

Decision No. 44525**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PENINSULA MOTOR EXPRESS, a corporation,)
 for a certificate of public convenience)
 and necessity to transport property, as) Application No. 29438
 a common carrier for compensation, over)
 the public highways between all points)
 on its line and San Jose, and points)
 intermediate and adjacent thereto.)

Glanz & Russell and Clair W. MacLeod, for Peninsula Motor Express, applicant.
Douglas Brookman, for Merchants Express Corporation, protestant,
Edward M. Berol and Marvin Handler, for Highway Transport, Inc. and Highway Transport Express, protestants.
W. A. Gregory, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.
E. L. Van Dellen, for The Western Pacific Railroad Company, protestant.
Frank Louzhran, for Peninsula Delivery Service, protestant.

O P I N I O N

Applicant, Peninsula Motor Express, a corporation, now operates as a highway common carrier between San Francisco and Palo Alto, and intermediate points. In this proceeding, it seeks a certificate of public convenience and necessity authorizing the extension of its operations between the points which it currently serves, on the one hand, and San Jose and points adjacent thereto, as well as intermediate points, on the other hand.⁽¹⁾ The application

- (1) Specifically, applicant seeks a certificate authorizing the performance of a highway common carrier service--"....between all points covered by its present certificate and San Jose and points intermediate and adjacent thereto, as follows:

"Between San Francisco, San Bruno, San Francisco Airport at Mills Field, Millbrae, Burlingame, San Mateo, Beresford, Belmont, San Carlos, Redwood City, Atherton, Menlo Park, Palo Alto, Mountain View, Moffett Field, Sunnyvale, Santa Clara, San Jose, Agnew, Robertsville, Los Gatos, Saratoga, Campbell, Cupertino, Permanente, Los Altos, and all intermediate points (including unnamed points); and between any two points, both of which are intermediate to any of the points named above; also to all points within one mile of the city limits of every incorporated city served; and to perform a unified and consolidated service between all of said points."

was opposed by certain common carriers now serving the territory, which appeared as protestants.⁽²⁾ Public hearing was had before Examiner Austin at San Francisco and San Jose, when the matter was submitted on briefs, since filed.⁽³⁾

Applicant's proposal was described by its president and general manager; it also called shipper-witnesses. Through their respective operating officials, protestants described the nature of their operations. They also produced shipper-witnesses.

In general, applicant contends that public need for the establishment of the proposed service has been shown, in view of: (a) the nature and characteristics of the territory involved, from a transportation standpoint; (b) the history and the internal relationships of the carriers in the field; (c) the prevalence of permitted carriers in the area; (d) the inadequacy of the service afforded by the existing carriers; (e) the ability of applicant to provide an adequate service; and (f) the sufficiency of the available traffic to support the proposed operation, without detrimental effect upon the existing carriers. Protestants contend, in reply: (a) that applicant has failed to establish the inadequacy of the service provided by the existing carriers; (b) that protestants have affirmatively shown the adequacy of such service; (c) that applicant has failed to show the existence of public convenience and necessity

(2) The protestants comprised Southern Pacific Company and its affiliate, Pacific Motor Trucking Company; The Western Pacific Railroad Company; Merchants Express Corporation; Highway Transport, Inc. and its affiliate, Highway Transport Express; and Peninsula Delivery Service.

(3) For brevity, protestants, Southern Pacific Company and Pacific Motor Trucking Company will be referred to, collectively, as Southern Pacific - Pacific Motor (or as either); the Western Pacific Railroad Company, as Western; Merchants Express Corporation, as Merchants; Highway Transport, Inc. and Highway Transport Express (collectively or individually) as Highway; and Peninsula Delivery Service, as Peninsula Delivery. Similarly, the applicant, Peninsula Motor Express will be referred to as Peninsula Motor.

for the proposed service, in that the proof rests upon the mere desire of applicant or its shippers, and also upon the nature of the service formerly supplied by applicant as a contract carrier; moreover, it is claimed, applicant cannot offer to the shipping public a service not provided by the existing carriers; (d) that applicant has failed to bring itself within the scope of the Commission's recent declaration of policy concerning the issuance of certificates of this nature; and (e) that the granting of the application would impair the economic stability of the transportation industry in this area.

In resolving these conflicting contentions, we shall consider the record from the standpoint of:

- (a) The offer of service proffered by applicant, and its qualifications and ability to provide the same.
- (b) The nature and the transportation characteristics of the territory involved.
- (c) The prevalence of permitted carriers in the affected area.
- (d) The history and the internal relationships of the carriers in the field.
- (e) The operations conducted by the existing carriers.
- (f) The extent to which applicant's proposed service would be utilized, if established.
- (g) The adequacy of the service provided by the existing carriers.
- (h) The extent to which applicant's proposed service, if established, would impair the economic stability of the existing transportation facilities.
- (i) The guiding principles to be observed in determining whether public convenience and necessity require the approval of applicant's proposal.

