

ORIGINAL

Decision No. 42080

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
M. L. MORRIS, doing business as M & )  
W TRUCK LINE, for a certificate of )  
public convenience and necessity )  
authorizing him to conduct operations )  
as a highway common carrier (a) be- )  
tween San Francisco, Oakland, Alameda, )  
Albany, Berkeley, Emeryville, San )  
Leandro, Richmond and Hayward, on the )  
one hand, and Stockton, Lodi, Sacra- )  
mento and North Sacramento, on the )  
other, and (b) between Stockton and )  
North Sacramento, serving Lodi and )  
Sacramento as intermediate points. )

Application No. 27140

Reginald L. Vaughan, Varnum Paul and John G. Lyons,  
for applicant.  
William Meinhold, for Southern Pacific Company and  
Pacific Motor Trucking Company, protestants.  
Louis M. Welsh, for The Atchison, Topeka and Santa  
Fe Railway Company, protestant.  
John S. Hennessy and John L. Amos, Jr., for Western  
Pacific Railroad Company and Sacramento  
Northern Railway, protestants.  
H. W. Mitchell, for Railway Express Agency, Inc.,  
protestant.  
R. Edward Burton, for Valley Express Company and  
Valley Motor Lines, Inc., protestants.  
Frederick W. Mielke, for Delta Lines, Inc., pro-  
testant.  
J. F. Anderson, for The River Lines, protestant.  
Berol C. Handler, by Marvin Handler, for M. A. Gilardy,  
doing business as G. & E. Freight Lines,  
Stockton Motor Express and Bekins Van Lines,  
Inc., protestants.  
Charles L. Dickman, for Dickman Overnight Car Service,  
protestant.  
James E. Harris, for Sacramento Chamber of Commerce,  
protestant.

O P I N I O N

In this proceeding, M. L. Morris, an individual engaged  
in business under the trade-name of M & W Truck Line, seeks a  
certificate of public convenience and necessity authorizing the  
establishment of a highway common carrier service (a) between San

Francisco, Oakland, Alameda, San Leandro, Hayward, Emeryville, Berkeley, Albany and Richmond, on the one hand, and Stockton, Lodi, Sacramento and North Sacramento, on the other hand; and (b) between Stockton and North Sacramento, serving Lodi and Sacramento as intermediate points. General commodities would be transported. The application was opposed by the common carriers in the field, who appeared as protestants.<sup>(1)</sup> Public hearings were had before Examiners Austin and Gregory at San Francisco, Oakland, Sacramento and Stockton, following which the matter was submitted on briefs,<sup>(2)</sup> since filed.

Applicant's proposal was described by applicant himself, by an accountant, and by a traffic expert. Their testimony dealt with the nature of applicant's present operations, and the service which would be established. Public witnesses, representing

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- (1) The common carriers now serving the territory appeared as protestants. They comprise Southern Pacific Company, Pacific Motor Trucking Company, The Atchison, Topeka & Santa Fe Railway Company, Western Pacific Railroad Company, Sacramento Northern Railway, Railway Express Agency, Inc., Valley Express Company, Valley Motor Lines, Inc., Delta Lines, Inc., The River Lines, M. A. Gilardy, doing business as G. & H. Freight Lines, Stockton Motor Express, Bekins Van Lines, Inc. and Charles L. Dickman, doing business as Dickman Overnight Car Service. Sacramento Chamber of Commerce also appeared as a protestant. For brevity, the protesting carriers will be referred to, respectively, as Southern Pacific, Pacific Motor, Santa Fe, Western Pacific, Sacramento Northern, Railway Express, Valley (including Valley Express Company and Valley Motor Lines, Inc., collectively), Delta, G. & H., Stockton Motor, Bekins and Dickman.
- (2) Public hearings were held before Examiner Austin at San Francisco, on August 11, 1947; at Stockton, on October 1, 2 and 3, 1947; at Sacramento, on December 2, 3 and 4, 1947; before Examiner Gregory at San Francisco, on February 2 and 3, 1948; and before Examiner Austin at San Francisco, on March 23, 24 and 25, 1948; at Stockton, on May 12 and 13, 1948; at Sacramento, on May 26, 27 and 28, 1948; and at Oakland, on June 9, 10 and 21, 1948. On the date last mentioned, the matter was submitted on briefs. The final brief was received November 29, 1948.

shippers engaged in business at the affected points, described the growth and development of the territory, the need for an adequate transportation service sufficient to satisfy their requirements, and the character of the service which had been afforded them by the carriers in the field.

