the equal protection clause of the Fourteenth Amendment to the Federal Constitution. In support of these claims protestants invoke the rule announced in Yick Wo v. Hopkins, 118 U. S. 356, condemning as within the inhibitions of the Fourteenth Amendment the unequal administration of a law, "fair on its face and impartial in appearance," "so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights***." (Page 373).

In dealing with applications for certificates filed by an applicant other than a railroad or a railroad subsidiary, it has become the settled policy of the Commission, so it is claimed, to deny the application when it appears that the carriers in the field are providing adequate service sufficient to handle all of the business offered at reasonable rates. (31) However, in the case of rail subsidiaries, it is said, the Commission, acting under the same statute has granted certificates notwithstanding evidence showing that the existing carriers are furnishing a service adequate to the needs of the public.

These contentions, it is claimed, have been upheld by the rulings of the courts of Ohio and Missouri which, protestants assert, have construed similar statutes as requiring identical treatment of rail-truck subsidiaries and independent truck carriers. The statute before the court in New York Central R. R. Company v. Public Utilities Commission, 123 Ohio St. 370; 175 N. E. 596; P.U.R. 1931 D. 101, empowered the Commission to grant a certificate to

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(31) In support of this contention protestants refer to Re Santa Clara Valley Auto Line, 14 C.R.C. 112-118; and Re Louis E. Smith, 38 C.R.C. 421-423.

serve in a territory already served by a motor carrier holding a certificate from the Commission, "only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish this service to the satisfaction of the Commission, ***".(32)

As construed by the court that statute imposed upon the Commission the duty of considering other transportation facilities in the field and of denying the application where it appeared "that the service furnished by existing transportation facilities is reasonably adequate." Thus the Commission lacked authority to grant a certificate where the existing service was adequate and satisfactory. This limitation upon the Commission's jurisdiction, it was held, extended to applications filed by rail subsidiaries as well as to those filed by independent motor carriers.

Reference has also been made to State ex rel. Missouri Pacific R. R. Company v. State Public Service Commission, 327 Mo. 249; 37 S.W. (2nd) 576; P.U.R. 1931 D. 199, where the statute directed the Commission to consider existing transportation facilities and the effect that the proposed service would have upon them. Under this statute the court held:

> *** the Commission's discretion is to be controlled by three principal considerations: (1) The transportation service being furnished by other carriers; (2) the permanency and continuity of the proposed service; and (3) the effect which the proposed service may have upon other existing forms of transportation service.

In the light of these limitations the Commission properly, so the court held, denied the application of the railroad to discontinue certain trains, and the application of its subsidiary to

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(32) Page's Ohio General Code, Section 614-87.

establish bus service between the same points, where it appeared that the existing motor carriers were conducting an adequate service and had offered to provide all additional service necessary.

The statute under which we operate, however, contains no provisions similar to those considered in the cases cited, nor has it been so construed by the Supreme Court of this State. As we have said, the term "public convenience and necessity" as used in Section 50-3/4 of the Public Utilities Act, empowers us to issue a certificate whenever such a course appears necessary in the public interest. In determining the existence of public convenience and necessity no hard and fast rule can be observed, nor can any mathematical formula be applied. The facts and circumstances, necessarily differing in each case, cannot be forced into a uniform mold. Nor have we overlooked the other authorities cited by protestants; we believe, however, that the principles announced in them are not in conflict, the facts considered, with the conclusions we have reached herein.

Generally, where we have granted certificates to railroad subsidiaries, certain facts stand out. It has been shown that the applicant or its parent company, the railroad, was a pioneer in the field of transportation; that the service accorded by the railroad had become inadequate to meet the changing demands and needs of the public; that only at a great expense, wholly disproportionate to the benefits conferred, could a service suitable to the needs of the public be furnished by rail; that at an expense equal to or not greatly exceeding that now incurred or often much less, a coordinated rail-truck service could be established which would better accommodate the public; that such a service would result in substantial improvements and efficiency because of more convenient pickup and delivery service, more frequent schedules,

and reduction of time in-transit; and sometimes, though not always, that the carriers in the field were providing an adequate service.

Here the Commission has held, rightly we believe, that the public is entitled to the benefits flowing from such an improvement in the service of an existing rail carrier. This is so, it has been stated, notwithstanding the existence of an adequate service furnished by an independent carrier, for no new carrier has been permitted to invade a field already occupied to the point of saturation, nor enabled to compete more effectively than the existing motor carriers; in the long run, the public must benefit from the effects of this competition. To these views we still adhere.

In the administration of the statute the Commission has authorized not only railroads but other types of carriers as well, to improve their services notwithstanding the possible effect this might have on existing motor carriers who were providing an adequate service. In all of these cases, we have followed the same principles and applied the law with an even hand; no type or class of carrier has been singled out for discriminatory treatment. Previously in this opinion we have discussed some of these cases in our consideration of other issues. However, we believe it appropriate, even at the expense of repetition, to refer once more to a few of the more illustrative cases.

By our ruling in Re Napa Transportation Company, Decision No. 30107 on Application No. 21104, rendered September 7, 1937, an inland water carrier was authorized to conduct a motor truck service as a highway common carrier "in coordination and conjunction with the vessel service" for the purpose of permitting applicant to continue its water transportation operations. In that case, the applicant here appeared as a protestant. Voicing its disapproval of the position there taken by the present applicant and pointing out that the latter's contentions were wholly inconsistent with those advanced

in previous proceedings, the Commission held:

> In the instant application, Applicant is seeking authority to operate an alternate truck service, which is more economical than present vessel service for the lighter cargo, so as to provide for the continuation of a daily service which the public not only demands but requires.