These subjects will be dealt with in the order mentioned.

Applicant's Offer of Service, and its Qualifications and Ability to Provide the Same.

The service which applicant proposes to establish, as well as its past operations, was described by Wayne F. Maloney, its president and general manager. In March, 1947, Maloney acquired all of applicant's shares of capital stock, and since then he has managed and controlled its affairs. As a highway common carrier, applicant serves the territory between San Francisco and Palo Alto, and intermediate points. It performs no service as a contract carrier. Formerly, Maloney operated as a permitted carrier between San Francisco, San Jose and peninsula points.⁽⁴⁾

As stated, applicant proposes to extend its service south from Palo Alto to San Jose and points adjacent and nearby. The principal communities served would comprise Mountain View, Sunnyvale, Santa Clara, San Jose, Agnew, Los Altos, Cupertino, Campbell, Saratoga and Los Gatos.

From San Francisco, an overnight service would be provided, affording first-morning delivery on smaller shipments at all of these points. Larger shipments might be delivered somewhat later.⁽⁵⁾

(4) In 1946, Maloney (who was then individually engaged in business as Peninsula Motor Express) was required by the Commission to discontinue certain operations between San Francisco, San Jose and other peninsula points, which had been found to be unlawful. (Decision No. 39404, rendered September 10, 1946 in Cases Nos. 4339 and 4743; 46 CRC. 673) The present record discloses full compliance, on Maloney's part, with the terms of this order.

(5) Applicant's offer contemplates that small shipments picked up in San Francisco on a given day would be delivered on the following business day, by 10 AM, at any peninsula point, including San Jose and Los Gatos. This would comprise shipments weighing 4000 pounds or less. Heavier shipments would be delivered somewhat later, depending on the consignees' requirements.

To provide the service, applicant would use its existing facilities, augmenting them as occasion may require. At present, some 17 units of equipment are employed in this operation. Following the inauguration of the extended service, about eight additional units would be acquired. Terminals are maintained at both San Francisco and Palo Alto; if the service were extended, another terminal would be established at San Jose. At some points, non-agency stations would be established where shippers, desirous of obtaining pick-up service, would be afforded toll-free telephone access to the offices at Palo Alto and San Jose. Altogether, some 16 persons are employed in the operation, both in the office and as drivers.

The rates to be established are shown in a proposed tariff which was offered as part of this record.

Information was submitted concerning applicant's financial status. It may be said, generally, that it is financially qualified to carry on the proposed operation, if authorized to do so.

Nature and Transportation Characteristics of the Territory Involved.

Applicant points to the extensive growth and development of the peninsula territory, extending south from San Francisco to San Jose. This area, it is claimed, forms an integrated commercial unit which is tributary to San Francisco. Dealers in these communities draw upon San Francisco distributors for their supplies. This also is true as to San Jose, which in turn redistributes merchandise to nearby towns, thus forming a subsidiary commercial center.

The recent spectacular growth of this territory is a matter of common knowledge, of which the Commission might well take official notice. However, the growth of the area directly involved in this proceeding, was amply shown by the evidence. Statistical data submitted by a representative of the San Jose Chamber of Commerce,

as well as the testimony of shipper-witnesses, abundantly establish the rapid and substantial commercial and industrial development of this region with its concomitant increase in population. The record is replete with details.

For the reasons mentioned, it is claimed, the transportation requirements of the entire peninsula territory are essentially those of a local drayage service. To accommodate the needs of this area adequately, it is said, a carrier must provide such refinements of service as special attention to the loading requirements of its patrons, as well as their peculiar delivery needs and unusual service demands.

To adequately serve an integrated local commercial area, such as this, it is essential, so applicant contends, that there be available at least one transportation service which concentrates on the needs and requirements of that region alone. By facilitating the prompt fulfillment of orders received by suppliers from local dealers, emergency shipments could be delivered expeditiously and inventories could be held within reasonable bounds. Because of their proximity to the source of supply, it is said, local dealers rely largely upon an expeditious transportation service in the conduct of their business.

Applicant asserts that it is better able than the existing common carriers to satisfy the needs of these shippers. It now serves part of the territory; if the present application were granted, it then could serve all of it. Since applicant's operations would not extend beyond the boundaries of the peninsula area, the service would be adapted primarily to the needs of local shippers, and would completely meet their requirements.

