

Decision No. 41704

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FLORENCE V. HILL as administratrix of)
the estate of GEORGE HILL, deceased)
(doing business as IMPERIAL TRUCK)
LINE) for a certificate of public)
convenience and necessity to operate)
as a highway common carrier between)
the Los Angeles Drayage Area and)
Imperial Valley points.)

Application No. 26522

WALLACE L. WARE and JAMES J. BROZ, for applicant.
E. L. H. BISSINGER, JOSEPH C. GILL and JOHN H. GORDON, for
Southern Pacific Company and Pacific Motor Trucking
Company, protestants.
GORDON & KNAPP, for Pacific Freight Lines and Pacific
Freight Lines Express, protestants.
H. J. BISHOFF, H. P. MERRY and W. A. STEIGER, for Southern
California Freight Lines and Southern California
Freight Forwarders, protestants.
EDWARD STERN, for Railway Express Agency, Incorporated,
protestant.
PEROL & HANDLER and HAROLD W. NASH, for Atlas Truck Lines,
interested party.

O P I N I O N

In this proceeding, Florence V. Hill, as administratrix
of the estate of her late husband, George Hill (who had been engaged
in business under the trade name of Imperial Truck Line), seeks a
certificate of public convenience and necessity, under Section
50-3/4, Public Utilities Act, authorizing the operation of a highway
common carrier service between the Los Angeles Drayage Area, ⁽¹⁾ on the

(1) The service to be established would extend to certain portions
of the Los Angeles Drayage Area, as established in Case No.
4121, comprising Zones 1-A, 1-B, 1-C, 1-D, 10, 12 and 17; Zone 11
would be excluded. (See Decision No. 30785 (41 C.R.C. 222),
rendered April 11, 1938, as amended.) This, in general, would
constitute applicant's western terminal area.

(2)
 one hand, and Imperial Valley points, on the other hand. The original applicant, George Hill, died May 3, 1946. Subsequently, Florence V. Hill, who had been duly appointed administratrix of Hill's estate, was substituted as the applicant, pending final distribution. The application was opposed by the carriers in the field, comprising Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company; Pacific Freight Lines and its affiliate, Pacific Freight Lines Express; Southern California Freight Lines and its affiliate, Southern California Freight Forwarders; and Railway Express Agency, Incorporated. (3) All of them appeared as protestants.

Public hearings were had before Examiner Austin at Los Angeles on February 28 and March 1, 1945, when this matter was consolidated with Application No. 26413 — a proceeding in which Edgar R. Ketchum and Dana E. Ketchum, partners, doing business as Atlas Truck Lines, sought highway common carrier operative rights between the same points as those involved herein. Both matters were dropped from the calendar, and subsequently Application No. (4) 26413 was dismissed. Further hearings were had in the instant

(2) In the Imperial Valley, applicant proposes to serve the following points, viz.: Truckhaven, Kane Springs, Westmorland, Miland, Calpatria, Wiest, Alamorio, Sandia, Holtville, Alamo, Bonds Corner, Calexico, Mt. Signal, Seeley, Heber, El Centro, Imperial and Brawley. In addition, the service would extend to all points and places within a 15-mile radius of each of the communities specified.

(3) For brevity, Southern Pacific Company will be designated as Southern Pacific; Pacific Motor Trucking Company, as Pacific Motor; Pacific Freight Lines and Pacific Freight Lines Express, collectively, as Pacific Freight; Southern California Freight Lines and Southern California Freight Forwarders, collectively, as Southern California Freight; and Railway Express Agency, Incorporated, as Railway Express. The term "applicant" shall be deemed to include both George Hill, the original applicant, and his administratrix, Florence V. Hill, unless otherwise stated.

(4) Application No. 26413 was dismissed by Decision No. 39870, rendered January 13, 1947.

(5)
proceeding before Examiner Austin at Los Angeles and El Centro,
when it was submitted on briefs, since filed.

Applicant's showing was presented by George Hill (who testified at the original hearing), by Florence V. Hill, and by her employees and representatives. Various shipper witnesses were produced both at the Los Angeles and the El Centro hearings. Through their respective operating officials, protestants described the nature of the services which they severally performed.

