

(2)
extending from Tracy and Stockton to Fresno. No points, north of Fresno, lying east of U. S. Highway 99 would be served. Applicants consented to the imposition of certain restrictions. (3)

Each applicant proposes to serve the territory involved. California Express seeks operating authority as an express corporation, under Section 1010, Public Utilities Code; and California Transport seeks similar authority as a highway common carrier, under Section 1063. The latter would not limit its service to the transportation of express traffic, as an underlying carrier for California Express.

The application was opposed by the common carriers in the field. Many, including the major carriers, appeared as protestants. (4)

Public hearings were held before Examiner Austin at San Francisco, Oakland, San Jose, Stockton, Los Banos, Modesto, Merced, Fresno, Dinuba, Hanford and Los Angeles. Following the completion of applicants' showing, this application was consolidated

(2) Specifically, applicants propose to extend their operations " * * * between the San Francisco Territory (described in Item 270-A of Highway Carriers' Tariff No. 2) and Stockton on the one hand, and on the other hand, Tracy and all points east and south of Tracy to and including Fresno, also all points south of Stockton to and including Fresno, located along U. S. Highway 50, State Highway 120 and U. S. Highway 99 and along State Highways 33 and 180 and along all highways between U. S. Highways 99 and State Highway 33 from Manteca on the north to Fresno on the south, including service between all of said points."

(3) Applicants stipulated that in any certificate which might be issued, certain restrictions would be imposed, viz., (a) that no freight would be transported in refrigerated service; and (b) that no fresh dairy products would be transported between San Francisco and East Bay cities (Richmond to Hayward, inclusive), on the one hand, and Patterson, Newman, Gustine and Los Banos, on the other hand.

(4) The protestants will be considered in detail, later. See footnotes 13, 14 and 15, infra.

with Application No. 31338 (where Pacific Freight Lines sought authority to serve the points here involved as well as adjacent territory) ⁽⁵⁾ for the purpose of hearing the evidence offered by protestants, most of whom were common to both proceedings. Some of this testimony was not pertinent to the present proceeding, and therefore will be disregarded. ⁽⁶⁾ Both matters were submitted on briefs, since filed.

Applicants' proposal was described by their operating officials; in addition, shipper witnesses were called. Through their respective officials, protestants described the operations in which they severally were engaged. They also produced shipper witnesses.

The record discloses the scope of applicants' present operations. In general, California Transport operates as a highway common carrier (a) between San Francisco-East Bay and Los Angeles via both the Coast route and the Coast, Pacheco Pass and Valley routes; (b) between San Francisco-East Bay and various points in the San Joaquin Valley, including Fresno and points south, east and west thereof, over the Coast route and connecting routes, including Pacheco Pass; and (c) between Los Angeles and the San Joaquin Valley points mentioned, as well as Valley points extending north from Fresno to Stockton and Sacramento. California Express serves substantially the same territory, utilizing California Motor as its underlying carrier in most instances. However, it reaches some

(5) The hearing of the consolidated protests was held before Examiners Austin and Daly. (Examiner Daly, to whom Application No. 31338 had been assigned, heard the evidence offered by the applicant in that proceeding.)

(6) Some protestants offered evidence directed to both proceedings. The showing made by others related only to Application No. 31338. Included among the latter were J. Christenson Co., Harold H. McBride, Reedley-Selma-Kingsburg Truck Lines and Triangle Transfer Co.

points not served by the latter, including those situated on the west side of the Valley and also Tracy.⁽⁷⁾

Applicants, it appears, are well qualified to provide the service for which certification is sought. Their operations were initiated in 1930. They possess ample financial means. Both equipment and personnel are adequate. Terminals are located at San Francisco, Oakland, San Jose, Fresno and Los Angeles. Another will be established at Modesto, regardless of the outcome of this proceeding.

