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Decision No. 45990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CARL AUGUST WIGHOLM, an individual, doing business as CIVIC CENTER TRANSPORT SERVICE, for a highway common carrier certificate for the transportation of motor and other vehicles, and related applications. (1)	) Application Nos.	
	) 29827	30018
	) 29828	30026
	) 29863	30068
	) 29885	30739
	) 29886	30741
	) 29895	30800
	) 29900	31018

For appearances see Appendix "A"

O P I N I O N

The fourteen applicants herein seek certificates of public

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(1) The application numbers and names of the applicants follow. Shown in parenthesis is the shortened titled by which each applicant will be referred to hereafter in this opinion.

Appl. No.	Name of Applicant
29827	Carl August Wigholm, doing business as Civic Center Transport Service (Civic Center)
29828	Dealer's Transport Company, a corporation (Dealer's)
29863	Insured Drive-Away Service, Inc., a corporation (Insured)
29885	James D. Boner and David H. Hamilton, copartners, doing business as B & H Truckaway Co., (B & H)
29886	Taylor Truck-A-Way, Ltd., a corporation (Taylor)
29895	Robertson Truck-A-Ways, Inc., a corporation (Robertson)
29900	E.P. Hadley and C. P. Hadley, doing business as Hadley Auto Transport Co. (Hadley)
30018	Kenosha Auto Transport Corporation (Kenosha)
30026	Arco Auto Carriers, Inc. (Arco)
30068	Howard Sober, Inc. (Sober)
30739	W. H. Clark, doing business as Automobile Forwarding Service (Clark)
30741	H. E. Wentz, doing business as Automobile Transport Company of California (Wentz)
30800	Edwin T. Hughes, doing business as Hughes Truck-A-Way (Hughes)
31018	C. H. Sheppard, Sr., and C. H. Sheppard, Jr., co-partners, doing business as Charlie Sheppard Auto Transport (Sheppard)

convenience and necessity to operate as highway common carriers, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of motor and other vehicles in truckaway, driveaway and towaway service between points in California. After the applications were filed and during the course of the hearings, Taylor, Robertson and Hadley filed formal requests for dismissal without prejudice. These requests will be granted and the order will so provide.

Public hearings were held before Examiner R. K. Hunter at San Francisco on December 10, 1948; February 15 and 16, March 17 and 28, October 19 and December 19, 1949; and April 20, 1950; and at Los Angeles on May 18 and 19, 1949; January 24 and 25, February 7, March 16, and May 4, 1950. The hearings were adjourned and the parties were given leave to file concurrent opening and reply briefs. Such applicants as desired to do so duly filed briefs and the matter is now ready for decision.

At the hearings testimony and exhibits were introduced. A total of 91 witnesses testified on behalf of applicants and 12 on behalf of protestants. Applicants introduced into evidence 136 exhibits, some of which were voluminous.

During the course of the hearings certain questions were raised which will be disposed of before considering the evidence on the issue of public convenience and necessity. These questions are three in number. The first is whether the handling and delivering of vehicles by the driveaway method is transportation subject to the jurisdiction of this Commission under the Public Utilities Act. The second is should this Commission make a distinction between driveaway, towaway and truckaway or should it divide the transportation of vehicles into only two classes - driveaway and truckaway - as has been done by the Interstate Commerce Commission. The third is should this Commission

make any distinction between initial and secondary movements, as these terms are used by the Interstate Commerce Commission.

IS DRIVEAWAY TRANSPORTATION SUBJECT TO THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION UNDER THE PUBLIC UTILITIES ACT?

With reference to the question as to whether driveaway is transportation under the Public Utilities Act, we have very carefully considered all of the arguments and citations set forth in the briefs of both applicants and protestants. Section 2-3/4(a) of the Public Utilities Act, to the extent that it is germane to the question under discussion here, reads as follows:

> "The term 'highway common carrier' when used in this act means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any auto truck, or other self-propelled vehicle not operated upon rails, used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route, *****".

The term "transportation of property", which is used in the section quoted above, is defined in Section 2(f) of the Act as follows:

> "The term 'transportation of property', when used in this act, includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express corporations." (emphasis added)

From the foregoing, it is evident that the term "transportation of property" has been very broadly defined in the Public Utilities Act, especially since it includes "every service in connection with or incidental to the transportation of property, including...receipt, delivery,...transfer,... and handling."

Under Sections 203(a) (13) and 203(a) (14) of the Motor Carriers' Act, which sections do not appear to be any broader than those of the Public Utilities Act quoted above, the Interstate

Commerce Commission has held that the handling of vehicles by the driveaway method, or as sometimes referred to by that Commission as the "caravan method", is transportation of property by motor vehicle and subject to its jurisdiction when the movement is in interstate or foreign commerce. On October 16, 1936, the Interstate Commerce Commission issued its Administrative Ruling No. 33, reading as follows:

> "Question: Is the delivery of automobiles under their own power, for compensation, in interstate commerce such a transportation of property by motor vehicle as to come within the provisions of the Motor Carrier Act, 1935?
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> "Answer: The interstate transportation of automobiles by the so-called "caravan method," if conducted for compensation by individuals or organizations holding themselves out to perform such a driving service, as a business and not as casual, occasional, or reciprocal transportation, is transportation of property by motor vehicle and is subject to the Motor Carrier Act, 1935. It makes no difference whether some of such vehicles are towed by other vehicles or whether all operate on their own power."

The foregoing Administrative Ruling No. 33 was approved in a formal proceeding before the Interstate Commerce Commission, being D. L. Wartena, Incorporated, Common Carrier Application No. MC-69842, reported in 4 MCC 619. In that proceeding the Commission had before it an application for a certificate for the transportation of automobiles and stated at page 620:

> "The automobiles are usually transported on specially built trailers, but approximately 10 per cent of them are moved by the caravan method, that is, they are operated under their own power or are towed by an automobile so operated. In the latter instances connection is made with the towed car by means of a tow bar or by mounting its front axle on the body of the car furnishing the power. Transportation in interstate or foreign commerce by the caravan method, for compensation, is transportation subject to the act. It was so held in Bureau of Motor Carriers' administrative ruling No. 33, which we hereby approve."

The same matter was again before the Interstate Commerce Commission in John P. Fleming Common Carrier Application No. MC-48654, decided September 19, 1938, and reported in 8 MCC 469. In that proceeding

the applicant sought authority to transport automobiles and other vehicles in driveaway service as a common carrier. The following is a quotation from that decision (pages 470-1):

> "These methods of conveying the traffic suggest the desirability of a brief discussion of whether the transportation performed is within the jurisdiction conferred upon us by the act. As indicated below, no question appears to exist so far as towing of a vehicle is concerned. The dictionary definition, in a limited sense, however, leaves the impression that 'transportation' may be something other than the movement of an automotive vehicle under its own power. Corpus Juris defines 'transporting' as follows: 'As commonly understood, one is transporting an article when he is conveying it from one place to another. Transporting includes towing.' In their interpretation of Federal statutes making transportation of a stolen motor vehicle, in interstate commerce, a criminal offense, the courts have uniformly held in sustaining convictions that driving of the vehicle under its own power is transportation. See Whitaker v. Hitt, 285 Fed. 797, Hostetter v. United States, 16 Fed. (2d) 921, and Piper v. Bingamen, 12 Fed. Supp. 755. We conclude that the methods followed by applicant in conveying the vehicles from one place to another constitute transportation within the meaning of the act. It makes no difference whether certain vehicles are towed by other vehicles or whether all operate on their own power.
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> "Under part I, we have consistently regarded the movement over other than the owning railroad of locomotives under their own power as transportation. Tariff rates for such transportation are provided by rail carriers, and in certain instances we have approved a basis of rates therefor. See Investigation and Suspension Docket No. 23, 21 I.C.C. 103, and Locomotives from and to the South, 211 I.C.C. 114."

The protestants in their reply brief contend that the furnishing of a driver to drive a car from San Francisco to Los Angeles, for example, is certainly not owning, controlling, operating and managing any motor vehicle "used in the business of transportation of property" for compensation; that such so-called carrier does not even own or lease any equipment whatsoever; that he merely drives someone else's car or cars from one place to another; that the business of supplying drivers for compensation to drive someone else's motor vehicle is certainly not a "highway common carrier" business as defined in Section 2-3/4 of the Public Utilities Act. The protestants also

contend that the entire subject of driving motor vehicles, including the supervision and regulation of driveaway service, has been delegated by the legislature to the Department of Motor Vehicles in the Vehicle Code (Chap. 27, Stats. 1935, as amended). We have been referred in particular to Sections 31-34, 36, 37, 93.3 and 206 of that Code. It is also the protestants' contention that in its present form the Public Utilities Act does not include and cannot legally be construed to include driveaway service as a "highway common carrier" service requiring certification by this Commission.

Sections 31-34, 36, 37 and 73.3 of the Vehicle Code, merely define certain words and phrases used in that Code. Section 206 is a part of Chapter 4 of that Code which concerns the issuance of special plates to dealers and others and appears to be a licensing provision concerning the use of the highways.

