

ORIGINAL

Decision No. 45417

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
E. GUY WARREN, doing business as )  
WARREN TRANSPORTATION CO., for a )  
certificate of public convenience )  
and necessity to operate as a high- )  
way common carrier for the trans- )  
portation of property. )

Application No. 30128

Marvin Handler, for applicant.  
Douglas Brookman, for Common Carrier Conference of  
Truck Owners' Association of California;  
Gordon & Knapp by Hugh Gordon, for Pacific  
Freight Lines and Pacific Freight Lines  
Express; Reginald L. Vaughan, Varnum Paul &  
John C. Lyons by John C. Lyons, for Clark  
Bros. Motor Transport, Inc., Inter-Urban  
Express Corporation, Kellogg Express and  
Draying Company and M. L. Morris, doing  
business as M & W Truck Line; Willard S.  
Johnson, for J. A. Nevis, doing business as  
Joe A. Nevis Trucking, J. Christenson Co.  
and Theo Peters, doing business as Ted Peters  
Trucking; William Meinhold and W. A. Gregory,  
for Southern Pacific Company, Northwestern  
Pacific Railroad Company, Central California  
Traction Company and Pacific Motor Trucking  
Company; Robert W. Walker, J. B. Kramer and  
F. A. Jacobus, for The Atchison, Topeka &  
Santa Fe Railway Company and Santa Fe Trans-  
portation Company; and E. L. Van Dellen, for  
The Western Pacific Railroad Company, Sacramento  
Northern Railway and Tidewater Southern Railway  
Company, protestants.

Frank Loughran, for Riske Trucking Company, Johnson  
Truck Lines and Bonded Draying Service,  
interested parties.

O P I N I O N

By the application, as amended, in this proceeding, E. Guy  
Warren, doing business as Warren Transportation Co., seeks a certifi-  
cate of public convenience and necessity to operate as a highway  
common carrier for the transportation of (1) general commodities  
(except uncrated household goods, livestock, liquid petroleum products  
in bulk, explosives, articles of unusual value and fresh fruits

and vegetables)

- (a) between points in San Francisco Territory, as described in Highway Carriers' Tariff No. 2, subject to the limitation that no shipments be transported locally between San Francisco, Oakland, Emeryville, Berkeley, Albany, El Cerrito, Richmond, Piedmont, Alameda and San Leandro; and
- (b) between points in San Francisco Territory, on the one hand, and points and places located on various specified routes extending from Santa Maria, Taft and Wheeler Ridge on the south to Ukiah, the California-Oregon state line (north of Yreka as well as near Dorris) and Alturas on the north and the California-Nevada state line (near Doyle as well as near Verdi, Nevada), Placerville, Sonora Junction (near Bridgeport) and the Yosemite National Park on the east, on the other hand;

together with the right to serve all points and places within 25 miles of the highways traversed, and (2) lumber, other forest products and building materials between Vallejo, on the one hand, and all points and places on, and within 25 miles of, the routes over which applicant proposes to operate in transporting shipments from or to San Francisco Territory. Applicant also requests that the certificate be subject to the restriction that he shall not transport any shipments of less than 20,000 pounds or subject to a charge lower than that applicable on a shipment of not less than 20,000 pounds.

San Francisco Territory embraces the area from San Jose northerly on the west side of San Francisco Bay to and including San Francisco and on the east side of the Bay to and including Point Richmond. In general, the territory sought to be served in connection with traffic from and to San Francisco Territory and Vallejo embraces virtually the entire State of California north of Santa Maria, Taft and Wheeler Ridge, except north of Ukiah, portions of Modoc, Lassen, Plumas, Sierra, Alpine and Amador counties and the areas east of Yosemite National Park and the southern part of the San Joaquin Valley.

The granting of the application is opposed by the Common Carrier Conference of the Truck Owners' Association of California,

various individual highway common carriers and the principal rail lines operating in northern and central California, including their affiliated highway transport agencies. Public hearings were held before Examiner Bradshaw at San Francisco. Evidence was received and the parties were heard in oral argument.