Applicants' offer of service was described. It is contemplated that an overnight service would be supplied, available daily except Saturdays, Sundays and holidays. Freight received at San Francisco and Oakland, during daylight hours, would move overnight in line-haul equipment to the terminals at Fresno and Modesto. There, it would break bulk and would be distributed in pickup equipment throughout the surrounding area.⁽⁸⁾ At each of these terminals, from six to eight pickup trucks would be stationed to provide this service. Deliveries would commence by 8 a.m. and would be completed by 1:30 p.m. An agent would be located at Merced but not elsewhere. Traffic moving northbound would be picked up by 5 p.m. and delivered the next morning.

(7) California Express serves points situated on State Highway 33, on the west side of San Joaquin Valley, through the instrumentality of Valley Motor Lines, Inc., its underlying carrier. It also serves Tracy over the lines of Pacific Motor Trucking Company, which acts as its underlying carrier.

(8) Traffic would move either to Fresno or Modesto, depending upon its ultimate destination. From the Fresno terminal, freight would be distributed throughout the territory extending north to Merced and Gustine. The Modesto terminal would accommodate the territory extending south to Merced and Patterson, and north to Manteca and Tracy. Full truckloads would move directly to their destination, in line-haul equipment; such shipments would not be handled through the terminals.

In support of their proposal, applicants called shipper witnesses representing 101 firms engaged in business within the affected territory. Of these, 68 are located in the San Francisco Bay area, and 33 at San Joaquin Valley points.⁽⁹⁾

The establishments represented by these witnesses may be regarded as a fair cross section of the shipping public. Those located in the San Francisco Bay area are engaged in the manufacture or wholesale distribution of the products in which they deal. Those situated in the Valley are, for the most part, retail dealers, though some also are manufacturers or wholesale distributors. Collectively, they deal in a wide variety of commodities.

Some are nationally established concerns trading throughout the State; others, in varying degrees, operate on a smaller scale. Their shipments move regularly and in substantial volume throughout the territory involved.

All of these shippers have used applicants' facilities for the transportation of their products within the territory reached by the lines of these carriers.⁽¹⁰⁾ Universally, they have found this service satisfactory; many characterized it as excellent. If the present proposal were approved, they would extend their patronage of applicants to these points.⁽¹¹⁾

(9) The witnesses produced by applicants were distributed as follows: San Francisco 40; Oakland 11; Berkeley 3; Emeryville 4; San Jose 4; Santa Clara 2; Mountain View 1; Palo Alto 1; Redwood City 1; San Carlos 1; Tracy 1; Manteca 1; Modesto 10; Merced 7 and Fresno 14.

(10) Shippers situated in the San Francisco Bay area have used applicants' service to Fresno and points south, including Bakersfield, and also to Los Angeles. Those situated in the territory north of Fresno, including Merced and Modesto, have used the service to Fresno, San Joaquin Valley points and Los Angeles. Those located at Fresno have used the service from San Francisco Bay points and also to San Joaquin Valley points and Los Angeles.

(11) Their shipments would move between San Francisco Bay area and San Joaquin Valley points, and between Valley points themselves, it was shown.

Certain elements, characterized as desirable, were stressed. All desire an overnight service, accompanied by first-morning delivery. Many emphasized the need for an adequate pickup and delivery service. A few favored competition among the carriers. A substantial number expressed a preference for a single carrier serving a wide area rather than several carriers having less extensive coverage. Thus, it was said, congestion at the shippers' docks would be curtailed, the handling of freight expedited, employees utilized more efficiently, paper work minimized and economies effected. These views, apparently, may be ascribed largely to inadequate shipping facilities and to traffic congestion.

Many shippers questioned the quality of service which had been furnished by one or more of the existing common carriers. For the most part, they pointed to delays occurring in course of transit and in effecting delivery, ranging from three to four days and even longer; and also to delayed or unsatisfactory pickup service. A few referred to the delayed adjustment of damage claims. A review of the evidence indicates that many of the complaints concerning delay in transportation or delivery, and in affording pickup service, were well founded. These complaints emanated from shippers situated both in the San Francisco Bay area and at San Joaquin Valley points.

The major common carriers now serving the territory, both rail and truck, appeared as protestants against the granting of this

(12) Of the shippers who so testified, some 20 are located in the San Francisco Bay area and five at San Joaquin Valley points. The reasons influencing this conclusion--viz., inadequate and crowded shipping facilities and traffic congestion--exist to a more marked degree in the metropolitan area than in the valley communities.

