

ORIGINAL

Decision No. 42353

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
GEORGE KELLER for a certificate of
public convenience and necessity to
operate an automotive service as a
highway common carrier for the trans-
portation of property: (A) Between
San Francisco, Oakland, and Emeryville,
on the one hand, and points between
Sausalito and Santa Rosa, both inclu-
sive, on the other hand; (B) between
Sausalito and Santa Rosa and inter-
mediate points, inclusive of Sausalito
and Santa Rosa; and (C) serving Mill
Valley as an off-route point in con-
nection with (A) and (B).

Application No. 27545

Berol & Handler, for George Keller, applicant.
Douglas Brookman, for Merchants Express Corporation, Marin
Sonoma Fast Freight and Sonoma Express Co., protestants.
Reginald L. Vaughan and John G. Lyons, for Kellogg Express and
Draying Co., protestant..
William Meinhold, for Northwestern Pacific Railroad Company,
Petaluma-Santa Rosa Railroad Company and Pacific Motor
Trucking Company, protestants.
William Meinhold and C. W. Lehmann, for Railway Express Agency,
Inc., protestant.

O P I N I O N

By his application as amended, George Keller, doing
business under the trade name of Santa Rosa Purchasing Agency,
seeks a certificate of public convenience and necessity, under
Section 50-3/4 of the Public Utilities Act, authorizing the opera-
tion of a highway common carrier service between San Francisco,
Oakland and Emeryville, on the one hand, and points between
Sausalito and Santa Rosa, both inclusive, on the other hand;
between Sausalito and Santa Rosa, inclusive, and intermediate
points; and serving Mill Valley, in both instances, as an off-route

(1) point. The service would be restricted to the transportation of automotive parts, equipment, materials and supplies.⁽²⁾

Following a public hearing, had before Examiner Austin at San Francisco, Santa Rosa, Petaluma and San Rafael, the matter was submitted on briefs, since filed.⁽³⁾ The common carriers now serving this territory, both rail and truck, opposed the granting of the application and appeared as protestants.⁽⁴⁾

Applicant's showing was presented by applicant Keller himself, by his general manager, and by shipper-witnesses engaged in business at various points within the territory affected.

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- (1) Applicant stipulated that under any certificate granted in this matter the pickup and delivery limits of any community he was authorized to serve would not be extended to include any other community, whether incorporated or unincorporated, which he did not originally seek to serve. This stipulation applied to Oakland, Emeryville, Santa Rosa, Petaluma and points in Marin County.
 - (2) Under applicant's proposal, certain commodities would be transported only". . . when point of origin or destination is a service station, garage or dealer in automotive parts, equipment, materials, or supplies." Other commodities would be handled for any consignor or consignee. For convenience, the commodities which applicant proposes to transport will be referred to as automotive supplies.
 - (3) Public hearings were held at San Francisco on May 12, 13 and 14; at Santa Rosa, on August 18 and 19; at Petaluma, on August 20; at San Rafael, on August 21 and 22; and at San Francisco, on November 3, 5 and 6, 1947. Subsequently, briefs were filed by the respective parties, applicant's closing brief having been received April 8, 1948.
 - (4) Appearances as protestants were entered by the carriers in the field, comprising Northwestern Pacific Railroad Company, Petaluma-Santa Rosa Railroad Company, Pacific Motor Trucking Company, Railway Express Agency, Inc., Merchants Express Corporation (as successor to and substituted for Marin-Sonoma Fast Freight and Sonoma Express Co.), and Kellogg Express and Draying Co. For brevity, they will be referred to respectively, as Northwestern Pacific, Petaluma-Santa Rosa, Pacific Motor, Railway Express, Merchants and Kellogg.

Through their respective operating officials and representatives, protestants described the service which they severally have provided between the points involved. However, they called no shipper-witnesses.