We have also carefully examined the Caravan Act (Chap. 788, Stats. 1937, as amended). Section 1 of this Act reads as follows:

> "The term 'caravaning' as used in this act shall mean the transportation of any vehicle of a type subject to registration under the Vehicle Code, operated on its own wheels, or in tow of a motor vehicle, for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser or prospective purchaser, whether such agent, dealer, purchaser or prospective purchaser may be located within or without this State."

The term "caravaning" is generally used interchangeably with the word "driveaway". It is significant that the above noted section refers to this type of movement as "transportation". This Act likewise appears to be a licensing provision concerning the use of the highways in this type of operation. It is also significant that by virtue of Section 8 of said Act, the state is divided into two zones by drawing a line running easterly and westerly approximately through the center of the state. The southerly portion is designated Zone 1 and the

northerly, Zone 2, and unless the movement takes place between Zone 1 and Zone 2, the provisions of the Act do not apply.

Testimony introduced at the hearings shows that in most cases, the companies engaged in transporting motor and other vehicles, such as those involved in this proceeding, perform both driveaway and truckaway service; that in many instances the circumstances surrounding the particular movement involved determines which method would be used in making delivery; that the ability to perform both truckaway and driveaway service by such a transportation company is essential in order to give a complete well-rounded service and adequately to serve the vehicle shipping public; and that to regulate only truckaway service to the exclusion of driveaway service would be to exercise jurisdiction over only a part of the motor vehicle transporter's operations. Some of the witnesses for the applicants testified that if this Commission's jurisdiction is exercised in connection with the transportation of motor and other vehicles by highway carrier that it would be their opinion that this segment of the transportation industry would be seriously affected adversely if this Commission should undertake to exercise such jurisdiction in connection with only the truckaway portion of the operation.

After carefully considering the testimony introduced at the hearings, the arguments in the briefs, and the statutes and cases cited, it is our conclusion that the movement of motor vehicles, trailers and related vehicular equipment by the so-called driveaway method as set forth in the record is transportation, and when performed by a highway common carrier, is subject to the Public Utilities Act.

A definition of precisely what is included in the term "driveaway" will be covered in considering the second question.

CLASSIFICATION OF THE DIFFERENT METHODS OF TRANSPORTING MOTOR VEHICLES.

The second question is whether this Commission should recognize the terms driveaway, towaway and truckaway or should divide the transportation of motor and other vehicles into only two classes, driveaway and truckaway, as has been done by the Interstate Commerce Commission. It is not deemed necessary to dwell at great length on this question. It appears that the Interstate Commerce Commission, in administering the Motor Carrier Act, formerly used these three terms, driveaway, towaway and truckaway, and that as a result of this use considerable confusion arose. Thereafter, the Commission eliminated the term "towaway" and embraced all methods of transporting vehicles within the terms "driveaway" and "truckaway". In Charles E. Danbury Extension of Operations, 46 M.C.C. 147, decided February 19, 1946, the Interstate Commerce Commission defined and made clear the distinction between driveaway and truckaway and at page 149 said:

> "...We believe that the test as between drive-away and truck-away should be: Are the vehicles being transported moved with motive power furnished by one or more of such vehicles? If so, the service is drive-away; otherwise it is truck-away. Accepting such test it is apparent that both drive-away and truck-away include 'towaway'. We conclude that based on this test, the service rendered by motor carriers in the transportation of automotive vehicles and equipment consists of either drive-away service or truck-away service, and that avoidance of the use of the term 'towaway' will tend to eliminate any confusion which at present exists."

The driveaway method of transporting motor vehicles as set forth in the above quotation may be performed by (1) single delivery, whereby one car is driven under its own power; (2) tow-bar delivery,

whereby one vehicle is driven under its own power and another towed through the use of a tow-bar mechanism; (3) saddle delivery, whereby one vehicle is driven under its own power and another is partially mounted thereon; (4) full-mount delivery, whereby one vehicle is driven under its own power and one or more are fully mounted thereupon; and (5) combination delivery, whereby one vehicle is driven and the remainder of the vehicles are attached to the vehicle driven by one or more of the foregoing methods. In all these instances, it must be understood that the motive power is being furnished by one of such vehicles being transported.

Briefly defined, driveaway is any transportation of vehicles where the motive power is provided by means of a vehicle being transported and truckaway is any transportation of vehicles where the motive power is supplied by means of a vehicle of the carrier. The responsibility of the transportation agency is essentially the same in both methods.

It is our conclusion after considering the testimony and evidence introduced at the hearings and the arguments set forth in the briefs, that it would avoid confusion if these definitions of driveaway and truckaway are adopted by this Commission, and, therefore, these definitions are hereby so adopted and will be used in the sense indicated in this opinion and order.

SHOULD A DISTINCTION BE MADE BETWEEN
"INITIAL" AND "SECONDARY" MOVEMENTS?

In the briefs many pages of argument were devoted to the question of whether this Commission should adopt the distinction made by the Interstate Commerce Commission between "initial" and "secondary" movements. In the Interstate Commerce Commission's Administrative Ruling No. 75, dated July 15, 1938, these two terms

are defined as follows:

> "... The term 'Initial Movements' means transportation of new motor vehicles from a place of manufacture or assembly, specifically authorized to be served as a point of origin by the originating carrier's certificate or permit, to any point or place upon the authorized route or within its defined territory for delivery to consignee or to a connecting carrier.
>
> "The term 'Secondary or Subsequent Movements' means transportation of motor vehicles, except transportation of new motor vehicles from a place of manufacture or assembly, by a carrier to, from, and between all points and places upon its authorized route or routes or within its authorized territory for delivery to consignee or connecting carriers. Such movements also include cross movements, back hauls, and movements to and from body and specialty plants upon the route or routes or within the authorized territory of the carrier."

More simply stated and as used by the parties to this proceeding, the term "initial movement" means the transportation of new vehicles from the place of manufacture or of assembly, to the first specified destination, and the term "secondary movement" means all other movements of motor vehicles. Analogically, these two terms can be applied to the movement of other types of automotive equipment such as commercial trailers, semi-trailers and house trailers.

None of the applicants requested in their applications that any distinction be made between "initial" and "secondary" movements. The subject of "initial" and "secondary" movements was first introduced in the proceeding by protestants' counsel in interrogating witnesses. Protestants' arguments and position in this regard are rather fully set forth in protestants' (2) opening and closing briefs and as therein set forth, may be summarized as follows:

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(2) R.L. Hibbett, doing business as California Truckaway Company, Robertson Truck-A-Way, Inc., Hadley Automobile Transport Company, Taylor Truckaway, Ltd., and Pacific Motor Trucking Company, all of whom are permitted carriers with the exception of Taylor.

(1) That during the course of these proceedings, it became increasingly evident, and finally conclusively evident, that, in the transportation of motor vehicles, there is a universally recognized distinction between "initial" movements and "secondary" movements;

(2) That these two distinct types of service and transportation of motor vehicles were recognized not only by each of the applicants but also by those engaged in the manufacture, sale and distribution of both new and used passenger cars and trucks, and also by practically every shipper witness who appeared in these proceedings;

(3) That it is significant that in filing a separate petition with this Commission on December 19, 1949, for the establishment of mimimum rates (Exhibit 101), such petition is confined to the establishments of minimum rates for "secondary" movements only;

(4) That in disposing of these proceedings, the Commission must accept the universally recognized distinction between service rendered in "initial" and "secondary" movements in the transportation of motor vehicles; and

(5) That this distinction between "initial" and "secondary" movements of motor vehicles is a factual distinction recognized throughout the automotive industry and is urged not merely because the distinction has been recognized by the Interstate Commerce Commission, but because the two types of service are, in fact, different and were shown to be different by the factual testimony presented in this record.

In addition to the foregoing points, the protestants advanced the proposition that "initial" movements of motor vehicles do not involve a service which can or should be certificated as a highway common carrier service. They argued that:

(1) "Initial movements" of new motor vehicles from factories

and assembly plants is a highly specialized and individualized service rendered under contract with said factories or assembly plants and that it is practically a uniform procedure for the manufacturers of motor vehicles or the assembly plants of such vehicles to arrange with a contract carrier for the transportation of the output of new motor vehicles from such factories or plants; and, further, that the services of such contract carriers become, in effect, a part of the operation of the factory or assembly plant.

(2) That the situation in connection with "initial movement" is very similar to a proprietary operation distributing the output of the product produced by such proprietor; that the carriers engaged in the "initial" movement of new motor vehicles are generally given special facilities for the receipt and dispatching of such motor vehicles from factory and assembly plants; that space within or immediately adjacent to the factory or assembly plant is required and is usually enclosed so as to prevent any other carrier from having entrance thereto; that a close relationship is required and maintained by the personnel of the two organizations involved; and that the service is adjusted to meet the output of the factory or plant and charges for the services are the result of negotiations between the shipper and the carrier which result in revisions from time to time as circumstances require.

(3) That there is no element whatever of highway common carrier operation in the "initial" movements of new motor vehicles from factories and assembly plants.