(13)
application. Of these, three limited their showing to the territory
between the San Francisco Bay area and Sacramento and Stockton. (14)
Others opposed only the issuance of the certificate sought by
Pacific Freight Lines in Application No. 31338; this related to
territory beyond the scope of the instant proceeding. (15)

The record establishes the qualifications of protestants, respectively, to conduct the operations in which they severally are engaged. They possess ample equipment (both line-haul and pickup and delivery) to provide the service offered. Their terminal facilities are adequate. Their financial ability to supply the service also was shown.

The operations of Southern Pacific-Pacific Motor extend to all of the points involved. Less-carload traffic moves in

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- (13) The carriers appearing as protestants in Application No. 30475 comprised Southern Pacific Company and its subsidiary, Pacific Motor Trucking Company; The Atchison, Topeka & Santa Fe Railway Company and its subsidiary, Santa Fe Transportation Company; Railway Express Agency, Inc.; and Valley Motor Lines, Inc. and its affiliate, Valley Express Company. For convenience, these carriers will be referred to, respectively, as Southern Pacific, Pacific Motor, Santa Fe (including both the railroad company and its trucking subsidiary, collectively), Railway Express and Valley (including both Valley Motor Lines, Inc. and Valley Express Company, collectively).
- (14) The carriers who limited their protests to the San Francisco Bay area-Sacramento-Stockton territory consisted of Delta Lines, Inc., Stockton Motor Express and M. A. Gillardi, doing business as G & H Motor Express. For convenience, they will be referred to, respectively, as Delta, Stockton Motor and G & H.
- (15) At the joint hearing held in Applications Nos. 30475 and 31338, where the showing on behalf of protestants therein was consolidated, three carriers appeared only in opposition to the application of Pacific Freight Lines (Application No. 31338). They comprised J. Christenson Company, Reedley-Selma-Kingsburg Truck Line and McBride Truck Line. Consequently, the evidence offered on behalf of these carriers will not be considered in the present proceeding.

merchandise trains from both San Francisco and Oakland to break-bulk points in the San Joaquin Valley, where cars are set out. So far as material, these include Stockton, Tracy, Modesto, Merced and Fresno. Rail service is also provided between Stockton and Fresno, and intermediate points. In addition, Pacific Motor operates a trucking service between San Francisco and Oakland, and Newman, Gustine and Los Banos; between San Jose and Fresno via Gilroy; and between Valley points themselves. Freight moves by truck to San Francisco, Oakland and San Jose from Peninsula and East Bay points; and from the rail break-bulk points mentioned to various Valley points. This service is limited to points situated on Southern Pacific rail lines. About 85 per cent of the traffic moves outbound from Bay points; the remainder moves inbound.

A trucking service is supplied by Santa Fe between San Francisco Bay points and Southern California, serving rail points only. In the affected territory, these would comprise Merced,
(16)
Madera and Fresno.

Between the Bay area and rail points within the affected territory, Railway Express supplies a service through the passenger train facilities of both Southern Pacific and Santa Fe, its underlying carriers. Between Fresno and certain westside Valley points, the traffic moves via Pacific Motor. Pickup and delivery service is provided at major points.

(16) Santa Fe Transportation Company also serves points lying east of U. S. Highway 99 such as Escalon, Oakdale, Riverbank, Empire, Hughson, Donair, Winton, Planada and Le Grand. However, these points need not be considered, since applicant seeks no authority to serve points located east of U. S. Highway 99. Also, Santa Fe serves no points situated on the west side of the San Joaquin Valley, north of Fresno.

The operations of Valley extend to all points in the territory involved. ⁽¹⁷⁾ Terminals are maintained at the principal ⁽¹⁸⁾ points; at others, agency stations are located. These agency ⁽¹⁹⁾ stations, it was said, facilitate the distribution of traffic. The movement outbound from San Francisco Bay territory is heavier than the inbound movement. To promote efficiency, shipments moving inbound frequently are consolidated, at various points.