None of the existing carriers, it is claimed, is able to supply the specialized type of service required by the shippers, which applicant assertedly could provide. Without exception, their

operations embrace areas more extensive than the peninsula. Because of service ~~commitments~~, they could not afford peninsula shippers the individual attention and consideration required by an effective local drayage service, it is said. A carrier operation adjusted to the needs of a widespread territory would encounter difficulty, it is claimed, in meeting the transportation requirements of a more narrowly restricted drayage area.

While there is considerable merit in applicant's contentions, we are not disposed to accept its thesis completely. That the peninsula territory, extending south from San Francisco to San Jose, forms a compact, well integrated commercial area must be regarded as an established fact. Moreover, this region has developed industrially and commercially, and has grown in population. However, on the present record we are not prepared to find that it necessarily possesses the essential attributes of a drayage zone; that question should be determined only after more extensive investigation. It is true that applicant's service is designed to meet the special requirements of the shippers within this territory, and would not extend beyond its boundaries. But it does not appear that the service afforded by the existing carriers, respectively, though extending to other areas in addition to that involved here, was not, or could not be moulded to these shippers' needs. On the contrary, the record indicates that in many respects, it is well adapted to their requirements. However, the fact that applicant would serve this area exclusively, and is well equipped to do so, is a circumstance to be accorded due weight in arriving at a conclusion in this matter.

Prevalence of Permitted Carriers in the Affected Area.

A substantial number of permitted carriers are operating within the territory immediately involved in this proceeding. This was shown by the testimony of the shipper-witnesses. Applicant's

witnesses identified some nine so-called contract carriers whom they had employed; and those called by protestants named an additional fourteen carriers. Still another was specified by one of protestants' operating officials. Altogether, a total of 24 such carriers was designated. Other carriers, whose names were not mentioned, also had been employed.

The shippers, it was shown had used the permitted carriers mentioned, with varying degrees of frequency, for the transportation of their products between these points. Several shippers had patronized more than one such carrier. A few carriers had been employed by several of the shippers. The volume of traffic which they handled was not shown with particularity. However, their services appear to have been utilized quite regularly. Thus, it appears that these operators are firmly entrenched in the field.

From the standpoint of their utilization by the shippers mentioned, these permitted carriers are indistinguishable from the common carriers regularly serving the territory. With minor exceptions, they transport general commodities. They do not undertake to meet the specialized requirements of the shippers. And they enter into competition with the authorized common carriers to share the traffic offered by those shippers. We shall undertake, presently, to appraise the significance of this situation.

History and Internal Relationships of Carriers in the Field.

Applicant asserts that during recent years, the number of common carriers serving this territory has materially decreased. This has been brought about through transfers of operative rights, sanctioned by the Commission, and their subsequent amalgamation with the operations of the purchasing carriers.

Formerly, six major common carriers occupied the field. They competed with one another for the traffic. None exercised any

control over any of the others. They comprised two rail lines, three highway common carriers, and one express corporation.⁽⁶⁾ Of these, the two rail lines and one of the highway common carriers still continue to serve the territory.⁽⁷⁾ One of the highway common carriers has transferred its operative rights to another highway common carrier, which actively operates within this area.⁽⁸⁾ The operative rights of the third highway common carrier were acquired by one of the rail lines.⁽⁹⁾ And the express corporation was acquired by interests which control the surviving highway common carrier.⁽¹⁰⁾

As a result of the acquisition of Holmes by Pacific Motor, the independent highway common carrier service formerly conducted by Holmes has disappeared, it was shown. It has been merged with the coordinated rail and truck service conducted by Southern Pacific-Pacific Motor. Generally, an over-the-road service is provided south from San Francisco to Palo Alto, and north from San Jose to that point. Through truck service, as contemplated by the former Holmes right, is provided only occasionally.

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- (6) The rail lines consisted of Southern Pacific and Pacific Motor (which collectively will be considered as a single carrier, in view of their close relationship), and Western Pacific. The three highway common carriers comprised Holmes Express, Valley Motor Lines, Inc., and Highway Transport, Inc. Intercity Transport Lines, Inc. operated as an express corporation. (For convenience, Holmes Express, Valley Motor Lines, Inc. and Intercity Transport Lines, Inc. will be referred to, respectively as Holmes, Valley and as Intercity).
- (7) Of the six carriers mentioned above, Southern Pacific-Pacific Motor, Western Pacific and Highway Transport, Inc. have continued to serve this area.
- (8) The operative rights of Valley, between points in the affected territory, were acquired by Merchants, pursuant to Decision No. 40105, rendered March 25, 1947, in Application No. 28154.
- (9) Holmes transferred its operative rights to Pacific Motor, as authorized by Decision No. 36793, rendered December 30, 1943, in Application No. 25619 (45 CRC 138).
- (10) Intercity's operative right, as an express corporation, was transferred to a new corporation, Highway Transport Express, pursuant to Decision No. 41613, rendered May 18, 1948, in Application No. 29276. The latter is an affiliate of Highway Transport, Inc.