Again in Re The River Lines, Decision No. 31209, supra, rendered August 15, 1938, we authorized a water carrier operating between San Francisco Bay points and Sacramento to conduct a motor truck service as a highway common carrier between the same points, "*** as an alternative and supplemental service to the existing service of The River Lines by vessel ***". This certificate was also granted over the protest of the present applicant and other carriers in the field. We there pointed out, as stated above, that by this means The River Lines would be enabled to improve its service to the public and thus find itself in a better position to perform its public obligations. By this trucking operation, "*** applicant can provide for its patrons a rounded out, dependable and adequate service; without it, the service will be incomplete. In fact, the establishment of such a service appears essential to permit applicant to retain much of the traffic now moving by vessel, which otherwise may be diverted to other carriers."

Pacific Freight Lines, one of the protestants here, was also authorized to extend and improve its service by our decision in Re Pacific Freight Lines, 42 C.R.C. 496, rendered January 16, 1940. The applicant therein, a highway common carrier, was permitted, in the public interest, to substitute its own service for that previously rendered by an express corporation through the instrumentality of certain underlying carriers, including said applicant. This substitution of service, it appeared, was the primary objective of that proceeding. There we stated:

> For the existing service, now provided through the agency of an express corporation operating over two underlying highway common carriers, applicant proposes to substitute a service performed directly by a highway common

carrier. This, it was shown, will simplify the operations, increase the efficiency of the service, and result in substantial economies. (Page 500).

The substantial movement of traffic between Los Angeles and the points involved, it was held, "*** together with the economies and efficiencies to be effected through the substitution for the express corporation of a highway common carrier serving the public directly, is sufficient to show the existence of public convenience and necessity which would warrant the granting of this application." (Page 500).

By its decision in Re H. Frasher, Decision No. 28199 on Application No. 19976, rendered September 3, 1935, the Commission authorized applicant, an officer of Valley Express Company, one of the protestants herein, to establish a highway common carrier service for the transportation of property in the custody of the latter company, an express corporation, as an underlying carrier. We quote from the brief opinion a statement of the reasons which motivated the granting of this authority:

> The express company (Valley Express Company) of which the applicant is an officer, assertedly has suffered great shrinkage in the volume of traffic formerly handled, because the consignments are transported by Pacific Motor Trucking Company, a subsidiary of a competitor, namely, Pacific Motor Transport Company.

It may be noted that this certificate was granted without a public hearing, while in the Napa Transportation Company and Pacific Freight Lines cases, supra, the applicants, respectively, rested their whole showing of public convenience and necessity upon the testimony offered by a single witness, an officer of the applicant.

This brief resume' of our decisions discloses that in the administration of Section 50-3/4 of the Public Utilities Act the Commission has accorded to all carriers equal treatment. For the purpose of effecting improvements in existing service which would inure to the public benefit, certificates have been granted to water carriers, highway common carriers, and other types or classes of common carriers. Plainly, the same rules have there been invoked

as those applied in determining applications by railroads or their subsidiaries for authority to conduct motor truck service designed to improve the rail service.

From what has been said it abundantly appears that all carriers seeking to improve their existing services have received at our hands equal consideration under the statute; clearly, protestants' contentions are wholly without merit.

Accordingly, the applications will be granted, subject to certain conditions. Our findings of fact follow.

F I N D I N G S

Upon this record we find:

1. The present all-rail less-carload merchandise service provided by the Southern Pacific Company and Pacific Electric Railway Company in the territory proposed to be served by applicant is inefficient and unsatisfactory to meet adequately present-day transportation needs of the shipping public.

2. Public convenience and necessity require that said all-rail service be improved and expedited.

3. The said all-rail service can be improved and expedited by operating additional local way-freight trains; that this can be done, however, only at a cost which would be so excessive as to be unwarranted by the volume of available traffic, disproportionate to the public benefits afforded, and a burden on other traffic.

4. The existing defects in the said all-rail service can be adequately and economically remedied by the use of motor trucks in coordination with the rail freight trains.

5. The benefits and advantages to be obtained from an improved and more expeditious service by coordination of rail-and-truck operations are in the public interest.

6. The applicant is ready, willing and able to render properly a motor truck service fully integrated and coordinated with the rail service of Southern Pacific Company and Pacific Electric Railway Company within the territory here considered.

7. The existing all-truck service rendered by protestants, when considered separate and apart from said all-rail service and the proposed coordinated rail-truck service to be provided by Southern Pacific Company, Pacific Electric Railway Company, and applicant, is adequate to meet the public need for an all-truck service at the points here considered.

8. The said coordinated rail-truck service can be provided and maintained most effectively and efficiently, and to the greatest public advantage, through the operation of all transportation facilities under a common control and management as proposed by applicant.

9. Protestants cannot provide and maintain a motor truck service in coordination with the rail service of Southern Pacific Company and Pacific Electric Railway Company within the territory here considered adequate to meet, and fully responsive to, the public need for this dual form of transportation service.

10. Public convenience and necessity require the establishment and operation by applicant as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, over any and all available public highways, between

(a) Ontario, Upland, Chino, and Guasti, but not including intermediate points;

(b) Alta Loma and Cucamonga;

(c) San Bernardino, Redlands, Crafton, Bryn Mawr, Loma Linda, Highgrove, Riverside, Arlington, Corona, Colton, Bloomington, Rialto, Patton, Highland, Crown Jewel, and Sunkist, but not including intermediate points;

including the right to render store-door pickup and delivery service at any and all of said points hereinabove named; subject, however, to the following conditions:

A. The service to be performed by applicant shall be limited to that which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company and Pacific Electric Railway Company, or either of them.

B. Applicant shall not render service to or from, nor interchange traffic at, any point not a station on the rail lines of the Southern Pacific Company or Pacific Electric Railway Company.

C. Applicant shall be limited to the transportation of shipments (1) which it receives from or delivers to the Southern Pacific Company and Pacific Electric Railway Company, or either of them; and (2) shipments which it transports for express corporations. All of said shipments shall receive, in addition to the movement by applicant, a prior or subsequent movement by rail.