For many years George Hill operated as a highway contract carrier between Los Angeles and the Imperial Valley, the service having been provided since 1935 under permits issued by the Commission. (6) In addition, his operations extended northward to San Francisco, Oakland and Sacramento Valley territory. Hill also held a permit issued by the Interstate Commerce Commission, authorizing operation as a contract carrier by motor vehicle, limited to the transportation of automobile parts from Los Angeles to Imperial Valley points. For several years he has carried newspapers and newspaper supplements for both the Los Angeles Times and the Los Angeles Examiner from Los Angeles to Calexico and intermediate communities. The contractual arrangements under which the latter service has been supplied would not be disturbed, it was stated; applicant would continue to handle this traffic as a private carrier.

Applicant contemplates the establishment of an overnight service between Los Angeles and the Imperial Valley, available daily

(5) Further hearings were had in this matter at Los Angeles on April 7, 1947, at El Centro on April 9 and 10, 1947, and at Los Angeles on May 1 and on October 6, 7 and 8, 1947, when it was submitted subject to the filing of briefs by the respective parties. These briefs were received February 17, 1948.

(6) Permits authorizing operations as a highway contract carrier and also as a radial highway common carrier were issued to Hill, and subsequently, to his administratrix, Florence V. Hill.

at Brawley, El Centro and Calexico, excepting Saturdays and days preceding legal holidays. Aside from Meloland and Holtville, where a tri-weekly service would be provided, all other points would be served on-call.⁽⁷⁾

Pickup and delivery service would be provided both at Los Angeles and throughout the Imperial Valley. The equipment available to serve the Los Angeles Drayage Area, comprising some four units, would be adequate for that purpose, applicant's manager testified. Most of the shippers presently served, he stated, are situated in the City of Los Angeles, within the district bounded by Aliso Street, Santa Fe Avenue, 18th Street and Figueroa Street.

Freight picked up at Los Angeles during the day would move overnight to Imperial Valley territory, where it would be delivered on the following morning. A regular store-door delivery service would be provided daily (except Sundays and holidays) at Brawley, El Centro and Calexico. As stated, other points would be served less frequently. Smaller shipments ordinarily would be distributed by pickup trucks, based on the El Centro terminal. At times, however, whenever it would be more convenient to do so, this traffic would be delivered by the line-haul trucks, which also would handle the larger shipments. In general, the service would correspond to that which applicant currently supplies.

From the Imperial Valley to Los Angeles an overnight service would be provided, as at present. A large share of the smaller shipments of packaged-produce, it is anticipated, would be brought by the consignors to the El Centro terminal; the larger

(7) On-call service would be provided at Alamorio, Alamo, Bombay Beach, Bonds Corner, Calipatria, Date City, Dixieland, Estelle, Flowing Well, Frink, Heber, Imperial, Jasper District, Kane Springs, Keystone, Laverne, Mobile, Mullet, Mundo, Munyou, Niland, Rockwood, Sandia, Seeley, Tamarack District, Trifolium, Turn, Westmoreland, Wiest and Wister.

shipments, however, would be picked up at ranches, farms or packing sheds. To insure distribution at the most favorable prices, these shipments should reach the Los Angeles produce markets not later than 5 a.m. — a circumstance which governs the hour of departure from the Valley.

Terminals are maintained both at Los Angeles (where applicant's headquarters are located) and at El Centro, the latter having been established since the initial hearing in this matter. (8) At each of them, dock facilities have been installed to facilitate the handling of freight. Part of the El Centro terminal is occupied by tenants, who use the space for storage purposes.

A staff numbering thirty is employed, of whom four are stationed at El Centro and the remainder at Los Angeles. They comprise administrative employees, drivers and office workers.

To provide the service contemplated, applicant would use the automotive equipment presently employed in conducting her contract-carrier operations. All such equipment, comprising some twenty-six units, (9) would be available for this purpose excepting

(8) The Los Angeles terminal is located at 3758 Fruitland Avenue, Maywood; and the El Centro terminal, at 4th and Ross Streets, in that city.

(9) During 1946, applicant used in her overall operations the equipment described as follows:

- 2 Line-haul trucks;
- 6 Pickup trucks;
- 6 Tractors;
- 6 Semi-trailers;
- 6 Trailers;
- 3 Converter-gears.