Applicant established his trucking business during 1929 with one truck. His principal place of business and terminal is at Hayward. An office is also maintained in Stockton. He has held permits to operate as a radial highway common carrier and highway contract carrier, as defined in the Highway Carriers' Act, since the passage of that Act in 1935. A certificate of public convenience and necessity was granted to applicant by the Interstate Commerce Commission, under the grandfather clause of the Motor Carrier Act, 1935, authorizing the transportation in interstate and foreign commerce as a common carrier by motor vehicle over irregular routes of general commodities, with certain exceptions, between the San Francisco Bay area and points and places in 37 counties in California. The excepted commodities are substantially the same as those which have been excluded from the application in this proceeding. Some territorial limitations were imposed with respect to canned goods, dried fruits, fresh fruits, fresh and dried vegetables, apple cider, groceries, lumber and lumber products.

Applicant's present equipment consists of 15 diesel and three gasoline tractors; six diesel flat-rack trucks; five flat-rack trailers; 17 flat-rack, two dump and three tank semi-trailers; five pairs of flat-rack trailer trains, four cranes and two pole dollies. One flat-rack diesel truck and three gasoline tractors are leased, while the balance of the equipment is owned. Applicant stated that the equipment is particularly adapted to the transportation of truckload shipments; that the tank equipment is used for

transporting liquid sugar; and that the dump equipment is used for the movement of ore, bulk salt and a few other commodities, such as bulk fertilizer. Applicant does not operate any van-type equipment. It was stated that when large movements occur requiring very rapid handling the fleet is augmented by the employment of sub-haulers.

A balance sheet designed to disclose applicant's financial condition as of December 31, 1949, indicates current assets of \$139,347 and fixed assets of \$299,023, or total assets of \$438,370. The same statement sets forth his liabilities as current liabilities, \$52,537; secured liabilities, \$83,773; and total liabilities of \$136,310, leaving a net worth of \$302,060. These figures are represented as being applicant's total assets and liabilities, which include a farm equipment business in Hayward and two nearby ranches. Other evidence indicates that the net worth of the transportation business is about \$173,233. According to an exhibit of record, applicant's revenue from transportation during 1949 amounted to \$611,490, while the total expense of conducting the same was \$603,466.

It is alleged that applicant is not exactly informed and has not been able to obtain exact information as to what operations may be conducted under his permits. He testified that he only desires to continue the operations now being rendered. His counsel asserted that if applicant's operations do not require certification he will have no objection to a decision so stating. Under the circumstances, it becomes necessary to inquire into the nature of the present operations, insofar as they are revealed by the evidence, to determine the type of operation applicant proposes to render in the event that the application herein is granted.

Applicant testified that his operations have been confined to the transportation of shipments in truckload lots and that the traffic handled during 1949 amounted to 178,525 tons. An exhibit

of record lists the names of 119 shippers, including the United States Government (Army, Navy, Marine Corps and Commodity Credit Corporation), who were billed for transportation services during the same year. The classes of commodities transported are not in all instances indicated on the exhibit. To the extent that they are shown the following, from the standpoint of the number of shippers involved, predominate in the order in which they are named: steel, lumber, contractors' equipment, miscellaneous, paper, groceries (including straight truckloads of canned goods, sugar and salt), machinery and poles.

It was testified that the preponderance of the traffic is outbound from the Bay area to various points in California; that shipments of pipe and steel usually move to construction job-sites at off-route points; and that considerable poles and some shipments of machinery are transported to projected pole-line locations.

Applicant further stated that he transports any type of freight that is offered provided it can be handled on his equipment, and that requests for service have never been refused if within the scope of his operations. The witness asserted that business has never been solicited for movement to particular points or over any specified routes. Frequently, occasions arise, according to the testimony, when there are very heavy movements, such as over 100 loads, which must be transported within a very short period. It was estimated that at the present time about 25 per cent of applicant's traffic is in interstate or foreign commerce.

An outline map was introduced in evidence purporting to show the locations to or from which applicant transported at least one truckload of freight during the months of August, 1947, August, 1948, and March, 1949. The shipments handled during these months are claimed to have been typical of his operations. The showing is not

intended to reflect the extent of service to or from any given location, that is, whether the movements were of one truckload or, possibly, 100 truckloads. The shipments were described as consisting of lumber, poles, brick, cement, pipe and steel products, machinery, petroleum products, paper products, ore, groceries, sugar and miscellaneous commodities. While the precise location of the points of origin or destination cannot be definitely ascertained from the map, it appears that they were about equally divided as between points on applicant's proposed routes and places located off such routes but within 25 miles thereof.