Between San Francisco Bay territory and Stockton and Sacramento, Delta operates as a highway common carrier. Terminals are maintained at the principal points.

Between San Francisco, East Bay points and Stockton, Stockton Motor operates as a highway common carrier, engaging only in the transportation of automotive parts, accessories and supplies. Teletype service is available between the terminals at San Francisco and Stockton.

C & H likewise operates as a highway common carrier, limited to the transportation of automotive parts, supplies and equipment, between San Francisco, East Bay, Sacramento and intermediate points. Teletype service is provided between the terminals

(17) Throughout this territory, Valley Motor Lines, Inc. operates as a highway common carrier. Valley Express Company operates as an express corporation over the lines of Valley Motor Lines, Inc.

(18) Valley maintains terminals at San Francisco, Oakland, San Jose, Stockton, Sacramento, Modesto, Merced, Fresno and Tulare. At these terminals freight is interchanged between line-haul and pickup and delivery equipment. Agency stations are located at Turlock, Chowchilla, Madera, Los Banos, Dos Palos, Firebaugh, Mendota, Kerman and other points not material here.

(19) At these agency stations, telephone facilities are provided where inquiries of shippers may be answered. Here, undelivered or rejected shipments may be stored, as well as freight destined to consignees residing outside the carrier's pickup and delivery limits. In such instances, shippers may call and receive their freight. These stations, it was said, are essential to supplying an efficient overnight service.

at San Francisco and Sacramento. Short wave radio equipment has been installed at these terminals to facilitate control of the operations and to expedite the service.

An overnight service is furnished by all of these carriers between the points which they serve, respectively. As to some of them, this service extends throughout the area involved; as to others, it is more circumscribed. All provide first-morning delivery. Pickup and delivery service is provided by these carriers at all points reached by their lines. Some have established regulations regarding the time for placing pickup calls.

Information regarding the nature of their performance of the service offered, was supplied by two of the protestants. Southern Pacific-Pacific Motor submitted a statement covering shipments handled on selected dates during representative periods in April, 1950. This traffic moved between San Francisco and Oakland, and Fresno, Merced and Modesto. The tabulation discloses that 91.4 per cent of the shipments described were afforded overnight delivery;

(20) An overnight service is provided between all points in the affected territory by Southern Pacific - Pacific Motor, Railway Express and Valley. Santa Fe supplies such a service between the Bay area and Merced, Madera and Fresno. An overnight service is supplied by Delta, between San Francisco-East Bay and the Stockton-Sacramento territory; by Stockton Motor, between the Bay area and Stockton; and by G & H, between the Bay area and Sacramento.

(21) Delta also provides same-day delivery service, on some traffic.

(22) The larger carriers require calls for pickup service within the Bay area to be placed not later than 3 p.m., if shipments are to be picked up on that day. Such a rule has been established by Southern Pacific - Pacific Motor, Santa Fe, Delta and Valley. The cutoff time provided by the latter varies at different Valley points.

(23) This statement covered no intermediate points nor any other East Bay points except possibly Emeryville; as to the latter, there was some uncertainty.

5.3 per cent received second-day delivery; and the remainder were delivered on the third day or later. ⁽²⁴⁾ On behalf of Valley, it was stated that on the average, some 98 per cent of the shipments moving to points within the territory involved were afforded overnight service. This appears from surveys which had been made, it was said.

Several protesting carriers expressed apprehension that the entrance of a new carrier, within this field, might result in impairment of their service. Such a showing was submitted by Valley, Delta, Stockton Motor and G & H.

Valley's general manager testified that, in his judgment, the certification of additional highway common carriers would intensify the competition already encountered. ⁽²⁵⁾ Instances were cited in support of this view. ⁽²⁶⁾

(24) This tabulation reveals in detail the service afforded 1,119 shipments. The nature of the delivery service provided is indicated below:

<u>No. of Shipments</u>	<u>Per Cent of Total</u>	<u>When Delivered</u>
1,023	91.4	Overnight
59	5.3	Two days
8	0.7	Three days
9	0.8	Four days
<u>20</u>	<u>1.8</u>	Five days or over
1,119	100.	