Through their respective operating officials, the protesting carriers described their operations between the points involved; they also submitted data concerning the service which had been supplied during selected periods, including that afforded certain shippers whom applicant had produced. In addition, they called shipper witnesses.

Applicant contends that there is a public need for his service, in view of the development of the territory; and that the service supplied by protestants is inadequate. These claims are challenged by the latter, who assert, on the contrary, that the services which they severally provide are fully sufficient to meet the shippers' needs.

#### Applicant's Proposal

Since 1932, applicant has served this territory, professedly as a highway contract carrier, under permits issued by the Commission. Pursuant to authority granted by the Interstate Commerce Commission, he also operates as a common carrier of interstate traffic between some of these points, transporting general commodities. (3) It is estimated that 40 per cent of the total tonnage

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(3) On September 18, 1942, applicant Morris was authorized by the Interstate Commerce Commission (in Docket I.C. 13090) to acquire a certificate under which he may operate, over irregular routes, from Oakland and Sacramento to Stockton and Lodi; and from Sacramento, Stockton and Lodi to Oakland.

is interstate in character; the remainder moves intrastate.

Applicant offers to supply an overnight service, available daily excepting Saturdays, Sundays and holidays. With respect to traffic moving in each direction between San Francisco-East Bay and Sacramento, Stockton and Lodi, and also between Stockton and Lodi, shipments picked up during the morning and afternoon would be delivered on the following morning.

To provide the service, applicant would continue to use his existing facilities. These include the present terminals at Oakland, Stockton and Sacramento; if necessary, an additional terminal would be established at San Francisco. He also has available some 36 units of equipment, including both line-haul tractors and semi-trailers, as well as pick up trucks. It is contemplated that the latter would be augmented, if the operation were authorized.

Applicant's financial status was described by an accountant, who submitted a detailed showing. The record discloses that applicant is financially qualified to serve this territory as a highway common carrier, in accordance with his proposal.

A rate expert submitted a proposed tariff, specifying the rates, rules and regulations which applicant would publish, if certificated. In general, they would conform to the minimum rates which have been prescribed by the Commission. In the few instances where this is not the case, the proposed rates would be competitive

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(4) In the meantime, it was stated, San Francisco traffic would be handled through the Oakland terminal. Heavy shipments would move directly from consignor to consignee, in line-haul equipment.

with those maintained by the common carriers, both rail and truck, now serving the territory.

Service offered by Protesting Carriers

Through their respective operating officials, certain protestants described the service which they severally undertake to provide within this territory. Such a showing was presented on behalf of Southern Pacific, Pacific Motor, Santa Fe, Western Pacific, Sacramento Northern, Valley, Delta, River Lines, G. & H., Stockton Motor and Dickman.

We shall consider first the less carload freight service offered by the rail lines. From the Bay region to Sacramento, Stockton and Lodi, Southern Pacific-Pacific Motor offers over-<sup>(5)</sup>night service; on westbound traffic, second-day delivery is afforded except at Richmond, where it is third-day. The service between Sacramento, Lodi and Stockton varies in frequency according to the<sup>(6)</sup> direction of the movement. At Stockton, the Santa Fe offers overnight service on freight moving from San Francisco or Oakland, and second-day delivery on Richmond traffic. Freight consigned to

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(5) The westbound less-carload tonnage was insufficient, it was said, to permit the daily movement of rail cars. Under Office of Defense Transportation restrictions, the rails may not move cars containing less than 20,000 pounds of freight.

(6) From Sacramento to Stockton, Southern Pacific-Pacific Motor offers first-day delivery; in the opposite direction, it is second-day. Between Stockton and Lodi, first day delivery is afforded, each way. First day delivery is offered from Sacramento to Lodi, and second-day delivery, in the opposite direction.

(7)  
 Sacramento or Lodi is afforded second-day delivery from San Francisco or Oakland, and third-day delivery from Richmond. Western Pacific offers overnight service on freight moving from San Francisco or Oakland to Stockton and Sacramento; in the opposite direction, first afternoon delivery is provided. Between Oakland and Sacramento, Sacramento Northern offers second-day delivery on traffic moving in each direction. (8) The service offered by each of these carriers is available daily except Sundays. At the cities mentioned, which they respectively serve, these carriers provide pick-up and delivery service, either through their own facilities, or through those of local draymen.