The applicants took issue with these arguments. With certain minor exceptions, which do not appear to be material, the collective position of the applicants may be summarized as follows:

(1) That this Commission should not distinguish, in granting certificates establishing highway common carriers between "initial"

and "secondary" movements.

(2) That to make such a distinction would be creating complexity and restrictiveness in a field (vehicle transportation by highway carrier) where, with one minor exception, no highway common carriers exist.

(3) That any sub-classification of the motor carrier business, if it is to assist in accomplishing the ultimate purposes of the Public Utilities Act, must be predicated upon differences in service which are different in kind and that unless sub-classifications are predicated upon differences in transportation which result from the transportation characteristics of the produce or products to be moved, arbitrary and unnatural barriers to the free flow of commerce would inevitably result.

(4) That the pattern of the flow of traffic is unpredictable to a substantial degree but tends to flow from larger metropolitan centers whether the product being moved is new or used and that the matter of loading, the type of vehicle used for transportation, the care exercised in handling, the possibility of damage, the cost of transportation and the personnel required for movement are substantially the same whether or not the vehicle is a new automobile, a new trailer, a used automobile or a used trailer.

(5) That there is no justification which can be found in terms of the transportation characteristics of the movement of vehicles which would justify a distinction between the transportation of new vehicles from point of assembly or manufacture from the transportation of vehicles otherwise performed.

(6) That there is no logical or natural basis for distinguishing, in establishing regulatory controls, between the movement of new

vehicles in so-called "initial" movements and other movements of these vehicles.

(7) That in the movement of vehicles from point of manufacture or assembly, as compared with other movements, the proper classification of service is not between "initial" and "secondary" movement but rather between "contract" and "common" carriage. The only practical result of adopting the first of these distinctions will be to protect those who are engaging in contract carriage of new automobiles from the advent of competition by highway common carriers.

(8) That the Commission should start with the premise that the carrier involved is to be a highway common carrier handling merchandise for all persons alike and that such carriers are to be common carriers as distinguished from private carriers; that there is no justification of logic for distinguishing between common carriers on the basis of the point of origin of the vehicles to be moved and further that those persons who prefer to remain and act as private carriers of new vehicles should not be granted protection against competition from common carrier service under the guise of a classification of common carriers as those who transfer articles in "secondary" as distinguished from "initial" movement.

(9) That the disadvantages of such a distinction are that it is predicated upon factors not related to the transportation characteristics or nature of the article itself and that the carrier and the Commission in order to determine whether or not any given shipment falls within the class of "initial" or "secondary" movement, would have to make independent investigations in each instance that would be difficult, time consuming, and leave open the door to both fraudulent action and honest mistake.

(10) That the transportation of automobiles by all carriers should be allowed without distinction between "initial" and "secondary" movements in order that the most efficient use of equipment can be secured with the result that a generally lower level of rates can be maintained, and that artificial restraints hampering interchange between carriers will tend to decrease the efficiency of operations and result ultimately in higher charges.

(11) That the distinction which the Interstate Commerce Commission has made between "initial" and "secondary" movement of automobiles was undoubtedly predicated in large part upon the fact that the grant of authority to automobile carriers in the early days of regulation involved, in almost all instances, the registration of "grandfather rights" where that Commission was endeavoring to closely restrict the carrier to its exact field of prior operation, and that the experience of the Interstate Commerce Commission in applying the distinction between "initial" and "secondary" movements has demonstrated that the attempt to so classify the movements of vehicles has produced unnecessary litigation and numerous problems in connection with its regulation which are not justified under all the circumstances.

(12) That the desire of certain permitted carriers to engage primarily in the handling of new automobiles on a contract carrier basis to be protected against the competition of highway common carrier service does not justify the establishment of a distinction in the transportation of vehicles as between "initial" and "secondary" movements; that for the reasons given the proposed distinction should be rejected by this Commission; that carriers authorized to transport automobiles as highway common carriers should be allowed to transport them either new or used without regard to the nature of the business conducted at the point of origin or

destination; and, finally, that because the distinction between "initial" and "secondary" movements of vehicles is unsound it should be rejected by this Commission.

In response to protestants' proposition that "initial service" is not the type of service which can be certificated as a highway common carriage, the applicants have advanced the following arguments:

(1) That many public witnesses testifying in this hearing expressed the desire to have highway common carrier service on "initial" movements including the filing of tariffs, the subjection of the carrier to regulation, the establishment of such service as a public utility, the more permanent and fixed character of such service and the responsiveness of the carrier to common carrier liability.

(2) That a review of the Interstate Commerce Commission's certifications of highway common carriers shows a vast number of such carriers authorized to engage in "initial" service under common carrier authority and that no witness appeared who testified that he had any fault to find with the interstate "initial" service being performed by common carriers.

(3) That the arguments advanced by protestants in support of their position, in each and every instance, is directed at the distinction between contract and highway common carrier service as such and has nothing to do with the distinction between "initial" and "secondary" movements of vehicles.

(4) That, in their arguments, protestants failed to mention the fact that the Interstate Commerce Commission, in drawing a distinction between "initial" and "secondary" movements, does not follow the rule that if the movement is "initial" in character, a permitted operation must result.

(5) That it is rather difficult to see how the service of

protestant permitted carriers can be basically contract carrier in its nature insofar as intrastate movements are concerned, and common carrier in its nature insofar as interstate movements are concerned.

(6) That in every proceeding involving the granting of new certificates, the parties before the Commission are interested in protecting a personal interest; that it is the problem of the Commission to look through the position of various parties and to protect the public interest involved; that the witnesses whose testimony was cited by protestants in support of the position which they urge were, for the most part, representatives of large automobile manufacturing concerns; that they have, individually and collectively, tremendous buying power when it comes to transportation; that public regulation of the transportation industry first became necessary because concerns of similar buying power were taking advantage of that strength to secure advantages not available to the smaller shippers; that the views expressed and the positions taken by these representatives of those large shippers concerning the negotiation of rates and their solicitude for the economic well being of their carriers are undoubtedly sincerely stated, but that from the standpoint of the over-all public benefit, they must be carefully analyzed and scrutinized.

(7) That the protestants, for example, are not urging here that they should be restricted as contract carriers against the transportation of any vehicles which move in what they term "secondary" movements and that if the applicants are certificated on the basis that they may not, as common carriers, compete for the transportation of new automobiles from point of manufacture or assembly, they will face a problem in which protestants will be able to compete for applicants' traffic but applicants will be unable to compete for the

traffic of protestants. Further, that protestants will derive their principal source of traffic and revenue from the outbound movement of new vehicles and consequently will be vigorous bidders in a competitive market for what to them is the backhaul traffic; and, finally, that this inevitably will have a depressing effect upon the going rate level and will be especially true if protestants remain as contract carriers free to bid for competitive traffic without the stabilizing effect of minimum rates.

(8) That no portion of the public stands to benefit from the subdivision of the vehicle transportation industry in the manner in which the protestants suggest; that those who have appeared in support of protestants' position will be adequately protected as long as the distinction remains between common and contract carrier services; that the arguments which protestants have put forward are based upon the unsound premise that "initial" and "secondary" movements and "contract" and "common" carrier services are synonomous terms; and, finally, that in actual fact the two subjects are wholly unrelated and should not be confused.

(9) In conclusion, the applicants aver that, based upon their own experience in the past in intrastate, as well as in interstate, commerce, the public interest will be served best if the artificial distinction between "initial" and "secondary" movements is avoided in the granting of highway common carrier certificates by this Commission.

Protestants called twelve (12) witnesses, nine (9) represented automobile manufacturing or assembly plants; three (3) were from staffs of protestants. It is not deemed necessary to set forth their testimony in detail because all of the points raised have been fully outlined in protestants' briefs and have been adequately covered in the foregoing summary of the arguments advanced. Nevertheless,

the testimony of these twelve (12) witnesses has been carefully and fully considered in arriving at our conclusions.

Based upon the arguments set forth in the briefs and the evidence introduced at the hearings, it is our conclusion and we so find (1) that it is not in the public interest in the granting of certificates authorizing operations as highway common carriers to distinguish between "initial" and "secondary" movements in the transportation of motor and other vehicles; (2) that there is no validity to the argument that "initial" movement of vehicles involves a service which cannot or should not be certificated as a highway common carrier service; and (3) that the interests of the carriers, as well as the shipping public, will be served best by avoiding this distinction. The foregoing conclusions do not preclude the possibility of different bases of rates being established for different types and categories of service, and contemplate the possibility that departure from established minimum rates may be justified in a proper proceeding.

ON THE QUESTION OF CERTIFICATION AND THE ISSUE OF PUBLIC CONVENIENCE AND NECESSITY

After excluding the three (3) applicants, Taylor, Robertson and Hadley, on whose behalf petitions for dismissal were filed, eleven (11) applicants remain. They propose service generally as highway common carriers in the transportation of motor and other vehicles and their equipment, subject to certain restrictions, in truckaway and driveaway service, as previously defined herein. With the exception of applicant Sheppard they propose service between practically all points and places in California over and along all available routes. Sheppard proposes service between practically all of the principal points in California south of Santa Rosa and Sacramento.