Intercity no longer exists as an independent carrier. Since the transfer, mentioned above, both the express operation acquired by Highway Transport Express, and the highway common carrier operation conducted by Highway Transport, Inc., are dominated by Robertson Drayage Company, which controls each of these corporations.

Thus, two of the carriers which originally served this territory have disappeared from the scene. One, a highway common carrier, and the other, an express corporation, have lost their identities, as independent carriers, because of the transfers described above. The significance of this development will be discussed hereafter.

Operations Conducted by Existing Carriers.

Through their respective operating officials, the major protestants described the operations in which they severally were engaged. Such a showing was offered on behalf of Southern Pacific-Pacific Motor, Western Pacific, Merchants and Highway.

Southern Pacific-Pacific Motor perform a coordinated rail and truck service between San Francisco, San Jose and intermediate peninsula communities. Agencies and terminals are maintained at San Francisco, San Jose and other points.⁽¹¹⁾ Extensive facilities are provided for both the line-haul and the pick-up-and-delivery operations.

These carriers offer an overnight service, both north and southbound, affording first morning delivery at most points. Freight picked up in San Francisco⁽¹²⁾ moves overnight by rail to San Jose, where local traffic is delivered by a contract drayman; that destined

(11) Within the affected territory agencies and terminals are maintained at San Jose, Campbell, Los Gatos, Los Altos, Sunnyvale, Mountain View and Permanente.

(12) At San Francisco, the local pickup and delivery service is provided for Pacific Motor by Walkup Drayage and Warehouse Company.

to other points involved is distributed by Pacific Motor.

Western Pacific provides a less-carload rail service between San Francisco and San Jose; no intermediate peninsula points are served. Freight picked up in San Francisco is barged across the bay to Oakland, moving thence by rail to San Jose. At both San Francisco and San Jose, local pick-up-and-delivery service is supplied through contract draymen. An overnight service is offered, supplying first morning delivery.

Highway⁽¹³⁾ operates between San Francisco and San Jose, serving all intermediate peninsula points, in connection with more extensive operations. Terminals are maintained at San Francisco, San Jose, Palo Alto and Redwood City. The equipment used in this area, both line haul and pick-up-and-delivery, aggregates some 225 units; when necessary, additional equipment is supplied by Robertson Drayage Company, an affiliated company.

Between points in the affected territory, these carriers offer both same-day and overnight delivery service. When requested by the shippers, freight picked up in the forenoon, at San Francisco, is distributed that afternoon at San Jose and intermediate points; traffic received during the afternoon is accorded first-morning delivery at these points.

Merchants operates as a highway common carrier between San Francisco, San Jose and intermediate peninsula points; in addition, it serves other territory. Terminals are maintained at San Francisco, San Jose and Redwood City. Its fleet of equipment comprises some 481 units, of which 100 units are allocated to San Francisco, 14 to San Jose, and eight to Redwood City.

(13) Both Highway Transport, Inc. and Highway Transport Express serve the San Francisco-San Jose territory, the former as a highway common carrier and the latter as an express corporation.

An overnight service is offered by this carrier between San Francisco, San Jose and intermediate points. Same-day delivery service is offered, on freight received during the morning, between San Francisco and Redwood City territory, as far south as Sunnyvale. Pick-up-and-delivery service is provided at all points.

In general these carriers provide northbound service, affording overnight delivery at San Francisco. The emphasis, however, rests upon the southbound service, since the bulk of the traffic moves in this direction.

The investment of these carriers in facilities used to provide the service is substantial, it was shown. Full details were supplied. This covers both terminals and equipment.

No showing concerning the nature of its operations was offered by any of the other carriers which appeared as a protestant.

Extent to Which Applicant's Proposed Service would be Utilized.

Many of the shipper-witnesses, produced by the applicant, related their use of applicant's facilities in the past, and described the extent to which they would patronize its proposed service, if established. Presently, we shall refer to the shipper-witnesses in greater detail.

A substantial number had utilized applicant's existing service between San Francisco and Palo Alto. This service, they said, was excellent in quality. They referred to dependability of pickup, promptness of delivery, dispatch in handling claims, and the willingness of applicant to adapt itself to the shippers' particular demands.