The contentions of the parties may be briefly stated. Applicant asserts that the shippers have shown a need for the establishment of an expeditious, specialized service for the transportation of automotive supplies between the points involved; that the service supplied by the common carriers in that field is inadequate to satisfy the shippers' requirements; and the protestants' service would suffer no impairment through the authorization of the service which applicant seeks to establish. Protestants dispute these contentions and, in addition, maintain that their service is superior to that proposed by applicant; that applicant's proposal is impracticable; and that the service currently supplied by applicant as a highway contract carrier is sufficient to satisfy the requirements of the shippers whom he serves.

The following issues are thus presented for determination, viz.:

- (1) Is the proposed service practicable?
- (2) Did the shipper witnesses show any need for the proposed service?
- (3) Do the protestants, respectively, provide a service adequate to meet the needs of shippers of automotive supplies between the points involved?

(4) Would protestants' ability severally to provide an adequate service be impaired by the approval of the present application?

(5) May applicant, as a highway contract carrier, continue to meet the shippers' requirements for the transportation of automotive supplies within the affected territory?

These questions will be considered in appropriate order. Preliminarily, however, we shall describe applicant's present operations, his qualifications, and the nature of his proposal, as disclosed by the testimony of applicant himself and that of his general manager.

Since 1925, applicant has continuously conducted a trucking service between San Francisco and Oakland, on the one hand, and Santa Rosa and intermediate points, on the other; the service having been provided, since 1935, under a highway contract carrier permit issued by the Commission. With minor exceptions the operation has been confined to the transportation of automotive parts, equipment, materials, and supplies, for a limited number of shippers.

The operation is conducted on a modest scale. To provide the line-haul service, a single 2-ton Dodge truck is used, having a carrying capacity of six tons. Service is afforded daily, except Sundays and holidays. At San Francisco applicant uses the terminal, located on Fulton Street, operated by his brother, Tom Keller, who controls Stockton Motor Express, a highway common carrier engaged in the transportation of automotive supplies between San Francisco, Stockton, Lodi and intermediate points. Stockton Motor Express provides the pickup service for applicant both in San Francisco and

in the East Bay.

Under applicant's proposal, the operation would be expanded. At the outset, two daily schedules would be offered, requiring two trucks⁽⁵⁾ to supply the line-haul service. Applicant would perform the pickup service at Oakland and Emeryville; at San Francisco, this service would be provided by Stockton Motor Express. Applicant would continue to use the latter's terminal at San Francisco.

The proposed time schedule contemplates delivery of shipments at Marin and Sonoma County destinations on the same day they would be picked up in San Francisco or East Bay. Both line-haul trucks would leave San Francisco at 1 P.M. One truck would provide local service to points south of Petaluma, such as San Rafael, arriving at Petaluma at 3:30 P.M.; the other truck, serving only Petaluma and Santa Rosa and intermediate points, would reach Petaluma at 2:00 P.M., and Santa Rosa at 3:15 P.M. Pickup service would be provided during the morning at San Francisco, Oakland and Emeryville. Traffic moving southbound would be afforded overnight delivery service.

Applicant would continue to provide, as he has in the past, a purchasing service which could be used by dealers in automotive supplies situated at Marin and Sonoma County points. Both the telephone and the teletype facilities maintained by Stockton Motor Express at its San Francisco terminal would be available to applicant for this purpose. Under this arrangement, these dealers could telephone or teletype their requirements to applicant who, in turn, would transmit their orders to suppliers in San Francisco or East Bay, where the merchandise subsequently would be picked up. If necessary, an order would be relayed to several distributors

(5) Applicant plans to purchase an additional truck, similar to that now used. These two units, it was stated, would be sufficient initially to permit the establishment of an adequate service.

successively, until the article desired could be obtained. Thus, purchase orders could be filled on morning calls, and delivery of the merchandise accomplished, on the same day the order was placed with the supplier. Moreover, dealers would be relieved from the burden of shopping around by long-distance telephone.