The line-haul trucks, semi-trailers and trailers are from 10 to 12 tons capacity each; four pickup trucks are of 6 tons capacity each, and two, of 1½ tons. Twelve units consist of 1944 and 1946 models; the remainder range from 1930 to 1942.

two trucks required to carry newspapers under the contractual arrangement described. Some would continue to be used in the operations conducted north of Los Angeles, but if necessary these would be diverted to the Imperial Valley service. The pickup trucks would be divided between Los Angeles and El Centro; additional equipment of this type, it is anticipated, may be acquired. Since 1940 the fleet has grown substantially.

To supplement applicant's facilities, arrangements have been made for the use of other equipment. Three trucks, now assigned to the line-haul operations, have been leased from applicant's manager. Under a subhauling agreement, some seven carriers, holding highway carrier permits and owning eight trucks, have engaged in pickup service both in the Imperial Valley and in the Los Angeles Area, and also in line-haul operations between the Valley and Los Angeles, handling produce shipments largely. The revenues derived from such operations are retained by these carriers, after deducting a small percentage to compensate applicant for her services. Occasionally, other highway carriers have been similarly employed. When applicant recently augmented her fleet of equipment, the share of the total tonnage which was handled by subhaulers decreased markedly. The use of subhaulers would be continued, it was stated, should applicant's operations be certificated. It is contemplated that city carriers would be engaged to assist in providing pickup and delivery service within the Los Angeles Drayage Area. As compensation for so doing, they would receive a share of the local drayage rates, below the established minima.

Applicant's financial position was described by her auditor, who presented balance sheets and profit-and-loss statements covering the operations extending from 1940 through 1946. As of December 31,

1946, total assets of \$122,192.55 were reported, total liabilities of \$81,694.35, and a net worth of \$40,498.20.⁽¹⁰⁾ In 1945 and 1946, applicant realized net profits amounting to \$7,162.74 and \$5,508.48, respectively.⁽¹¹⁾ Because of rate increases authorized by the Commission, the total revenue for 1946 exceeded by a substantial margin that received in 1945. However, this gain was offset by higher operating costs incurred in 1946, attributable to wage increases and also to the growing proportion of less-truckload shipments carried, as compared with truck loads. About 80 per cent of the revenue, it was estimated, was derived from the Los Angeles-Imperial Valley operations, and the remainder, from the northern operations. Adequate insurance coverage, it was shown, is provided.

The rates to be established, should the application be approved, were shown in detail. With certain exceptions, they would be maintained on a parity with those observed by Pacific Freight between the points involved.

At the initial hearing, Hill testified that, before filing

(10) The value of the rolling equipment owned by applicant in 1946, after allowing for depreciation, was reported as \$74,774.25. During the same period, it appears, equipment obligations aggregating \$45,991.55 were outstanding.

(11) Profit-and-loss statements submitted for the calendar years, 1945 and 1946, may thus be summarized:

<u>Income</u>	<u>1945</u>	<u>1946</u>
Total Revenue	\$249,202.07	\$327,840.94
<u>Expenses</u>		
Total Operating Expenses	241,643.22	323,389.16
Gross Operating Profit	7,558.85	4,451.78
Other Deductions	396.11	3,260.90
Net Profit, Operating	7,162.74	1,190.88
Gain on Sale of Equipment		4,317.60
Net Profit	7,162.74	5,508.48
Salary credited to George Hill, Owner.	6,000.00	-
Taxable Income	\$13,162.74	

the present application, he had investigated the need for the proposed service. This survey, he said, was motivated by complaints emanating from both Los Angeles and Imperial Valley shippers regarding delays assertedly encountered in the service furnished, in this territory, by the carriers in the field. Subsequently, applicant's manager recounted the requests received from Los Angeles firms for the transportation of their products to the Valley. Since they had entered into no written agreements with applicant, under which the service could be performed, these requests, he stated, uniformly had been rejected.

An exhibit was submitted disclosing in detail the characteristics of the traffic handled between Los Angeles and Imperial Valley territory during 1946, as shown by applicant's records. This indicated the points served, the commodities transported and the volume of the movement. The traffic, both inbound and outbound, was widely distributed throughout the Valley. From Los Angeles, a variety of commodities was transported, but the freight originating in the Valley consisted largely of agricultural and farm products — a movement which is seasonal in character.