Dickman operates as a freight forwarder, utilizing Western Pacific as the underlying carrier. Less-carload shipments, collected at San Francisco through the facilities of Federated Terminals, move by rail to Stockton, where he provides the distribution service, using six trucks for that purpose. The traffic averages 15 tons daily, all of which moves eastbound.

We shall consider next the service offered by the highway common carriers, of which Valley and Delta are the most important. (9) Valley's operations extend from San Francisco and East Bay to Sacramento, Lodi and Stockton, as part of its system. Delta (9) operates between San Francisco, East Bay, Sacramento and Stockton,

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- (7) At both Lodi and Sacramento, service is provided through the facilities of Central California Traction Company, which connects with Santa Fe at Stockton.
  - (8) Since traffic handled by Sacramento Northern moves during daylight hours, leaving each terminal in the early morning and reaching the other in the late afternoon, freight must be picked up on the day preceding its transportation, and delivered on the day following its arrival at destination.
  - (9) In the East Bay area, Valley serves the communities extending from Richmond to San Leandro. Delta served Oakland, Emeryville and Berkeley.

but does not serve Lodi. During the course of the hearing, this protestant inaugurated a direct service between Sacramento and Stockton; previously, traffic between these points was routed via San Francisco or Oakland.<sup>(10)</sup> Each carrier offers an overnight service, available daily except Saturdays, Sundays and holidays.

For many years, both Valley and Delta (as successor to The River Lines)<sup>(11)</sup> have served this territory. Both maintain terminals at San Francisco, Oakland, Sacramento and Stockton. Each operates a large fleet of equipment. Their investments in these facilities are substantial. At the cities mentioned, each provides a pick up and delivery service.<sup>(12)</sup> Between these points, traffic moves in substantial volume.<sup>(13)</sup>

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(10) Direct service between Sacramento and Stockton was established by Delta, during March, 1948, on advice of its counsel. The legality of this step is not involved here.

(11) The River Lines (which appeared as a protestant) operates a vessel service between San Francisco, East Bay points, and Sacramento and Stockton, respectively, traversing the Bay and the Sacramento and the San Joaquin Rivers. No pickup and delivery service is provided. Since freight is held at the pier until a full cargo is accumulated, no daily service is assured. However, vessels generally operate daily, as the tonnage offered is sufficient in volume to warrant so frequent a service. In 1946, this carrier transferred to Delta all the trucking operations which it then possessed.

(12) As a rule, less-truckload traffic is handled through the terminals. However, larger shipments (weighing 2,000 pounds or over) move directly from the consignor to the consignee.

(13) From July, 1947 to January, 1948, inclusive, Valley handled between San Francisco-Oakland, and Sacramento and Stockton, an average of 200 tons daily, of which 110 tons moved east-bound, and 90 tons, westbound. To accommodate this traffic, 30 vans were required daily, on the average. The average daily tonnage handled by Delta, during March and April, 1948, between the same points, is reflected by the following tabulation:

<u>FROM</u>	<u>TO</u>	<u>MARCH</u> <u>(Tons)</u>	<u>APRIL</u> <u>(Tons)</u>
(San Francisco- Oakland	Sacramento	141	143
(San Francisco- Oakland	Stockton	59	65

(Contd next page)

Other highway common carriers appeared as protestants; their operations, however, are conducted on a more limited scale than are those either of Valley or Delta. Both G & H and Stockton Motor are engaged in the transportation of automotive parts, accessories and supplies; the former, between San Francisco, East Bay points and Sacramento, and the latter, between the same Bay points and both Stockton and Lodi. Each provides an overnight service, affording first morning delivery. Each supplies teletype facilities to its patrons. Both have adequate rolling equipment. G & H has terminals at Oakland and Sacramento; those of Stockton Motor are situated at San Francisco and Stockton. Each handles a small volume of traffic; since early 1948, this had declined materially.

(13) Contd.  
FROM

TO

MARCH  
(Tons)  
3

APRIL  
(Tons)  
3.5

Sacramento  
Sacramento

Stockton  
(San Francisco-  
Oakland)

117

57

Stockton

(San Francisco-  
Oakland)

12

16.5

Stockton

Sacramento

0.75

2.5

During the period shown, there were wide variations between the maximum and the minimum daily tonnage actually transported. For example, during April, the traffic moving daily from San Francisco to Sacramento ranged from a low of 66 tons to a high of 169 tons; and, in the opposite direction, from one and one-half to 393 tons.