The taking of testimony and introduction of evidence consumed twelve (12) days of hearing, during which 103 witnesses appeared and testified, 84 of whom were public witnesses. Twelve of these witnesses were called by protestants, of whom nine were public witnesses. The remaining witnesses testified on behalf of the applicants. At the several hearings, 136 exhibits, some quite voluminous, were introduced, all by the applicants.

From the evidence submitted, we conclude and hereby find that the eleven (11) remaining applicants, which will be the only applicants referred to in this part of the opinion, have adequate experience, knowledge, available equipment and financial ability and resources to amply qualify them to conduct the services proposed. Each introduced exhibits showing proposed rates. No useful purpose will be served by discussing these matters as to each of the applicants.

We will next consider the showing made by each of the eleven applicants on the issue of public convenience and necessity.

APPLICATION NO. 29827

CARL AUGUST WIGHOLM, DOING BUSINESS AS CIVIC CENTER TRANSPORT SERVICE

Civic Center's operating witness testified that his firm performed service for dealers, finance companies, automobile warehouses, insurance salvage companies, wreckers, repossessors, theft bureaus and a few new car distributors; that it has transported new and used automobiles, trucks, truck-trailers, house trailers, motorcycles, chassis, mobile searchlights and generators between points and places in California. By far the larger portion of the traffic has consisted of the transportation of used vehicles. The witness also testified that his company has transported new vehicles on behalf of the Buick zone office, Pontiac zone office, Hudson, Packard

and between dealers at their request. He added that it has always been his position that his company holds itself out to transport any type of motor or other vehicle and related types of equipment for anyone between all points in California. Exhibit No. 67 shows that during the year 1948, 3044 vehicles were transported, the greater portion being in truckaway service although some were transported by the driveaway method. These shipments involved over 300 different points of origin in California. Exhibit 114 consists of a sampling of the intrastate movement for the year 1949, showing the vehicles moved on Mondays, Wednesday and Fridays of each week and is estimated to represent approximately one-half of the total annual movement. According to this exhibit, 2270 cars were moved on these three days of each week, indicating that the total movement for the year 1949 was over 4500 vehicles.

Nineteen public witnesses were called by or on behalf of this applicant. Two were from banks, seven from dealers or distributors, one from an automobile warehouse, four from repossessors, two from insurance salvage companies, one from a finance company and two from manufacturers. All testified that the service rendered by Civic Center was essential to the conduct of their business. Sixteen of these witnesses said that they must have a carrier with the ability and authority to transport vehicles between all points in California and that on many occasions it was necessary to go to points located substantial distances off the principal highways. The majority of these witnesses testified that they preferred highway common carrier service with rates published in filed tariffs, the stability that goes with common carrier status and that they would use Civic Center's service if certificated.

It is our conclusion after carefully reviewing the record

in this proceeding and we so find that public convenience and necessity requires the granting of a certificate to Carl August Wigholm, authorizing operations as a highway common carrier in the transportation of motor and other vehicles between points and places in California over the designated routes, all as set forth in the order herein.

APPLICATION No. 29828

DEALER'S TRANSPORT COMPANY

Applicant, Dealer's Transport Company, is a corporation duly organized in the State of Illinois and is qualified to do business in California. This applicant's operating witness testified that Dealer's carries on operations in the 48 states and the District of Columbia in interstate and foreign commerce, and has approximately 600 employees; that it has terminals in Oakland and Los Angeles and will establish additional facilities in California if certificated. This witness further testified that Dealer's prefers to perform its proposed service as a certificated carrier because of the more permanent and better defined status and that it wants to have its rates published and filed with this Commission; that it is necessary to have authority to operate between all points in California in order to adequately serve the motor-vehicle shipping public; that there has been located in California a large number of assembly or manufacturing plants producing automobiles, trucks, trailers and other related vehicles; that there is increasing need for the type of service proposed and that there is much traffic that can be developed in this State.

Exhibit 9 shows that this applicant handled a total of 7,547 automobiles, trucks, trailers, station wagons, ambulances, fire trucks and buses in driveaway and towaway service between California points

from January 1, 1945 to December 31, 1948. Most of this transportation was in driveaway service. The towaway service could have been either driveaway or truckaway depending on the source of the motive power.

Exhibit No. 109 shows that during 1949 this applicant transported 473 trucks, truck-trailer units and trailers, automobiles and buses in driveaway and towaway between various points in California and Exhibit No. 110 shows that 32 vehicles of these types were handled during the first three months of 1950.

These exhibits show further that the service was performed generally throughout the entire State over the principal highways. The points of origin and destination extended from Eureka, Dorris and Hilt on the North and from San Diego and El Centro on the South. These movements consisted of both new and used vehicles.

Eight public witnesses testified on behalf of this applicant. These witnesses represented trailer manufacturers, a body builder, a distributor of heavy duty trucks and heavy construction equipment, and a petroleum manufacturing and distributing company. These witnesses testified that the service proposed by Dealer's is essential to their operations and that in order to meet their demands it should be authorized to serve all points and places in California; that they would prefer to have the operation established as a highway common carrier service with published rates and public utility status; that they desired both truckaway and driveaway services and would use Dealer's if certificated. According to the testimony of these witnesses they produce a rather substantial volume of vehicles for transportation within this State.

Applicants Clark, Wentz, and Hughes filed a brief protesting the granting of a certificate of public convenience and necessity to

this applicant (Dealer's). It was their position that the grant to this applicant of a certificate would be contrary to the public interest. These protestants admit that they were not represented at the hearing involving Dealer's application and that they did not have the opportunity of reviewing the transcript. It was their contention that Dealer's would use its operative right in California merely for the purpose of providing a back haul for its vehicles operating in interestate commerce. A careful review of the evidence fails to support this contention. These protestants also argued that the position of Dealer's was very similar to that of the Pacific Inter-Mountain Express considered in the case of Savage Transportation, et al, 48 Cal. P.U.C. 712 (1949). It appears to us, however, that the two situations are clearly distinguishable.

The granting of a certificate of public convenience and necessity to Dealer's was also protested by California Truckaway Company, Robertson, Hadley, Taylor and Pacific Motor Trucking Company. It was the contention of these protestants that those applicants which they designate as the eastern corporate applicants (3) failed to make a showing of public convenience and necessity justifying certification for intrastate operations in California. In the face of the testimony which has been summarized in the preceding paragraphs it is our conclusion that this position is not supported by the evidence.

After considering all of the evidence and the arguments

(3) Applicants Arco, Kenosha, Sober and Dealer's. The first three will be considered subsequently in this opinion.

set forth in the briefs, it is our conclusion and we so find that public convenience and necessity requires the establishment of Dealer's Transport Company as a highway common carrier authorized to transport motor and other vehicles in intrastate commerce between points and places in California over the principal highways, all as more particularly set forth in the order herein.

APPLICATION NO. 29863

INSURED DRIVE-AWAY SERVICE, INC.

This applicant, Insured Drive-Away Service, Inc., is a California corporation. Its president testified that this corporation and its predecessors has been engaged in the transportation of automobiles since 1933; that it has two terminals in California, one located at San Leandro and the other at Maywood; that it holds certificates of public convenience and necessity issued by the Interstate Commerce Commission authorizing the transportation of trucks, tractors, truck chassis, truck trailers and semi-trailers or combinations of such vehicles, with or without bodies, in driveaway and truckaway service, over irregular routes, between San Francisco, Oakland and Los Angeles, California, on the one hand, and on the other, points and places in Arizona, Utah and Washington; also between San Francisco and Oakland, California, on the one hand, and on the other Reno, Nevada and points and places in California and Oregon; also for the transportation of new trucks, tractors, truck-trailers, buses and chassis and parts thereof, when moving with these commodities, in initial movements (as defined by the Interstate Commerce Commission) in driveaway service over irregular routes from places of manufacture or assembly at San Francisco, California, and the points and places within twenty miles thereof, to points and places in Arizona,

Colorado, Idaho, Montana, New Mexico, Nevada, Oklahoma, Oregon, Texas, Utah, Washington and Wyoming and the transportation of automobiles, buses, trucks and chassis in secondary movements (as defined by the Interstate Commerce Commission) in driveaway service over irregular routes between points and places in the states just mentioned in the foregoing; that they employ 70 drivers and have 100 complete sets of driveaway equipment; that they have four tractors, four trailers, four trucks and three smaller pieces of automotive equipment for use in truckaway operations; that prior to July, 1948, this applicant operated almost exclusively in driveaway movements but that since that date has developed a program involving the handling of truckaway movements, which type of operation has greatly increased recently; and that it has served the International Harvester Company in hauls from Emeryville and in hauls between branches, district offices and dealers; that it has also served the Willys-Overland Company in Los Angeles.

Exhibit No. 106 shows that this applicant handled 5,410 vehicles during 1948 between points located throughout the State of California, many of which were substantial distances off the principal state and U.S. Highways. Exhibit No. 108 lists the 2,389 vehicles handled during the last week of each month for the entire year of 1949 and which are estimated to represent approximately 25% of the total number of vehicles handled during that year. This exhibit also shows that the movements took place between points and places located generally throughout the entire state. The president of this corporation testified further that, in order to be able to serve the motor vehicle shipping public adequately any carrier granted a certificate should be authorized to serve the entire state.