The rates to be established would be the same as those applicable, under Highway Carriers' Tariff No. 2, to the commodities which applicant proposes to transport. Generally, the rules and regulations would follow those prescribed by that tariff. No rates would be provided for shipments weighing in excess of 10,000 pounds each, since it is not anticipated, in view of the nature of the traffic, that any heavier shipment would ever be offered. The rates proposed are the same as those which applicant currently charges, excepting those covering the purchasing service; these would be increased above their present level.⁽⁶⁾

In the past, it was shown, applicant's operations as a highway contract carrier have been conducted profitably. For 1946, the net profit realized was \$6,167.74;⁽⁷⁾ and during the first quarter

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- (6) At present, applicant observes a minimum charge of 2 cents per purchase order. Since this rate was established, some ten years ago, costs have increased and the volume of traffic has diminished. Consequently, applicant proposes to publish, for this service, a charge of 10 cents per purchase order.
- (7) The revenues derived from this operation during 1946, and the expenses incurred, were reported as follows:

	(a)	(b)
Operating Revenue	\$16,714.19	\$13,638.88
Expenses	7,931.04	7,471.14
Operating Net Income	\$ 8,783.15	\$ 6,167.74

Column (a) reflects income derived from the transportation of automotive supplies and other commodities, together with the expense properly chargeable to this service. Column (b) includes only revenues and expenses attributable to the transportation of automotive supplies.

of 1947, this amounted to \$2,840.88. In addition to the profits stated, no salary or wages were credited to applicant, nor claimed or received by him, for any services which he may have performed individually.

Because of applicant's illness, he has been advised by his physician to avoid arduous work. For many years, applicant has driven the truck used in this operation to provide both the line-haul and, in part, the pickup service; also, he has performed some of the office work. He now finds it necessary to curtail these activities.

Within its present limited scope, the business, as now conducted, yields sufficient profits to support applicant financially. This would not be true, however, if he undertook to employ another person to drive the truck in his stead. ⁽⁸⁾ Any increase in revenue sufficient to warrant the employment of a driver must necessarily flow from an expansion of the business. Applicant is apprehensive that any such enlargement of his highway contract carrier operation might well occasion doubts concerning its legality.

The certification of this service, it is anticipated, would result in substantially increased revenues. Drivers could then be employed to operate the two trucks used for the line-haul, but applicant would continue to drive one of these trucks when

- (8) The report of revenues and expenses for 1946 attributable to the transportation of automotive supplies, submitted by applicant, includes, in addition to the expenditures actually made, an estimate of the expense which would be incurred for hiring a truck driver. This information is summarized below:

Revenues		\$13,638.88
Expenses		
Pickup and delivery	\$2,142.00	
Miscellaneous	1,997.14	
Driver expense	2,838.00	
Other items	<u>3,332.00</u>	
Total		\$10,309.14
Operating Net Income		\$3,329.74

engaged in the pickup service.

This brings us to the first question presented for consideration, viz., whether the contemplated operation would be practicable.

Practicability of Proposed Operation

Protestants contend that the operation which applicant proposes to conduct is inherently impracticable. It was shown to be such, they assert, by the testimony of experienced truck operators and drivers. In reply, applicant maintains that both past experience and actual tests have proved the operation to be feasible. The evidence dealt with the pickup service at Oakland, Emeryville and San Francisco, and with the delivery service at Marin and Sonoma County points.

The East Bay operation was described by applicant's general manager, E. E. Rowley, who was familiar with the service supplied both by applicant and by Stockton Motor Express. The pickup truck, he stated, ordinarily left the San Francisco terminal at 8:30 A.M. and returned by noon, in the meantime covering the territory extending from the San Leandro city boundary to Emeryville.⁽⁹⁾

A single truck, protestants maintain, could not, within the time allotted for that purpose, handle the traffic which might be