In general, the shippers stated they would employ Peninsula Motor for the transportation of their shipments to and from points within the territory which it now seeks to serve, if such an operation were authorized. Some, it appears, would divert

to applicant the traffic now handled by permitted carriers or upon their own trucks. Their shipments would move regularly and in substantial volume.

Adequacy of Service Provided by Existing Carriers.

The character of the service supplied by the existing carriers was described by the shipper-witnesses produced by the applicant and by the protestants, respectively. Applicant called 53 witnesses, representing 50 firms and two chambers of commerce. Those called by protestants aggregated 63, representing the same number of firms. These business establishments were centered largely in San Francisco, and to a lesser degree in San Jose; a few were located in other communities.⁽¹⁴⁾

The shippers called by both applicants and protestants alike were substantial business institutions, whose products moved regularly and in varying quantities. Collectively, they dealt in a wide variety of commodities. We shall discuss the general purport of their testimony.

Applicant's shipper-witnesses expressed their dissatisfaction with the service provided by the existing common carriers. Their complaints were directed chiefly against Highway, Merchants and Southern Pacific-Pacific Motor. Only slight reference was made to Western Pacific; in fact, it does not appear that that carrier shared in the transportation of their traffic to any substantial degree.

(14) The firms represented by applicant's shipper-witnesses were distributed, as follows: San Francisco, 27; San Jose, 16; Los Gatos, 1; Sunnyvale, 1; Mountain View, 1; Los Altos, 2; Permanente, 1; and Palo Alto, 1. In addition spokesmen for the San Jose and the Sunnyvale Chambers of Commerce testified. The firms represented by the shipper-witnesses whom protestants called were distributed as follows: San Francisco, 25; San Jose, 29; Los Gatos, 3; Santa Clara, 3; Sunnyvale, 1; Mountain View, 1; and Belmont, 1.

The complaints which were voiced against the carriers mentioned follow a familiar pattern. They relate chiefly to delays occurring in picking up shipments, in the course of transit, and in completing delivery. Often, only part of a shipment had been picked up, the remainder having been left at the shipper's dock. At times, delivery had been delayed, after arrival of the freight at destination. There also had been delays in the adjustment of claims for damages arising in the course of transit. Delays affecting the handling of freight ranged from three days to one week, and sometimes even longer.

These complaints were distributed among the carriers unequally. Highway was the chief target, followed by Merchants and Southern Pacific-Pacific Motor, in that order. Every shipper did not patronize all of these carriers; as a rule, each offered one of them all or a predominant share of his traffic. Consequently, few shippers were familiar with the type of service afforded by all the carriers.

Protestants contend that this showing rests largely upon hearsay, and should therefore be disregarded. This, however, is not the case. On numerous occasions, proffered hearsay evidence was excluded, at protestants' instance. At times, statements of this nature were received without objection. On the whole, these charges are supported by direct, positive testimony given by witnesses familiar with the facts.

In weighing the testimony of applicant's shipper-witnesses certain factors should not be overlooked. For the transportation of their freight from San Francisco to Palo Alto, some of these shippers had employed both applicant and the very protestant of whose service they had complained. Between these points, they were free to choose the applicant alone, but they did not elect to do so. Obviously, this impairs the effectiveness of their testimony. But the record

indicates that only a few shippers fell within this category.

The shipper-witnesses called by protestants expressed their satisfaction with the service accorded by the existing carriers. An expeditious service had been provided, they said. Freight had been picked up promptly, whether in response to calls, or along a regular route. Some had used the same-day delivery service, offered by both Highway and Merchants, and had found it satisfactory. In general, their testimony discloses, the service supplied by these carriers had been adequate to meet their requirements; so far as they were concerned, there was no need for another carrier.

In weighing the testimony offered by the shipper-witnesses who were produced by the applicant and by the protestants, respectively, there are several circumstances which should be considered. Between the two groups, there is little choice as to the nature or importance of the business institutions which were represented. The San Francisco shippers, as a class, comprised wholesale distributors of their respective products. Those located at peninsula points included some wholesale distributors situated at San Jose, but the remainder were retailers, for the most part. Each group contained both large and small shippers.

We are disposed to accept, at face value, the statements of these witnesses concerning the quality of the service they had received. Nothing in the record would justify a contrary conclusion.

We have, then, one group of shippers who condemn the existing service, and another group which is satisfied with it. The testimony of neither group necessarily contradicts that offered by the other. We must conclude, therefore, that although some shippers have received satisfactory service, there are others who have found the service inadequate for their needs. The record affords no clear explanation for this situation. In the light of this testimony, it is reasonable to hold that the existing carriers have been unable to

accord some of their patrons a transportation service which is adequate for their needs. Such, accordingly, will be our finding.