(12) Included among the commodities transported from Los Angeles were automobile parts, tires and batteries; bakery products; building materials (including lumber, paint and steel products); dry goods; electrical appliances (including radios and refrigerators); farm implements and machinery; insecticides; newspapers; oxygen and acetylene tanks; paper products; stationery; typewriters; and welding supplies. No drugs were handled, nor had there been any recent movement of canned goods.

(13) In addition to agricultural and farm products, applicant handled occasional shipments of empty oxygen and acetylene tanks, as well as automobile and machinery parts returned for rebuilding or reconditioning. As subhauler for another highway carrier, applicant also transported dairy products from the Valley.

(14) During the period extending from October of each year through the following July, the crops move in cycles. From July to October, there is little, if any, traffic of this character.

(15)

The tonnage carried was substantial in volume.

Applicant, it appears, has entered into written agreements with several shippers regarding the transportation of their products between the points here involved. Such agreements, her manager testified, have been negotiated with approximately forty shippers situated at Imperial Valley points, and with some fifteen, at Los Angeles. Although freight has been accepted from shippers in Los Angeles, other than those mentioned, the transportation charges, he stated, ordinarily had been paid by consignees, at Valley points, who were parties to transportation agreements. Many of these

(15) The following tabulation, based on information appearing in the report submitted covering the traffic which applicant handled during 1946 (Exhibit 28), indicates the tonnage which actually moved, viz.:

<u>Weight (Tons)</u>	<u>Revenue</u>	<u>Number of Shipments</u>			
		<u>Over 1000 lbs.</u>	<u>100 to 1000 lbs.</u>	<u>100 lbs. Truck or less Loads</u>	
<u>From Los Angeles to Imperial Valley</u>					
9,696	\$131,745.79	3,117	15,605	4,506	79
<u>From Imperial Valley to Los Angeles</u>					
6,082	\$ 55,147.22	919	1,149	523	48
<u>Total</u>					
15,778	\$186,893.01	4,036	16,754	5,029	127

This information was supplemented by tonnage and revenue figures submitted for January-August, 1947, inclusive. Comparatively, the movement was somewhat greater than during 1946.

(16)
agreements were produced.

Shipper-witnesses, engaged in business both at Los Angeles and in the Imperial Valley, were called by applicant in support of her proposal. They represented some twenty-four firms, of whom three are located in Los Angeles and the remainder, at various Valley points. (17) The Los Angeles shippers, it appears, market a variety of products. (18) Those situated in the Valley, however, distribute a more limited range of commodities, these being confined in most instances, (19) to automobile parts, and to agricultural implements and supplies.

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- (16) Written agreements were submitted by witnesses, called on behalf of applicant, who represented nineteen shippers; and the record identified fourteen additional shippers who had entered into similar agreements. Of these shippers, five were engaged in business in Los Angeles, and the remaining twenty-eight, at various Imperial Valley points. With few exceptions, these contracts are identical in form. In general, the agreement obligates the shipper to offer, and the carrier to receive and transport between designated points, shipments of specified commodities, at rates no lower than the prescribed minima. By its terms, the agreement shall remain in effect for a period of one year, subject to rescission by either party upon written notice, to the other, of thirty days.
- (17) The shippers represented by the witnesses called are distributed throughout the affected territory, as follows: Los Angeles, 3; El Centro, 11; Brawley, 3; Calexico, 2; Holtville, 2; Heber, 1; Seeley, 1; and Trifolium, 1. One Los Angeles firm maintains branch stores at El Centro and Calexico, and another, at El Centro and Brawley. A few Valley firms conduct two or more stores, situated at different points in that territory.
- (18) The Los Angeles shippers, represented at the hearing, deal in general merchandise; hardware; household furnishings and appliances; heating appliances; farm implements and equipment; automobile parts, accessories and supplies; and packaged petroleum products; as well as other commodities not specified.
- (19) Allowing for branch establishments, twelve Imperial Valley shippers are engaged in the distribution of automobile parts, equipment and supplies (6 at El Centro, 3 at Brawley, 2 at Calexico, and 1 at Holtville); eight are distributors of agricultural implements and machinery, tractors and repair parts (3 at El Centro, 2 at Brawley, 1 at Calexico, 1 at Holtville, and 1 at Heber); one, at El Centro, deals in lubricants, oils and greases; and one conducts a service station and store at Trifolium.

