

ORIGINAL

Decision No. 42827

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
STAPEL TRUCK LINES for a certificate)
of public convenience and necessity)
to operate freight and general merchan-)
dise trucking service between San)
Francisco, Oakland and Contra Costa)
County points.)

Application No. 28649

- Spurgeon Avakian, for applicant.
- William Meinhold and E. L. Van Dellen, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.
- Louis M. Welch and Frederick Jacobus, for The Atchison, Topeka & Santa Fe Railway Company, protestant.
- John E. Hennessy and John L. Amos, Jr., for Sacramento Northern Railway Company, protestant.
- D. L. Morrison, for Railway Express Agency, Inc., protestant.
- Douglas Brookman, for Merchants Express Corporation, protestant.
- Frederick W. Mielke, for Delta Lines, Inc., protestant.
- Reginald L. Vaughan and John G. Lyons, for Inter-Urban Express Corporation, protestant.
- Scott Elder, for Circle Freight Lines, interested party.

O P I N I O N

Harold A. Stapel, Harland H. Stapel and Clayton C. Koons (who collectively will be referred to as the applicant) are co-partners, engaged in business under the firm name of Stapel Truck Lines. By their application, as amended, they seek a certificate of public convenience and necessity, authorizing the establishment of a highway common carrier service for the transportation of general commodities (with certain exceptions) between San Francisco,

(1) Applicant proposes to transport only those commodities which are covered by Highway Carriers' Tariff No. 2. It will not engage in the transportation of household goods, (as specified in Highway Carriers' Tariff No. 4), commodities requiring refrigeration, nor liquids in bulk moving in tank equipment.

Emeryville and Oakland, on the one hand, and Orinda, Lafayette, Walnut Creek, Alamo, Danville, Concord, Pittsburg, Antioch and intermediate points located on State Highways 24 and 21, on the other hand. ⁽²⁾ The points last mentioned are situated in Contra Costa County, within distances ranging from 18 to 45 miles from San Francisco. The application is opposed by the carriers now serving this territory, who appeared as protestants. ⁽³⁾

Public hearings were had before Examiner Austin at San Francisco, Walnut Creek and Concord. The matter was submitted on briefs, which have been filed.

Applicant's proposal was explained by one of the partners, Clayton C. Koons; in addition, shipper-witnesses were called. Through their respective operating officials, protestants described the service which they severally provide; they produced no shipper-witnesses. On applicant's motion, the testimony of certain shipper-

(2) Originally, applicant also proposed to serve Dublin, Pleasanton, Livermore, Clayton, Port Chicago, Oakley, Brentwood and Byron. However, these points were eliminated by an amendment to the application, filed at the outset of the hearing. State Highway 24 (the Tunnel Road) extends northeasterly from Oakland to Antioch, and beyond, via Orinda, Lafayette, Walnut Creek, Concord and Pittsburg. State Highway 21 extends southward from Walnut Creek through Alamo and Danville.

(3) The carriers appearing as protestants comprised Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company; The Atchison, Topeka & Santa Fe Railway Company; Sacramento Northern Railway Company; Railway Express Agency, Inc.; Merchants Express Corporation; Delta Lines, Inc.; and Inter-Urban Express Corporation. For brevity, they will be referred to as Southern Pacific, Pacific Motor, Santa Fe, Sacramento Northern, Railway Express, Merchants, Delta and Interurban, respectively. Circle Freight Lines appeared as an interested party; it will be designated hereafter as Circle.

witnesses given in a companion proceeding, i.e., the Circle case, (4)
was made a part of the record in this matter.

Since February, 1946, applicant has been engaged in the trucking business, under permits issued by the Commission. (5) In general, the operation extended throughout the territory covered by the present application, as well as to such points as Livermore, Pleasanton, Oakley and Brentwood. A variety of commodities has been handled. (6)

The facilities used in conducting applicant's present operations would be devoted to the proposed service. Applicant now has available eleven units of equipment, and contemplates the acquisition of ten additional pickup trucks to be used principally in the East Bay. At present a terminal is maintained at Walnut Creek; (7) if necessary, Koons testified, terminals would also be established in both San Francisco and Oakland. At the latter points, (8) dispatchers would be stationed and telephones installed, for the convenience of shippers.

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- (4) Application No. 28856 of Circle Freight Lines (a partnership composed of Gilbert J. Munson and Gordon A. Samuelson) for authority to operate as a highway common carrier, serving substantially the same points as those involved in the present proceeding. That matter has been heard and submitted.
- (5) During this period, applicant has held radial, contract and city carrier permits.
- (6) In his testimony, Mr. Koons referred to such commodities as hardware, plumbing supplies, sheet metal, electric lamps, and light fixtures, electrical household appliances and supplies, automobile tires, canned goods and groceries. Other commodities were specified by the shipper witnesses, as will be shown later.
- (7) Applicant's present equipment comprises four van-type trucks, two pickup trucks, two tractors and three semi-trailers.
- (8) The terminal property at Walnut Creek is approximately 490 by 100 feet in dimension. On this is located a quonset hut which shelters both the loading platform and the office accommodations. It is situated on land which has been leased for that purpose.

