

ORIGINAL

Decision No. 37892

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 E. O. HURLBERT and V. G. KEYES, a)
 partnership, doing business as GENERAL)
 TRANSFER COMPANY, for a certificate of)
 public convenience and necessity to) Application No. 24202
 operate as a highway common carrier be-)
 tween certain points in the San Joaquin)
 Valley and Stockton and San Francisco)
 Bay points and certain intermediate)
 points.)

In the Matter of the Application of)
 ANDRUS HURLBERT, VINCENT G. KEYES and)
 ELMER O. HURLBERT, partners in business)
 under the name of GENERAL TRANSFER)
 COMPANY, for certificate of public con-)
 venience and necessity to operate a) Application No. 18873
 freight transportation service by motor)
 truck over the public highways as a)
 common carrier between the cities of)
 Stockton, California, and Fresno,)
 California.)

J. RICHARD TOWNSEND and ROBERT M. DAVIS, for applicants.

W. S. JOHNSON and HAROLD FRASHER, for Valley Motor Lines, Inc. and Valley Express Co., protestants.

F. X. VIEIRA, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.

STARR THOMAS, for The Atchison, Topeka & Santa Fe Railway Company, protestant.

EDWARD STERN, for Railway Express Agency, Incorporated, protestant.

BY THE COMMISSION:

O P I N I O N

Applicants E. D. Hurlbert and V. G. Keyes, partners doing business as General Transfer Company, seek authority under Section 50-3/4 of the Public Utilities Act to operate as a highway common carrier between Selma and Fresno, on the one hand, and, on the

other hand, Stockton and points within one mile thereof, San Francisco, Oakland (including Emeryville, Fruitvale and Melrose), San Leandro, Alameda, Berkeley, El Cerrito, Richmond, Hayward, South San Francisco, San Bruno, Palo Alto, Sunnyvale, Santa Clara and San Jose, serving no intermediate points. Certain carriers now serving the territory appeared as protestants, viz., Valley Motor Lines, Inc., Valley Express Co., Railway Express Agency, Incorporated, Southern Pacific Company, Pacific Motor Trucking Company and The Atchison, Topeka & Santa Fe Railway Company. (1) Public hearings were had before Examiner Austin at Fresno, Stockton, San Jose, Oakland and San Francisco; and the matter was submitted upon briefs, since filed.

By Application No. 18873, as amended, Andrus Hurlbert, Vincent G. Keyes and Elmer O. Hurlbert, partners doing business as General Transfer Company, sought a certificate of public convenience and necessity authorizing the operation of a highway common carrier service for the transportation of general commodities between Stockton and Fresno, excluding intermediate points. The matter was heard and submitted, but it was reopened upon the filing of Application No. 24202.

Application No. 24202 was filed by E. O. Hurlbert and V. G. Keyes, partners doing business as General Transfer Company, Andrus Hurlbert having died since the initial submission of Application No. 18873. A certificate was sought under which applicants could engage in the transportation of general commodities,

(1) For brevity, Valley Motor Lines, Inc. and its affiliate Valley Express Co., will be referred to collectively as Valley; The Atchison, Topeka & Santa Fe Railway Company will be referred to as Santa Fe; and Southern Pacific Company and its subsidiary Pacific Motor Trucking Company will be designated as Southern Pacific and as Pacific Motor, respectively.

with certain exceptions, between the points specified above, including those involved in Application No. 18873. The latter proceeding, however, was not discontinued, applicants desiring to preserve any advantages that might accrue from the prior filing of that application. Both proceedings were heard concurrently, and will be covered by this decision. For convenience, the applicants herein will be referred to collectively as the applicant.