D. Applicant may render store-door pickup and delivery service at the points hereinabove named only within the pickup and delivery zones for each respective point as described and published in the tariff or tariffs of the Southern Pacific Company, Pacific Electric Railway Company, and Railway Express Agency, Inc., respectively, currently on file with this Commission and in effect.

11. Public convenience and necessity do not require service by applicant (I) from, to, or between any point or points other than those specifically named in paragraphs (a), (b), and (c), respectively, of Finding No. 10; nor (II) for the transportation of shipments solely by trick when both origin and destination are points specifically named in paragraphs (a), (b), and (c), respectively, of Finding No. 10.

Pacific Motor Trucking Company 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

Pacific Motor Trucking Company, a corporation, having made applications as above-entitled, a public hearing having been held, evidence received, briefs filed, oral argument had, the matters submitted, and the Commission being now fully advised:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Pacific Motor Trucking Company of an automotive truck service, as a highway common carrier, as said term is defined by Section 2-3/4 of the Public Utilities Act, over any and all available public highways, between

(a) Ontario, Upland, Chino, and Guasti, but not including intermediate points;

(b) Alta Loma and Cucamonga;

(c) San Bernardino, Redlands, Crafton, Bryn Mawr, Loma Linda, Highgrove, Riverside, Arlington, Corona, Colton, Bloomington, Rialto, Patton, Highland, Crown Jewel, and Sunkist, but not including intermediate points;

including the right to render store-door pickup and delivery service at any and all of said points hereinabove named; subject, however, to the following conditions:

A. The service to be performed by applicant shall be limited to that which is auxiliary to, or supplemental of, the rail service of the Southern Pacific Company and Pacific Electric Railway Company or either of them.

B. Applicant shall not render service to or from, nor interchange traffic at, any point not a station on the rail lines of the Southern Pacific Company or Pacific Electric Railway Company.

C. Applicant shall be limited to the transportation of shipments (1) which it receives from or delivers to the Southern Pacific Company and Pacific Electric Railway Company or either of them; and (2) shipments which it transports for express corporations. All of said shipments shall receive, in addition to the movement by applicant, a prior or subsequent movement by rail.

D. Applicant may render store-door pickup and delivery service at the points hereinabove named only within the pickup and delivery zones for each respective point as described and published in the tariff or tariffs of the Southern Pacific Company, Pacific Electric Railway Company, and Railway Express Agency, Inc., respectively, currently on file with this Commission and in effect.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same is hereby, granted to said Pacific Motor Trucking Company, subject to the following conditions, in addition to those hereinabove specified:

(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 twenty (20) days from the 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 upon not less than five (5) days' notice to the Commission. It shall also file, in duplicate, within a period of not exceeding twenty (20) days from the effective date hereof, copies of any contract or contracts entered into between applicant and any carrier or carriers pursuant to the authority herein granted.

(4) 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.

(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 said applications in all other respects be, and they are, and each of them is, hereby denied.

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.

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

Dated at San Francisco, California, this 24th day of August, 1940.

Ray L. Riley

Ray Wakefield

[illegible]

Justus F. Craemer

Commissioners

COMMISSIONER DEVLIN:

I dissent from the opinion and order made in the matters herein.

In recent years, this Commission has granted numerous highway common carrier certificates to the applicant, or to its predecessor, the Pacific Motor Transport Company. The principles underlying the Commission's opinions in some of these former proceedings, are contrary to the views expressed herein and in so far as some of those former decisions in which I have joined are in conflict with my views expressed herein I wish to be understood as reversing my previously held views.

The importance of the instant proceedings may, in part, be judged by the amount of time consumed in oral argument before the Commission. In view of the fact that there are seven other proceedings now pending before us, which involve the same applicant, and the same or similar principles, the Commission prior to hearing argument, addressed a letter to all interested parties, stating that it desired counsel to address their argument to the "fundamental issues involved" herein. Accordingly, when argument was heard, applicant's counsel consumed four hours for his presentation, while protestants divided an additional period of six hours. The time and care devoted to the presentation of argument by counsel, is fairly indicative of the recognition given by interested parties to the importance of the issues here involved.

Because of the importance of this matter, a somewhat extensive analysis of the Commission's former decisions is

necessary. An effort will be made to point out certain principles, which, in my judgment, ought to guide or control our decisions in applications for certificates of public convenience and necessity to engage in highway common carrier operations, and the extent to which I believe we are now departing from those principles.

Before entering upon a discussion of the problem, it may be well to briefly outline the interests and the parties with whom we are here concerned. The Pacific Motor Trucking Company is the applicant of record herein. It is a wholly owned and controlled subsidiary of the Southern Pacific Company, organized under the laws of California as a corporation on April 11, 1933. According to its last annual report on file with the Commission, it serves over 3200 route miles within the State and operates about 360 pieces of automotive equipment. Its gross receipts in 1939 were in excess of $1,250,000 per year, of which, almost $1,000,000 were from operations wholly within the state of California.

The protestants are highway common carriers of whom there are approximately 233 operating within this State.

The antecedent operations of applicant's predecessors began in the year 1928 when the Pacific Electric Motor Transport was organized under the laws of California to perform pickup and delivery truck service for the Pacific Electric Railway Company and the Southern Pacific Company.(1) Truck operations were begun

(1) A restriction in the statute (Chapter 64, Stats. 1927) provided that no certificate of public convenience and necessity could be issued to a "foreign corporation" to engage in highway common carrier service. The Southern Pacific Company was, and is, a Kentucky corporation, and was, therefore, ineligible to receive a highway common carrier certificate. This restriction, however, was eliminated from the statute in 1937. (Chap. 287, Stats. 1937)

in March, 1929, at certain stations of the Pacific Electric Railway. In October, 1929, similar operations were begun for the Southern Pacific Company in the vicinity of Santa Barbara. Later, the name of the trucking subsidiary was changed to Pacific Motor Transport Company. Between 1930 and 1933 this Commission issued numerous certificates of public convenience and necessity to the Pacific Motor Transport Company to carry property entrusted to it for transportation by the Southern Pacific Company, Railway Express Agency, and other common carriers.