Without exception, these shipper-witnesses voiced their approval of the service which had been provided by applicant, as a highway contract carrier. Between Los Angeles and Imperial Valley points, it was shown, applicant had transported their shipments in substantial volume. The preponderance of the traffic moved eastbound from Los Angeles to the Valley. Upon these shipments they had, in most instances, paid the freight charges and controlled the routing. An overnight service, adequate for their needs, had been provided, they said; in all respects, it had been satisfactory. They would continue to use the service, they declared, if applicant were
(20)
certificated as a highway common carrier.

The needs of the asparagus growers were related by the manager of their association, and also by a grower located near Seeley. In recent years, the production has declined. This product, which is harvested twice yearly, is marketed largely in Los Angeles. Shipments are collected in the field and brought to the El Centro terminal, where they are consolidated into full loads. The pickup service, it was pointed out, should be completed in time to permit early arrival at the Los Angeles produce markets. Applicant's service in the past, they testified, had been satisfactory; they would continue to use it if her operations were certificated.

With respect to the quality of the service afforded by the common carriers in the field, the showing of the shipper-witnesses was quite meager. Few of the shippers represented at the hearing had

(20) A service which would satisfy their special requirements to the same degree as that supplied by applicant in the past, some of them testified, must be assured before they would undertake to use it in the future. For example, some emphasized the importance of early delivery, at their respective places of business, of shipments for which there was an urgent need. A grower testified that occasionally applicant's trucks would wait in the field as long as two hours until asparagus, consigned to the Los Angeles market, had been harvested. He expected this service to continue, if applicant were certificated.

employed applicant exclusively to transport their freight between Los Angeles and the Valley; many of them, it appears, also had used other carriers for that purpose. However, the shippers in large part failed to identify these carriers. Those mentioned by a few of them comprised protestants, Pacific Freight, Southern California Freight, Southern Pacific and Pacific Motor. Very few complaints were expressed concerning the service which had been furnished by protestants and these, for the most part, were volunteered by the witnesses. This testimony, moreover, was vague, uncertain and general in character; it was wholly lacking in essential detail.

Through their respective operating officials, protestants described the nature of the service which they severally perform. Such a showing was made on behalf of Southern Pacific, Pacific Motor, Railway Express, Southern California Freight and Pacific Freight.

Southern Pacific and Pacific Motor conduct a coordinated rail-truck service between Los Angeles and Imperial Valley. Freight collected by Pacific Motor throughout the Los Angeles Drayage Area and brought to the railroad terminal at Los Angeles, moves overnight by a fast-freight train to Niland, where the cars are incorporated in a local freight train and hauled to El Centro and Calexico. There these cars break bulk and the freight is distributed by truck to Valley points. The service is available daily excepting Saturdays, Sundays and holidays. (21) First-morning delivery is afforded. The

(21) The other protestants, so the record shows, provide a similar service.

(22)
movement is substantial in volume. Westbound traffic moves less expeditiously, third-day delivery being afforded.

Railway Express, it was shown, provides an overnight service between Los Angeles and the Valley, shipments being afforded first-morning delivery. This traffic moves in railway passenger trains.

The operations of Southern California Freight Lines extend, generally, from Los Angeles to San Diego, and from both of these cities to the Imperial Valley. Throughout this territory it provides a highway common carrier service. Over its lines, Southern California Freight Forwarders operates as an express corporation. The Los Angeles-Imperial Valley operation was acquired from Dale C. Ramsey in 1945; (23) previously, Southern California Freight Lines had reached that territory only by way of San Diego.