(9) Rowley testified that the pickup truck, after leaving the San Francisco terminal on Fulton Street, at 8:30 A.M., would travel directly to the plant of General Motors Parts Division, on East 14th Street near the San Leandro city boundary, which it would reach by 9:15 A.M. Leaving that point about 10:30 A.M., the truck would head back to Oakland, generally stopping at a supply house situated at East 8th Street and 6th Avenue, and then calling at several supply houses located near Broadway and 22nd Street. Plants situated at 40th and Hollis Streets, in Emeryville, and at 20th and Peralta Streets, in Oakland, would next be served. Then the truck would return over the bridge to San Francisco, consistently reaching the terminal by noon.

offered throughout so extensive an area. Many dealers in automotive supplies situated in Oakland and Emeryville, they assert, would be potential shippers over applicant's line if he were certificated as a common carrier and thus required to serve the public generally, he being no longer free to select his customers. Rowley testified that over a period of some 15 years, shipments rarely had been received from dealers of this character. The automotive supply houses in this territory regularly offering shipments, he stated, did not exceed fifteen in number.

A test run, Rowley testified, had demonstrated the feasibility of this operation. On this occasion no shipments were actually handled but sufficient time was allowed, he stated, to have picked up the freight normally offered by the shippers whom he visited. This trip, he said, was completed within the time contemplated by the proposed schedule.

The difficulties and delays experienced in collecting shipments of automotive supplies at San Francisco were detailed by operating officials and employees called by certain protestants. This traffic originates in the Van Ness Avenue district, and also south of Market Street. The time usually required to complete a single pickup, it was stated, would range from five to thirty minutes, depending upon the nature of the commodity offered and the accessibility of the consignor's shipping facilities. To handle heavy goods, such as motors, the driver frequently is obliged to call upon the shipper's employees for assistance.

The superintendent of Stockton Motor Express described the pickup service performed by that carrier in San Francisco, both for its own shippers and also for those of the applicant. To provide the

service, two trucks ordinarily are used, an additional truck being available for overflow tonnage. This equipment, he said, had proved adequate to accommodate the traffic offered; with these facilities, the pickup service uniformly had been completed by noon.⁽¹⁰⁾

Rowley described the delivery service currently provided by applicant in conducting his Marin-Sonoma County operations. The line-haul truck, after having been route-loaded to facilitate the distribution of freight, leaves the San Francisco terminal not later than 1:30 P.M., reaching Santa Rosa about 4:00 P.M., and returning to San Francisco by 6:00 P.M.⁽¹¹⁾ Northbound, about 35 deliveries are made daily;⁽¹²⁾ this figure, it is estimated, would be doubled if applicant were certificated. However, another truck would be available to handle the traffic. The southbound movement, it was stated, is quite light. The same witness described the service which applicant plans to establish within this territory. He expressed the opinion, based on his past experience, that the proposed time-schedule could be observed, allowing a slight margin for delays which might be encountered. In support of this claim, the results

(10) An exhibit was submitted disclosing the time required by this carrier to complete the pickup service on a designated morning. On this occasion, 24 stops were made, and 13 shipments picked up, within a period of two hours and 20 minutes. These stops, it appears, consumed from one to five minutes each.

(11) At present, Rowley testified, applicant completes the trip from San Francisco to Santa Rosa, including the time consumed in delivering freight to the consignees, in 2- $\frac{1}{2}$ hours. As shown by the proposed time-schedule the distance from San Francisco to Petaluma is 33 miles, and to Santa Rosa, 49 miles.

(12) On the average, Rowley testified, fifty shipments are handled daily, moving northbound from San Francisco to Santa Rosa and intermediate points. Since only 35 consignees are served daily, several of them receive more than a single shipment.

observed during the course of a test-run were submitted.⁽¹³⁾ Some
of these estimates were challenged as being unrealistic.⁽¹⁴⁾

Experienced operating employees of protestants, familiar with the delivery service furnished by those carriers within this territory, voiced their disagreement with the estimates submitted by applicant's general manager regarding the time within which this service could be accomplished. A substantially longer period, they said, would be required for that purpose.⁽¹⁵⁾ They described the delivery service afforded by protestants, respectively, at San Rafael pointing out the widespread distribution of automotive supply houses and garages, the delays occasioned by traffic congestion, and the difficulty of finding convenient parking space for their trucks. A check of applicant's operations between San Francisco and Santa Rosa, made by one of protestant's operating officials, disclosed that the time required to consummate the delivery of shipments somewhat exceeded Rowley's estimates.⁽¹⁶⁾ But the overall time compared favorably with that indicated in applicant's proposed time schedules.