(25) Several carriers now serve this territory, this witness asserted. Between San Francisco Bay area and the San Joaquin Valley, Southern Pacific-Pacific Motor, Santa Fe, Railway Express Agency and Valley are engaged in the transportation of general commodities; and Christenson transports commodities moving under refrigeration. Between San Francisco Bay and the Sacramento-Stockton territory, the general commodity carriers comprise Southern Pacific-Pacific Motor, Santa Fe, Railway Express Agency, Merchants Express Corporation, Delta and River Lines. Others operate under restricted certificates, such as G & H, Stockton Motor, Christenson, Moser and Joe Nevis.

(26) This witness referred to the enhanced competition generated by the certification of additional carriers between Los Angeles and the Bay area, in the so-called "Savage Cases"; and also between San Francisco, Sacramento and Stockton.

Although the volume of traffic available has increased, due to the requirements of national defense, the tonnage carried by Valley has not grown proportionately, he pointed out. Moreover, it has not increased commensurately with the growth of population. (27) This is true notwithstanding the active solicitation of shippers for their business, which Valley had carried on.

Because of this situation, Valley's ability to provide an efficient service would be substantially impaired, it was said. Traffic losses would necessitate increases in the rates, in order to ensure the continuance of profitable operations. Failing this, there remained the alternative of reducing the service.

Delta stressed the ability of a larger carrier such as applicant, serving an extensive territory, to divert traffic from a smaller carrier. Assertedly, there is a tendency on the part of shippers to favor the larger carrier. Delta now encounters active competition, it was said. Similar testimony was offered on behalf of Stockton Motor and G & H. Both feared the loss of tonnage which might result should applicants be permitted to enter this territory. (28)

Protestants called some 118 shipper witnesses, representing firms located within the territory involved in this proceeding.

(27) The load factor, indicated by the system average, has dropped from 75 to 67.6 per cent, it was said. This computation is based upon the tonnage handled and the equipment actually used for that purpose. Obviously, it is influenced by variations in the density of traffic, manifested in different parts of the system.

(28) Since applicants in the present proceeding have not expressly sought authority to operate between San Francisco-East Bay, and Stockton and Sacramento, they admittedly could serve that territory only through linking up their existing operative rights with any which might be granted in this proceeding. This subject will be discussed presently.

Of these, 42 are situated within the San Francisco Bay area, and 76
(29)
in the San Joaquin Valley.

Like the witnesses produced by applicant, those situated in the San Francisco Bay area are manufacturers or wholesale distributors of the products in which they deal. Those located at Valley points, generally, are retail dealers; some also are manufacturers or whole distributors. They vary in size, ranging from quite large establishments to smaller firms. Collectively, they are engaged in the distribution of a variety of commodities; their shipments move regularly and in substantial volume throughout the affected territory.

These shippers have used the facilities of one or more of the protestants for the transportation of their products between the points involved. Those in the Bay area ship to San Joaquin Valley points, extending from Fresno to Stockton. Those in the Valley receive shipments from San Francisco, East Bay, San Jose and Peninsula points, as well as San Joaquin Valley points themselves; they also distribute their products throughout the same territory.

All of these shippers expressed their approval of the service which protestants had provided. It had been both adequate and prompt, they testified. Overnight service had been accorded; the pickup service had been prompt and satisfactory. The service supplied by protestants collectively had fully met their business requirements, it was said; they had no need for any additional transportation facilities.

(29) The shippers whom protestants produced are distributed as follows: San Francisco 18; Oakland 10; Berkeley 2; Emeryville 1; San Leandro 1; San Jose 7; Santa Clara 3; Modesto 14; Merced 23; Escalon 3; Riverbank 2; Empire 1; Hughson 2; Denair 1; Patterson 2; Newman 1; Gustine 1; Los Banos 9; Dos Palos 1; Firebaugh 2; Mendota 2; Fresno 12. In addition, some 50 witnesses were called at the consolidated hearings, whose testimony related only to issues raised in Application No. 31338. Of these, 3 were produced at Fresno; 21 at Dinuba; 14 at Hanford; and 12 at Los Angeles.