Applicant's proposal was described by Vincent G. Keyes, one of the partners. For many years applicant and its predecessors have operated within this territory as a highway carrier. In 1912, service was initiated between Atwater and Tulare; by 1915 it had been extended to Stockton; and, by 1917, it had reached San Jose and San Francisco Bay points. In 1917, the service which previously had been operated radially, was placed upon a contract basis. Since the enactment of the Highway Carriers' Act in 1935, applicant's intrastate operations have been conducted as a radial highway common carrier, under permits issued by the Commission. Applicant holds a certificate issued by the Interstate Commerce Commission authorizing operation as a common carrier by motor vehicle between Selma and San Francisco, and intermediate and certain off-route points, including Stockton. From the outset, headquarters have been maintained at Fresno. Applicant's experience as a truck operator, and its financial ability to provide the service, are conceded.

For many years applicant's traffic was largely interstate in character. This consisted of freight moving by steamer to San Francisco and Stockton, and thence by truck to Fresno and Selma. Since the outbreak of the war intercoastal steamer operation has been discontinued, and the traffic has shifted to the railroads.

Freight formerly moving from the docks at Stockton and San Francisco Bay points now originates at jobbers' warehouses in San Francisco. Frequently, considerable difficulty is experienced in determining whether the trucking movement beyond San Francisco is interstate or intrastate in character. Much of it undoubtedly is intrastate. Applicant, so Keyes testified, has been requested by shippers of interstate traffic to handle their intrastate shipments. Were it permitted to do so, the equipment, assertedly, could be used more efficiently, ample space being available for that purpose.

Applicant plans to conduct a scheduled overnight service, available daily except Saturday, Sunday and holidays, between Selma and Fresno, and San Francisco Bay points and Stockton; all other points would be served on-call. Terminals would be established at Stockton and Oakland, in addition to those now located at San Francisco and Fresno. Agencies staffed by applicant's employees would be maintained at these four points; elsewhere, telephone facilities, available to the public, would be provided. Rates, rules and regulations identical to those established by the Commission would be published; as to commodities upon which no such rates have been established, applicant's rates would correspond with those published by Valley. To provide the service, applicant has available some 38 units of equipment comprising 11 trucks, (including 5 pickup trucks), 6 trailers, 10 tractors and 11 semi-trailers, of varying capacities and types.

(2) Approximately 70 per cent of applicant's traffic is interstate, and the balance intrastate, Keyes testified. Of the interstate traffic formerly handled, about 20 per cent has shifted to an intrastate basis.

Pickup and delivery service would be provided at Fresno, Stockton, San Francisco and Oakland where pickup trucks would be maintained, and line-haul trucks would also be used. At Fresno freight would be delivered between 8:00 and 9:00 a.m. to consignees desiring deliveries at that time. At Selma delivery service would be provided between 8:00 a.m. and 4:00 p.m., when line-haul equipment would be available. A pickup service would be conducted, on call, both at San Francisco and Oakland. Shipments originating at other points would be picked up by the line-haul equipment.

Applicant called some 29 shipper-witnesses of whom 24 were engaged in business in Fresno, one at Selma, three at Stockton and one at Emeryville. They represented both wholesale and retail stores, manufacturing establishments, machine shops, fruit packing and canning plants. In the past, all had employed applicant to carry their freight and had found the service satisfactory. The operation contemplated, so they testified, would be advantageous in that it would permit the through transportation of freight, without intermediate handling; it would accommodate truck load as well as less-carload traffic; and, by facilitating the combination of both interstate and intrastate shipments, it would promote more economic and efficient service; and would spare shippers the inconvenience of attempting to distinguish between the two types of traffic. Many whose interstate shipments applicant had handled asserted they would find it convenient were applicant permitted to carry their intrastate traffic as well.

The service furnished by the existing carriers was inadequate, these shippers asserted. Between San Jose and Fresno, some stated, Southern Pacific provided second day delivery for both carload and less-carload traffic. Similarly, traffic moving

via Southern Pacific and Valley from Selma to San Francisco Bay points and Stockton received second-morning delivery; in the opposite direction, it was accorded second-morning, or at best, first-afternoon delivery. Shipments have been delayed in transit from one to three days, some testified. The delivery of freight at Fresno was performed too late to meet their requirements, several Fresno shippers stated. ⁽³⁾ Some described the damage occasioned by the intermediate handling of freight. Three shippers asserted that Valley did not appear to be interested in truck-load traffic.