- (14) The traffic carried by G & H averages 14 tons daily, moving eastbound, and five tons daily, in the opposite direction. Stockton Motor's traffic averages from 10 to 12 tons daily.

### Growth and Development of Territory

During recent years, the communities affected have experienced a substantial growth in population, and have developed to a marked degree, both industrially and commercially. This was shown by the testimony of witnesses familiar with the facts, and by supporting data which were produced. The record is replete with details.

The extent to which the population of the principal centers has increased, during the past decade, is indicated by the following tabulation:

	<u>1940</u>	<u>1947</u>
San Francisco	634,536	812,400
Oakland (Metropolitan Area)	513,011	735,000
Oakland (City)	302,163	425,000
Richmond	23,642	101,519
San Leandro	14,601	27,000
Sacramento	105,958	122,624
Stockton	54,714	65,924
Lodi	11,079	15,000*

(\*Estimated, 1948)

Throughout this territory, industrial development has kept pace with the growth of population; new plants have sprung up, and existing establishments have expanded. This has been accompanied by a substantial increase in business activities. ✓

### Nature of Service Provided by the Existing Carriers.

As is customary in cases of this type, much of the testimony related to the character of service supplied by the common carriers in the field. The shipper witnesses produced both by the applicant and by the protestants dealt largely with this subject. Performance records were submitted by protestants' operating officials. We shall review the evidence relating to this subject.

(a) Showing by Applicant's Shipper Witnesses

Applicant called 91 shipper-witnesses, representing 86 commercial or industrial firms located at San Francisco, East Bay cities, Sacramento, Stockton and Lodi. They dealt in, or were engaged in the production of, a variety of commodities which, in the course of business, were regularly transported to and from their respective establishments.

The testimony of the shipper-witnesses follows a common pattern. Many had been served by applicant under written agreements in which both shipper and carrier had joined. Some have continued to use the service; others no longer do so, their contracts having been cancelled at applicant's instance. Pursuant to agreements with the consignor or the consignee, applicant has served some shippers who hold no contracts. Those who had used applicant's facilities characterized the service as highly satisfactory. Without exception, the shipper-witnesses testified they would favor applicant with their patronage, if he were certificated. Their less-truckload shipments, it was shown, move frequently and in substantial volume between the points involved.

These shippers voiced their dissatisfaction with the

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(15) The firms, for which these witnesses appeared as spokesmen, are distributed throughout the affected territory, as follows: San Francisco, 9; Oakland, 7; Berkeley, 1; Richmond, 1; Emeryville, 1; San Leandro, 1; Hayward, 1; Sacramento, 32; Stockton, 20; and Lodi, 13. In several instances, an establishment engaged in business at two or more of the points involved was represented by more than one witness, thus resulting in some duplication.

(16) Many of the firms represented by the shipper-witnesses are engaged in the production or distribution of steel products, hardware and automotive parts and equipment. However, this by no means exhausts the list of products which they handle. The record abundantly shows that, collectively, they deal in, and require the transportation of, general commodities.

service which had been afforded them by the protesting carriers, throughout the territory involved, during a period of approximately (17) eighteen months preceding and coinciding with, the hearing. In general, their complaints related to delays encountered in the transportation of their shipments; to the slow settlement of claims; to unnecessary damage incurred in the handling of freight; and to the rejection of certain types of shipments.

Substantially all of the shipper-witnesses complained of delays. These occurred in picking up their freight, in performing the line-haul service, and in effecting delivery at destination. It is the consensus of their testimony that, between the major (18) points involved, these carriers frequently had consumed from two to five days, and sometimes even longer, to accomplish the transportation of their shipments. On many occasions, the carriers had failed to respond promptly to calls requesting pickup service; these delays frequently ranged from two to four days. Many times, freight had been held at the carriers' terminals, often because of congestion. As a result, they stated, overnight service had not regularly been furnished by the common carriers in the field.

Responsibility for these conditions was distributed somewhat evenly among the carriers. However, complaints concerning

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(17) Not every shipper witness had patronized all of the existing carriers; however, most had used the facilities of one or more of them. Only a very few had been served by applicant exclusively and, consequently, were not acquainted with the service afforded by protestants.