Although the subject was not referred to by all of these shippers, a few, when questioned concerning the matter, voiced their opposition to the entrance of an additional highway common carrier into this field. They apprehended that the dilution of traffic thus occasioned might result either in the ultimate imposition of higher rates or in the impairment of the service now afforded. For the reasons mentioned by applicants' shipper witnesses, some expressed a preference for a limited number of carriers. This, they said, would avoid congestion of their shipping facilities; moreover, the more extensive territorial coverage supplied by a larger carrier might be advantageous.

Southern Pacific offered evidence to rebut the testimony of a shipper witness whom applicant had produced. A shipper called at the earlier Modesto hearing asserted that this carrier had unduly delayed the adjustment of claims. No details were specified. To refute this showing, a Southern Pacific traffic official, stationed at Modesto, listed the claims which had been submitted by this shipper, as revealed by the company's records. It appears that over a period of three years, all claims filed had been promptly settled.

In determining the public need for the extension of service which applicants seek to establish, we shall consider the characteristics of the territory affected, the nature of the service presently provided, and the shippers' requirements.

The area as to which applicants seek operating authority is contiguous to territory which they presently serve. Applicants now operate between the San Francisco Bay area and that portion of the San Joaquin Valley lying south of Fresno (including that city); and also between Los Angeles and the entire San Joaquin Valley, including the territory involved from Fresno north to Stockton.

The San Joaquin Valley is commercially integrated, forming a unified trading area. Traffic moves between all points within the Valley, extending from Stockton to Bakersfield; the entire area, both north and south of Fresno, draws upon distributors situated in the San Francisco Bay area.

Between points in this territory where applicants are authorized to operate, they have provided a satisfactory service. This was established by the shipper witnesses. They desire to see this service extended. From their testimony, as indicated above, it appears that in some respects the service supplied by the existing carriers has failed to meet their needs.

This extensive territory is now served by two rail lines and their affiliated motor companies, and by one independent motor carrier. Between San Francisco and Stockton and the San Joaquin Valley territory affected, service is supplied by Southern Pacific-Pacific Motor, by Santa Fe (both rail and truck) and by Valley. Both Southern Pacific and Valley reach all of the points affected; Santa Fe serves only a limited number. Other carriers serve only a few points, or are limited as to the commodities which they may transport.

In our judgment, the evidence clearly establishes the existence of a public need for the service which applicants propose to render, subject, however, to the exceptions hereafter noted. There remains for consideration the question whether both the express service and the underlying motor carrier service should be authorized, or only one of these operations.

Applicants, respectively, seek authority to operate as a highway common carrier and as an express corporation. Protestants contend that the evidence would not support the grant of operating authority to both applicants. The testimony of the shipper

witnesses, produced by applicants, was directed to the service previously afforded them by "California Motors," and to their prospective use of that service. From the record, it is clear that this term, as they understood it, denoted the complete transportation service performed both by the overlying and the underlying carriers, considered as a unit. Obviously, they were not concerned with the internal relationship between the two carriers. The testimony dealt with the service which had been, or would be, supplied directly to the shippers. Under the issues presented here, this clearly would relate to the offer of the express company. (30)

To provide the express service, the facilities of an underlying carrier would be essential. Quite apparently, the shippers had in mind the service afforded by both California Express and California Transport, considered together as a unit. Clearly, they did not refer to any other carrier. Consequently, their testimony would support the application of the underlying highway common carrier, as well as that of the overlying express corporation. Upon this record, we conclude that both carriers should be certificated.

A question has arisen concerning the nature of the operating authority which should be issued. Applicants contend that it should be unlimited in character. Protestants, on the other hand, assert that neither carrier should be permitted to perform any service independently of the other. Over most of its lines, California Motor operates only as an underlying carrier for California Express. Other operations, acquired from predecessors,

(30) Re Valley Express Co. (1941) 43 CRC 408,415.