Through their operating officials, the protesting carriers described the service they conducted. Testimony of this character was offered on behalf of Southern Pacific, Pacific Motor, Santa Fe and Valley.

Southern Pacific affords an overnight rail service between San Francisco, Oakland, Stockton and Fresno, available daily excepting Sundays and holidays. First-morning delivery is provided. At Selma shipments from San Francisco Bay points and from Stockton receive first morning delivery; northbound traffic receives first-afternoon delivery at San Francisco Bay points, and first-morning delivery at Stockton. Between San Jose and Fresno, traffic is delivered on the first afternoon; Selma traffic is accorded second-morning delivery. Pacific Motor supplies the pickup and delivery service at Fresno, using seven pickup trucks for the

(3) Deliveries provided by Valley ranged, so these shippers testified, from 8:30 a.m. to 2:00 p.m., and mostly between 10:00 a.m. and 12:00 M; by Pacific Motor, from 9:00 a.m. to 3:30 p.m., and mostly between 10:00 a.m. and 12:00 M; and by Santa Fe, from 9:30 a.m. to 3:30 p.m., and usually somewhat later than by Pacific Motor.

purpose. Deliveries commence between 7:30 and 8:00 a.m., and are completed by 11:30 a.m. Each truck makes two deliveries daily and occasionally three. At Selma, where the service is provided by a contract drayman, incoming freight is delivered between 8:00 and 9:30 a.m. Shippers' request for early delivery usually are observed.

A substantial volume of tonnage moves daily between these points. From San Francisco and East Bay points, eight cars of less-carload traffic move to Fresno. Northbound, some 20 to 25 truckloads are picked up, handling a maximum of five tons each. From Stockton one car of less-carload traffic moves to Fresno; and at Selma the inbound traffic ranges from 8,000 to 10,000 pounds.

The Santa Fe serves Fresno, Stockton, Oakland and San Francisco, but does not reach Selma or San Jose. Between San Francisco, Oakland and Stockton, respectively and Fresno, an overnight service is conducted, supplying first-morning delivery. At Fresno the pickup and delivery service is furnished through a contract drayman. Four pickup trucks are used, each making from two to three trips daily. Deliveries commence between 7:00 and 8:00 a.m., and are completed between 11:00 a.m. and noon. From five to seven cars of less-carload traffic move daily to Fresno from San Francisco and Oakland, and one from Stockton.

Between Fresno and Selma, on the one hand, and San Francisco, East Bay points, San Jose, and Stockton, on the other, Valley conducts an overnight service available daily excepting Sundays and holidays. First-morning delivery service is provided between San Francisco, Oakland and Stockton, respectively, and Fresno; and first-afternoon delivery, between these points and

Selma. Between San Jose, and Fresno and Selma, respectively, first-afternoon delivery is accomplished. A pickup and delivery service is furnished by Valley at all of these points excepting Selma, where the service is supplied by Huntington Stage Line, a connecting carrier. At Fresno 18 units of equipment are used to provide the pickup and delivery service. Terminals are maintained at San Francisco, Oakland, San Jose, Stockton, Fresno, Manteca and Modesto. A substantial volume of traffic moves between these points.

Protestants called some 125 shipper witnesses, who were distributed widely throughout the territory affected. (4) In substance, these shippers testified they had used the service of one or more of the protesting carriers; that the service utilized had been satisfactory; and that they had no need for any additional public transportation service. A few voiced dissatisfaction with the delivery service provided by some of the protestants at Fresno. Others complained of late pickup service at Stockton and San Francisco. In general, however, they asserted that the delivery service afforded at Fresno on traffic moving from San Francisco Bay territory had satisfied their requirements. These deliveries mostly were accomplished between 8:00 and 9:00 a.m., although they ranged from 7:30 to 11:00 a.m.