(18) The testimony concerning delays in transportation was directed to the movement: (a) from San Francisco-East Bay to Sacramento or Stockton, and to some extent, in the reverse direction; (b) between Sacramento and Stockton, both ways; and (c) from either Sacramento or Stockton to Lodi, and to a small degree, in the opposite direction. Sacramento also includes North Sacramento. This would be true, generally, throughout this opinion.

delayed pickups were directed chiefly against Valley, and Pacific Motor was criticized most frequently for delays occasioned by congested terminals. By most of the shippers, Delta's service was considered somewhat superior to that afforded by the others.

These delays had proved quite detrimental, the shippers testified. Frequently, their shipments are of a critical nature; often, they are required to respond to emergencies. Some find it expedient to replenish promptly their stocks of merchandise and supplies; in their business, a quick turnover is necessary. To meet competition, which constantly is becoming more intensive, many must respond punctually to their customers' demands; failing in this they cannot hope to retain these accounts. For these reasons, an expeditious transportation service is essential.

In some instances, it was said, the existing carriers had postponed unduly the adjustment of freight damage claims. A few shippers complained of damage occurring to freight while in transit or when it is delivered.

Some shippers referred to the apparent reluctance of these carriers to accept their products for transportation. At times, they said, this had resulted in substantial delays. These experiences were confined largely to such commodities as pipe and bar iron, especially when tendered in lengths of thirty feet or more. In their dealings with applicant, no such difficulties had been encountered, they stated.

Because of the conditions described, the shippers have received many complaints from customers, they testified. The shippers, in turn, frequently have expressed to the carriers their

dissatisfaction with the service provided. To insure more expeditious delivery, some shippers have resorted to contract carriers; others have been compelled, at considerable inconvenience to themselves, to use their own facilities.

A few shippers referred to improvements they had recently observed in the service supplied by the existing carriers. They had experienced fewer, and shorter, delays; and freight had been more carefully handled. This change, the record shows, coincided generally with the period consumed by the hearings in this matter, and had occurred shortly before they were called as witnesses.

During the course of protestants' showing, they offered evidence intended to refute the statements made by some of applicant's shipper-witnesses. This testimony will be considered presently.

A resolution adopted by the Traffic Committee of the Richmond Chamber of Commerce, favoring the application, was received in evidence. This resolution was approved by all of those present at the meeting when it was considered, excepting the Southern Pacific representative, who abstained from voting.

(b) Protestants' Performance Records.

Some protestants submitted exhibits designed to show the time required for the transportation of specified shipments, during selected periods. Some of these studies covered all the shipments handled, during a given period, between the affected points; others were limited to those transported for certain shippers, whom applicant previously had called. Information of this character was presented by Southern Pacific-Pacific Motor, Valley and Delta.

These exhibits have certain characteristics in common. They disclose the dates of the principal shipping documents used, as well as the time when each shipment was received by the carrier, and delivered to the consignee. <sup>(19)</sup> The records underlying these exhibits are kept in the regular course of business.

The Southern Pacific-Pacific Motor showing embraces all shipments which moved, between the principal points involved, during a weekly period, the days of which were spread through the ~~same~~ <sup>typical test</sup> ~~mission~~ months of January, April, July and October, 1947, and January, 1948. It is reported that 68 per cent of the shipments originating at San Francisco, and 59 per cent of those originating <sup>(20)</sup> at Oakland, received overnight service. A much smaller proportion of the shipments originating at Hayward, San Leandro, Sacramento and Stockton, respectively, moved overnight.

The study submitted by Valley is limited to specified shippers, who previously had testified in applicant's behalf. It covers the shipments handled for these firms during September, 1947, as to Stockton shippers, and during October, 1947, as to Sacramento and San Francisco shippers. It was stated that, of the shipments originating at Stockton, 91 per cent were accorded overnight service; at Sacramento, 80 per cent; and at San Francisco 80 per cent.

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(19) These exhibits show, with respect to each shipment, the names of the consignor and the consignee; the dates borne by the shipping order or bill of lading, respectively, and by the freight bill; the date of receipt by the carrier; the date of delivery to the consignee; and the time consumed in transit. The freight bill date is used to indicate the time of delivery to the carrier; the date of delivery to the consignee is taken from the delivery receipt, which bears his signature.