(31)
are not thus restricted. In our judgment, the operating rights to be granted here to California Motor should be limited to the transportation of express traffic for California Express. This would be consistent with the authority which California Motor now holds over most of its lines. The new operations readily could be integrated with the existing service.

We turn now to the consideration of applicants' right to establish service between the San Francisco Bay territory and the Stockton-Sacramento area. Protestants contend that if the authority sought were granted in its entirety, it could be combined with applicants' present operations and thus would permit the operation of through service between San Francisco Bay territory and the Stockton-Sacramento area. To obviate this, it is urged that the present application be denied unless applicants consent to appropriate restrictions. It appears that applicants are unwilling to agree to any such waiver.

This contention hinges upon the right of California Motor, as a highway common carrier, to provide through service between all of the points served under the certificates which it holds. It is now authorized to operate between Los Angeles and points north of Fresno, extending to Stockton and Sacramento. Under its present proposal, California Motor would operate between San Francisco, East Bay and San Joaquin Valley points, extending from Stockton to Fresno. This would connect with this applicant's present lines at Manteca, a point common to both operations.

(31) California Motor may engage only in the transportation of express for California Express between San Francisco-East Bay and Los Angeles; between San Francisco and San Joaquin Valley points, via Pacheco Pass; between Los Angeles-San Joaquin Valley points and Sacramento; and also between other points. Under operative rights acquired from applicants' predecessors, Valley and Coast Transit Co. and Coast Line Express, no such limitations are applicable. These relate to operations between San Francisco-East Bay and San Joaquin Valley points, over certain routes south of Gilroy.

Applicants do not expressly seek the right, by any unification of these highway common carrier operative rights, to provide a service between San Francisco Bay area and the Stockton-Sacramento territory. At the outset, applicants announced that no evidence would be introduced to show the need for such a service. This commitment was faithfully observed; no evidence of this nature was introduced. As stated, however, applicants declined to waive any possible legal right which either of them might possess to unify the operations.

The record does not show the service now provided between San Francisco Bay territory and the Stockton-Sacramento area by the carriers in the field to be inadequate. Those now serving this territory, wholly or in part, comprise Delta, Valley, Merchants Express Corporation, Southern Pacific-Pacific Motor, Santa Fe, Railway Express, and River Lines. There also are carriers holding limited certificates, such as Christenson, Moser, G & H, and Stockton Motor.

To meet this situation, the Commission may impose appropriate restrictions upon any operating authority which might be granted. The statute now provides:

"Without the express approval of the commission no through route or joint, through, combination, or proportional rate shall be established by one highway common carrier, or petroleum irregular route carrier, between any point or points which it serves, on the one hand, and any point or points served by another such carrier, on the other hand. Unless prohibited by the terms and conditions of any certificate that may be involved, any one highway common carrier, or petroleum irregular route carrier, may establish through routes and joint rates, charges, and classifications between any and all points served by it under any and all certificates or operative rights issued to or possessed by it." (Section 1066, Public Utilities Code; formerly Section 50-3/4 (c), Public Utilities Act.) (Emphasis supplied.)

The legislative history of the above section reveals a clear legislative intent to empower the Commission, in the issuance of new certificates, to impose restrictions against the consolidation of a newly granted right with existing rights of the successful applicant. Before 1941, the statute prohibited consolidation of separate rights, by the establishment of through routes and joint rates, without first obtaining Commission approval. A 1941 amendment, as construed in So. Calif. Freight Lines v. Public Utilities Commission, 35 Cal.(2d) 586, removed such prohibition as to rights held by a single highway common carrier and rendered the Commission powerless to impose any limitation which might effectively prevent a highway common carrier from linking up the new right with its existing rights.

The Southern California Freight Lines case was decided in 1950. The 1951 legislation was enacted in the light of that decision. The statute now provides (Stats. 1951, ch. 1493) that such consolidation, which was a statutory right under the 1941 amendment, may still be effected "unless prohibited by the terms and conditions of any certificate that may be involved, * * *." Clearly, the Commission is again empowered to impose a restriction preventing the unification of service under a new certificate with other operations which the grantee might previously have been authorized to conduct.