The rate witnesses on behalf of this applicant introduced exhibits showing the rates proposed to be charged which were generally on the basis of those presently assessed for such transportation in this state.

Fifteen public witnesses testified on behalf of this applicant. They represented a trailer sales organization; two manufacturers of buses; a trailer manufacturer; a truck and bus manufacturer; two truck manufacturers; two trailer manufacturers; a manufacturer of trucks, station wagons and jeeps; the representatives of the automotive transportation department of two of the large oil companies in this state and the automotive department of a large gas and electric utility company. All testified that the service proposed by the applicant was essential and convenient to them and that in order to accommodate their requirements, the certificate should authorize service between all points in California. All indicated that they preferred that the carrier transporting their automobiles have highway common carrier status with published rates. Several indicated that they desired to have both truckaway and driveaway service so certificated, and others that they would require one or the other. Nine of these witnesses testified that they handled new vehicles; two that they handled both new and used and three that they handled only used vehicles. Their testimony also showed that together they handled passenger automobiles, trucks, tractors, trailers, semi-trailers, chassis, bodies, buses, heavy duty automotive equipment and parts thereof. The witnesses stated that they had used this applicant, found its service satisfactory, and that they would use it if certificated. According to their testimony, these witnesses control a substantial volume of vehicles available for transportation in California.

After considering all of the evidence and the arguments set forth in the briefs, it is our conclusion and we so find that public convenience and necessity require the establishment of Insured Drive-Away Service, Inc., as a highway common carrier authorized to transport motor and other related vehicles between points and places in

California over the principal highways, all as more particularly set forth in the order herein.

APPLICATION No. 29885 - B & H TRUCKAWAY CO.

Applicants James D. Boner and David T. Hamilton, a copartnership doing business as the B & H Truckaway Co., introduced oral and written evidence. One of the partners testified that either he or his partner has been in the business of transporting motor vehicles by truckaway and driveaway since 1935; that he holds Interstate Commerce Commission permits to operate as a contract carrier in interstate commerce and holds permits from this Commission as a contract carrier, radial highway common carrier and a city carrier. During 1935 applicants handled a total of 14,943 vehicles, of which 11,004 were new passenger automobiles, 3,091 used passenger automobiles, 732 used trucks and 116 used passenger cars. These shipments involved 549 shippers or consignees. Shipments originated at 51 different points and places in California. From only two points of origin shipments were destined to 138 points and places throughout this state. Many were located substantial distances off the main highways.

Exhibit No. 85, introduced by this witness, showed that B & H owns 14 trucks and 10 trailers which are used in truckaway operations. Both truckaway and driveaway services are offered.

Applicants have available a terminal of generous proportions which includes a garage, repair shop, storage building and office. They also lease additional space from one of their shippers. The present partnership or its predecessor has had an exclusive contract with Studebaker since 1935 and now also has a contract with Willys-Overland Company. In addition to vehicles from these two firms the applicants have handled new and used vehicles from other shippers.

Most of the transportation is via truckaway but driveaway is occasionally used for shorter distances. This witness also testified that the partnership has been operating at capacity for some time and is adding additional equipment every month in the expectation that their business will continue to increase.

Five public witnesses testified on behalf of these applicants, three of whom were used car dealers. The other two were manufacturers of new automobiles and trucks. They testified that the service being rendered by this applicant was essential to their continued operation; that any carrier certificated should be authorized to operate between all points in California and that they would like to see B & H certificated as a highway common carrier. Three desired truckaway service while two desired both truckaway and driveaway. All had used B & H and found their service satisfactory and stated that they would use the service if certificated. These witnesses or the firms that they represent account for a substantial volume of traffic available for transportation within this state.

It is our conclusion, after considering all of the evidence and the arguments set forth in the briefs, and we so find that public convenience and necessity require that James D. Boner and David T. Hamilton be authorized to operate as a highway common carrier in the transportation of motor and other vehicles between points and places in California, all as more particularly set forth in the order herein.

APPLICATION NO. 30018, KENOSHA AUTO TRANSPORT CORP.
APPLICATION NO. 30026, ARCO AUTO CARRIERS, INC.
APPLICATION NO. 30068, HOWARD SOBER, INC.

As a matter of convenience and because several of the public witnesses testified for more than one of these three applicants the applications of Kenosha, Arco and Sober will be considered together. Also because of its sometimes conflicting character the testimony introduced on behalf of these three applicants will be set forth in some detail.

Kenosha's traffic manager and newly established western sales and promotional representative were called as witnesses on its behalf. Their testimony showed that Kenosha has no terminal in California but that if certificated it would have equipment available here and would establish in this state whatever facilities are required by available traffic; that the nearest terminal is located in Kansas City; that an agency representative is located at Bell, California, this party being a service station operator who receives telephone calls for Kenosha; that it does not have its name in the telephone directory but plans to establish an office, and at the time of the hearing (October 19, 1949) it had no truckaway equipment in or licensed to do business in California.

The record shows that the first application in this proceeding was filed on November 17, 1948; that Kenosha's application was filed on February 1, 1949; that it secured from this Commission Radial Highway Common Carrier Permit No. 59-265 on February 24, 1948, and Highway Contract Carrier Permit No. 59-272 on April 7, 1948. Both of these permits were terminated on May 23, 1949, for failure to use them for a period of over one year.

The Commission's records show however that a new radial permit (No. 59-273) was issued on August 15, 1950, and is still in effect.

Kenosha failed to file a requested exhibit showing the volume of intrastate traffic handled in California and the record fails to show that any such business was handled by it.

Konosha's traffic manager also testified that this application for a certificate was filed at the request of the International Harvester Company and the Nash Motor Division of the Nash-Kelvinator Corporation made either in 1946 or 1947. The record shows, however, that neither of these concerns has ever given Kenosha any intrastate traffic nor that they plan to do so. International Harvester Company uses Insured almost exclusively and Nash Motors uses Taylor on intrastate business and it appears that the services of both are satisfactory and that no change is contemplated.

Two public witnesses, other than the joint witnesses who testified on behalf of more than one of the three applicants under consideration, were called to testify on behalf of Kenosha. The first was the vice president of the Crown Body and Coach Company of Los Angeles which manufactures approximately 100 school buses a year and distributes approximately the same number manufactured in the East. The witness stated that if Kenosha were certificated his company would use its driveaway service for deliveries in California which would amount to approximately 75 per cent of the outgoing vehicles. However, it appears that his firm has never given Kenosha any business; that his firm has never asked anybody

to make deliveries for it; that it has used its own employees or those of its buyers to transport its products; that it did not know exactly what service was available in California; that it was interested in a driveaway service and that it would not make any difference to the firm which of the applicants in these proceedings were eventually certificated; that the firm was interested in reasonable rates and would secure quotations from each carrier and compare them with its own costs and use the cheapest method, and further, that it could not tell whether it would use Kenosha until it became known what its rates would be.

The second public witness was the president of the Diamond T Motor Truck Company of California with headquarters in Los Angeles. This firm distributes and sells trucks and truck parts in the southern part of California under a license from the Diamond T Corporation, Chicago, at which point the trucks are manufactured. The witness stated that it moved approximately 65 trucks during 1948, some being handled by dealer consignees themselves and others by driveaway service. He recommends that Kenosha be granted a certificate and added that its driveaway service would be helpful to him; that there would be available to the carrier approximately ten to fifteen per cent of his wholesale business which would amount to between 25 and 30 units annually. He added, however, that he was not "wedded" to Kenosha but that he wanted a reliable common carrier service with rates filed with this Commission. It appears that the freight charges are evenly divided between prepaid and collect and that this firm has no objection to continuing to allow employees of his dealers to handle deliveries and that the request of a buyer for a particular carrier would be honored.

Under cross-examination it was brought out that he prefers to have several carriers available because a competitive situation is usually more satisfactory; and, that he prefers to have rates established and then be in a position to choose the carrier giving the best and most reliable service. This witness stated further that he was asked by Kenosha's representative if he would like to have their service and that he answered in the affirmative and agreed to so testify but that he does not want this Commission to understand from his testimony that there is insufficient service in California at present but that he had not recently investigated to ascertain what services are available.

On behalf of Arco Auto Carriers, Inc., its general manager testified that it has an agent in California and a leased terminal in Los Angeles; that it had no truckaway equipment in California at the time of the hearing (February 16, 1949); that it proposes to station in California the equipment necessary to accommodate the needs of the public in connection with whatever authority is granted.

On April 14, 1948, Arco was issued Radial Highway Common Carrier Permit No. 59-276, Highway Contract Carrier Permit No. 59-274 and City Carrier Permit No. 59-275. These permits were terminated on November 24, 1950, for failure to use them for a period of over one year. At the present time Arco holds no permits issued by this Commission.

The witness stated that his company has performed interstate service in California and he believes but could not substantiate that his company has handled California intrastate traffic.