To meet the testimony of certain shippers called by the applicant, regarding delays in transit, protestants Southern Pacific and Santa Fe offered abstracts of their freight bills, and

(4) Of the 125 shipper witnesses produced by applicant, 40 were engaged in business at San Francisco, 12 at Oakland, 3 at Emeryville, 3 at Berkeley, one at San Leandro, 13 at San Jose, 10 at Stockton, 40 at Fresno and 3 at Selma. Some of those called at the San Francisco and Oakland hearings represented firms having plants or establishments at two or more of the points mentioned.

in some instances copies of their bills of lading, covering the traffic handled for these shippers throughout the period during which the delays assertedly had occurred. . . With negligible exceptions, no shipments were delayed in transit, so these records disclosed, excepting over Sundays and holidays. Valley's showing dealt with a period later than that indicated by the shippers. .

We turn now to the contentions of the parties, which may be briefly summarized. . Applicant asserts that its operations have expanded to a point where certification is justified; that the service of the existing carriers is inadequate; that the requirements of interstate shippers concerning their intrastate traffic should be considered; that rail equipment needed elsewhere would be released through the approval of applicant's proposal; and that no substantial amount of traffic would be diverted from the existing carriers. . These claims are controverted by the protestants, who in turn contend that applicant's proposed service is inferior to that now available through protestants' facilities; that the evidence establishes that protestants' service is adequate, and that applicant has offered no service not now available to the public; and that the granting of the application would result in unnecessary and wasteful duplication of transportation facilities. .

Over the years, it is claimed, applicant's business has developed gradually to a point where it no longer can meet public demands, in the absence of a certificate. . Because of legal restrictions, applicant has been compelled to reject much of the tonnage offered. . Assertedly, public interest requires certification, this being but another step in applicant's growth. . Protestants contend this merely reflects applicant's desire to secure operating authority. . These circumstances, we believe, are

entitled to consideration in appraising the public need for the service.

Applicant has challenged the existing service as inadequate. It is true, as applicant claims, that at Selma and San Jose its service would be more expeditious than that furnished by some of the protestants; elsewhere, however, the scheduled transit time would be comparable. Some of applicant's shipper witnesses complained of late deliveries at Fresno; a much larger number called by protestants, asserted the delivery service had been adequate and sufficiently early to suit their needs. The preponderance of the evidence indicates that the service was satisfactory. Certain shippers called by applicant complained of delays in transit, ranging from two to four days. The records produced by Southern Pacific and Santa Fe covering the shipments of two of these firms indicate that, with minor exceptions, first-morning delivery was accorded. However, the testimony of the other shippers stands uncontradicted in the record. Freight has been damaged because of rehandling in transit, some of the shippers asserted. The damage would be minimized, applicant contends, were the shipments carried by line-haul trucks, as proposed. Applicant cannot expect to avoid this risk, since it would be obliged to conduct its business much in the same manner as other carriers now serving the territory.

Valley, it is claimed, is interested primarily in the transportation of less-truck load shipments, while applicant has developed considerable truck-load traffic and would continue to accommodate business of this character. Three shippers, called by applicant, testified they had never employed Valley to handle their truck-load traffic. Assertedly, this rests upon Valley's

failure to solicit truck loads. It was not shown that Valley ever had rejected such shipments. Valley's general manager stated that it regularly carried truck-load traffic, and a shipper whom it produced testified that that carrier frequently had handled such traffic. This contention, we believe, is not supported by the record.

In certain respects, it is contended, the service proposed by applicant would be inferior to that now furnished by protestants. Applicant would operate on five days a week omitting Saturday, as well as Sunday and holidays; protestants, however, now operate on Saturday. An on-call service only would be provided at certain intermediate points such as Palo Alto, which protestants now serve regularly. At non-agency points shippers must contact applicant by telephone, in order to secure any service. As stated, agencies would be maintained only at Fresno, Stockton, San Francisco and Oakland. Applicant's equipment, it is claimed, could not adequately serve so extensive an area, it being too small for that purpose and too few pickup trucks being employed. Applicant's service, we believe would be less frequent, and at some points less convenient, than that now offered by the carriers in the field. However, protestants' fleets, though larger, are not being devoted exclusively to the service of this territory.