Other exhibits of record purport to show the locations from and to which shipments were transported during July, 1945, October, 1946, August, 1947, and 1948, and March, 1949. The data were compiled from applicant's invoices, each such invoice representing the movement of from one truckload to as many truckloads as moved in connection with a particular job. In some instances the number of loads transported between given points are shown, but it was asserted that such entries might not indicate the total number of multiple loads. Applicant testified that each of the months covered by these exhibits represented one of the largest revenue months during the years indicated. The destinations of shipments to job sites outside of towns are in most cases shown as the nearest town. A similar exhibit was also presented listing shipments transported during May, 1950, but excluding shipments known to have been interstate in character and those which moved beyond the territory embraced in the application.

The following is a recapitulation of the number of invoices covering loads transported during the specified months of 1947, 1948, 1949 and 1950, the proposed routes being grouped somewhat differently than listed in the application in order to more clearly depict the sections of the State from or to which most of the so-called "on-route" traffic moved:

	<u>August</u> <u>1947</u>	<u>August</u> <u>1948</u>	<u>March</u> <u>1949</u>	<u>May</u> <u>1950</u>
Between San Francisco Territory and points on proposed routes.				
S. F. - Ukiah	8	13	7	10
S. F. - Santa Maria	13	13	18	20
North of Red Bluff to Oregon Line, Mt. Shasta to near Mineral, Redding - Alturas and Red Bluff-Nevada Line	0	2	2	2
North of Roseville and Davis Jet. - Red Bluff	8	12	6	11
S. F. - Nevada Line (U.S. 40)	43	34	19	38
Sacramento - Placerville	0	0	1	0
S.F. - south of Sacramento. (U.S.50)	8	9	14	13
Stockton-Fresno	17	3	7	29
South of Fresno (U.S.99)	2	2	2	2
South of Tracy-Taft (Cal.33)	8	4	8	4
Manteca-Sonora Jet. (near Bridgeport)	4	0	0	3
Merced-Yosemite National Park	0	0	0	0
	<u>111</u>	<u>92</u>	<u>84</u>	<u>132</u>
Between points within San Francisco Territory	66	79	54	112
Between San Francisco Territory and Vallejo, on the one hand, and off-route points or those beyond territory covered by application	125	98	56	134
Movements other than from or to San Francisco Territory, or Vallejo or within San Francisco Territory	<u>47</u>	<u>28</u>	<u>35</u>	<u>#</u>
	<u>349</u>	<u>297</u>	<u>229</u>	<u>378</u>

# Data not included in exhibit.

Redding is listed as the most northerly on-route point of origin or destination on U. S. Highway 99. Other instances indicating that shipments did not move from or to places located on substantial portions of the routes described follow: Between Redding and Alturas the only shipments were from or to Burney and Fall River Mills. Very few shipments moved from or to points east of North Sacramento on U. S. Highway 40, the most easterly point served being Colfax. The most southerly point served on U. S. Highway 99 is listed as Bakersfield. The points served on the route between Manteca and Sonora Jet. are shown as Escalon, Oakdale, Sonora and Strawberry Lodge.

The dates on which the shipments described in the exhibits were transported are not of record. Moreover, the number of truckloads between any two points can not be determined with certainty. However, examples of multiple-truckload movements from and to the same points during the course of a month follow:

Commodity	From	To	Truckloads
Lumber & Poles	Caldor*	San Leandro	July, 1945 71 Oct. 1946 67 Aug. 1947 83
Cement	Redwood City	Alameda	July, 1945 86
Pipe & Steel Pts.	So. San Francisco	San Juan*	Mar. 1949 210
Machinery	Oakland	Sacramento	" 1949 11
Sugar	Alvarado	San Leandro	" 1949 15
Lumber & Poles	Rio Vista*	Richmond	May, 1950 16
Pipe & Steel pts.	" "	" "	" 1950 7
" " " "	Emeryville	San Jose	" 1950 18
Army & Navy Shpts.	Oakland	Sacramento & Polk* (near Sacto.)	" 1950 33
Paper	San Francisco	Millbrae	" 1950 12
Miscellaneous	Berkeley	Chowchilla	" 1950 11

\* denotes off-route point.