The members of the firm devote their full time to the business. One partner, Mr. Keons, acts as manager; both he and another partner also serve as dispatchers and perform the office work. The third partner maintains the equipment. In addition, six drivers are regularly employed.

Applicant offers to provide an overnight service between San Francisco, the East Bay and the Contra Costa points mentioned. Shipments picked up by 3 p.m. in the Bay cities would be delivered not later than noon, on the following day, at the more distant points, and considerably earlier at nearby communities. (9)

Both the pickup and the distribution service were described by applicant's manager. San Francisco and the East Bay would each be served by a line-haul van and a pickup truck, both of which would collect the shipments offered. In each of these areas, the pickup truck would transfer its load to the van at some predetermined place - ordinarily, a shipper's dock, which usually would vary from day to day. The van would then proceed to the Walnut Creek terminal, where the freight would be unloaded, routed and transferred to other units for distribution at the Contra Costa points served. This delivery service would be channeled over

(9) Under applicant's proposal, freight would be distributed at Contra Costa points in accordance with the following time schedule:

| | | |
|--------------|-----|---------|
| Lafayette | Ar. | 8 a.m. |
| Orinda | " | 9 a.m. |
| Walnut Creek | " | 8 a.m. |
| Danville | " | 9 a.m. |
| Concord | " | 8 a.m. |
| Pittsburg | " | 10 a.m. |
| Antioch | " | 12 N |

Should the Antioch tonnage increase sufficiently to warrant the use of an additional truck, delivery at that point would commence by 9 a.m.

(10)
distinct routes.

The financial results of applicant's operations were disclosed. As of October 31, 1947, (during the course of the hearings) total assets of \$31,009.35 were reported, and total liabilities of \$9,554.29, thus indicating a net worth of \$21,455.06, of which each partner's share was \$7,151.69⁽¹¹⁾. For the ten-month period ending October 31, 1947, total income was reported as \$30,057.81, total operating expense as \$25,473.23, and nonoperating expense as \$100, leaving a net profit of \$4,484.58⁽¹²⁾.

Applicant has undertaken no systematic survey to ascertain either the volume or the nature of any additional traffic which it might attract if the operation were certificated. From conversations he has had with prospective shippers, applicant's manager anticipates a substantial increase in the volume of freight handled, including both local and interstate traffic. The latter would flow from pool-car rail shipments originating at Eastern points. This witness referred generally to the recent growth and development of the communities here involved.

(10) Early in the morning following the date of pickup, trucks would leave the Walnut Creek terminal destined, respectively, to Lafayette and Orinda; to Danville; and to Concord, Pittsburg and Antioch. At times, the Bay Area pickup trucks might serve Lafayette and Orinda directly, while en route to Walnut Creek, thereby affording those communities same-day delivery.

(11) Operating equipment, as depreciated, was shown as amounting to \$21,191.14, against which notes aggregating \$8,200.32 were outstanding.

(12) Included in the operating expenses was an item of \$6,500, representing the amounts received by the partners, under their drawing accounts, during the ten-month period mentioned. Projecting this showing on an annual basis, the total amount available yearly to the partners, both for their drawing accounts and as net profits, would aggregate \$13,181.52, or \$4,393.84 for each of them. About five per cent of applicant's revenues, it was stated, was derived from the transportation of household goods.

The rates to be established, applicant's manager testified, would be based upon the minimum rates contained in the Commission's Highway Carriers' Tariff No. 2. If the operation were certificated, applicant contemplates the publication of a tariff setting up such rates, together with the rules and regulations appearing in that tariff.

In support of its proposal, applicant called 36 shipper-witnesses. At its instance, the testimony of 36 witnesses, which had been offered in the Circle case, supra, by the applicant therein, was made a part of the record in the instant proceeding. (13) Allowing for duplications, some 68 shippers were represented, who were widely distributed throughout the territory involved. (14) They comprized wholesale dealers, situated at San Francisco and Oakland and retail establishments located at Contra Costa points. Collectively, they dealt in, or were engaged in the distribution of general commodities.

These shippers described their need for an adequate transportation service. The wholesale distributors at the San Francisco Bay cities, faced by severe competition, must promptly meet their customers' requirements in order to retain the business. Retail dealers at Contra Costa points also compete among themselves. The amelioration of post-war shortages tends to encourage continual

(13) The witnesses called in the Circle case, whose testimony was incorporated in the present record, were engaged in business at the following points, viz.: - San Francisco, 1; Oakland, 2; Walnut Creek, 10; Danville, 1; Concord, 16; and Pittsburg, 6.