The record fully justifies the imposition of such a restriction here. Public convenience and necessity have been shown for the service for which applicants have requested certificates. On the other hand, public convenience and necessity have not been shown for any service by applicants between San Francisco Bay territory and Stockton-Sacramento territory. On the contrary, the record herein shows, and we hereby find, that such latter service would be counter to and in conflict with the public interest,

convenience and necessity. It is further found that, if the new rights herein granted were to be consolidated with existing rights, the resulting adverse effect upon the general highway transportation system would so far outweigh the public interest which would be served by the granting of the certificate herein as to warrant denial of the present application. Accordingly, both applicants will be restricted from providing service, under the certificates issued herein, between San Francisco Bay territory and Stockton-Sacramento territory. Authority to impose such a limitation upon California Motors flows directly from the terms of the amendment of 1951, quoted above. As to California Express, such authority is derived from the provisions of Section 1010,⁽³²⁾ Public Utilities Code.

The application, accordingly, will be granted subject to the limitations indicated above.

O R D E R

Application having been filed as above entitled, a public hearing having been held thereon, the matter having been duly submitted and the Commission now finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to California Motor Transport Co., Ltd., a corporation, authorizing the establishment and operation of service as a highway common carrier (as defined by Section 213, Public Utilities Code) for the transportation of express traffic of

(32) Section 1010, Public Utilities Code (formerly Section 50 (f), Public Utilities Act) authorizes the Commission, in issuing a certificate authorizing operation by an express corporation, to impose "such terms and conditions as, in its judgment, the public convenience and necessity require."

California Motor Express, Ltd., between all points in San Francisco territory (as described in Item 270-A of Highway Carriers' Tariff No. 2) and Tracy, via U. S. Highway 50; between all points, Tracy to Fresno, located on U. S. Highways 50 and 99 and State Highways 120, 33 and 180, and between all such points; between all points, Stockton to Fresno, located on U. S. Highway 99, and between all such points; between all points located on all state and county highways connecting State Highway 33 and U. S. Highway 99, extending from Fresno on the south to Stockton on the north, including U. S. Highway 50, and between all such points; and (subject to the limitations hereinafter provided) between all of the points above described.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to California Motor Express, Ltd., a corporation, authorizing the establishment and operation of service as an express corporation (as defined by Section 219, Public Utilities Code) between all points in San Francisco territory (as described in Item 270-A of Highway Carriers' Tariff No. 2) and Tracy, via U. S. Highway 50; between all points, Tracy to Fresno, located on U. S. Highways 50 and 99 and State Highways 120, 33 and 180, and between all such points; between all points, Stockton to Fresno, located on U. S. Highway 99, and between all such points; between all points located on all state and county highways connecting State Highway 33 and U. S. Highway 99, extending from Fresno on the south to Stockton on the north, including U. S. Highway 50, and between all such points; and (subject to the limitations hereinafter provided) between all of the points above described. Said certificate is hereby granted as an extension and enlargement of, and shall be consolidated with, all of the existing operative rights of California Motor Express, Ltd.

(3) That said certificates are, and each of them is, granted subject to the following restrictions:

- (a) No freight may be transported in refrigerated service.
- (b) No fresh dairy products may be transported between San Francisco and East Bay points (Richmond to Hayward, inclusive), on the one hand, and Patterson, Newman, Gustine and Los Banos, on the other hand.
- (c) No freight may be transported between San Francisco, East Bay points (Richmond to Hayward, inclusive), or any points between the latter and Manteca, inclusive, on the one hand, and, on the other hand, any point or points extending from Manteca to Stockton and Sacramento, inclusive.

(4) That, in providing service pursuant to the certificates herein granted, applicants, respectively, shall comply with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, applicants shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs and time schedules satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify them by further order, applicants shall conduct operations pursuant to the certificates herein granted over and along the routes described above.

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

Dated at San Francisco, California, this 17th day of March, 1952.

[Signature] President
Justin F. Cravens
Harold H. Hubbs
[Signature]
 Commissioners