He added that the present application was filed at the request of the Nash Motor Division of the Nash Kelvinator Company and because interstate operations in California are making the establishment of a terminal of its own desirable, adding that he believes intrastate operations will help to meet the cost of maintaining a terminal in this state, add to the income of the drivers and improve his company's operations generally. It appears further that Arco has never participated in the movement of Nash automobiles from El Segundo, that plant using other carriers for this service. At a subsequent hearing (October 14, 1949) Arco's traffic manager testified that his company had stationed and maintained in California one tractor and one trailer since March, 1949, and had two pieces of equipment stationed here since the latter part of July of the same year. The witness testified that Arco's agent in California actively solicits and has been soliciting business since March, 1949; that the equipment stationed here has been used in intrastate moves from Long Beach to Emeryville and other points. This applicant likewise failed to file the requested exhibit showing the volume of intrastate business handled in California and the record therefore fails to show and does not reveal what, if any, intrastate traffic was handled by this applicant.

In addition to the joint witnesses two public witnesses were called on behalf of Arco.

The following is a summary of testimony of the first of these witnesses, the Zone Manager of Four Wheel Drive Pacific Company, San Francisco. The vehicles handled by this firm are manufactured by the parent company at Clintonville, Wisconsin. They

consist of heavy duty four and six wheel drive trucks and tractors with trailers. Many of these are used in off-highway service. The vehicles are shipped from Clintonville either direct to the purchaser or to the branch in San Francisco. Most of them have moved by rail but when driveaway service was required Arco was used. The service has been satisfactory. Arco has handled all interstate shipments for the parent company. Drivers are required to attend a factory school at Clintonville before being allowed to drive any of their vehicles.

As to California intrastate traffic this witness stated that common carrier driveaway service would enable his company to save the time of its own personnel now used in making deliveries and that he recommended the granting of a certificate to Arco. However, on cross-examination the witness testified that the Pacific Company did not investigate as to what service was available in California during 1948; that Arco had not been asked to perform any services although deliveries were being made; that the use of "for-hire" carriers was a matter of reliable and efficient service and driver control and that the decision as to whether carriers other than Arco would be used would rest with the parent company in Clintonville.

The following is a summary of the second of these witnesses called on behalf of Arco, the witness being the factory representative of the Davis Motor Car Company of Van Nuys, California. He testified that this company at the date of the hearing (February 16, 1949) was producing a pilot model only; that it expected to commence production in July or August of 1949; that it contemplated a volume of 40,000 units a year for distribution

throughout the United States; that the company would use driveaway, truckaway and rail services; that the witness believed the service proposed by Arco would be convenient and necessary for his firm and therefore he supports Arco's application.

However, a consideration of the remainder of this witness's testimony reveals that his firm is interested in reliable and responsible service regardless of the carrier that performs it; that it is immaterial which carrier actually does transport its vehicles; that its company wants a choice of more than one vehicle transportation company; that the witness does not know anything about the services offered by the other applicants in this proceeding and finally that the firm is not committed to give its business to any carrier.

It should be noted that the testimony by the representative of the Davis Motor Car Company, on behalf of Arco, was all prospective in character and that there is nothing in the record to indicate whether the expected production or any production was ever realized.

The general manager of Howard Sober, Inc., of Lansing, Michigan, applicant in No. 30068 testified that his company has never engaged in any intrastate traffic in California; that it holds no permits from this Commission although it has operated into and out of California in interstate traffic; that he could not give the exact date of the last operation into this state; that his firm has no terminal in California, the nearest one being located at Fort Wayne, Indiana; that it holds Interstate Commerce Commission authority to serve the International Harvester Company plant at Emeryville, California, but has not as yet been requested

to furnish any service from that point; that the only reason for his filing the application was because of a request that he do so from International Harvester Company although he stated that he did not expect to establish service in California merely as a stand-by carrier for that firm.

The assistant to the Sales Manager of the Utility Trailer Sales Company of San Francisco in testifying for his firm stated that it is engaged in the business of selling and servicing utility trailers, bodies and third axles; that the San Francisco firm is entirely separate from the firm in Los Angeles bearing a similar name; that his firm wants a common carrier service such as proposed by Arco; that such service for the movement of vehicles from San Francisco would be required by his company but only occasionally and that a variety of contract carriers have been used but were not always readily available; that if Civic Center and Dealer's were certificated his firm would use them out of San Francisco; that it has used Insured and found its service satisfactory and if Insured were authorized to provide a truckaway service he would be inclined to use it also.

The Secretary of the Utility Trailer Manufacturing Company of Los Angeles, while called by Arco, testified on behalf of Insured, Kenosha and Dealer's as well as Arco. The Los Angeles firm manufactures trucks, trailers, third axles and miscellaneous truck equipment. The witness stated that his dealer in Los Angeles requested him to appear in this proceeding and that his testimony is to be understood as being on behalf of both his own firm and his dealer; that while he has been with his firm for 12 years he is

consulted only occasionally about transportation service; that service so far has been secured from contract carriers without written contracts; that the freight is paid by the consignees; that the service of the contract carriers has not always been satisfactory; that he prefers common carrier service because he believes it would be more reliable and because contract carriers are usually interested only when they can fill out a back-haul with a pay load; that his firm will discontinue using contract carriers if it is economically in its favor to do so; that the decision in this matter will depend on rates and service; that this Commission should establish minimum rates but that they will have to be low enough to meet the competition and that he did not wish to be understood as advocating the bringing in and certificating of eastern carriers if there was enough equipment already available in California although he admitted he has no personal knowledge as to whether sufficient service is already available.

The assistant to the Works Manager of the International Harvester Company, Emeryville, California, testified on behalf of Insured, Arco and Sober. The following is a summary of his testimony. The firm manufactures trucks. The annual production as of the date of the hearing (March 17, 1949) was 880 and that of 1,370 trucks produced from January, 1948, through March, 1949, only 466 were delivered to California points. Five per cent were picked up at the plant by his dealers. Driveaway service best suits the firm's needs. Trucks are sold f.o.b. plant with freight added to the invoice. Insured has satisfactorily performed all the transportation service from the plant so far. The firm also

desires to have Kenosha and Sober certificated so it can have them as stand-by carriers to be used in the event Insured for any reason is unable to furnish service. There has been no need for any service in addition to that of Insured.

The assistant to the General Manager of the International Harvester Company, Chicago, Illinois, also testified on behalf of Insured, Kenosha and Sober. This witness testified substantially to the same effect as the previous witness as to the firm's needs and outlined its policy in desiring stand-by carriers. He testified further that International Harvester is supporting Insured's application as it is actually using its service; that it desires to have Kenosha and Sober certificated as stand-by carriers because they are familiar with the firm's requirements and procedures and that while he prefers Kenosha to Dealer's and is not acquainted with the service of Civic Center he is not opposing the granting of certificates to the latter two.

The Traffic Manager of Del Mar Motors, San Diego, testified on behalf of Kenosha and Arco. The following is a summary of this testimony. Del Mar's factory is now in production (May 18, 1949). It hopes to manufacture 100 cars in June and in July expects to be well on its way to producing its first 1000 cars. Ultimately the production is expected to be 600 automobiles per day of which it is estimated 400 would be sold in California. Del Mar would use Kenosha and Arco if certificated but it hopes to have more than two carriers available and the service rendered will determine which will be used. Filed tariffs and rates the same as would be available to other automobile manufacturers is desired. Rate uniformity is important. Certificated common carriers have greater

permanence and stability and therefore the establishment of a number of this type is favored. Del Mar has not pledged its business to any carrier. Taylor and B & H could handle the production. The establishment of the large Eastern carriers in intrastate operations in California would keep local carriers "on their toes". Del Mar desires to be in a position to choose between local and eastern carriers. Konosha and Arco have not been promised any business and it is quite possible Del Mar would use Insured or other carriers. It is not "wedded" to eastern carriers.

The foregoing testimony, on behalf of Del Mar, by the representative of Del Mar Motors, insofar as the anticipated production is concerned, was essentially prospective in character and the record does not reveal whether the expected volume was ever realized.

The District Manager of Kaiser-Frazer Motors, Southern California Division, with headquarters in North Long Beach, was also called to testify on behalf of Konosha and Arco. The following is the summary of this testimony. Kaiser-Frazer has a newly established assembly plant in Long Beach; some models are assembled there, others are assembled at Willow Run, Michigan, and shipped to Long Beach for subsequent distribution in California. The present volume is approximately 200 cars per month (October 29, 1949). It expects to increase this volume to 400 cars per month when full production is achieved. Some dealers call for the cars at the plant, others use "for-hire" truckaway or driveaway services, or rail. An increase is expected in truckaway-driveaway movement.