By Decision No. 26017, in Application No. 18892, issued on June 5, 1933, the Commission authorized applicant herein to acquire the operative rights as well as the automotive equipment of the Pacific Motor Transport Company. Thereafter, and until August 1, 1938, the latter engaged in operations solely as an "express corporation" within the meaning of Section 2(k) of the Public Utilities Act.

On August 1, 1938, pursuant to Decision No. 30723, in Application No. 21599, the Pacific Motor Transport Company ceased to do business as an express corporation and cancelled its tariffs on file with this Commission. Applicant herein succeeded to the rights and privileges of the Pacific Motor Transport Company. At this time, therefore, the Pacific Motor Trucking Company, applicant herein, is the highway transport subsidiary of the Southern Pacific Company within the State of California. It also performs highway transport services for the rail subsidiaries of the Southern Pacific Company located in this State.

At oral argument preceding the submission of these matters, I requested counsel for both applicant and protestants to express their views on several questions which in my judgment have a direct bearing upon the fundamental issues here involved. My inquiries were substantially as follows:

(1) Should the Pacific Motor Trucking Company, when applying for a truck certificate, be required to furnish detailed reasons in support of their application in the same manner and to the same extent as an individual applicant for an entirely new certificate?

(2) Should the Pacific Motor Trucking Company be required to establish by affirmative evidence the same kind of probative facts concerning public convenience and necessity as an individual applicant for a new service?

(3) If existing truck service in the territory, which the Pacific Motor Trucking Company seeks to serve, is conceded to be adequate and sufficient and at reasonable rates, is it required

(a) that protestant highway carriers offer affirmative evidence to show they would suffer prejudice through competition with the Pacific Motor Trucking Company, or

(b) does the burden of proof rest with the Pacific Motor Trucking Company to show by affirmative evidence that no substantial injury will result to existing highway carriers?

(4) Will not the continued granting of these applications to rail-controlled subsidiary truck lines be conducive to crowding out truck competition throughout the State?

(5) If, as required by the Publicc Utilities Act, common carriers are obliged to establish joint rates for through service with each other, what sound reason is there, if any, why rail carriers should not be required to establish joint rates with existing highway common carriers when found by this Commission to be in the public interest?

and

If unable to do so, should not the rail line or its subsidiary truck line be required to offer satisfactory evidence as to why joint rate arrangements cannot be made with certificated highway carriers?

(6) Should the Commission take into consideration the advisability of granting certificates of a limited character for emergency services by the Pacific Motor Trucking Company. In other words, is it proper for the Commission to grant a certificate without a time limit to cover an emergency truck service, by applicant, say for six months, or any other limited period as the evidence indicates is desirable to the public interest?

The views expressed by applicant's counsel on these points will appear throughout the discussion to follow, although not necessarily in the same sequence.

By contrast with the foregoing inquiries, it appears proper to outline the applicant's understanding of the nature of evidence required to prove public convenience and necessity. This understanding was described by counsel as follows:

Mr. Wedekind:

"First, there is always a showing that the Southern Pacific Company, or one of its rail subsidiaries if it happens to be the Northwestern Pacific or Pacific Electric, or whichever one of the subsidiaries is involved, is already operating in the territory and holding itself out as a common carrier to serve the public and that it has been in the business for a good many years.

"Second, there is a showing that, through the medium of the Pacific Motor Trucking Company, an improvement in service will be effected if the certificate is granted. Generally speaking, that improvement is effected through a service supplemental or auxiliary to the railroad service. Sometimes, as I mentioned awhile ago, there is an outright substitution; that has been very rare in California, I believe.

"The proof of public convenience and necessity which is presented in each one of these cases has generally been along three lines. First, the shortening in time in transit on the traffic at the time of the hearing moving by rail, in some cases a showing that the railroad will be able to effect economies which will be greater than the additional cost through the utilization of trucking service....

"Third, the testimony of shippers who then and in the past have been using the Southern Pacific service; they are more or less dissatisfied with the Southern Pacific service because of the time element. With changing conditions in the last several years time appears to have become a very important matter in connection with the transportation of freight, particularly on less-than-carload. These public witnesses generally testify that they are using the Southern Pacific, that they are not now satisfied with the service, that they need to get their freight more quickly, and that they need the improvement in transit time proposed by the applicant." (Tr. pages 808, 809)

The extent to which the foregoing conception falls short of the quantum of evidence sufficient to prove public convenience and necessity is best demonstrated by reference to decisions of this Commission in other proceedings.

The following are some of the elements heretofore regarded as essential to prove public convenience and necessity. These points are not necessarily stated in the order of their importance because the weight which attaches to any one of them depends upon the particular circumstances and conditions under consideration at the time and in the territory involved.

(1) There must be evidence of a public need for the proposed truck service, supported by the testimony of shipper witnesses in sufficient number depending upon the extent of the territory involved and the volume of traffic being handled by all agencies of transportation.

<u>In re City Transfer & Storage Co.</u>, 32 CRC 2, 5.

"The Commission has repeatedly asserted the principle that certificates of public convenience and necessity will not be granted upon a mere showing by applicant that the service is desired by it or is feasible, without affirmative proof that the service is needed by those who may be expected to use it, and by the testimony of witnesses competent to know their own needs or the needs of others. Such an affirmative showing is entirely absent, and without it the Commission can not feel authorized to grant any certificate, particularly

one of the character sought herein which would so enlarge applicant's operative rights and incidentally affect so many public carriers against whose operations there is at present no proof of inadequacy."

In re Worth Warehouse Co., 35 CRC 378, 381.

"It has been the general policy of this Commission to require very definite evidence of the need of the public for the service sought to be certificated. This has usually taken the form of testimony of so-called public witnesses respecting the inadequacy of existing facilities or the need of some improved or specialized service." (2)

(2) The applicant must affirmatively show that it proposes to render a more expeditious and more efficient service than that being rendered by the existing agencies of transportation.