(14) The 68 shippers represented by the witnesses produced both in the instant proceeding and in the Circle case, were located, respectively, at the following communities, viz.: San Francisco, 7; Oakland, 6; Orinda, 1; Lafayette, 1; Walnut Creek, 22; Alamo, 1; Danville, 3; Concord, 21; and Pittsburg, 6.

constriction of the stocks of merchandise carried, with consequent reduction in the amount of capital thus tied up. This, they stated, is highly desirable. To accomplish this objective, there must be a quicker turnover of their stocks. Moreover, emergencies arise at times when the dealers are unable immediately to supply the goods demanded by their customers. For these reasons, it was stated, a transportation service from the Bay centers consuming a longer period than overnight, or not affording direct, store-door delivery at Contra Costa points, would not satisfy their needs.

Many of the shipper-witnesses condemned the service which had been provided by the common carriers in the field. This service was objectionable, they stated, because of undue delays encountered; and also because of recurring losses attributable to damage or pilferage of shipments, with accompanying slow settlement of claims.

The testimony of the Bay area wholesale dealers throw little light upon this subject. Of the ten establishments engaged in business at San Francisco and Oakland, which were represented, seven had not employed the existing common carriers since mid-1946, or earlier, for the transportation of their products to the points involved. Because of the unsatisfactory service then supplied by these carriers, they had turned to applicant, it was shown. Still another shipper had used applicant exclusively for this purpose, since July, 1947, when he first embarked in business. Consequently, none of them was familiar with the nature of the service currently provided by these carriers. Only the remaining two shippers recently had used them. One had experienced delays in connection with shipments transported by Sacramento Northern and by Pacific

Motor, respectively; the other had suffered pilferage losses with respect to shipments handled by Pacific Motor. They admitted that the service afforded them by both Merchants and Delta had been adequate.

The retail dealers located at Contra Costa points, however, were well acquainted with the service now provided by the common carriers in the field. This they described in considerable detail.

Their chief complaint concerned delays encountered in the performance of the service during the period of approximately one year preceding, and coextensive with, the hearing. This was directed principally against Pacific Motor, and to a lesser degree against the other carriers. A substantial number of these witnesses⁽¹⁵⁾ testified that freight originating at San Francisco and East Bay points and handled by Pacific Motor, had been subjected to delays in transit ranging from three to seven days. These delays, they said, occurred regularly and frequently. Several shippers⁽¹⁶⁾ situated in the Pittsburg area attributed to Delta similar delays⁽¹⁷⁾ experienced in the transportation of shipments from the same points.

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- (15) Of the 55 shippers engaged in business at Contra Costa points, whose testimony appears in the record in this proceeding, some 30 described, in considerable detail, delays encountered in the transportation of their shipments by Pacific Motor. They were distributed throughout the territory as follows, viz.: 8 were located at Walnut Creek; 1, at Alamo; 2, at Danville; 15, at Concord; and 4, at Pittsburg. In addition, a witness representing an Oakland wholesale dealer referred to similar delays. Other witnesses referred somewhat more generally to delays which they had experienced.
- (16) Some 6 shippers, engaged in business in the Pittsburg area, described delays, ranging from two to seven days, encountered in the transportation of shipments by Delta.
- (17) Two Pittsburg shippers described delays experienced in the handling of their freight by Santa Fe; 4 shippers (1, at Lafayette; 2, at Concord; and 1, at Pittsburg) voiced similar complaints against Sacramento Northern; one shipper, situated at Walnut Creek, referred to delays in the transportation of shipments by Railway Express; and an Orinda shipper complained of delays encountered in the delivery of shipments by Merchants. Reference is made here to the more detailed complaints expressed by the shippers; others described in more general terms the delays which they had experienced.

This situation had caused considerable inconvenience, they testified. Many had been unable to satisfy their customers' requirements, particularly where the need for prompt delivery existed. As a result, this had become a source of constant complaint. Some dealers had been prevented, because of the later delivery of goods purchased, from taking advantage of price discounts available only during a short period following the date of invoice. Others had been compelled to use their own trucks to transport from the Bay Area supplies which were urgently needed, or to pick up shipments detained at the carriers' local terminals. Due to the delayed arrival of shipments consigned to building contractors, work had been held up on construction jobs; in the meantime, wages continued to accrue for idle time.

Many local dealers complained of loss or damage attributed to breakage or pilferage of their shipments.⁽¹⁸⁾ This charge was directed chiefly against Pacific Motor; only to a minor extent did it affect the other carriers. It was the consensus of their testimony that, during the period mentioned above, such incidents had occurred frequently, repeatedly and regularly. The damage thus occasioned was substantial,⁽¹⁹⁾ they said.

(18) Witnesses representing 39 dealers, located at Contra Costa points, described the damage they had suffered because of breakage or pilferage - usually both. With minor exceptions, the shipments affected had moved over the lines of Pacific Motor.

(19) Several elements were mentioned by the shippers in their consideration of the damages ascribed to breakage or pilferage. Some referred to lost profits, which otherwise would have been realized. Frequently, it was stated, damaged articles, such as appliances, for example, had been held for several months while awaiting the procurement of scarce repair parts. In the meantime, they could be disposed of only at a heavy discount. This situation militated against the rapid turnover of merchandise stocks. Moreover, some said, it was poor business practice to offer damaged goods for sale. A few testified that Pacific Motor had unduly delayed the adjustment of claims growing out of the conditions described.