Automobile Transport Company (Wentz) and Robertson had been used. Kenosha has not been used on intrastate traffic. Kaiser-Frazer is supporting the application of any qualified carrier so it may have available a group of efficient and reliable highway common carriers. It has been using various carriers inbound to try to find out which can give the most efficient service. It has used Arco only once within California but has used Wentz more than any other carrier and the latter has been satisfactory as to rates and service. Kaiser-Frazer is not under contract with any carrier. It may give Sheppard some business in the future. At the present time cars are picked up by his dealers. It would like to see all carriers certificated so that minimum rates could be established and so that it would be assured of getting the same rates as its competitors. On cross-examination the witness stated he did not know exactly which carrier would be used; that some rail may be used even though highway common carriers are certificated; that the change in the method of handling freight charges by Kaiser-Fraser may result in an increased movement by highway carriers which might make necessary the use of several such carriers and for this reason the firm is supporting the application of all qualified carriers.

All of the testimony introduced on behalf of Kenosha, Arco and Sober and the arguments set forth in the briefs have been carefully considered. The requirements of the automobile shipping public as shown by the testimony and the use being made of existing carriers as indicated by the exhibits filed by some applicants showing past performance and the consequent need indicated thereby, were carefully weighed. There is serious doubt as to whether there is need for service in addition to that

already being furnished by the carriers presently operating intrastate in California. While some of the testimony tended to support the applications of these three carriers (Kenosha, Arco and Sober), it was conflicting on many points and on the whole was not conclusive or convincing. Based upon the entire record, it is our conclusion, and we so find, that these three applicants have failed to sustain the burden of showing that public convenience and necessity require that they be certificated as highway common carriers and therefore their applications will be denied. The order will so provide.

The arguments presented in protestants' briefs that these three companies should not be certificated simply because they are out of state carriers or foreign corporations was not given any weight by this Commission in arriving at the foregoing conclusion.

APPLICATION NO. 30739 - W. H. CLARK, dba AUTOMOBILE FORWARDING SERVICE
APPLICATION NO. 30741 - H. E. WENTZ dba AUTOMOBILE TRANSPORT CO. OF CALIFORNIA
APPLICATION NO. 30800 - EDWIN T. HUGHES dba HUGHES TRUCK-A-WAY

The hearings on the above mentioned applications were held at Los Angeles on January 24 and 25, and March 16, 1950. Because some of the witnesses testified for more than one of these three applicants they will be considered together in this opinion.

W. H. Clark, the owner of Automobile Forwarding Service testified that he holds radial highway common carrier, contract carrier and city carrier permits from this Commission; that since 1939 he has transported various types of vehicles between points in California including automobiles, trucks, buses and house trailers; that he has a terminal, office and shop in Los Angeles and a representative in Fresno; that he has regularly increased the size of his fleet of carriers as needed and has been able to meet all requirements in this regard; that during the past year he has conducted operations over the various highways for which highway common carrier authority is sought in this proceeding; that the routes shown in the application were selected to enable him to give a coverage of the entire state because over the years he has probably served every incorporated town and city and approximately 90 per cent of the unincorporated towns and points in this state; that in order to adequately serve the vehicle shipping public he must be able to serve every point and place; that during the year 1949 he handled 4,085 vehicles consisting of new and used automobiles, new and used trucks, trailers and motorcycles (Exhibit Nos. 10 and 11); that he filed his application because he learned that other automobile carriers were doing likewise and because he wants his service to have permanence and stability and finally

because he finds that his operations have resulted in using continuously the same route and frequently operating between the same points in serving the automobile shipping public.

The witness also testified that he desires that minimum rates be established and believes that they are essential to the proper operation of his industry. He added that he would not be inclined to accept a certificate unless minimum rates were established which would protect him from cut-throat competition by permitted carriers.

Harold E. Wentz, owner of the Automobile Transport Co., of California testified that he has transported mostly passenger cars but has also handled trucks, commercial trailers, buses, house trailers and motorcycles; that he is willing to accept and transport any type of vehicle; that he has held permits from this Commission as a radial highway common carrier and a contract carrier for 15 years; he has filed for city carrier permits based on a grandfather right; that he secured interstate operating authority from the Interstate Commerce Commission under a grandfather right in 1938; that he has a terminal in Inglewood; that he has transported vehicles with considerable frequency over all of the routes shown in the application, that he needs authority to serve the 50-mile lateral territory in order to adequately serve the automobile shipping public; that the routes shown in the application are those most frequently used; that based upon the present operations the equipment he possesses is adequate but that he is able to and will acquire whatever equipment is necessary to meet the demand; that if his business requires he will establish an additional terminal in the San Francisco Bay area; that he has

handled traffic to and from most of the towns in California; that during 1949 he handled 2,935 vehicles consisting of new and used cars, new and used trucks, house trailers and motorcycles to and from over 195 incorporated cities and probably as many unincorporated towns and points in California; that the 1949 experience is typical of previous years; that he has handled and is handling both repossessed and wrecked automobiles requiring the ability to render service to and from any point in California; that in filing his application it is his desire to secure from this Commission the necessary authority required to continue his operations in the future on a permanent basis; that due to the nature of the motor vehicle transportation industry it is inevitable that the movements will take place with increasing frequency over the principal highways and between the principal points and places in California; that he estimates he is serving at least 200 different customers, probably more, and that he holds himself out generally to handle any type of motor vehicle that may be offered to him.

The witness also testified relative to the desirability of the establishment of minimum rates, stating that at the present time, permitted carriers are in a position when looking for return loads to charge anything that they wish even to the extent of taking such return loads at rates far below compensatory levels. Upon further questioning the witness stated that he would not be inclined to accept a certificate unless minimum rates were established, adding that he could not afford to do so as it would put him in a position where he would have an established rate which he would have to maintain, while permitted carriers would be able to charge any rate that they wished.

Edwin T. Hughes, the owner of Hughes Truck-A-Way, testified that he has been engaged in the business of transporting automobiles

and house trailers during the past 12 years; that he holds radial highway common carrier and contract carrier permits from this Commission; that he also holds interstate operating authority from the Interstate Commerce Commission; that, while there have been periods of unprofitable operation, on the whole his operation has produced satisfactory financial results; that during 1949 he handled a total of 333 vehicles including new and used cars and new and used house trailers between points and places in California; that he has more transportation equipment than he can use in the transportation business at the present time.

This witness also testified that he would not be inclined to accept a certificate unless minimum rates were established by this Commission, adding that approximately 90 per cent of all the trailer transportation business is now handled by what he designates as "wildcatters"; that a certificate would not mean very much to him if the so-called "wildcatters" are permitted to come in and take the business away from the certificated carriers at lower rates than those in published tariffs; that permitted carriers and interstate carriers are in a position after completing an outbound pay-load to solicit return loads at rates considerably below those charged by established carriers on original hauls; that some of the interstate carriers now take loads between points within the State of California at rates below those charged by the California carriers.

Seven public witnesses appeared and testified on behalf of applicants Clark, Wentz and Hughes. In addition it was stipulated that the testimony of three additional witnesses would have been substantially the same as the seven just mentioned. These ten witnesses represented three used car dealers, three repossessors of automobiles and four automobile financing institutions. All of these witnesses testified that the service proposed was essential to the conduct of

their own businesses; that they needed carriers authorized to serve all points within the State of California; that they would use the service if established; that they desired truckaway service and in some instances needed driveaway service and that in practically every instance the type of service now being furnished by these three applicants was satisfactory. It was also evident that they controlled a rather substantial number of vehicles requiring transportation.

It is our conclusion after considering the testimony introduced and the arguments set forth in the briefs, and we so find, that public convenience and necessity require that Clark, Wentz and Hughes be granted certificates authorizing operation as highway common carriers between points and places in California all as more particularly set forth in the order herein.

APPLICATION NO. 31018
C. H. SHEPPARD and C. H. SHEPPARD, JR., co-partners, doing business as CHARLIE SHEPPARD TRANSPORT.

The hearing on the above-mentioned application was held in Los Angeles on May 4, 1950. Charles H. Sheppard, Jr., one of the co-partners, testified that they have been engaged in the business of transporting automobiles by the truckaway method for over a year; that they have a yard with a capacity of approximately 50 trucks, office facilities and minor repair facilities at 72 W. Alameda Street in Burbank, California; that they hold radial highway common carrier, contract carrier and city carrier permits issued by this Commission; that they have adequate equipment to perform the proposed service (Exhibit No. 1); that the partnership seeks authority as a highway common carrier of automobiles, trucks and station-wagons between the points and along the routes specified in the application (the scope of the proposed service has been previously outlined in this opinion); that it is essential in order to adequately serve the motor vehicle

shipping public to have authority covering the 50-mile lateral territory; that because of the geography of the State of California it is inevitable that the operations will repeatedly follow the same route and that insofar as the principal cities are concerned the operations regularly will be between those points; that during the past year the partnership had served approximately 500 different customers; that the greater portion of the vehicles transported have been used automobiles; that the partnership actively solicits vehicles for transportation and generally it has accepted all offered, and further, it intends to continue to do so; that they endeavor to secure loads in both directions, and that the partnership is ready, willing and able to accept for transportation motor vehicles between any of the points in California for which authority is sought in this application. Exhibit No. 3 introduced at the hearing shows that the partnership handled 4,186 vehicles during an 11-month period, ending March 31, 1950, between the various points and places located within the territory for which authority is sought in this application. The witness testified further that some of the cars included in the exhibit were actually manufactured and assembled at the point of origin and that the partnership is in a position, if called upon to do so, to handle with the present equipment more vehicles than it has been transporting up to the present time.