According to applicant, his transportation revenue during April, 1950, amounted to \$43,908. It was stated that of this amount, \$11,631 was derived from shipments transported for a public utility, \$948 accrued from the movement of contractors' equipment and \$12,800 were received for moving Army and Navy traffic. It is evident that much of applicant's traffic to or from off-route locations differs from that usually transported by highway common carriers, in that a substantial volume is of a non-recurring nature. This, however, does not appear to be the situation in some instances, such as, in transporting lumber and some other commodities.

The traffic manager for Pacific Gas and Electric Company testified that applicant's service has been utilized since about 1932 for transporting poles, pipe, wire, cable, pole-line materials



and other articles, including commissary supplies, in truckload lots in the area served by the utility extending from Bakersfield and San Luis Obispo to Redding and Eureka. Most of the shipments, the witness declared, move to the location of plants and new transmission lines--invariably off the main highways--, although applicant also performs service to and from supply yards and warehouses located in various cities. According to this witness, time in transit is important, the availability of applicant's service is necessary because of the type of equipment used, the employment of skilled personnel and the ability to obtain service on very short notice. Existing highway common carriers are seldom used for the type of shipments tendered to applicant. The scope of their operations are not deemed sufficiently broad, transfers en route of heavy articles being extremely expensive. This witness further asserted that van-type equipment would not be suitable for the particular traffic involved; that crane loading and unloading, which applicant performs, is necessary in many instances; and that the only degree of regularity of movement between given points (except as to supply yard and warehouse shipments) is dependent upon the requirements of a particular construction job.

The traffic manager for a manufacturer at Berkeley of steel articles used in road and other types of construction testified that shipments are made to both highway and off-highway destinations, depending upon the location of job sites; as well as to State, county and city storage yards. This witness asserted that applicant's service has been availed of for about 15 years; that the articles shipped require crane loading and unloading, which applicant provides; and that in the majority of cases flat-bed open-type equipment is necessary. Time in transit was declared to be important due to the necessity of shipments reaching job sites at a certain time.

According to the witness, it is necessary that applicant's service be available in the future.

Similar testimony was given by the purchasing agent of a contractor engaged in heavy construction work, whose usual shipping point is at Richmond, as well as by the sales manager of a concern dealing in lumber and building materials with yards at Oakland, Vallejo and Redco. The purchasing agent stated that when construction jobs, many of which are not located on the main highways, are completed there is no longer any occasion for transportation to or from such locations other than for returning to Richmond the equipment used on the job. According to the sales manager for the lumber dealer, applicant transports lumber from numerous shipping points located off the main highways to Oakland and Vallejo, as well as outbound lumber, including roofing and plywood, from these two points to destinations in the territory from Bakersfield and San Luis Obispo to Marysville and Willows. He said that many of the outbound shipments are for bridge jobs and similar work on roads other than main highways and that applicant has been able to meet the requirements for service, even though sometimes given very short notice.

Testimony was also presented by the traffic manager of a producer of cement, having mills at Redwood City and San Juan. This witness asserted that applicant's service has been very good; that, while he has not been tendered any outbound cement shipments for about three years, his services are now utilized for the movement of inbound materials and supplies to the Redwood City mill; and that a highway common carrier service for the transportation of cement, in bulk and sacks, from Redwood City would be advantageous. According to this witness, few, if any, of the existing highway common carriers are equipped to handle inbound truckload shipments, most of them have

very limited franchises, there are few joint rates and no arrangements exist for the interchange of equipment.

Applicant's service is also availed of by a manufacturer of a sodium hypochloride bleach and disinfectant at Oakland. This shipper's traffic manager testified that shipments average about 15 truckloads a month and move to numerous points in the territory from Fresno north to the Oregon and Nevada state lines and to points in the coastal areas. It appears from the testimony that straight truckloads are made to some destinations and that others are serviced by split-delivery shipments. Time in transit was declared to be important because frequently buyers are out of stock when they place orders. Applicant's service was described as satisfactory. However, according to the testimony, he does not handle all of this shipper's traffic, it being the policy to divide the business among whichever carriers the witness believes can render satisfactory service.