In re Southern Pacific Motor Transport, 32 CRC 331, 337.

"No general principle may be announced which, under all conditions and circumstances and under every possible set of facts, may measure the rights of every applicant for a certificate of public convenience todoperate buses upon the highways. Each case must be determined by the facts presented for consideration; yet, when it appears that there is a material number of the public to be served;....that the service will better serve the public than that offered by any other carrier then in the field;...a certificate should issue...."

In re Santa Clara Valley Auto Line, 14 CRC 112, 118

"...the Railroad Commission will be slow to permit a competitor to enter the field unless the competitor by reason of superior natural advantages...can give to the public either a service materially better or rates materially lower."

(3) The applicant must show that it is able to perform the proposed service at the same or lower rates than those charged by existing transportation facilities.

In re W. R. King et al, 16 CRC 849, 851.

"All other things being equal, the public is entitled to transportation at the lowest rate

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(2) Emphasis shown herein, and in other citations following, is supplied, except where stated to the contrary.

consistent with proper service, and as in this proceeding the testimony indicates that ...the rates as proposed by applicants, Boynton, Baines & Anazitos, are the most favorable for the public, as suchrates in practically every instance are lower than those of the Northwestern Pacific Railroad, and in all instances lower than those proposed by the applicant King.... After careful consideration of all the evidence in this proceeding we are of the opinion that the application of Boynton, Baines & Anazitos should be granted, and that of King should be denied for the reason that...the applicants Boynton, Baines & Anazitos are willing to undertake the service at more satisfactory rates of fare for the public from whom their compensation will be derived."

(4) Applicant must show by affirmative evidence that it can operate the proposed service and secure sufficient revenue to justify its proposed capital investment and fully return costs of operation under honest and efficient management.

In re Oro Electric Corporation, 1 CRC 253, 265.

"Unless reasonable assurance is given that an applicant's fixed charges as well as its operating expense will not be excessive...and that the utility will be honestly and prudently managed, it may become this Commission's duty to deny the application and thereafter to grant itx permission to some other utility which can and does measure up to the state's express public policy in these respects."

In re T. Morgan, 20 CRC 753, 755.

"It is very doubtful whether the proposed line could be operated profitably, or whether applicant will be financially able to operate at a loss for a reasonably long period to determine by experience whether the line is justified economically, or whether the line, if established, would be reasonably permanent. The proposed (truck) service, if authorized, would tend to render the railroad less able to serve, and would probably result in an early withdrawal of truck service, after crippling the present rail service. The application, therefore, will be denied."

(5) Applicant must show by affirmative evidence that the establishment of the proposed service will not injure existing carriers or unduly divert existing traffic from these carriers.

In re Southern Pacific Motor Transport, 32 CRC 331, 337

"When it appears that...the proposed service will not result in injury to any existing utility then operating a certificate should issue..."

In re Pickwick Stages, 26 CRC 570, 572.

"Applicant Pickwick Stages proposes to superimpose upon this entire route a new service, ...and intended to be competitive with such other operations and facilities as now exist. Well balanced regulation must require from applicant, therefore, an emphatic and convincing showing that the public necessity is such that existing authorized facilities do not and can not adequately meet the public requirements. It is further a burden upon applicant to show that the intrusion of the service proposed by it is constructive in the public interest, and not merely destructive of existing facilities without due advantage to the public."

In re Pickwick v. Wilcox, 25 CRC 880, 884.

"We do not believe that it is a sound policy nor in the interest of public service to authorize the establishment and operation of a local stage service...as it is obvious that practically all local business handled by such local service will be taken away from the existing carriers who are admittedly rendering an adequate and efficient service the year around, winter and summer."

(6) Applicant must show that the transportation requirements of the public in the territory involved require the inauguration of the new service and that the existing services are inadequate, unsatisfactory or otherwise lacking in scope sufficient to meet the reasonable needs of the shipping public.

In re George Learned, 17 CRC 594, 597.

"The Commission cannot, however, authorize the establishment of duplicate facilities in the absence of an affirmative showing that the facilities of existing carriers are not satisfactorily meeting the demands of the public desiring transportation...."

In re F. A. Wilson, 17 CRC 817, 820.

"As the Commission has frequently stated in its decisions on applications for certificates of public convenience and necessity to operate automobile stage lines as common carriers of passengers, an affirmative showing must be made as to the public convenience and necessity to be served. It is incumbent upon applicants in proceedings of this nature to make an affirmative showing that the transportation facilities offered by existing authorized carriers are insufficient, unsatisfactory, or do not in any other manner meet the requirements and demands of the traveling public...."

In re Motor Transit Company, 21 CRC 509, 517.

"Moreover, this Commission has repeatedly held on applications for certificates of public necessity and convenience, particularly where an additional service is proposed which will virtually parallel existing carriers, that a clear and affirmative showing must be made that the existing transportation facilities are inadequate or unsatisfactory."

(7) Where applicant is already engaged in the transportation business and seeks by a new application to extend its operations, it must affirmatively show that it is unable to establish joint rates with connecting common carriers and that it has exhausted its remedy under Section 33 of the Public Utilities Act which gives this Commission power to establish divisions of revenue between connecting common carriers.

In re F. A. Wilson, 17 CRC 817, 820.

"The evidence in this proceedings does not warrant the Commission granting the order herein sought for the reason that there is no showing that existing lines are unable to furnish transportation by automobile stage over the route herein sought; and if a through route and joint rate is desired by the public, and existing stage lines cannot themselves agree on an adjustment of schedules and rates which will make possible a through route and joint rate between the points sought to be served by applicant, complaint to the Commission that a through route and joint rate is necessary will receive investigation and an order of the Commission will issue based on the evidence adduced at a public hearing."