Effect of Applicant's Operations Upon Stability of Present Service.

Protestants contend that the establishment of applicant's proposed service would impair the economic stability of the existing transportation facilities. Applicant challenges this claim, asserting that it is not supported by the record.

Protestants submitted an estimate of the potential loss of tonnage, gross revenues and net profits which they would have suffered during a recent period if they had failed to secure the traffic which applicant believes it would be able to transport if the present application were approved. This rests upon Witness Maloney's estimate that, in addition to its present traffic, applicant soon would develop a volume of tonnage averaging 100,000 pounds daily, in shipments of 20,000 pounds or under.

Protestants assert that their loss would have been substantial. Had applicant diverted from Highway, Merchants and Pacific Motor the volume of tonnage mentioned, their weighted average loss, during 1948, would have been 35.52 per cent of the less-truck-load traffic which they actually carried, it is claimed. Highway alone, it is said, would have suffered a loss of \$61,616.75 in gross revenue, and of \$18,241.55 in net profits, after making due allowance for reduction in related expenses. According to this showing, its operating ratio would have increased from 98.20 per cent to 99.70 per cent; with a corresponding reduction in the rate of profit.

Applicant has questioned the validity of these estimates. The data submitted by protestants relate only to southbound shipments, of 10,000 pounds or less, moving from San Francisco to San Jose. It appears, however, that applicant's estimated tonnage of 100,000 pounds daily, included shipments of 20,000 pounds and under,

transported in both directions between San Francisco and San Jose, Of this, Maloney testified, 80 per cent would move southbound; and 20 per cent, northbound. To delineate accurately the extent of the traffic which might have been diverted, applicant contends, protestants should have indicated the volume of movement, in both directions between the points mentioned, of shipments weighing 20,000 pounds and under. Had this been done, it is claimed, the tonnage movement used as a standard would have been considerably larger, and the losses correspondingly smaller, than those purportedly shown. We are disposed to agree with applicant's contentions. Because of the erroneous and unfounded assumptions underlying protestants' computations they cannot be accepted at face value.⁽¹⁵⁾

The record indicates, moreover, that protestants' estimate is inaccurate in still another respect. As a basis for their conclusions, protestants have assumed that the additional tonnage which applicant expects to enjoy would have been diverted, in its totality, from the three carriers mentioned. This, however, would not necessarily have occurred. There are many permitted carriers in this territory with whom applicant would compete for business. And several shippers testified that, if applicant were certificated, they would divert to it the traffic now transported for them by the so-called contract carriers. Their testimony discloses that in the aggregate this tonnage would be substantial in volume.⁽¹⁶⁾

(15) It also appears that the allocation of operating expenses to the San Francisco-San Jose territory, involved in arriving at the estimates mentioned, was based in part upon the exercise of judgment by the witness who presented the exhibit. The underlying details were not disclosed.

(16) We find ourselves unable to accept the explanation, intimated by the operating witness whom protestants called in this respect, that because of contractual obligations subsisting between these shippers and the permitted carriers whom they employ, applicant could not expect to participate in the transportation of this traffic. Our long experience in this phase of regulation has revealed the irresponsible attitude, regarding these ties, which commonly has been adopted by both contract-carriers and shippers alike. To assume the contrary would be unrealistic.

If applicant were permitted to enter the field, protestants nevertheless may reasonably expect to retain their present patrons. Many of protestants' shipper-witnesses testified, on cross examination, that if the authority sought were granted, they would divert none of their traffic to the applicant. A few indicated they might do so, but they definitely were in the minority. Most of them, it appears, would continue to use the existing carriers.

On the whole, protestants' showing, in this respect, was not convincing.

Principles Observed in Determining Existence of Public Convenience and Necessity.

In their respective briefs, both the applicant and the protestants have discussed extensively the underlying principles which, in their judgment, should control the Commission in determining whether public convenience and necessity require the issuance of the certificate sought by the applicant. As might well be expected, because of their conflicting interests the parties differ sharply in the views which they have expressed. In general, applicant points to recent decisions which, it is claimed, indicate a departure from the rigid rules which earlier were observed. Protestants, on the other hand, invoke these very rules, contending that the later decisions are not applicable in the light of the showing made.