Between Los Angeles and Imperial Valley, Southern California Freight supplies an overnight service, affording first-morning delivery at Valley points. Pickup and delivery service is provided both at Los Angeles and in the Valley. (24)

(22) Estimates were submitted indicating the volume of less-carload freight moving during 1947 from Los Angeles to Imperial Valley points. These appear in the following tabulation:

<u>Destination Point</u>	<u>Weight of Shipments (Tons)</u>	<u>No. of Shipments</u>	<u>No. of Consignees</u>
Brawley	588.13	3,978	2,754
Calexico	1,257.42	6,120	4,896
Calipatria	80.17	612	612
Carlton	86.59	306	306
El Centro	1,315.64	6,732	5,202
Holtville	202.57	918	918
Imperial	31.36	306	306
Niland	9.79	122	122
TOTAL	4,171.67	19,094	15,116

(23) This transfer was authorized by Decision No. 38620, rendered October 2, 1945, in Application. No. 26938.

(24) Throughout the Los Angeles Drayage Area, pickup and delivery service is afforded over 65 distinct routes.

To provide the service, adequate equipment and facilities are available, it was shown. Terminals are maintained at the larger stations, including such points as Los Angeles, Colton, Indio, Brawley and El Centro.

Between Los Angeles and the Valley, this protestant has carried a substantial volume of traffic. (25) Although it actively has solicited produce growers for shipments destined to Los Angeles, these efforts have not stimulated a marked response. The preponderance of this tonnage, it appears, moves by highway contract carriers.

Pacific Freight Lines operates as a highway common carrier within the territory extending from Fresno and San Luis Obispo through Los Angeles and other Southern California points, including the Imperial Valley, to Tucson and Phoenix, Arizona. For many years, it has provided a service between Los Angeles and the Valley. Intra-state shipments are picked up and delivered, within municipalities, by Pacific Freight Lines Express, but the line-haul service is performed by Pacific Freight Lines.

Sufficient facilities and equipment, the record shows, are available to provide an adequate service. In the Valley, the principal terminals are situated at Brawley and El Centro. New units of equipment, recently received, have replaced some of those worn out during the war period; other units are on order.

(25) The tonnage moving between Los Angeles and Imperial Valley points during the period, January through March, 1947, was reported as follows:

<u>Revenue</u>	<u>Weight (Tons)</u>	<u>No. of Shipments</u>	<u>No. of Shippers</u>	<u>No. of Consignees</u>
(From Los Angeles to Imperial Valley)				
\$22,382.24	1,433.24	5,158	1,622	1,937
(From Imperial Valley to Los Angeles)				
\$ 8,400.63	921.15	1,294	374	461
(Total)				
\$30,782.87	2,354.39	6,452	1,996	2,398

Between Los Angeles and the Valley, Pacific Freight supplies an overnight service, affording first-morning delivery of traffic flowing in either direction. Freight originating at certain points near Los Angeles also moves overnight. (26) Pickup and delivery service is provided throughout the Los Angeles Drayage Area and also at Valley points. (27)

A substantial volume of freight moves between Los Angeles and the Valley; during recent years, this has fallen below the (28)

- (26) Freight picked up at Wilmington, Santa Ana, San Gabriel, Pomona and San Bernardino and handled through those stations, is brought to the Los Angeles terminal and dispatched to Valley points, thus receiving overnight delivery. Traffic moving in the reverse direction is delivered overnight at Los Angeles and in the immediately adjacent territory, but that consigned to the stations mentioned moves less expeditiously.
- (27) The Los Angeles Drayage Area, it was stated, would be served by not less than 100 pickup trucks, each operating over a distinct pickup route. In the Valley, the pickup and delivery service would be based on the terminals at El Centro and Brawley. To a small extent, this service would also be supplied through the subterminal at Calexico.
- (28) The tonnage carried by both Pacific Freight Lines and Pacific Freight Lines Express between Los Angeles and the Imperial Valley, and handled through the terminals at Brawley and El Centro, during 1946, and also during the period, January to April, inclusive, 1947, is set forth in the following tabulation:

Los Angeles to Imperial Valley

	1946		1947	
	<u>Tons</u>	<u>Revenue</u>	<u>Tons</u>	<u>Revenue</u>
Brawley	1,107.30	\$18,523.84	311.92	\$ 6,115.19
El Centro	3,795.53	68,159.34	1,314.20	25,515.12
Total	4,902.83	\$86,683.18	1,626.12	\$31,630.31

Imperial Valley to Los Angeles

	<u>Tons</u>	<u>Revenue</u>	<u>Tons</u>	<u>Revenue</u>
Brawley	664.63	\$ 4,089.22	34.77	\$ 603.65
El Centro	279.73	4,266.50	75.72	1,322.27
Total	944.36	\$ 8,355.72	110.49	\$ 1,925.92

wartime peak. The eastbound tonnage preponderates. The traffic returning from the Valley consists largely of produce, of which Pacific Freight has been able to secure only a small share, the bulk of the movement being handled by highway contract carriers.