Many shippers testified that Pacific Motor frequently had handled their shipments roughly. (20) Instances were cited where the driver had pushed heavy packages off the tail gate of the truck, thus permitting them to drop to the sidewalk. Quite often, a shipment subjected to such treatment had been rejected by the consignee because of its damaged condition. Similar complaints were directed against the local drayman jointly employed by Pacific Motor, Santa Fe and Sacramento Northern to perform their pickup and delivery service at Pittsburg. Some were quite specific concerning the nature of the shipment involved and the extent of the damage inflicted; on the whole, great dissatisfaction with this service was expressed by several dealers situated at this point.

The conduct of the drivers employed by Pacific Motor was severely criticized by some of the Contra Costa dealers. At times, it was stated, these drivers had manifested marked discourtesy toward the consignees, especially when the latter had remonstrated against the rough handling accorded their shipments. (21) Other shippers testified they had observed no discourtesy on the part of these drivers.

A few shippers stated that quite recently they had observed some measure of improvement in the service supplied by the carriers mentioned. However, by far the majority of the local

(20) Some 38 retail dealers, distributed throughout the Contra Costa territory, voiced this charge against Pacific Motor.

(21) On such occasions, these dealers testified, this carrier's drivers had somewhat brusquely suggested the filing of damage claims by the complaining consignee. Frequently, it was said, these drivers had objected to delivering freight at the place provided for that purpose on the consignee's premises, insisting, instead, upon unloading shipments on the front sidewalk, at considerable inconvenience to the consignee.

dealers testified that the conditions they had found objectionable continued to exist during the period immediately preceding their appearance on the witness-stand.

Official action endorsing applicant's proposal was taken by certain civic organizations, so their representatives testified. These comprised the directors of the Chambers of Commerce of Concord and Walnut Creek, respectively. The Concord Merchants' Association, a division of the Chamber of Commerce of that city, composed of local retail merchants, also expressed its approval of the applications.

Substantially all the local dealers, who were called as witnesses in the instant proceeding, testified they would utilize applicant's facilities for the transportation of their freight, if the operation were certificated. Many have used the service which applicant hitherto has supplied, professedly as a contract carrier, and have found it satisfactory. Their shipments were handled expeditiously; little damage, resulting either from breakage or pilferage, has occurred; and claims were settled promptly, it was said. In their relations with the shippers, applicant's drivers have exhibited no discourtesy.

We shall now consider the showing submitted by the protesting carriers.

Through their respective operating officials, protestants described the service which they severally provide within the territory under consideration here. Evidence of this nature was offered on behalf of Southern Pacific, Pacific Motor, Santa Fe, Sacramento Northern, Merchants and Delta. Their testimony was directed both

to the Stapel and to the Circle applications, excepting that sub-
(22)
mitted by Merchants, which opposed Stapel alone.

Within this territory, Southern Pacific-Pacific Motor provides a combination rail- and -truck service, available daily excepting Saturdays, Sundays and holidays, which reaches most of the points involved. Until shortly before the conclusion of the hearings, freight originating at San Francisco moved by rail, via Dumbarton Bridge, to Oakland where it was transferred to other trains; freight from East Bay points was loaded directly on these trains. Traffic consigned to San Ramon Valley points, such as Walnut Creek, Danville and Concord, moved by rail to Martinez, and thence by truck to destination. Shipments destined to Port Chicago also moved by rail to Martinez, and thence by truck; freight consigned to Pittsburg moved entirely by rail; and traffic destined to Antioch was handled by rail to Tracy, and thence by truck. The trucking operations beyond both Martinez and Tracy, which are rail break-bulk points, are performed by Pacific Motor.

Shortly before the hearings commenced, Pacific Motor inaugurated a direct trucking service between Oakland and San Ramon
(23)
Valley points, including Walnut Creek, Danville and Concord. This

(22) Certain phases of the cross-examination of Merchant's operating witness dealt with both of the applications mentioned.

(23) This service was established pursuant to Decision No. 39414, dated September 17, 1946, as modified by Decision No. 40364, dated June 3, 1947, both rendered in Application No. 26433. Under the certificate issued therein, Pacific Motor was authorized to conduct a trucking service, in connection with the rail operations of Southern Pacific and subject to certain limitations, between Oakland and Tracy and intermediate rail points situated both on the main line and on the San Ramon branch. Contemporaneously with the establishment of that service, Pacific Motor was authorized to discontinue its existing trucking operations between Martinez and San Ramon, Concord and intermediate points.

was designed to accommodate both East Bay and San Francisco shippers. Traffic originating at San Francisco would move directly across the San Francisco Bay Bridge to Oakland, where it would be transferred to trucks operating over the Tunnel Road to the destinations mentioned.