(13) Rowley testified that on this occasion the time required for delivering automotive parts, in both San Rafael and Petaluma, averaged about two minutes per stop.

(14) For example, Rowley testified that five deliveries could be completed at Mill Valley, within the space of two minutes; ten to fifteen, at San Rafael, within fifteen minutes; and thirty, at Santa Rosa, within ninety minutes. The ten-mile distance from Novato to Petaluma, he said, could be covered in fifteen minutes. The delivery of heavy shipments such as motors, he stated, could be completed in as short a time as two minutes. Protestants assert that such operations would be impracticable — a claim which applicant denies.

(15) They stated that the time required to complete delivery of a shipment of automotive parts would average five minutes. The estimates offered ranged from a minimum of three minutes to a maximum of ten minutes. Such a shipment, it was said, would vary in weight from 75 to 500 pounds, averaging from 100 to 150 pounds.

(16) At San Rafael, it appears from this witness' testimony, each stop for delivery consumed, on the average, a period of 3.83 minutes; at Petaluma (including one stop to pick up freight), the average time was 6 minutes; and at Santa Rosa, it was 7.8 minutes.

We conclude that an operation such as that which applicant plans initially to establish, serving only a small group of shippers, and supplied through the facilities which applicant proposes to use, would be feasible. However, any substantial enlargement of this group or of the volume of tonnage which may be offered, as might well be true if applicant should assume the obligations of a common carrier, would overtax these facilities to the point where they no longer would suffice to afford an adequate service. To provide such a service under these circumstances, additional equipment would be required. In so finding, we do not accept all the conclusions voiced by applicant's general manager, some of which, in our judgment, appear to be extravagant.

Showing of Need for Service by Shippers and Public Bodies.

During the course of the hearing a total of fifty-four shipper and other public witnesses were called on behalf of the applicant. They represented various firms engaged in business throughout the territory involved, as well as chambers of commerce and other business associations.⁽¹⁷⁾

All these shippers, it was shown, dealt in automotive supplies of various kinds. Those located in the Bay area comprised general automobile agencies and wholesale distributors of these commodities. Those situated in the Marin-Sonoma territory included automobile dealers, parts distributors and garages. Many of the major distributors and dealers of both regions were represented.

(17) The witness produced appeared as spokesmen for shippers distributed as follows, viz.: San Francisco, 17; Oakland, 1; Mill Valley, 1; San Rafael, 12; Novato, 1; Petaluma, 9; and Santa Rosa, 8; or a total of 49. In addition, applicant called representatives of the Chambers of Commerce at San Rafael, Petaluma and Santa Rosa; of the Junior Chamber of Commerce, at San Rafael; and of the Automotive Association, at Santa Rosa. The parties stipulated that three additional shippers would, if called, testify similarly to those who were produced; of these, two were located in Mill Valley, and one, at Santa Rosa.

To supplement their own stocks of automotive supplies, the Marin-Sonoma dealers draw upon the Bay-area distributors, it appears. Because of the infinite variety of these commodities, the local dealers have found it impracticable to maintain supplies sufficient to satisfy all of their requirements. Too heavy an investment would be required for this purpose. The San Francisco-Oakland suppliers maintain large and diversified stocks, adequate to meet these demands.

There is a substantial movement of these commodities, it was shown, from suppliers in the San Francisco-Oakland area to Marin-Sonoma dealers. This traffic has increased in volume — a circumstance attributed to the growing number of new cars marketed, and to the intensified requirements of the older cars for repairs. The southbound movement, consisting largely of automotive parts returned for needed repairs, is rather light.