The service provided by Pacific Freight Lines, its general manager conceded, had deteriorated in quality during the war. This was attributed to wartime regulations and shortages, as well as to the needs of war-occasioned traffic. As the result of remedial measures, vigorously undertaken, the service, he said, had in large part been restored to its former efficiency.

A service affording all consignees in a given area delivery of their shipments at an early hour (as applicant assertedly had offered to provide) would be impracticable, it was stated. To do so, the consignees must be served simultaneously. So much equipment would be required, it was pointed out, that the service could not be performed profitably.

The operating officials of both Pacific Freight and Southern California Freight expressed apprehension that the competition generated by applicant's operations, if certificated, would result in the diversion of some of the traffic they now enjoy. Pacific Freight, it was stated could ill afford to assume this burden, since the Valley service is regarded as a marginal operation.

From the standpoint of the protestants last mentioned, the increased business which applicant has attained is attributable largely to wartime conditions. During the war, protestants' operating officials testified, these carriers were required to devote their facilities to the transportation of military and other essential freight, thus necessarily disregarding their civilian shippers. The

latter, it is claimed, diverted their shipments to highway contract carriers, such as applicant. Since the termination of the war, applicant, assertedly, has been able to retain a substantial share of the traffic thus secured.

Shipper-witnesses were called on protestants' behalf, representing some fourteen firms engaged in business at Los Angeles. Most of these shippers were manufacturers or wholesale distributors, dealing in various commodities. (29) Included among them were three public utility warehousemen, occupied in the storage of goods for numerous producers and distributors. All had used the facilities of one or more of protestants, Pacific Freight, Southern California Freight, Southern Pacific and Pacific Motor for the transportation of their products. (30) from Los Angeles to the Imperial Valley. Their shipments moved in substantial volume. The service provided by these carriers, it was stated, had fully met their requirements; they had no need for any additional common carrier service between these points. Many of these witnesses stated they would prefer to use a carrier serving a wide area, rather than one whose operations were confined to a more limited territory. Since the former could accept for transportation a larger share of their shipments, the number of trucks calling at their docks would be minimized, with consequent reduction of traffic congestion.

(29) These shippers were engaged in the distribution of building materials, carbon dioxide, cattle and poultry remedies and serums, chemicals, drug supplies, dry goods and notions, electrical appliances, hardware, home furnishings, household appliances, infant food products and insecticides.

(30) Many of those storing goods in the three warehouses mentioned, it was shown, market their products throughout the Imperial Valley. To accomplish this distribution, these warehousemen dealt directly, on behalf of their storers, with the carriers serving this territory.

The claims advanced by the respective parties may be briefly stated. Applicant, on the one hand, asserts that her fitness to operate as a highway common carrier was established; that the service provided by the carriers in the field was shown to be inadequate; that the installation of a new service, as sought in the present proceeding, is desired by many shippers who are dissatisfied with the service currently afforded by protestants; and that the future economic development of the Imperial Valley rests upon the availability of good transportation service. Protestants, on the other hand, contend that the service furnished by the existing carriers was not shown to be inadequate; that applicant has not manifested her ability to provide a non-discriminatory service, of the character she should be required to supply, throughout an area so extensive as that involved here; and that the certificate sought should be denied because of alleged unlawful operations in which applicant had engaged.

Applicant's fitness to provide the service which she proposes to inaugurate, was established by the record. For many years, applicant was associated with her husband, George Hill, in the highway contract carrier operations conducted throughout the affected territory; since his death, she has carried on the business individually. The sufficiency of her financial qualifications was also shown. Moreover, there can be no doubt that good transportation service, available to the public generally, would facilitate the continued growth and development of the Imperial Valley.