(20) The percentages stated above include C.O.D. shipments, as well as those delivered by consignors to the depot, or accepted there by the consignees.

Delta's exhibits comprehend all shipments transported between San Francisco-Oakland, and Sacramento and Stockton, respectively, during the weekly period, March 15 to 19, 1948, inclusive; they also include the shipments consigned to certain firms (whose representatives had testified in applicant's behalf), located both at Sacramento and Stockton, which moved during September, 1947. Of the shipments handled during the weekly test period, only a small share, it was stated, had not been afforded overnight delivery; this was true only to a slightly lesser degree as to the shipments consigned to designated firms, it was said. Discrepancies between the dates of the shipping order and freight bill, respectively, disclosed by the exhibits, were attributed to causes beyond the carrier's control.

None of these exhibits indicates, with respect to any of the shipments specified, the time when a pickup call was made by the shipper, or received by the carrier. It was pointed out, however, that such a request probably would not be made earlier than the date of the bill of lading. Customarily, this is prepared by the shipper, and accompanies the shipment when tendered to the carrier. At times, the bill of lading bears a date earlier than that on which the goods are offered for transportation.

Applicant has challenged these performance reports, contending that they exclude shipments which actually moved during the periods covered; and that the information shown, concerning

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(21) During the test period described, it is reported, 1,992 shipments moved to Sacramento, and 1,052 to Stockton; of these, 99 and 35 shipments, respectively, were not afforded overnight delivery. However, only 33 shipments consigned to Sacramento, and 24 to Stockton, suffered delays because of reasons not known to the carrier, it was stated; the remainder assertedly were delayed because of circumstances for which it was not responsible.

(22) Of the shipments consigned to Sacramento, during the weekly test period, such discrepancies were indicated in 416 instances; of those consigned to Stockton, there were 253 such instances.

(23) The performance exhibits disclose that the interval between the dates of the shipping documents mentioned did not, in most cases where any such delay was indicated, exceed one day. However, there were several instances where longer periods intervened.

some shipments, is inaccurate. The record reveals that certain shipments, transported during the periods indicated, were not reported. However, these are few in number; and protestants have established, to our satisfaction, that their omission was inadvertent. A few shippers, who were called by applicant in rebuttal, have questioned, in several instances, the dates of delivery indicated by the performance reports, producing in support of their statements office copies of shipping documents. Protestants, in turn, have submitted their own records pertaining to the disputed items. In some respects, the testimony is sharply conflicting. As to both shippers and carriers, the records produced appear to have been made in the regular course of business. In weighing the evidence, we find no motive on the part of any of these witnesses to falsify his records (as intimated by the briefs), nor does it appear that any of them has done so. However, the circumstances under which these records were made are such that the possibility of error cannot be excluded. Moreover, the questioned shipments are relatively few in number, when compared with the many items which stand unchallenged. On the whole, the accuracy of these reports was established.

As stated, protestants sought to contradict the testimony of some of applicant's shipper-witnesses. This showing was presented through operating officials and through draymen who performed the pick-up and delivery service for various protestants. In certain particulars, the testimony of a few shippers regarding specific shipments was challenged. The evidence is somewhat conflicting. We shall not undertake to resolve those conflicts here, nor to discuss the evidence in detail. The field covered by this testimony is extremely narrow. It is sufficient to say that, on the whole,

the statements of the shipper-witnesses in question, finds ample support in the record.

(c) Showing by Protestants' Shipper-Witnesses.

Shipper-witnesses were called by the protesting carriers, collectively, representing 184 firms engaged in business at various points throughout the territory involved. <sup>(25)</sup> They included both industrial and commercial establishments, ranging in size from large plants or wholesale distributors to small retail stores. The commodities in which they dealt were widely diversified.

In general, their testimony was cast in the same mold. All of them had used the service of one or more of the protesting carriers for the transportation of their shipments between some or all of the affected points. This service, they said, had been satisfactory, and had fully met their requirements; so far as they were concerned, no need existed for the entrance of another carrier into the field.