Applicant's proposal, it is claimed, would meet the needs of its present interstate shippers for the accommodation of their intrastate traffic. As stated, the character of the inbound movement has changed substantially, because of the discontinuance of intercoastal steamer service occasioned by the war. The consolidation of interstate and intrastate traffic in the same truck,

assertedly, would result in a saving in transportation charges and would avoid the difficulties encountered when the shipper is called upon to distinguish between the two types of traffic. Protestants contend that this is immaterial unless it be shown that the traffic cannot now be satisfactorily accommodated. They, too, conduct an interstate service between the points involved. Applicant replies that because of its familiarity with the needs of the shippers, whose traffic it long has handled, it can more adequately provide the service. This feature, we believe, is an element to be considered in arriving at our conclusion.

In view of the increased rail traffic arising from war conditions, with its heavier demands upon equipment and manpower, applicant, it is claimed, should be permitted to use its facilities to their full capacity. Protestants urge that applicant's trucks are too few in number to assist in relieving the situation. This will be considered in our disposition of the application.

The parties differ in their views regarding the extent to which the approval of applicant's proposal would tend to impair protestants' ability to continue the service they now provide. Applicant contends that traffic would be diverted from the radial and the contract carriers rather than from the protestants. At the outset, it is claimed, applicant's service would be confined principally to its interstate shippers and those who have become dissatisfied with the existing carriers. Traffic would develop gradually, as it has in the past. Assertedly, applicant, because of its smaller size, could provide a more flexible service and maintain closer personal contact with its shippers than could the protestants. Within this territory, it was shown, traffic moves in substantial volume. Protestants, on the other hand, urge that

between the carriers in the field intensive competition exists, which would be augmented by the addition of another highway common carrier. This, they say, would result in a needless and wasteful duplication of common carrier facilities, contrary to the public interest. The elements of personal contact and flexibility of service would vanish, it is claimed, when applicant attained its full stature as one of the larger carriers, assertedly its ultimate objective. From the record we may reasonably conclude that if applicant were permitted to enter this territory, it would divert a substantial volume of traffic from the existing carriers.

The parties disagree in their appraisal of the essential questions presented. Applicant contends that if a substantial part of the shipping public is not receiving adequate service from the existing carriers, it is immaterial whether other shippers are satisfied with their service. Protestants, however, urge that our inquiry should be limited to ascertaining what applicant offers in the way of common carrier service that is not already available to the shipping public. Both contentions fall short of the issue before us in proceedings of this character. Applicant's contention ignores, while that of protestants unduly emphasizes, the equities of the existing carriers. The Commission however, is called upon to decide whether, in the light of all of the circumstances shown, including the character of service provided by the carriers in the field, a public need has been established for the certification of an additional service.

To sum up: The service rendered by the protestants collectively, we believe has been shown to be adequate. In some respects the service which applicant proposes to establish is inferior to that provided by protestants. Were applicant authorized to serve the territory, it would divert a substantial volume of

traffic from the existing carriers. We have considered applicant's contentions regarding the development of its business to a point where certification assertedly is essential, the needs of interstate shippers for the transportation of intrastate traffic, and the conservation of rail equipment. In our judgment these claims, even if accepted at their face value, are not sufficient, under the circumstances, to justify the approval of applicant's proposal. It is our conclusion that public convenience and necessity warranting the issuance of the certificates sought has not been shown. Accordingly, the applications will be denied.

O R D E R

Applications having been made as above entitled, a public hearing having been had, and the Commission now being fully advised,

IT IS ORDERED as follows:

- (1) That Application No. 18873 be, and it hereby is denied.
- (2) That Application No. 24202 be, and it hereby is denied.

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

Dated at San Francisco California, this 15th day of May, 1945.

Harold B. ...
James D. ...
Richard ...
Francis ...
Wm. H. ...
COMMISSIONERS