Frequently, it appears, the local dealers call upon San Francisco-Oakland suppliers for articles not carried in stock. These are required to repair their customers' cars or trucks, which generally are laid up awaiting the arrival of the necessary parts. Because of pressure exerted by the latter for the prompt release of their equipment, the need for expeditious transportation of these items is ever present. This demand is accentuated by the existing nationwide shortage of auto parts, which operates effectively to curtail the supply available.

The shipper witnesses uniformly testified they required, and would use, a service affording same-day delivery, i.e. a city pickup during the morning and delivery that afternoon at Marin-Sonoma points. Some also said they would use a service providing

first-morning delivery of shipments collected during the preceding afternoon. An emergency requiring the immediate procurement of some automotive part not carried in the local dealer's stock, they stated, might arise at any hour; obviously, it could not be anticipated through any schedule which the carrier might establish.

Officials of chambers of commerce and other business associations described the recent industrial development of the Marin-Sonoma communities, and the substantial increases in their population which have occurred. They also submitted resolutions, adopted by the governing bodies of these organizations, requesting favorable consideration of the instant application.

It is clear from the record, and we accordingly find, that there is a public need for an expeditious service for the transportation of automotive supplies between the San Francisco-Oakland area and the Marin-Sonoma territory. Preferably, this should afford same-day delivery for tonnage moving northbound, supplemented by an adequate overnight service. The traffic is of such a character that expeditious handling is required in order properly to meet the shippers' reasonable demands.

Adequacy of Service Provided by Protestant Carriers

The nature of the service supplied by the protestants was described by their operating officials. Such a showing was offered on behalf of Northwestern Pacific, Petaluma-Santa Rosa, Pacific Motor, Merchants and Kellogg.

We shall refer first to the service provided by the rail lines and by Pacific Motor. The pickup service is performed for Pacific Motor by Walkup Drayage Company, at San Francisco, and by

Merchants, at Oakland and Emeryville; these carriers devote to this purpose such equipment as may be necessary to accommodate the traffic offered. Freight originating in the East Bay is loaded into merchandise cars which are barged across San Francisco Bay to Tiburon and hauled by rail to San Rafael, Petaluma and Santa Rosa, respectively. Shipments destined to Sausalito, Mill Valley, Hamilton Field, Ignacio and Novato are handled in the San Rafael car; those consigned to Penngrove and Cotati move in the Petaluma car. From San Francisco, freight destined to San Rafael and Marin County points south of that city is handled by Pacific Motor over the Golden Gate Bridge. Freight consigned to points north of San Rafael moves via the Steamer Petaluma from San Francisco to Petaluma; beyond that point, it moves by rail freight cars to Santa Rosa. The delivery service is performed by Pacific Motor, the freight being distributed from San Rafael, Petaluma and Santa Rosa.

Between San Francisco, East Bay and Marin-Sonoma points, it was stated, an overnight service is provided, available daily excepting Saturdays, Sundays and holidays.⁽¹⁸⁾ Operating officials testified that deliveries at these points are completed by noon or shortly afterward.

From San Francisco, Merchant supplies both same-day and overnight service to Marin-Sonoma points; from Oakland, the service is overnight. Freight picked up in San Francisco by 11:30 A.M. is delivered that afternoon by 4:30 P.M., it was stated; freight collected both in San Francisco, during the afternoon, and in Oakland, throughout the day, is delivered on the following day

(18) Such a service, so the record shows, is provided by all of the protestants between the points, here involved, which they respectively serve. However, at Penngrove and Cotati, Pacific Motor supplies only a tri-weekly service. Freight consigned to these points over its lines is distributed from Petaluma.

by noon. The preponderance of the traffic moves under the overnight schedules, the major portion being picked up during the afternoon. Adequate facilities, including both terminals and equipment, are available to provide the service; in this operation, the equipment used aggregates some 43 units.