The foregoing, while not necessarily all-inclusive, are in my judgment necessary criteria of probative evidence required to prove public convenience and necessity. To the extent that applicant does not admit the necessity of offering affirmative evidence with respect to the foregoing points, it has, in my judgment, by carrying such limitations of evidence into its presentations, failed to sustain the burden of proof necessary and indispensable to a proceeding involving public convenience and necessity.

For this reason I conceive the majority opinion to be a departure from the statutory mandate, as well as the frequently declared policy of this Commission, to grant certificates of public convenience and necessity. This departure is not initiated by the majority opinion herein. Since 1930 the departure has been slow but none the less regular until it has culminated in an attitude where the Pacific Motor Trucking Company appears to no longer feel bound to sustain the same burden of proof we require of independent truck operators who seek a new certificate. To prove this assertion it is only necessary to quote the argument of applicant's counsel who said:

Mr. Wedekind:

> "Now, I will state that, generally, in these cases there are shipper witnesses; in one of the cases there are no shipper witnesses offered by the applicant, that was the San Luis Obispo-Oceano case. We were making a test ourselves there; we wondered whether it was necessary to prove the existence of public convenience and necessity, to introduce in these cases shipper witnesses to testify as to their needs. We do not believe that it is necessary in all cases; it may be in some cases...." (transcript page 809,810)

It is clear from the foregoing position declared by counsel that applicant has pursued a "wearing down" process to a point where it

deems that this Commission is required to grant a certificate to the Pacific Motor Trucking Company upon the mere self-serving testimony of its own company witnesses.

In his argument herein applicant's counsel strongly urged that the pending applications are to be considered as a request for leave to make an "improvement in existing service" rather than a "new service." To quote his views, he said:

> (<u>Mr. Wedekind</u>):
>
> "These 9 cases perhaps may be said to be what you might call the tag end cases of a program launched by the Southern Pacific Company back in 1928 to give the shipping public of California the benefit of an improved rail service through the utilization of trucks on the highways for co-ordination with that service." (Transcript, page 747).

If the current proposal is an "improvement" in service, the application comes too late because independent truck lines saw the need for expedited store-door pickup and delivery service many years ago.

The independent truck operators offered to render such service and their offer was accepted by the Commission which granted numerous truck certificates in the territory here involved. Having granted certificates to these pioneers in the store-door service, the Commission should not at this time deprive them of the inherent value of their franchises by granting parallel certificates authorizing a duplicate service by the applicant whose parent company, the Southern Pacific, so belatedly recognized the need for "improvement" in its service. If, as counsel argues, the instant application is part of a program launched by the Southern Pacific Company in 1928, the applicant is, to say the least, somewhat lax in waiting ten years to accomplish improvement in a territory where protestants have been adequately serving the public for over fifteen or twenty years.

In my opinion the facts and circumstances as shown of record herein bring this application clearly within the doctrine and principles laid down by the Commission in the well known opinions of former Commissioner Eshleman in the cases of Pacific Gas and Electric Co. v. Great Western Power Company, 1 CRC 203 and application of Oro Electric Corporation, 1 CRC 253.

The Commission in the above cases established the doctrine that an application for a certificate of public convenience and necessity shall be judged and decided upon the conditions existing at the time the application is filed; that a protestant who has not kept pace with the public needs and who, long after an application is filed, offers to render to the public the service applied for is not entitled to consideration. From the following expressions there arose a doctrine which we have come to call the "knock at the door" principle. The Commission in the Great Western Power case said, in part:

> "It is certainly true that where the territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty, which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may also be served by allowing competition to come in * * *. To all new utilities we shall likewise hold out the incentive that on the discovery by them of the territory which is not accorded reasonable service and just rates they may have the privilege of entering therein if they are willing to accord fair treatment to such territory."

In the Oro Electric decision the Commission said:

> "The California Commission, unless particular circumstances call for a different method of handling the problem looks to the existing utility as of the day when the newcomer knocks at the door. If the existing utility is at that time found not to be doing its duty to the public the newcomer is permitted to enter * * *.

"Furthermore, the Commission held that it would judge the two utilities as of the day when the new utility filed its application with this Commission, so that a utility desiring to be protected in the way of competition must do its full duty to the public before and not after the newcomer knocks at the door."

The foregoing principles although initially enunciated among the first proceedings to come before this Commission after its creation, are so well settled that they have been reiterated from time to time over the past 25 years. As recently as 1930, the doctrine was reaffirmed in the matter of the application of Auto Ferry Company of Coronado, 34 CRC 201, 208.

Unquestionably, the first and controlling consideration in proceedings of this kind is the public interest. The second and subordinate consideration involves equities with respect to operative rights of rail and truck transportation companies. The element of the public interest, of course, is always paramount and should be treated as superior to the private interests of the railroads and the truck lines.(3) However, after truck operators have made a prima facie showing of public convenience and necessity and the Commission has found and declared that public convenience and necessity warranted certain operations, and granted them certificates to operate as highway common carriers; and after they have invested capital and energy in the diligent prosecution of their new enterprises and have rendered a full and complete service to the public for a long period of time, the Commission should hesitate to authorize a rail competitor or any competitor to institute a duplicate or parallel truck service which would deprive the pioneer

(3) In re Motor Transit Co., 21 CRC 509, 513.

"The Commission has clearly heretofore established the doctrine that certificates to operate an auto stage or freight service shall be granted or withheld upon the basis of whether the rights, welfare and interest of the general public will be advanced by the prosecution of the enterprise, and not upon the private benefit or advantage that may accrue to any carrier, shipper or consignee."

truck operators of the full enjoyment of their certificated rights.