This applicant called six public witnesses, all used automobile dealers; two from Bakersfield, two from San Diego, one from Los Angeles and one from Fresno. Counsel for applicant stated that these witnesses were merely a representative group or a sampling of the customers served. They all testified that they had been using the applicant's service, had found it satisfactory, that it was essential to the continued operation of their businesses and that if certificated they would use it, and that it was essential for the

carrier, if certificated, to have authority to serve all points within the area specified in the application. It was evident that they controlled a rather substantial volume of vehicles which would require transportation within California. All supported the granting of the application.

The only point brought out by the protestants present at this hearing was that they objected to the granting of this application for so-called initial movements. However, in view of the conclusions stated previously in this opinion concerning so-called initial and secondary movements, no further comment is required here.

It is our conclusion after considering the testimony introduced and we so find that public convenience and necessity require that Sheppard be granted a certificate authorizing operation as a highway common carrier between the points and places set forth in the application and as more particularly set forth in the order herein.

The several applicants in their applications used far from a uniform nomenclature in describing the vehicles to be transported. In some instances a vagueness and looseness is evident. After considering carefully the entire record covering all applications it is deemed desirable and in the public interest to formulate a clearer and more uniform description of the various types of vehicles that may be transported in the proposed types of services by the carriers being granted certificates in this proceeding. The description which this Commission considers acceptable will be set forth in full in the order herein.

The description and specification of the proposed points and places to be served and the proposed routes to be used in serving them, as set forth in the applications, also exhibits a variety of approaches and a lack of uniformity. The evidence introduced by the

applicants whom we have concluded should be granted certificates shows the necessity for these carriers being authorized to serve all points and places in California. In the interest of simplicity and uniformity it appears that the points, places and routes to be served should be set forth in as concise a manner as possible. Therefore, it is our conclusion that the description and specification of these matters as set forth in the order although not couched in the language of the applications accomplishes this objective.

Applicants Carl August Wigholm, Dealer's Transport Company, a corporation, Insured Drive-away Service, Inc., a corporation, James D. Boner and David H. Hamilton, co-partners, W. H. Clark, H. E. Wentz, Edwin T. Hughes, individuals, and C. H. Sheppard, Sr., and C. H. Sheppard, Jr., co-partners, are hereby placed upon notice that the 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 a 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

Applications having been filed, public hearings having been held thereon, and based upon the record and the conclusions and findings set forth in the foregoing opinion,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity authorizing operation as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, is hereby granted to each of the following, for the transportation of the commodities listed below, between the points and places located on and over the routes hereinafter specified:

Vehicles, Motor, viz:
Chassis;
Freight, including tractors (driving tractors for vehicles), and dump trucks;
Passenger, including ambulances, hearses and buses;
Motorcycles and motorcycle sidecars.

Vehicles, other than motor, but for use with motor vehicles, viz:
Freight carts, trucks, trailers or wagons;
Trailer cars, carts or coaches, passenger, house or sleeper.
Cabs or bodies for vehicles above described.
Mobile searchlights.
Mobile Generators.
Parts, spare parts, or extra parts of the above described vehicles when accompanying the shipment of the vehicle to which it belongs or for which it is intended.
Auto show vehicle exhibits with exhibit equipment and accompanying advertising matter.

(a) To Carl August Wigholm, Dealer's Transport Company, a corporation, Insured Drive-Away Service, Inc., a corporation, James D. Boner and David H. Hamilton, co-partners, W. H. Clark, H. E. Wentz, and Edwin T. Hughes, individuals:

1. U. S. Highway 101, 101 By-pass, and 101 Alternate between the California-Oregon state line and the California-Mexican border.
2. U. S. Highway 99, 99E and 99W between the California-Oregon state line and the California-Mexican border.
3. U. S. Highway 97 between the California-Oregon state line and Weed.
4. U. S. Highway 395 between the California-Oregon state line and California-Nevada state line near Peavine, and between the California-Nevada state line approximately nine (9) miles north of Coleville and San Diego.
5. State Highway 89 between U. S. Highway 99 approximately two (2) miles south of Mt. Shasta City and State Highway 88 near Sorensens.
6. State Highway 49 between Sattley and Mariposa.
7. State Highway 127 between the California-Nevada state line and Baker.
8. U. S. Highway 299 between U. S. Highways 101 approximately two (2) miles north of Arcata and Alturas.
9. U. S. Highway 40 between San Francisco and the California-Nevada state line.
10. State Highway 190 between U. S. Highway 395 two (2) miles south of Lone Pine and Death Valley Junction.
11. U. S. Highway 466 between State Highway 1 near Morro Bay and the California-Nevada state line.
12. U. S. Highway 66 between Santa Monica and the California-Nevada state line.
13. U. S. Highway 60 between Los Angeles and the California-Nevada state line.
14. U. S. Highway 80 between San Diego and the California-Nevada state line.
15. With the right to serve points and places located laterally within 50 miles of the above routes.
16. With the right to serve intermediate points.

(b) To C. H. Sheppard, Sr., and C. H. Sheppard, Jr., co-partners:

1. U. S. Highway 101, 101 By-pass and 101 Alternate between Santa Rosa and the California-Mexican border.
2. U. S. Highway 99 between Sacramento and the California-Mexican border.
3. U. S. Highway 40 between San Francisco and Sacramento.
4. With the right to serve points and places located laterally within 50 miles of the foregoing routes.
5. With the right to serve intermediate points.

(2) That in providing service pursuant to the certificates herein granted there shall be compliance with the following service regulations:

(a) Applicants shall each file a written acceptance of their respective certificates as herein granted with not to exceed 60 days after the effective date hereof.

(b) Applicants shall each, within 120 days, after the effective date of this order and upon not less than five (5) days' notice to the Commission and to the public, establish the service herein authorized and comply with the provisions of General Orders 80 and 93-A (Part IV), by filing, in triplicate, and concurrently making effective, appropriate tariffs and time schedules satisfactory to the Commission.

(3) Applications Nos. 29886 of Taylor Truck-A-Way, Ltd., 29895 of Robertson Truck-A-Ways, Inc., a corporation and 29900 of E. P. Hadley and C. P. Hadley, doing business as Hadley Auto Transport, are hereby dismissed without prejudice.

(4) Applications Nos. 30018 of Kenosha Auto Transport Corporation, 30026 of Arco Auto Carriers, Inc., and 30068 of Howard Sober, Inc., are hereby denied.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 24th day of July, 1951.

Commissioners

Appendix "A"

Appearances

Glen W. Stephens and Marvin Handler for Dealer's Transport Company; Marvin Handler for Carl August Wigholm, doing business as Civic Center Transport Service; Reginald L. Vaughan, Varnum Paul and John G. Lyons for Insured Drive-Away Service, Inc. Kenosha Auto Transport Corporation, Arco Auto Carriers, Inc., and Howard Sober, Inc.; Phil Jacobson for E. P. Hadley and C. P. Hadley, doing business as Hadley Auto Transport Co.; Arlo D. Poe for C. H. Sheppard, Sr., and C. H. Sheppard, Jr., doing business as Charlie Sheppard Auto Transport; applicants.

Dewitt Morgan Manning for James D. Boner and David T. Hamilton, doing business as B & H Truckaway Company, originally as protestant and subsequently as applicant; also for Robertson Truck-A-Ways, Inc., protestant.

Glanz & Russell by Theodore W. Russell for H. E. Wentz, doing business as Auto Transport Company of California; H. W. Clark, doing business as Automobile Forwarding Service; and Edwin T. Hughes, doing business as Hughes Truck-A-Way Service, applicants; and with Douglas Brookman as Associate Counsel as protestants in Applications Nos. 30018 (Kenosha), 30026 (Arco), 29828 (Dealer's), and 30068 (Sober).

Douglas Brookman and Richard L. Hibbett for California Truckaway Company, interested party, and, later, protestant; also as Associate Counsel with existing counsel for B & H Truckaway Company; Taylor Truck-A-Way, Ltd.; Robertson Truck-A-Ways, Inc. and Hadley Auto Transport Co. as protestants in Applications Nos. 29828 (Dealer's), 30018 (Kenosha), 30026 (Arco) and 30068 (Sober).

Robert W. Walker, Wm. F. Brooks and Frederick A. Jacobus for The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company, protestants;

E. L. Van Dellen for Western Pacific Railroad Company, protestant;

Wm. Meinhold, W. A. Gregory and E. L. H. Bissinger for Southern Pacific Company, Pacific Motor Trucking Company and Northwestern Pacific Railroad Company, protestants;

Clair W. MacLeod for M. A. Gilardy, interested party; Hugh W. Hendrick for Elmer Ahl Company, interested party; Rudolph Illing, for Columbia Steel Company, interested party; George M. Kellogg, Jr. for International Harvester Company, intervenor in support of Applications Nos. 29863 (Insured), 30018 (Kenosha), and 30068 (Sober).