Officials of various highway common carriers, including their affiliated express corporations, engaged in the transportation of general commodities, described their terminal facilities, the equipment available for service and the territory in which they operate. These carriers are Merchants Express Corporation, Delta Lines, Inc., Pacific Freight Lines, Clark Bros. Motor Transport, Inc., California Motor Transport Co., Ltd., California Motor Express Ltd., Oregon-Nevada-California Fast Freight, Inc., Valley Motor Lines, Inc., Valley Express Co. and Sacramento-Corning Freight Lines. The evidence discloses that most of the points located on the proposed routes embraced in the application are served by one or more of these carriers, but that no single carrier comprising this group affords service to all such points, either directly or by the interchange between carriers of equipment containing truckload shipments.

Rates are published by these protesting carriers on shipments of 20,000 pounds and over, but according to the explanations given they are in some instances restricted to traffic subject to certain classification ratings or are upon a level applicable on shipments falling within lower weight brackets. It was testified that one of the carriers and an affiliated express corporation also meet carload rail rates when the volume of traffic justifies

With the exception of California Motor Transport Co., Ltd., and California Motor Express, Ltd., the equipment of these carriers includes flat-bed or open-type vehicles, but in the cases where the number in service were given they constitute a small proportion of their respective fleets. According to the testimony, each of the carriers transports shipments of 20,000 pounds and over. None of them, however, provides service from or to points not located on their regular routes, except in a few relatively small portions of the territory embraced in the application. According to the traffic manager for Clark Bros. Motor Transport, Inc., that carrier is not equipped to handle large or heavy articles requiring special equipment or handling, such as the use of lift-trucks or cranes in loading and unloading operations.

Evidence was presented on behalf of Theo Peters, doing business as Ted Peters Trucking. Peters is engaged in operations as a highway common carrier transporting dairy products and supplies used in that industry between points on California Highway 33, Dos Palos and north, and the San Francisco Bay area. The equipment, terminal facilities, financial results of operations and the transportation requirements of the traffic handled by this carrier were described in detail.

J. A. Novis, doing business as Joe A. Novis Trucking, and engaged in transporting iron, steel and related articles between Pittsburg and San Francisco Territory, presented evidence concerning his equipment, terminal facilities and the service rendered. During June, 1950, this carrier made 464 loaded trips between these points, transporting 9,758 tons.

Evidence was received outlining the freight train schedules of The Atchison, Topeka and Santa Fe Railway Co. and Southern Pacific Company, including certain of the latter's subsidiary rail lines, as well as the freight service rendered by Santa Fe Transportation Company and Pacific Motor Trucking Company. A map was introduced in evidence showing the location of the various rail lines in the territory applicant proposes to serve as a highway common carrier. Counsel for applicant and Southern Pacific Company and affiliated carriers stipulated that on shipments between rail facilities Southern Pacific Company is the low-cost carrier on some classes of traffic for certain distances and in some instances trucking costs are lower than the revenue received for transportation by rail. The manager of Southern Pacific's bureau of transportation research testified that, in his opinion, where rail transportation is more economical than truck transportation and trucking operators secure traffic beyond their zone of economic influence the railroad is deprived of a profit for contribution to overhead expenses; that as a consequence rates must be sufficiently increased to cover overhead expenses, otherwise the railroad will become insolvent; and that if a railroad loses a substantial volume of profitable traffic an increase in rates on other traffic will become essential.

Applicant's counsel in oral argument contended that much of the traffic handled by applicant is between fixed points. He asserted that existing highway common carriers do not, as a rule, engage in the

same type of operations as applicant and are not equipped to do so. Attention was called to the Commission's decisions granting certificates to petroleum, lumber and other specialized carriers embracing extensive areas with lateral rights. According to counsel, the facts in the instant proceeding cannot be distinguished, so far as service between fixed points is concerned. While urging that the application be granted, the position was taken that if applicant's operations do not require certification, such a finding clarifying his status will be a satisfactory determination. The contention was also advanced that any certificate should embrace the transportation of general commodities, without any limitations, in order that the efficient and complete service performed by applicant may be continued in the future. The necessity of truck service, as against dependence upon rail service, from the standpoint of available service and the location of rail facilities, was stressed.