This service, however, was of short duration. After having been in effect for four days, it was suspended because of labor difficulties and was not restored until five days before these protestants presented their showing, shortly before the close of the hearing. Owing to this situation, the establishment of the service was postponed for six months. The delay was occasioned by a wage dispute between Pacific Motor and the labor union of which its truck drivers were members. In the meantime, traffic continued to move by rail to Martinez and by truck beyond, under the arrangement which had existed for several years.

From San Francisco and the East Bay, these carriers offer an overnight service. At San Francisco the pickup and delivery service is provided for Pacific Motor by Walkup Drayage & Warehouse Co., and in the East Bay by Merchants; both have adequate facilities. Freight picked up pursuant to calls received no later than 3 p.m. will be delivered at the affected points during the following morning. Such a service was offered, it was stated, both under the recently established trucking operations and also under the pre-existing rail-truck operations. However, the new service will afford earlier delivery at San Ramon Valley points than was

(24)
previously available. Freight moving outbound from San Ramon Valley points is scheduled to leave not later than 2:30 p.m., on the average. In the past, overnight service has not always been afforded this traffic; under the present operation, however, such a service is contemplated.

Santa Fe provides an all-rail service between San Francisco and East Bay points (including Oakland, Alameda, Emeryville, Berkeley and Richmond), and Port Chicago, Pittsburg, Antioch and Oakley, available daily excepting Sundays and holidays. At San Francisco, pickup and delivery service is performed by Federated Terminals Co.; in Oakland and adjacent cities, by Merchants; and at the other points mentioned, by local draymen operating under contract with the railroad. At San Francisco, less-carload freight is received up to 6 p.m., and at Oakland, until 5 p.m.; however, the actual pickup must be completed by an earlier hour. Cars loaded at San Francisco are barged across the bay to Ferry Point; those loaded at Oakland are switched to Richmond. Less-carload freight originating at San Francisco is afforded next morning delivery at Port Chicago, Pittsburg, Antioch and Oakley; East Bay traffic is supplied next morning delivery at Pittsburg, and second morning delivery at the other points mentioned.

(24) Under the former rail-truck operation, freight handled via Martinez, it was said, ordinarily would be available for delivery at both Walnut Creek and Concord commencing from 9:30 to 10 a.m.; under the direct truck operation now provided, it would be available for delivery at Walnut Creek, commencing at 8:30 a.m. and at Concord, commencing at 9:15 a.m. At Port Chicago, delivery is afforded between 11 a.m. and 1 p.m.; at Pittsburg, commencing at 9:30 a.m.; and at Antioch, commencing at 8:30 a.m.

Sacramento Northern supplies an all rail service between Oakland, Lafayette, Walnut Creek, Concord, Port Chicago and Pittsburg. Pick up and delivery service is performed by Merchants in the East Bay (including Oakland, Emeryville, Piedmont, Berkeley and Albany); at Pittsburg, it is furnished by a local drayman. Such a service formerly was provided at Walnut Creek, Concord and Port Chicago, but was discontinued in recent years; assertedly, it has not been restored because of this carrier's inability to obtain draymen at these communities who would perform the service. Freight destined to any of these points is received at the station, and the consignee is notified by the agent of its arrival. At Lafayette, where no agent is maintained, freight is left unguarded in a shelter shed. East Bay traffic is offered an overnight service, with first morning delivery, available daily except Sundays.

Operating over an extensive network, Merchants serves an area situated north, east and south of San Francisco and East Bay cities, as a highway common carrier. As part of its system, it operates between Oakland, Orinda and Lafayette via the Tunnel Road. Terminals are established at both San Francisco and Oakland, and a large fleet of equipment is maintained. Its investment in these facilities is substantial. In case of need, it can draw upon the equipment owned by its affiliate, Wallcup Drayage & Warehouse Co. Ordinarily, one truck is assigned to the Orinda-Lafayette operation, but on occasion, as many as three additional trucks have been used. Merchants also provides pickup and delivery service, at East Bay points, for certain rail lines, as indicated above.

Between San Francisco-East Bay and Orinda and Lafayette, Merchants offers an overnight service, available daily excepting

Saturdays, Sundays and holidays. Pickup and delivery service is provided at all of these points. Freight picked up throughout the day, at both San Francisco and East Bay cities, is delivered to the consignees early on the following morning. The operating official representing this protestant, who is in close touch with the situation, testified that he had received very few complaints regarding the quality of the service afforded these points. The movement, he said is substantial.

Between San Francisco and East Bay cities, on the one hand, and Sacramento and Stockton, on the other, Delta operates as a highway common carrier, serving certain intermediate points such as Pittsburg and Antioch. It maintains terminals at San Francisco, Oakland and Pittsburg, and operates a large fleet of equipment of various types. The investment in these facilities is substantial. Pickup and delivery service is provided at San Francisco, East Bay cities, Pittsburg and Antioch. (25)

An overnight service is provided between the Bay Area and both Pittsburg and Antioch, available daily excepting Saturdays, Sundays and holidays. Freight picked up by 5:30 p.m., in San Francisco or the East Bay, is delivered at Pittsburg or Antioch on the following morning. Every effort is made to handle the traffic expeditiously. Terminals must be cleared daily, since they are

(25) Delta itself performs the pickup and delivery service at San Francisco, Pittsburg and Antioch. In the East Bay, this service is supplied through the instrumentality of Haslett Warehouse Co. At Antioch, freight is distributed by trucks based on the Pittsburg terminal. A larger shipment would move directly, on line equipment, from the consignor to the consignee; it would not be handled through the terminal.

designed to facilitate the transfer, rather than the storage, of freight. Sufficient equipment is stationed at Pittsburg to accomodate the traffic offered. The tonnage moving between these points is substantial in volume.