Kellogg provides a service from San Francisco, Oakland and Emeryville to Marin County points, including Sausalito, Mill Valley, San Rafael and Hamilton Field. From San Francisco, both same-day and overnight service are offered; from East Bay, overnight service only is afforded. Shipments picked up in San Francisco by noon are delivered that afternoon before 5 P.M. at Marin County points, it was stated; those collected during the afternoon before 5 P.M., in San Francisco, and throughout the day, in Oakland and Emeryville, are delivered before noon on the following day. Most of the traffic is picked up during the afternoon. This carrier, it was said, has sufficient facilities to transport the traffic offered.

The freight carried by these protestants between San Francisco, East-Bay and Marin-Sonoma points has been substantial in volume, it was shown. Although these carriers are engaged essentially in the transportation of general commodities, an important share of the traffic consists of automotive supplies.

Applicant contends that the service afforded by the protestants, respectively, has been inadequate to meet the shippers' requirements. Protestants reject this claim, contending, on the contrary, that the service which they severally provide not only is adequate but that it is superior to that which applicant proposes to establish.

We shall consider the testimony of the shipper-witnesses concerning the nature of the service actually furnished by the carriers in the field. Most of them testified they had used the services of one or more of these carriers for the transportation of automotive supplies between the affected points. A few of them had not done so, but they were distinctly in the minority.

Representatives of the San Francisco-Oakland suppliers, some eighteen in number, dealt with the service afforded by the existing carriers. Some were not familiar with such operations, having used the facilities of applicant exclusively. A few expressed their satisfaction with the service provided by one or more of these carriers. About half of them complained of delays on the part of these carriers, particularly Merchants and Pacific Motor, in responding to requests for pickup service. Many of these complaints were general in character. These delays, some testified, ranged from two to four days.

The shippers engaged in business at Marin-Sonoma points also described the character of the existing service. Of the thirty-one dealers represented at the hearing, all had used the facilities of one or more of these carriers. A very small fraction could find no fault with the service afforded. Most of them, however, complained of delays in transit which they had experienced, ranging generally from two to four days, and in some instances consuming an entire week. Some, but by no means the majority, of these delays had occurred over weekends or holidays. A few witnesses referred to shipments held at destination terminals for periods of from two to four days, and even longer.

Because of these delays, it was stated, both suppliers

and dealers had suffered inconvenience and expense. Completion of repair jobs was postponed while awaiting receipt of needed parts, often resulting in complaints from customers. Frequently, the shipper found it necessary to use his own truck to deliver or obtain the required parts, at substantial additional cost to himself.

Many suppliers and dealers, it was shown, have used the express service of Pacific Greyhound Lines to facilitate the delivery of their shipments. Although this carrier affords same-day delivery, it imposes limitations both as to weight and size so that practically the service is available for small items only. Since no pickup or delivery service is furnished, both consignors and consignees must call at its terminals to deliver or receive their shipments. Usually, at San Francisco or Oakland, a messenger service is employed for that purpose, for which an additional charge is levied.

All the shipper witnesses testified they would use applicant's proposed service if it were available. Such a service, they said, would accelerate the transportation of needed automotive supplies, thus enabling them more expeditiously to complete repair jobs under way and to furnish parts required by their customers. Several shippers, it was shown, had availed themselves of applicant's service as a highway contract carrier, this being true especially of the San Francisco-Oakland suppliers. However, a majority of the Marin-Sonoma dealers had not done so.⁽¹⁹⁾ Several stated that applicant had rejected their requests for service. Many said they would find the purchasing service advantageous; others, particularly those

(19) Of the San Francisco-Oakland suppliers, 17 had used applicant's service as a highway contract carrier, and one had not done so. Not exceeding eight of the Marin-Sonoma dealers had used applicant's service.

situated in the Bay area, would not use it. Some testified they would employ any carrier furnishing a satisfactory, same-day delivery service for their shipments of automotive supplies.

Careful consideration of the record impels the conclusion, and we accordingly find, that the service afforded these shippers by the carriers in the field, respectively, has not been adequate to meet their reasonable requirements.