It was the consensus of their testimony that the service afforded by these carriers was adequate, and of good quality. It was both expeditious and dependable, they said. Many referred to the satisfactory overnight service which had been supplied, enabling them promptly to meet their customers' demands. Others, particularly the larger establishments, usually anticipate their needs and, therefore, have less need for such a service. However, they demand expeditious handling for their emergency shipments. The pick-up

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(25) Of the business establishments represented by these witnesses, 39 were located at San Francisco; 16, at Oakland; 4, at Berkeley; 3, in Emeryville; 3, at Richmond; 66, at Sacramento; 1, at North Sacramento; 1, at West Sacramento; 1, at Broderick; 5, at Lodi; and 45, at Stockton. They include two firms whose representatives previously had testified in support of the applicant.

service, many testified, had been prompt and satisfactory. Many stated they had suffered little, if any, loss occasioned by breakage; perishable or fragile freight had been carefully handled.

The service provided by some of the protestants, a few shippers testified, was superior to that afforded by others. They referred to the quality of the pick-up service supplied, and to the over-all time consumed in transit. As a rule, these complaints were confined to past operations; with few exceptions, they were not directed against the service currently performed.

Some of the shippers have used other means of transportation than that afforded by the protestants. A few of the larger firms have used their own trucking facilities, on occasion. Others had employed contract carriers, especially where the traffic moved in heavy volume and rate considerations were uppermost. (26)

Several shippers testified they had used both Railway Express and Pacific Greyhound Lines for shipments requiring expedited transportation, particularly those of an emergency nature. The service supplied by these carriers had been satisfactory, they said; often, they had received same day delivery.

Several shippers described the improvements which had taken place in the service afforded by protestants. Their testimony related both to the pick-up and to the line-haul operations. Delays in responding to pick-up calls had been obviated, they said; and the service, generally, was more expeditious than it formerly had

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(26) Some shippers formerly had used contract carriers for greater expedition, they said. Because of the faster service now provided by the existing common carriers, this element no longer is so important, it was stated.

been. The time when these improvements occurred was not too clearly shown; moreover, the witnesses are somewhat at variance in this regard. The record indicates, however, that this was a gradual process, extending over the post-war period and culminating, shortly before the final hearings in this matter, in the establishment of marked improvements in the service supplied by these carriers.

Through the manager of its Transportation Department, the Sacramento Chamber of Commerce expressed its opposition to applicant's proposal. This was confined to operations between Sacramento, and San Francisco and Oakland; the other points here involved were not considered. Following a poll of some 25 chamber members, whose traffic moved between the points mentioned, both the Transportation Committee and the Board of Directors voted against the approval of the instant application. They did so because, in their judgment, the total combined service of all types of transportation currently available was sufficient. (27)

#### Conclusions.

Summing up: the record shows that applicant is qualified financially and by experience to provide the service sought to be established; that applicant's shipper-witnesses have indicated their need for an adequate transportation service, and have pointed out the deficiencies in the service which has been accorded them by the carriers in the field; that protestants currently are supplying a service of high quality, sufficient to meet the requirements of the shippers whom they produced; and that there has been

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(27) This witness testified that should there be any change in the Commission's attitude toward permitted carriers, the Chamber's position might be altered to that extent. He recognized that the contract carriers handled a substantial tonnage.

a substantial growth and development of the territory with which we are here concerned.

Protestants have challenged the sufficiency of applicant's showing, asserting that it rests largely upon hearsay evidence, as well as on oral testimony not supported by shipping documents which readily were available. Thus, it is claimed, the proof of alleged delays in supplying the service was based mainly on conversations related by the shipper-witnesses, which they, in turn, had had with their suppliers or customers, during which the latter had furnished the information concerning such delays. Evidence of this character appears in the record, but it was received without objection; proffered hearsay, relating to this subject, was excluded whenever timely objection was interposed. Moreover, the proof was not confined to hearsay; evidence not subject to this infirmity was also received. A similar showing was made by protestants' shipper-witnesses. It is true that the proof concerning these delays was predicated chiefly upon oral testimony; relatively few shipping documents were offered. Undoubtedly, the production of such written evidence is desirable, where it is available, since it usually is more reliable than the unaided recollection of shipper-witnesses in establishing the circumstances surrounding such delays. But evidence of this character is not indispensable (Code of Civil Procedure, Sections 1844, 1845, 1847). Consequently, the oral testimony will be accepted and accorded the weight to which it is properly entitled. Viewed in its entirety, the testimony of applicant's shipper-witnesses upholds the charges, both general and specific, which they have leveled against the adequacy of protestants' services.