This subject was thoroughly reviewed and carefully considered by the Commission in two recent decisions. One reflects the crystallization of our views, following an intensive investigation of the conditions prevailing in the property highway carrier industry in this state.⁽¹⁷⁾ The other involved the certification of

(17) Re Investigation into Operations of Property Carriers (Decision No. 42648 in Case No. 4823, dated March 22, 1949) 48 Cal. P.U.C. 587. This will be referred to hereafter as Decision No. 42648.

certain carriers between the Los Angeles and the San Francisco areas, which previously had been operating as permitted carriers.⁽¹⁸⁾

In Decision No. 42648, we referred to the marked growth of the permitted carriers, which now dominate the industry in this state. This, we said, was responsive primarily "...to a public demand and in most cases a public need for their services."⁽¹⁹⁾ However, the rapid turnover among such carriers, we stated, militates against the development of a sound transportation system.⁽²⁰⁾ Another factor contributing to the demoralization of the industry was the uncertain status of the permitted carriers.⁽²¹⁾ The remedy for this situation, we emphasized, did not lie in the creation of transportation monopolies. On the contrary, we stated that: "...The pattern of transportation regulation has been 'regulated competition'."⁽²²⁾ Sound policy, we declared, requires that those now operating, ostensibly as contract or radial carriers but in fact as highway common carriers, "...should be subject to substantially the same degree of regulation as the certificated carriers."⁽²³⁾ Recognizing that, under past precedents, such carriers had experienced difficulty in obtaining certificates to operate as highway common carriers, we announced, as a formal declaration of policy, that: "...The Commission should be liberal in granting certificates of public convenience and necessity."⁽²⁴⁾

(18) Re Savage Transportation Co., et al (Decision No. 43003 in Application No. 23877 and consolidated proceedings, dated June 14, 1949) 48 Cal. P.U.C. 712. This will be referred to hereafter as the Savage decision.

(19) 48 Cal. P.U.C., at page 594.

(20) Id., page 595.

(21) Id., pages 595, 596, 597.

(22) Id., page 597.

(23) Id., page 597.

(24) Id., page 598.

This general declaration of policy was implemented by the decision in the Savage case, where certificates were issued to a number of permitted carriers authorizing them to operate as highway common carriers. Emphasizing the undesirability of a transportation service supplied preponderantly by permitted carriers, between the important points involved, we said:

"Public convenience and necessity require that those carriers hauling the bulk of the tonnage should have public utility obligations. As public utilities, they must have rates on file; they are subject to stricter controls; and they must serve the public without discrimination. Such requirements tend toward greater stability. Furthermore, it is the opinion of this Commission that, in the highway common carrier field, competition is desirable to the extent that it does not impair the economic stability of the transportation industry."⁽²⁵⁾

There, as in the instant proceeding, the protesting carriers contended that they possessed the ability to perform all of the service required by the public between the affected points; and further, that to permit the entrance of new carriers into the field would seriously jeopardize their financial stability. In rejecting these claims, we pointed out that:

"...The record would indicate that [protestants] have maintained a sound financial position despite the fact that they have transported a small proportion of the available traffic over a considerable period. The evidence submitted by protestants themselves indicates satisfaction on the part of the shippers they are now serving. There is no reason to believe that any substantial diversion of such shippers' traffic would follow, should certificates be issued to applicants."⁽²⁶⁾

(25) 48 Cal. P.U.C., at pages 719, 720.

(26) Id., page 721.

Notwithstanding these objections, the applicants in those proceedings were authorized to enter the field as highway common carriers.

These pronouncements indicate the policy which should guide us in giving effect to the statutory standard of "public convenience and necessity" (Section 50-3/4, Public Utilities Act), governing us in the issuance of operating authority such as that involved here. They reflect our considered judgment. We shall now undertake to apply this policy to the facts shown of record, in this proceeding.

Findings and Conclusions ✓

Based upon the evidence we find and conclude as follows:

(1) Applicant is qualified, financially and by experience, to conduct the operation which it seeks to establish. The service, if inaugurated, would be well patronized by the shippers.

(2) The affected territory has undergone a marked development, during recent years, both commercially and industrially, and is continuing to grow. The population of these communities has increased substantially. For the proper functioning of these business activities, an adequate transportation service is essential.

(3) A transportation service limited to peninsula points, such as applicant proposes to establish, would be advantageous to the shippers of that area. It could be tailored to suit their needs, and would be untrammelled by service commitments elsewhere. However, the existing carriers are capable of adapting their service to this particular territory.