Pacific Freight Lines' counsel contended that the alleged need for the hauling of general commodities by applicant as a highway common carrier is not sustained by the evidence. Petroleum, livestock and other specialized transportation was characterized as an entirely different type of service than that rendered by a highway common carrier hauling general commodities. Applicant's doubt as to the lawfulness of his operations, counsel argued, is not an adequate representation of a public need for the proposed highway common carrier service. The type of service applicant has rendered, with the exception of that performed for one shipper, was referred to as an on-call service largely to meet the requirements of particular jobs. It was urged that the Commission recognize the provisions of the statutes as drawing a clearer distinction between highway common carriers and permitted carriers. The latter, it was argued, constitute the proper type of agencies to meet the needs for specialized service involving

particular requirements and handling in a manner differing from that entailed in the transportation of general commodities. Counsel asserted that applicant fits into this category and is typically a carrier who has been and would be best suited to operate under permits rather than a certificate.

Counsel for the Common Carrier Conference, Truck Owner's Association of California, argued that the authority sought by applicant extends far beyond the operations he has been conducting. In the opinion of counsel, the services rendered have constituted radial carrier operations. It was contended that the traffic shown to have been handled in the past is not evidence of the transportation of commodities generally. Reference was made to certain declarations of policy announced by the Commission in Decision No. 42646, dated March 22, 1949, in Case No. 4823 (48 Cal. P.U.C. 587), and especially the statement appearing therein that

The Commission in granting certificates of public convenience and necessity will follow a policy of strictly limiting such certificates to the scope of operation justified by the showing made, giving consideration to such matters as types and quantities of commodities, and the areas to be served.

It was urged that if a certificate is granted it should be restricted to the operations being conducted, that the commodities to be transported should be defined and that the points between which the particular commodities may be transported should be stated.

Counsel for Southern Pacific Company and its affiliated companies asserted that the requested authority to transport general commodities embraces a greater area, so far as he could determine, than ever granted to another operator in this State, whereas only a limited number of commodities have been hauled by applicant to any extent. According to counsel, there is an abundance of service, both

rail and truck, to handle traffic to points on the main highways and those served by rail. The contention was made that, by reason of his faster and more specialized service, applicant would be able to secure the cream of the traffic now moving by rail, thereby restricting the railroads to the transportation of low-rated commodities. It was argued that, for these reasons, the authorization of an operation of the vast proportions sought, affording applicant access to such a wide territory in the transportation of general commodities, would be contrary to the public interest.

Counsel for Theo Peters and J. A. Nevis stated that there is no objection to applicant continuing the operations he has performed in the past. He pointed out that the exhibits of record do not show that applicant has transported dairy products from points served by Peters and that applicant's equipment is not designed for such transportation. It was requested that a certificate, if granted, prohibit the transportation of dairy products between the points Peters is authorized to serve. According to counsel the record discloses the movement by applicant of only one shipment of iron and steel articles from Pittsburg, the same being consigned to applicant's farm equipment business at Hayward. The contention was advanced that, there being no record of any for-hire transportation of these articles between Pittsburg and San Francisco Territory--in which Nevis is engaged--a restriction against the handling of such traffic should be imposed in any certificate which may be granted in this proceeding.

In reply, applicant's counsel contended that Government shipments consist of virtually every commodity in general use; that applicant should not be expected to show that every commodity has been transported from and to every point he seeks to serve, and that the holding out of the carrier, including the fact that every type of shipment offered has been hauled, is evidence of having engaged in



transporting general commodities. It was asserted that all of the types of shipments handled, as indicated by the record, do not fall in the construction category. Counsel declared that to restrict applicant to a particular type of commodity or service would destroy his operation. In conclusion, he pointed out that all parties concede that applicant should be permitted to continue the operations he has performed in the past.