What the railroad seeks through this application, in substance, is the adoption of a new policy to be called an "open door" policy which will permit its subsidiary, the applicant truck line, to come into the field of highway carrier transportation. The adoption of such an "open door" policy would, in my judgment, in the course of time result in the eventual elimination of the existing highway common carriers from local territory now served by them. In passing, I desire to say that during the period from 1933 to 1938, this Commission considered 113 applications for truck certificates filed by rail-controlled subsidiary truck lines and denied only 3 applications. During the same period, it considered 118 applications from independent truck operators and denied 32 applications. From this we may judge that the rail lines have generally fared more successfully in an "open door" policy than the members of the trucking industry itself.

If applicant's proposal actually contemplates (and I so view it) not an "improvement" in service but a "new" service, then the existing highway common carriers adequately serving the territory (and whose service in this respect is unchallanged) are entitled to protection against a rail competitor who seeks to invade the field and divide the existing traffic to the same degree and the same extent as if the applying competitor were a truck operator.

The Commission should not authorize the institution of a new operation which would divide existing traffic with those who have pioneered such service,under authority and approval of the law, in this or in any other territory. A division of traffice would unquestionably impair the adequacy and efficiency of existing truck service and would eventually put the

truck operators out of business or compel them to seek an increase in freight rates to make up the loss in revenue which they would sustain. The alternatives then would be an increase of rates for the public or cessation of the present truck service.

One of the basic questions here involved is whether or not established common carrier truck service, rendering adequate service at reasonable rates in the State of California is to be protected from unlawful competition, in order that it may render a public service to the shippers of California. The inquiry in this regard may not necessarily be determined upon the necessities of today, tomorrow, next week or next month. The best interests of the public may demand inquiry as the ultimate benefit or injury to the public. If, by virtue of unrestrained competition, existing truck operators find their revenue in the more populated areas reduced below a reasonable level, thus impairing their operating efficiency, how can we reasonably expect them to continue service from and to the sparsely settled areas in this state which are not now served by rail lines? Will not a curtailment of adequate trucking service to these lean areas carry us back 25 years to the days when shippers were compelled to bring their traffic to the rail heads?

Applicant is likewise opposed to the establishment of joint rates and through routes with existing highway common carriers, upon the ground, primarily, that such arrangements would compel the railroad to divide its revenue with the truck operator in an inequitable manner. Counsel argued that truck operators would demand their full local rates as a division of revenue for services performed for the railroad. The premise is not sound.

The provisions of Section 33 of the Public Utilities Act require the establishment of satisfactory through routes and

joint rates between common carriers.[4] The law also provides that if the carriers do not agree upon the division between them of the joint rates, the Commission shall, after hearing, establish such division.[5] As an added protection to the railroad, which has itself an equally satisfactory route between the termini comprised in a through route, the Commission has enunciated the principle that the railroad may, under certain circumstances have the right to its local rate for the portion of line comprised in such through route.[6] With these assurances of protection from undue revenue demands of connecting truck carriers, the railroad should stand in no fear of possible losses in revenue which might arise from the establishment of joint rates with connecting highway common carriers, particularly when recourse may be had to the regulatory powers of this Commission to deal with the respective equities of both parties to such an arrangement.

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(4) Section 33 of the Public Utilities Act provides in part:

> "Whenever the commission, after a hearing had upon its own motion, or upon complaint, shall find that the rates, fares or charges in force over two or more common carriers, between any two points in this state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, and that public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare or charge which will be fair, just reasonable and sufficient...."

(5) Section 33 also provides in part that:

> "In case the common carriers do not agree upon the division between them of the joint rates, fares or charges established by the Commission over such through routes, the commission shall, after hearing, by supplemental order, establish such division...."

(6) <u>Western Pacific Railroad Company</u> vs. <u>Northwestern Pacific Railroad Company</u>, 29 CRC 408, 412.

The question of burden of proof in these proceedings merits some consideration. Applicant contends that after presentation of its case, the burden of proof shifts to the protestants to show in what manner, if at all, they will be handicapped by the proposed service.[7] I do not agree with that view. In my judgment, the burden of proof, consistent with the general rule in this respect, does not shift in this or in any other similar proceeding, but rests with the moving party (the applicant in this instance) to show by a preponderance of the evidence, that it has a prima facie case. Unless this is affirmatively shown the Commission has no alternative but to dismiss the application. This principle is well settled not only by our courts, but by this Commission.

In former opinions, we have required an applicant in certificate cases to sustain the burden of proof with respect to showing public convenience and necessity. As to territory which is now served by a utility which opposes the application, the burden is upon the applicant to show that the present or future public convenience and necessity require, or will require the granting of the application to another to enter such territory. Pacific Gas & Electric Co. vs. Great Western Power Co. 1 CRC 203, 213. Applications for certificates of public convenience and necessity to operate auto stage or truck lines require that an affirmative showing must be made. In the Matter of the Application of

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(7) Mr. Wedekind: "I would say in answer to that that the burden of proof is on the protestant to show that he will be eliminated from the field, or so badly handicapped that he will be almost eliminated from the field; and, further, that even his elimination from the field will not be in the public interest. Now it may be that you could have a case where his elimination or our elimination would be in the public interest." (Tr. page 844.)

M. Haydis, 17 CRC 379, 381. "Public convenience and necessity" as that term is used in the statute, is a question of fact to be proved by competent evidence. The burden being on the applicant in every case, he must prove the fact affirmatively, so that the Commission may ascertain from the record, free from doubt or conflict, that the proposed facility, if authorized, will meet some definite public demand. In the Matter of the Application of Beverly Gibson, 26 CRC 892, 894. Before a certificate may be granted, the burden rests affirmatively upon the applicant to establish by a preponderance of the evidence, that there is a need for the proposed service, In re California Transit Company, 29 CRC 473, 508.(8)

Because of applicant's mistaken view of this principle and its procedure pursuant thereto, it has, in my judgment, failed to sustain the burden of proof necessary to support the instant applications.