(4) The service afforded by the existing carriers has not been adequate to meet the requirements of a substantial number of shippers. It is true that these carriers possess extensive facilities and equipment. Their operations are well designed to accommodate the shipping public. Many shippers expressed their approval of the service supplied. Nevertheless, a substantial number of shippers have convincingly established the failure of these carriers to furnish them an adequate service. Their testimony is entitled to credence; it was not contradicted by that given by the shippers whom protestants produced. The record indicates that these carriers are unable to serve all of the shippers desiring to be accommodated; we cannot believe that they are unwilling to provide such a service.

(5) A substantial number of permitted carriers operate within the peninsula territory, serving the affected points, and competing for the traffic with the rail lines and the certificated property carriers. The volume of the tonnage which they handle, collectively, was not shown precisely; however, it appears to be substantial. In view of the Commission's present policy regarding enforcement of the statutes governing the operations of permitted carriers, it is highly probable that the activities of these carriers soon may be curtailed materially. When this occurs, the traffic they now enjoy would flow to the authorized common carriers in the field, both rail and truck. Protestants assert that they alone are entitled to all of this tonnage; they object to sharing it with a newcomer. In the absence of convincing evidence that deprivation of this traffic would impair their ability to serve the territory, we are unwilling to accede to this contention. Clearly, it is not consistent with the Commission's recent rulings, mentioned above. Moreover, in view of the showing indicating the inability of the existing carriers to serve all of

their present shippers adequately, there is no assurance that they could satisfactorily accommodate this additional traffic.

(6) Closely allied with the situation last discussed is the disappearance, through the merger of their operations with those of the existing carriers, of certain carriers who formerly had served this territory. This may indicate a trend toward fewer carriers operating within a given area. In view, however, of the growth and development of the peninsula communities, we are not inclined to curtail unduly the number of common carriers available to the shippers. Moreover, this would be inconsistent with the policy announced above.

(7) To sanction applicant's proposal, we believe, would not impair the ability of the existing common carriers to serve this territory. Their claims, in this respect, are not supported by the record. Moreover, they reasonably may expect to enjoy their fair share of the traffic which the permitted carriers would be required to forego, under the Commission's enforcement program.

The application, accordingly, will be granted.

Peninsula Motor Express is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number 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 duly submitted, the Commission being fully advised and now finding that public convenience and necessity so require;

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is granted to Peninsula Motor Express, a corporation, authorizing the establishment and operation of a service as a highway common carrier (as defined by Section 2-3/4, Public Utilities Act), for the transportation of general commodities between all points covered by its present certificate and San Jose and points intermediate and adjacent thereto, as follows:

Between San Francisco, San Bruno, San Francisco Airport at Mills Field, Millbrae, Burlingame, San Mateo, Beresford, Belmont, San Carlos, Redwood City, Atherton, Menlo Park, Palo Alto, Mountain View, Moffett Field, Sunnyvale, Santa Clara, San Jose, Agnew, Robertsville, Los Gatos, Saratoga, Campbell, Cupertino, Permanente, Los Altos, and all intermediate points (including unnamed points); and between any two points, both of which are intermediate to any of the points named above; and also to or from any and all points or places situated within one mile of the city limits of every incorporated city served hereunder.

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

- (a) Within a period of not to exceed 30 days from the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective, appropriate tariffs and time tables, provided said tariffs do not establish rates and charges lower than those maintained by existing Highway Common Carriers.
- (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:
 - 1. Over U. S. Highway No. 101 and over U. S. Highway No. 101-A, between San Francisco and San Jose, and over any and all lateral roads or highways connecting said highways.
 - 2. Over State Highway No. 9, between Sunnyvale and Los Gatos, via Cupertino and Saratoga.
 - 3. Over State Highway No. 17 and unnamed highways, between San Jose and Los Gatos, via Campbell and Robertsville.

4. Over unnumbered County Highway known as San Antonio Road from its junction with U. S. Highway No. 101, and over unnumbered County Highway known as Fremont Road, between Los Altos and Santa Clara, and over any and all lateral roads or highways connecting U. S. Highway No. 101 and San Antonio Road or Fremont Road.

5. Over unnumbered County Highway known as Stephens Creek Road, between San Jose and Monta Vista, via Cupertino; also over unnumbered County Highway between Monta Vista and Permanente, and unnumbered County Highway connecting Monta Vista with Fremont Road.

6. Over unnumbered County Highway known as Almaden Road, between San Jose and Robertsville.

7. Over unnumbered County Highway between Redwood City and the Port of Redwood.

8. Over unnumbered County Highways between Agnew and San Jose, and Agnew and Sunnyvale.

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

Dated at San Francisco, California, this 11th day of July, 1950.

R. Z. [unclear]
Justin J. [unclear]
Leas Powell
Harold Hule
Kenneth Patten
COMMISSIONERS