As indicated in the foregoing review of the evidence and arguments of the parties, protestants do not object to the perpetuation of applicant's past and present operations. The situation in this respect is somewhat unique in a proceeding of this nature in that the protestants either directly or indirectly take the position that applicant should be permitted to continue the type of service now being rendered. Thus, it is clear from the record that the opposition to the granting of the application is entirely predicated upon the contention that the authority sought is broader than necessary or justified to enable applicant to lawfully continue his operations in the event that they constitute carriage as a highway common carrier. In other words, protestants are apprehensive that with a certificate in the form requested applicant could and might extend the nature of his operations so as to actively compete for truckload traffic now enjoyed by existing highway common carriers of so-called "general commodities", as well as carload traffic moving by rail.

Inasmuch as applicant is seeking authority to conduct under a certificate of public convenience and necessity the operations he is presently performing, the initial question for determination is whether they embrace transportation as a highway common carrier. In connection with the operations of carriers of petroleum serving oil fields, where there were many instances of new oil wells being drilled and of old ones being abandoned, the Commission has held that the fields

themselves were permanent and should be regarded as fixed points. Similarly, it has been recognized that lumber mills are at fixed locations at which they remain for at least several years and that the destinations of lumber shipments, including yards and construction projects, are likewise generally fixed points. In re. Application of Willis, 42 C.R.C. 408, 423, the Commission held that if service is conducted with a reasonable degree of regularity and frequency over specified routes or between definite points, it is none the less within the Commission's certificating jurisdiction, though the points may be remote, inaccessible and scattered throughout an extensive area.

In this connection, the exhibits of record showing the points of origin and destination of shipments transported during various months, said to be typical of applicant's operations, are enlightening. An analysis of some of these exhibits has been shown in tabular form elsewhere in this opinion. It will be observed that there was considerable regularity of movement over a number of the routes embraced in the application, as well as between points within San Francisco Territory. In view of this and other evidence in this proceeding, we find that applicant does perform operations as a common carrier between fixed termini or over regular routes, as defined in Section 2-3/4 of the Public Utilities Act.

Having found that applicant does perform a highway common carrier operation, the question arises as to the extent of the authority, if any, which should be granted. It is indisputable that applicant is engaged in an essential field of transportation. This conclusion is supported by evidence showing (1) the phenomenal growth of his business, (2) the testimony of shippers, (3) the nature of the traffic handled, (4) the particular type of operation conducted and type of equipment in use and (5) the direct transportation of

truckload shipments to highway and off-highway points over a wide area without the necessity of transferring lading between rail cars and trucks or between trucks of different ownership. Under the circumstances, applicant should, in our opinion, be granted a certificate, after consideration has been given to the scope of the operating authority which, in the light of the record, should be included therein.

As hereinabove noted, the principal opposition to the granting of the application, arises from the fact that authority is desired to transport "general commodities". The record shows the commissary supplies and various undescribed miscellaneous articles have been transported in the past. It also appears that Government freight, of which applicant hauls a considerable volume, is of a very diversified nature. The record does not contain a list of the many articles for the transportation of which shippers now or in the future may require service of the type furnished by applicant. Nor do we regard the designation in a certificate of public convenience and necessity of every commodity which a carrier, such as applicant, may transport in the future, or the points between which every such commodity may be transported, to be practicable or desirable. Moreover, a definite limitation upon the articles which applicant may transport would tend to circumscribe the usefulness of the class of service he seeks to provide. We are, therefore, of the opinion that applicant should be authorized to transport general commodities. It is believed that certain restrictions which will be provided for in our order herein will afford a reasonable safeguard against the consequences protestants seem to fear.

No showing has been made of any transportation by applicant to or from points on some of the proposed routes or on substantial portions of certain other routes. Neither has any evidence of a demand for such transportation been presented. The terminal points on

some of the proposed routes will, therefore, be changed so that the territory to be served as a highway common carrier will more nearly conform to the areas from or to which, according to the record, shipments have moved. Similarly, authority to operate over certain routes will be denied where no showing of any transportation or a demand therefor has been presented.

As hereinabove indicated, applicant desires the right to serve all points and places within 25 miles of the routes proposed to be traversed. The evidence shows a considerable demand for transportation to and from points and places located off the main highways. Under similar circumstances, highway common carriers have been granted lateral rights in the past. We are, accordingly, of the opinion that applicant's request for authority to serve off-highway points should be granted.