(26)
(27)

Exhibits were offered by some of the protesting carriers, designed to disclose the character of their operations, respectively, within the affected territory during selected periods. Included among those submitting such information were Southern Pacific-Pacific Motor, Sacramento Northern and Delta. Other carriers described in general terms the nature of their performance.

The performance record produced by Southern Pacific-Pacific Motor covers all of the shipments delivered, within a designated monthly period during the course of the hearing, to specified shippers situated at Walnut Creek, Danville and Concord, who previously had testified on applicant's behalf. This was based upon a study of the freight delivery receipts filed at the

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- (26) The equipment allocated to Pittsburg, to be used locally, comprises three pickup trucks, three tractors and six van trailers.
- (27) This protestant's general manager estimated that some six hundred potential customers were located within the pickup and delivery limits of Pittsburg, which are somewhat more extensive than the city limits. This, he stated, was based upon information submitted by the local Chamber of Commerce. Within this area, he testified, Delta served, on the average, about 45 consignees daily, delivering to them some 70 shipments, in the aggregate. The traffic moving eastbound from the Bay Area to Pittsburg averages from 23 to 25 tons daily, ranging from 6 to 60 tons. In the opposite direction, it averages from 20 to 25 tons daily, ranging from 4 to 100 tons. Frequently, heavy shipments are transported westbound for large industries located at Pittsburg, such as Dow Chemical Co. From the Bay Area to Antioch, the daily traffic averages from five to six tons; in the opposite direction, it runs about one tone.

destination freight offices. A total of 249 shipments are listed, (28)
which were delivered during this period to 39 consignees.

This exhibit is designed to show, with respect to each of the shipments described therein, the time consumed in transit. It discloses the dates when the waybill and the freight bill, (29) respectively, were issued, and the date placed on the delivery receipt when the shipment was received by the consignee. The difference, measured in days, between the waybill date and that shown on the delivery receipt, represents the time required to perform the transportation service.

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- (28) Of the 39 consignees included in this study, 19 are located in Walnut Creek; three, in Danville; and 17, in Concord. Of the 249 shipments listed, 111 were destined to Walnut Creek; 17, to Danville; and 121, to Concord.
- (29) In the ordinary course of business, it was stated, the waybill is issued at the origin station when the shipment is received by the carrier, and it is dated accordingly. The information shown in this document, as well as in its counterparts, is taken from the shipping order, which is presented by the consignor and accompanies the shipment when it is tendered to the carrier for transportation. The shipping order is retained by the agent at the point of origin. With respect to traffic destined to Walnut Creek, Danville and Concord, handled under the rail-trucking operation formerly conducted, the freight bill date was inserted by the agent at Martinez, when the shipment reached that point. This practice was followed to avoid delay in effecting delivery at San Ramon Valley points. The record does not disclose the method of dating freight bills, now observed in the performance of the existing trucking operation; it was indicated, however, that some change would be made. On delivery of the shipment, the driver obtains the consignee's signature on the delivery receipt. Later, on the same day, after the driver has reported to the local agent at Walnut Creek or Concord, and has completed his accounting for the day's transactions, the date of delivery is stamped by the agent on the delivery receipt. This document remains in the agent's files at the point of delivery. Since no agency is maintained at Danville, delivery receipts covering freight destined to that point are processed by the agent at Walnut Creek.

This showing reveals that most of these shipments were delivered to consignees on the day following their receipt by the carrier. In not exceeding ten per cent of the total number described were delays indicated for which no satisfactory explanation appears. Most of these delays did not exceed one day; a few, however, were somewhat longer.

The information submitted by Sacramento Northern covers the performance of its freight trains during a three months period immediately preceding, and following, the filing of the application. The time schedule in effect during the latter half of this period also was offered. On the average, it appears, the trains left Oakland about 30 minutes late; they arrived at Lafayette, Walnut Creek and Concord on time or a few minutes late; and they reached both Port Chicago and Pittsburg well before the scheduled hour of arrival. This statement does not disclose the interval during which any shipment was in transit between the time when it was picked up from the consignor and when it was delivered to the consignee.