The protesting carriers, it was shown, have supplied an adequate and dependable service between Los Angeles and the Valley. The nature of these operations was fully described by protestants' operating officials. Their testimony discloses that between the

points mentioned, these carriers currently provide an overnight service, affording expeditious pickup and delivery of all shipments offered for transportation. Their facilities are adequate and their employees, dependable; in this respect, there has been marked improvement since the termination of the war. This showing was corroborated by the shipper-witnesses called by protestants; the service had been satisfactory, they said.

The testimony of the shipper-witnesses whom applicant produced, we are convinced, does not prove the service afforded by protestants, or any of them, to have been inadequate. As stated, but few complaints were expressed regarding the service of these carriers, and these were vague, uncertain and lacking in detail. Most of these witnesses did not even refer to the subject. A finding of inadequacy in the existing service can not be based upon so meager a showing.

That the service afforded by the carriers in the field is insufficient to satisfy the shippers' needs appears inferentially, it is claimed, from the testimony of the shippers whom applicant called, and also from data submitted regarding the distribution of the tonnage which actually moved. These shippers, the record discloses, had long used applicant's facilities for the transportation of their products between Los Angeles and Imperial Valley territory. Moreover, applicant, during recent years, has handled a larger volume of less-carload traffic between these points than any of the protestants. These circumstances, it is urged, indicate that the service which previously had been afforded these shippers by protestants was unsatisfactory; assertedly, they would not have discarded that service had it met their needs. The quality of protestants' service, it is contended, can best be measured by the extent of public

patronage.

In our judgment, the record does not warrant such a conclusion. Possibly, a large share of any tonnage which may have been diverted from the protesting carriers was retained by applicant because of the specialized services which, the record shows, she could — and actually did — afford the shippers, while operating under permits issued by this Commission. Indeed, some shipper-witnesses indicated that their future patronage of applicant, should she be certificated as a highway common carrier, would depend substantially upon her ability to continue the performance of the services which she previously had supplied.

Applicant suggests that we consider the evidence offered at the hearing in the Dale Ramsey case (App. No. 23,211), relating to the common carrier service provided in the territory with which we are here concerned during the pre-war years of 1935 to 1939. The decision rendered in that proceeding (Dec. No. 37,695, dated February 27, 1945) indicates that the protestants herein also appeared there as protestants. The proffered evidence given in the earlier proceeding, it is claimed, reveals the inadequate service then supplied throughout this area by these protestants. This testimony, however, was not made a part of the record in the instant proceeding; under well established principles, it cannot be considered in arriving at a determination of this matter.

Upon this record, we cannot find that the territory involved has been inadequately served. Since the war, the common carriers in the field have improved their service and expanded their facilities to meet the shippers' requirements; neither collectively nor individually have they failed or neglected to respond fully to

their public obligations. During the war period their service deteriorated, but this was occasioned largely by the preference necessarily accorded military and war-generated traffic. For this condition they should not now be penalized, as applicant, in effect, suggests. In fact, a substantial share of the traffic, previously enjoyed by protestants, gravitated to applicant during this period because of protestants' inability to handle it. No showing was made indicating so marked an expansion of population or of agricultural, industrial or business activities within the Valley, as to warrant the conclusion that the existing carriers no longer could accommodate the shippers' needs. That one, at least, of the protestants regards the Valley operation as marginal, is not sufficient reason for the approval of applicant's proposal; rather, it would justify our refusal to sanction still further dilution of the traffic now available. Under the circumstances, a new certificated carrier is not necessary to adequately serve this field.

In view of the conclusions announced, we believe it unnecessary to discuss protestants' contentions that the certificate sought should be withheld because of applicant's asserted inability to provide a non-discriminatory service throughout this territory, and also because of applicant's alleged unlawful operations.

The application, accordingly, will be denied.

O R D E R

Application as above entitled having been filed, a public hearing having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity do not require the operation of the service, as a highway common carrier, which applicant proposes to establish:

IT IS ORDERED that Application No. 26522 be, and it hereby is, denied.

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

Dated at San Francisco, California, this 8th day of June, 1948.

R. B. Anderson
Justus F. Galloway
August Lawrence
Harold T. Kild
Kenneth T. Tetter
COMMISSIONERS