The evidence indicates that applicant has not operated, and does not propose to operate, van-type equipment or insulated equipment for the transportation of commodities under refrigeration. As a safeguard against any undue broadening of applicant's operations, either by himself or a future successor to his operative rights, the certificate to be granted herein will provide that no shipments may be transported in van-type or insulated equipment.

Under certain conditions, applicant has transported shipments subject to split pick-up and split delivery privileges. In our opinion, the record does not reveal a sufficient public demand to justify authorizing the transportation of such shipments. Moreover, it would appear that the transportation of this class of traffic constitutes a departure from the general type of operation in which applicant has engaged and assertedly desires to continue. A restriction will, therefore, be imposed prohibiting the transportation of split pick-up and split delivery shipments.

There remains for consideration the request of Theo Peters and J. A. Nevis that restrictions be made against the handling of certain traffic. In view of the restriction against transportation in van-type or insulated equipment, a prohibition against the transportation of dairy products between points served by Peters is not considered necessary. We are of the opinion, however, that the authority herein granted should be restricted so as to prohibit the transportation of iron and steel articles between Pittsburg and San Francisco Territory. Our order will so provide.

After careful consideration of the entire record in this proceeding, the Commission finds that public convenience and necessity require the establishment and operation of service by applicant as a highway common carrier for the transportation of general commodities between the points described in, and subject to the exceptions, conditions and limitations set forth in the ensuing order.

E. Guy Warren is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearings having been had and the Commission, upon the evidence received, having found that public convenience and necessity

so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to E. Guy Warren, 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 (a) general commodities between points in San Francisco Territory, as described in the appendix to this order; and (b) general commodities between San Francisco Territory, as described in the appendix to this order, and of lumber, other forest products and building materials between Vallejo, on the one hand, and points and places located upon and along the following described routes, on the other hand:

1. U. S. Highway 101 between San Francisco and Ukiah;
2. U. S. Highway 101 and U. S. Highway 101 By-pass between San Francisco and Santa Maria;
3. State Highway 17 between Oakland and San Jose;
4. U. S. Highway 40 between San Francisco and Colfax;
5. U. S. Highways 99, 99-E and 99-W between San Francisco and Redding;
6. U. S. Highway 299 between Redding and Alturas;
7. State Highway 36 between Red Bluff and Johnstonville;
8. U. S. Highway 395 between Johnstonville and the California-Nevada border;
9. U. S. Highway 99 between Sacramento and Bakersfield;
10. U. S. Highway 50 between Oakland and Stockton;
11. State Highway 33 between junction with U. S. Highway 50 near Tracy and Taft;
12. U. S. Highway 50 between Sacramento and Placerville; and
13. State Highway 120 between Manteca and Sonora, thence State Highway 108 between Sonora and Strawberry,

with the right to make lateral departures therefrom within a radius of twenty-five (25) miles of said routes.

(2) That the certificate herein granted is subject to the following conditions and limitations:

- (a) Applicant shall not transport any shipments of uncrated household goods, livestock, liquid petroleum products in bulk, explosives, articles of unusual value or fresh fruits and vegetables.
- (b) Applicant shall not transport any shipments of less than 20,000 pounds or subject to a charge lower than applicable on a shipment of 20,000 pounds.
- (c) Applicant shall not transport any shipments in van-type equipment, including insulated equipment with or without refrigeration facilities.
- (d) Applicant shall not perform split pick-up or split delivery services in the transportation of any shipment.
- (e) Applicant shall not transport any shipments locally between San Francisco, Oakland, Emeryville, Berkeley, Albany, El Cerrito, Richmond, Piedmont, Alameda and San Leandro.
- (f) Applicant shall not transport any shipments of iron and steel articles between Pittsburg and points and places in San Francisco Territory, as described in the appendix to this order.

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

- (a) Within thirty (30) days after the effective date of this order, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, applicant shall 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 schedules on not less than five (5) days' notice to the Commission and the public.

(4) That in all other respects the application, as amended, in this proceeding be and it is hereby denied.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of March, 1951.

*[Signature]*  
Justice F. Coenen  
Harold P. Huls  
*[Signature]*  
*[Signature]*  
Commissioners



## A P P E N D I X

DESCRIPTION OF SAN FRANCISCO TERRITORY

SAN FRANCISCO TERRITORY includes that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway No. 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said water front and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.