Delta submitted performance records covering all shipments, moving from both San Francisco and Oakland to Pittsburg, during a weekly period in the midst of the hearing, as well as shipments consigned to certain Pittsburg firms from the same origin points

(30) Of the 249 shipments covered by this study, all but 77 were accorded overnight delivery. Of the latter, 48 were handled over weekends; eight, over holidays; four, over both weekends and holidays; and four were received on Sunday (including one trap-car shipment, and three delivered by the consignor directly to the freight station). As to 23 shipments, the reason for the delay was not expressly stated. However, it appears, both from the exhibit itself and from the explanatory testimony in the record, that in 23 instances, the delays shown were not satisfactorily accounted for, either wholly or in part. Of these, 14 involved an unexplained delay of one day; two, of two days; three, of three days; and one, each, of six, seven, nine and 14 days, respectively.

during a four-months period coinciding with the hearing. During the week selected, 251 shipments were transported from San Francisco, and 99 from Oakland, or a total of 350 from both points. In most instances, failure to effect overnight delivery appears to have been justified. Only on 14 occasions do these exhibits disclose delays of this nature which were not satisfactorily explained. These delays range from one to three days.

To refute the testimony of certain shippers, whom applicant had called, this protestant submitted performance records, as stated above. These covered the shipments received, during the period mentioned, by six Pittsburg firms. Altogether, 101 shipments were delivered to these consignees, collectively. In but 12 instances, it appears, was failure to accord overnight delivery not satisfactorily explained. These delays ranged from one to four days. Reference was also made to a Bella Vista shipper, situated three miles west of Pittsburg and within the Pittsburg pick up and delivery zone. As a witness for applicant, he had criticized the service afforded by Delta, pointing to frequent delays in transportation, and asserting that shipments had been held at Pittsburg in order to permit accumulation of a load, which would then be delivered at Bella Vista. In reply, it was stated that, pursuant to this shipper's request, all shipments were held at Pittsburg awaiting his instructions regarding their disposition. (He also was engaged in business at Pittsburg, and elsewhere.) Moreover, it was shown, his premises were somewhat inaccessible, thus rendering the delivery of freight consigned to him rather difficult to accomplish.

Having reviewed the facts of record, we shall undertake

to appraise their significance, and determine what action would be justified.

Though several carriers have appeared as protestants, not all of them reach every point which applicant proposes to serve. Thus, Orinda is served by Merchants alone. Lafayette is served by Merchants and Sacramento Northern. Both Walnut Creek and Concord are served by Sacramento Northern and Pacific Motor. Danville and Alamo are served by Pacific Motor. Pittsburg is served by Santa Fe, Southern Pacific-Pacific Motor, Sacramento Northern and Delta; Antioch is served by the same lines, excepting Sacramento Northern. Railway Express serves the points reached by the rail carriers or
(31)
by Pacific Motor.

Some of these carriers do not supply an overnight service for the transportation of less-carload freight. Santa Fe offers such a service on San Francisco traffic consigned to Pittsburg, Antioch and Oakley; East Bay traffic, however, is afforded second morning delivery at points other than Pittsburg, where it is delivered overnight. Sacramento Northern has discontinued the pick-up and delivery service previously furnished at Walnut Creek and Concord, and apparently has no present intention of restoring it. Nor is such a service supplied at Lafayette; in fact, no agency station is maintained there. Southern Pacific-Pacific Motor, Merchants and Delta offer overnight delivery service at the points reached by their respective lines.

(31) Thus, Southern Pacific reaches Pittsburg and Antioch; Pacific Motor serves the same points, and in addition, its lines reach Walnut Creek, Alamo, Danville, and Concord. Santa Fe's service extends to Pittsburg and Antioch. Sacramento Northern reaches Lafayette, Walnut Creek, Concord and Pittsburg. Merchants serves Orinda and Lafayette. Delta serves both Pittsburg and Antioch.

The service which actually has been provided by certain protestants, we are convinced, has not adequately met the shippers' requirements. This is true both as to Southern Pacific-Pacific Motor and as to Sacramento Northern. The evidence clearly shows that in the performance of the combined rail-truck service at San Ramon Valley points, such as Concord, Walnut Creek, Alamo and Danville, Southern Pacific-Pacific Motor have subjected shippers to undue delay in the transportation and delivery of their freight. This condition continued to exist for many months prior to, and during the course of the hearing. It likewise appears that Sacramento Northern, because of its failure to furnish pick-up and delivery service at important points such as Lafayette, Walnut Creek and Concord, has provided an inadequate service. Consignees of less-carload shipments must call at the station for their shipments - a circumstance which obviously results in both delay and inconvenience. The record also indicates that Merchants has delayed the delivery of shipments destined to Lafayette and Orinda. However, the showing presented by the retail dealers situated at Pittsburg and Antioch, regarding the quality of the service supplied by the existing carriers, is wholly insufficient, in our judgment, to disclose the nature and extent of the transportation needs of the shippers of those communities. Applicant, therefore, has failed to establish the inadequacy of this service.

(32) No shipper located in Antioch was produced, and only six shippers engaged in business at Pittsburg were called. In view of the size and importance of these communities, it is believed that so meager a showing cannot be regarded as adequately representing the views of a cross-section of those shippers who reasonably might be expected to be familiar with the quality of the service afforded by the carriers in the field.