Detriment Suffered by Protestants

Protestants assert that the certification of applicant's operations would be detrimental to them because of the traffic which would be diverted from their lines. Kellogg estimated its probable loss at \$40 per day, or \$10,000 annually. Applicant seeks to minimize the injury which protestants would suffer, but he is in agreement with them that the movement of automotive supplies is substantial and that it probably will increase in volume.

Upon this record, no definite conclusion can be reached concerning the extent of the damage which protestants might sustain. At best, it would be mere surmise. The evidence does not indicate whether the service provided by protestants, respectively, would be impaired to any substantial degree. However, they may well expect to lose part of this traffic should applicant enter the field as a highway common carrier, thus intensifying the competition which he has offered in the past. This would seem clear from the testimony of the shipper-witnesses regarding their contemplated use of applicant's facilities.

Continuation of Present Contract Carrier Service

Protestants urge that applicant could fully accommodate

his patrons by continuing to operate as a highway contract carrier. He offers a specialized service, it is said, designed to meet their requirements. For example, they point to the purchasing service which he has long supplied.

Applicant contends, on the other hand, that he could not undertake to enlarge the scope of his operations without inviting complaints concerning their legality. Were he to double the number of his customers as might well be true according to the record such a challenge, he apprehends, inevitably would be presented.

Applicant, we believe, stands on safer ground than the protestants. It would seem clear that he could not undertake to enlarge his operation to the extent contemplated without running the risk of prosecution. Many shippers who plan to use his service, it was shown, are not now doing so. With such an increase in numbers, even specialization in the services offered might not save the operation from condemnation as unlawful.

The record, we believe, establishes the existence of a public need for a service under which automotive supplies may be transported expeditiously between the Bay cities and the Marin-Sonoma communities. This clearly appears from the testimony of the shipper witnesses whom applicant produced, including both the city suppliers and the dealers and distributors situated in the Marin-Sonoma territory. The evidence is convincing that the carriers in the field have not adequately met these requirements. It is true that they offer both an overnight and a same-day delivery, but their offer of service, it was shown, has not been matched by actual performance. The record is replete with testimony disclosing delayed pickup service, delays encountered in transit, and delays occurring

in the delivery of shipments. To meet this showing, protestants called no shipper-witnesses to describe the character of service which actually had been accorded. Applicant, it appears, has offered to supply the expeditious service which the shippers demand and require, and is qualified to do so. Although the existing carriers may experience some loss of traffic, should applicant be permitted to enter the field, this is out-weighed by the need for an adequate service sufficient to meet the shippers' requirements. Accordingly, the application will be granted.

Applicant is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

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 so require:

IT IS ORDERED, as follows:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to George Keller authorizing the establishment and operation of a service as a highway common carrier, as

defined by Section 2-3/4, Public Utilities Act, between San Francisco, Oakland and Emeryville, on the one hand, and points between Sausalito and Santa Rosa, both inclusive, on the other hand; between Sausalito and Santa Rosa, inclusive, and intermediate points; and serving Mill Valley, in both instances, as an off-route point. Said certificate is limited to the transportation of automotive parts, equipment, materials and supplies, as more specifically described and defined in the amended application filed herein.

Said certificate is granted subject to the following restriction, viz.:

The pickup and delivery limits of any municipality or community, which applicant is hereby authorized to serve, shall not be extended so as to include any other municipality or community which applicant, by his application originally filed herein, did not expressly seek authority to serve.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
2. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective, appropriate tariffs and time tables.
3. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

(a) Between San Francisco and Santa Rosa,

via U. S. Highway No. 101 and Golden Gate Bridge, using both the Waldo approach and the Sausalito lateral; diverging to Mill Valley via unnumbered highway.

- (b) Between San Francisco, Oakland and Emeryville, via San Francisco-Oakland Bay Bridge and any and all available streets and highways.

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

Dated at San Francisco, California, this 21st day of December, 1948.

R. E. Dwyer
Justus J. Gaeuer
Leslie H. Farrell
Harold F. Kula
Wm. H. Dutton
COMMISSIONERS