Throughout my discussion, I have purposely refrained from emphasizing arguments raised by counsel for the protestants. I have endeavored to analyze only those arguments raised by applicant's counsel and discussed them and expressed my views of the subject. My initial inquiries to counsel, however, were not, I think fully answered. Such opinions as he expressed were not in accord with what I believe is a policy and procedure which should govern this Commission. By briefly answering my own inquiries, it may perhaps serve to show the policies which, in my opinion,

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(8) For additional references to the burden of proof, see In re J. Starkey, 27 CRC 324, 326; In re C. P. Stanbrough, 28 CRC 174, 178, and In re Santa Clara Valley Auto Line, 14 CRC 112, 119.

should prevail in this and other proceedings of a similar nature:

(1) With reference to the duty of the applicant to furnish detail reasons in support of its application, to the same extent as an individual applicant for a new certificate, I believe that the Pacific Motor Trucking Company is required by law to observe the same rules of practice, procedure and evidence as any other applicant for a certificate of public convenience and necessity.

(2) As to the establishment of public convenience and necessity by affirmative evidence, I believe the Pacific Motor Trucking Company is required by law to establish by probative evidence sufficient facts necessary to prove those elements of public convenience and necessity which I have enumerated herein, in the same manner as any other applicant.

(3) The burden of proof, in my judgment, rests upon the Pacific Motor Trucking Company, to show by affirmative evidence that existing highway common carriers will suffer no prejudice by virtue of the proposed operations. The burden of proof with respect to other matters as well, rests with the applicant, and he may not pass this burden on to protestants. Failure to sustain the burden of proof should result in a finding that applicant has failed to establish a prima facie case for a certificate.

(4) The continued granting of these and similar applications to rail-controlled subsidiary truck lines

will be conducive to crowding out existing highway common carrier services due to loss of traffic and revenue by reason of dividing the existing business with the Pacific Motor Trucking Company. The result may be an impairment of highway common carrier service not only in the territory involved but also, and perhaps more acutely, from and to the more sparsely settled areas of the state, not now served by railroads.

(5) I find no sound reason why the Southern Pacific Company may not establish joint rates with connecting highway common carrier for through service or why it cannot execute contracts for expedited depot-to-depot service with such carriers. The fact that it now operates under such a contract between Los Angeles, on the one hand, and Glendale, Burbank and Alhambra, on the other hand, indicates that the plan is feasible. Moreover, it maintains joint rates with numerous highway common carriers in other parts of the state, so why can it not do so in this territory? If appropriate divisions of revenue cannot be agreed upon, the railroad may petition us to bring about a divisional agreement under Section 33 of the Public Utilities Act.

(6) In regard to certificates for emergency truck services, I feel that the issuance of a certificate limited as to the time of enjoyment, is more desirable, than a full, unlimited operative right. We have uniformly granted limited certificates to other truck operators and vessel carriers to expire upon the termination of the emergency for which they were granted. I see no sound reason for departing from this policy.

The views and criticisms here expressed should not be considered in the light of destructive criticism. That it may not be so considered, I desire to offer, what, appear to me to be constructive suggestions concerning possible courses of action which the Southern Pacific Company may take to achieve competitive equality with the existing highway common carriers in the particular district involved. Some of these courses of action may be pursued without the necessity of securing authority from this Commission. Others may require a showing of public convenience and necessity.

The movement of less-carload merchandise by rail trains may be expeditied to run on passenger service schedules, as was done between San Francisco and Los Angeles. This expedited service may be accomplished on the company's own initiative.

If rail service is expedited to passenger schedule speed the Southern Pacific Company may perform its own pickup and delivery service under city carrier permits, or it may continue to contract with local draymen for that kind of service.

The Southern Pacific Company may establish joint rates with existing highway common carriers as it has in other parts of the State. It may establish mutually satisfactory divisions of revenue, and if unable to do so, it may appeal to the Commission for relief under Section 33 of the Public Utilities Act.

If none of the foregoing courses of action are deemed desirable, the Southern Pacific Company (or the applicant) may apply for a certificate of public convenience and necessity to operate motor vehicles as a highway common carrier, under Section 50-3/4 of the Public Utilities Act. In support of such application, it should be prepared to meet the same requirements with respect to

evidence, burden of proof and testimony of public witnesses concerning public convenience and necessity, as are required of other applicants seeking similar trucking certificates. It should, moreover, prove to the Commission's satisfaction that the proposed operation is justified from the standpoint of the capital investment to be made, and that it will earn the full costs of operation which result from honest and efficient operation of a new service. The proposal should be supported by affirmative evidence to show whether or not the territory is adequately served by existing transportation companies, and to what extent, if any, injury or prejudice may result to existing highway common carriers from the institution of a new competitive service.

Since none of the foregoing elements have been affirmatively proved by the applicant in the instant proceedings, and for the reasons set forth herein, I dissent from the opinion of the majority and feel that the applications should be denied.

In making this dissent and stating my reasons therefor I do not wish to be understood as contending that in no instance or under no circumstance should the Pacific Motor Trucking Company or similar transportation agencies be permitted to engage in service similar to that applied for herein. There may be circumstances and conditions which would warrant and require the granting of such a certificate. My view, essentially, is that where the Southern Pacific Company, the Pacific Motor Trucking Company or any other rail carrier or its trucking subsidiary applies for a certificate of public convenience and necessity to engage in highway common carrier operations, that it should be required to support its application in the same manner and to the same extent and degree as would any applicant.

I have tried to express my views concerning procedure in these matters and the rights of the respective parties thereto. I might add one thing more. Unquestionably, the public interest is of primary concern in the Commission's consideration of such applications, and the equities which arise between an applicant and other truck operators in the territory sought to be served, are of secondary importance. However, the equity of the present truck operator under a certificate granted by this Commission may be and perhaps is, as much a matter of concern to the public as to the operator of such service. This thought rests upon the possibility that highway common carrier truck operators may be practically eliminated from the highways of California through undue competition which may arise from the granting of certificates for trucking services such as those herein proposed. Such a result, in my opinion, would unquestionably be against the public interest of the people of the State.

Frank R. Devlin
Commissioner