The performance records offered by some of the protestants afford no sufficient answer to the shippers' complaints. Those offered by Southern Pacific-Pacific Motor were confined to a single month, occurring shortly before the submission of the case. Accepting, as we do, the explanations offered for the delays indicated by this record (except as specified above), we believe, nevertheless, that the period selected is not of sufficient duration to reflect adequately the quality of service provided by these carriers throughout the many months covered by the testimony of the shipper witnesses. The information submitted by Sacramento Northern offers no clue as to the time consumed between the receipt by that carrier of any given shipment, and its delivery to the consignee. They, therefore, throw little light upon the nature of its performance. The record supplied by Delta, covering its general performance, was limited to one week - a period too short, in our opinion, to reflect adequately the character of that carrier's service. However, the reports dealing with traffic handled for designated shippers (who previously had testified on applicant's behalf) are not susceptible to this objection, since they cover a period of three months.

That Pacific Motor subjected its patrons to both inconvenience and annoyance through undue breakage and rough handling of their shipments, must be regarded, as an established fact. These complaints were supported by convincing evidence, replete with details. Although such conduct, standing alone, might not necessarily warrant the admission of another carrier into the field, nevertheless, it is a circumstance which should be considered.

The deficiencies in the service provided by this carrier cannot be excused solely because of labor difficulties which may

have arisen. During the course of the dispute between Pacific Motor and its employees, the rail-truck operation via Martinez, which had been conducted for several years previously, continued to be performed. Not until the settlement of this disagreement, shortly before the submission of the case, was the direct trucking service, theretofore authorized by the Commission, permanently established. In view of the dispute which immediately ensued, the initial attempt to inaugurate that service proved futile, it having been withdrawn over the weekend, and its ultimate establishment was delayed six months. We cannot accept the contention that the service provided in the meantime was of an emergency character. On the contrary, it was the service which long had been supplied, and which immediately was restored, after an evanescent interruption. Under the circumstances then prevailing, the rail-truck service must be regarded, rather, as the normal method of operations. Clearly, any defects inhering in that service cannot be excused on the ground that this was merely a temporary service, established to meet an emergency, for such was not the case.

This territory, it was shown, has experienced substantial growth and development during recent years. There appears to be a need for a transportation service which would meet the requirements of the local retail merchants and dealers, situated at San Ramon Valley points, which are not adequately supplied by the carriers in the field. These shippers need, and are entitled to, a service which would afford prompt delivery of goods purchased from their suppliers in the Bay Area. Applicant, it appears, is qualified to perform such a service. The potential traffic is sufficient to warrant the admission of a newcomer to the field; the competition thus generated would not, in our judgment, impair the ability of

the existing carriers to continue their operations. Accordingly, applicant will be authorized to serve San Ramon Valley points as a highway common carrier; however, the record, we believe, does not justify the extension of this service either to Pittsburg or Antioch.

Protestants sought to show that applicant, though professedly acting under its permit as a contract carrier, nevertheless had served this territory as a common carrier, without proper authority. Applicant's objections to the production of such evidence were submitted to the Commission, which held informally that testimony of this nature would not be received. This ruling was announced by the presiding examiner shortly before the close of the hearing. The reasons underlying this conclusion are set forth in our decision in the Circle case, to which we have referred. To avoid undue repetition, that discussion is incorporated in this opinion.

As stated, the application will be granted in part. Appropriate limitations will be imposed which are designed to exclude the transportation of certain commodities, as indicated above.

Harold A. Stapel, Harland H. Stapel and Clayton C. Koons, copartners, are 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 Harold A. Stapel, Harland H. Stapel and Clayton C. Keons, copartners, authorizing the establishment and operation of a service as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act) for the transportation of general commodities between San Francisco, Emeryville and Oakland, on the one hand, and Orinda, Lafayette, Walnut Creek, Danville and Concord, and points intermediate thereto on State Highways Nos. 24 and 21, on the other hand.

Said certificate is granted subject to the following limitations:

a. Applicant is authorized to engage only in the transportation of those commodities which are specified in the Commission's Highway Carriers' Tariff No. 2.

b. Applicant shall not engage in the transportation of:

Uncrated household goods and other commodities for which the Commission has prescribed minimum rates in Appendix "A", Decision No. 32325, City Carriers' Tariff No. 3 - Highway Carriers' Tariff No. 4;

Livestock, uncrated;

Liquid commodities, in bulk, in tank trucks;

High explosives; and

Commodities requiring refrigeration.

(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 Oakland, via the San Francisco-Oakland Bay Bridge.

Between Oakland and other East Bay points, and Orinda, Lafayette, Walnut Creek and Concord, via State Highway No. 24.

Between Walnut Creek and Danville, via State Highway No. 21.

(3) That in all other respects, said Application No. 28649 is hereby denied.

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

Dated at San Francisco, California, this 14th day of February, 1950.

R. J. [Signature]
Justice J. [Signature]
[Signature]
[Signature]
 COMMISSIONERS