The performance records submitted by the principal

protestants disclose that, during the period chosen for study, the service provided by these carriers was good in quality. It is true there were some deficiencies, as shown by the percentages stated above, but on the whole, the service was sufficient. However, the periods selected do not coincide with those covered by the testimony of applicant's shipper-witnesses. Moreover, these reports reflect the influence of the recent improvements in protestants' service, to which we have adverted.

Protestants' shipper-witnesses have shown that these carriers, collectively, have provided a service which is adequate for their needs. The period they had in mind, though not too clearly defined, was somewhat later than that covered by applicant's shipper-witnesses. To some degree, their testimony also reflects the improvements in service, mentioned above.

Protestants' showing, in our judgment, has not met nor overcome the testimony of applicant's shipper-witnesses, that protestants have failed adequately to supply their needs. Evidence to that effect is not negatived by the testimony of other shippers that the service afforded them by protestants was satisfactory. Nor was this testimony contradicted, except in minor respects, by the performance reports. It must be regarded as an established fact that a substantial share of the shipping public has not been adequately served by the common carriers in the field.

The reasons for protestants' failure to provide such a service do not clearly appear. There is no foundation in the record for the contention, somewhat feebly asserted by the applicant, that protestants have discriminated against any of these shippers, or have been unwilling to serve them. We may reasonably

conclude that protestants' failure to furnish these shippers the service to which they were entitled is directly traceable to the inability of these carriers to do so.

This situation, it may also reasonably be inferred from the facts presented, arose because of protestants' inability to keep pace with the growth of the territory. The substantial degree of this development has been mentioned above. Only recently, and long after the filing of this application, have protestants improved their service to the point where apparently they can better serve the shippers of this area.

In the past, we have held that the existing carrier must be judged by the quality of the service which he furnishes when the newcomer seeks to gain entrance to the field. Ordinarily, this occurs when the latter files his application. Under the conditions which prevailed during the war and the succeeding period of readjustment, (too well known to be recited here) this rule could not reasonably be enforced to the fullest degree in the instant proceeding. Such a course would be both harsh and unfair. Protestants should not be penalized because of these conditions, nor should applicant be permitted to profit by them. Throughout the post-war period, protestants have endeavored to better their service, but the record shows that to some extent the process was hastened by the pendency of this proceeding. Making due allowance for the difficulties which have confronted protestants, we must nevertheless conclude that they have too long delayed the consummation of those improvements in their service which were reasonably necessary to afford the shippers the service they were entitled to receive.

The record shows that a substantial share of the shipping public is in need of the service which applicant seeks to establish. The service provided by the existing carriers has been inadequate to meet their needs. Moreover, many of these shippers, who have used applicant's facilities in the past, as a highway contract carrier, would continue to patronize him if he were authorized to operate as a highway common carrier. Under the circumstances, the certificate sought will be issued. Such a course would be consistent with the policy announced in Decision No. 42646, recently rendered in Case No. 4823, involving the Commission's investigation into the operations of for-hire carriers of property, subject to its jurisdiction.

M. L. Morris 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 a 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 M. L. Morris authorizing the establishment and operation of a service, as a highway common carrier (as defined by Section 2-3/4 of the Public Utilities Act), for the transportation of general commodities (a) between San Francisco, Oakland, Alameda, San Leandro, Hayward, Emeryville, Berkeley, Albany and Richmond, on the one hand, and Stockton, Lodi, Sacramento and North Sacramento, on the other hand; and (b) between Stockton and North Sacramento, serving Lodi and Sacramento as intermediate points.

Said certificate is granted subject to the following limitations:

- (a) Applicant shall not engage in the transportation of any of the following commodities between any of the points described, viz.: Used household goods, furniture, office and store fixtures and equipment, uncrated; livestock, uncrated; and liquid commodities, in bulk, in tank trucks.

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

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days after the effective date hereof.
- (b) Within 60 days after 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.
- (c) 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:

Between San Francisco and the East Bay points mentioned, and North Sacramento, via U. S. Highway No. 40; also via California State Highway No. 17 and U. S. Highways Nos. 50 and 50-99.

Between Stockton and North Sacramento, via U. S. Highways Nos. 50-99, and 40.

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

Dated at San Francisco, California, this 28th day of June, 1949.

R. B. Anderson  
James P. Cramer  
Dr. H. C. Kull  
Harold P. Kull  
James H. Patton  
 Commissioners