

Decision No. 48436**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 28649

In the Matter of the Application of)
 CIRCLE FREIGHT LINES, a copartnership,)
 for a certificate of public conven-)
 ience and necessity as a highway)
 common carrier between San Francisco,)
 Oakland, and other East Bay Points, on)
 the one hand, and points in Contra)
 Costa County, on the other hand.)
)
)

Application No. 28856

Application of Gordon A. Samuelson and)
 Gilbert J. Munson, copartners, dba)
 CIRCLE FREIGHT LINES, for certificate)
 of public convenience and necessity as)
 a highway common carrier for the)
 transportation of general commodities)
 between San Francisco and East Bay)
 Cities, on the one hand, and Antioch,)
 Oakley, Brentwood and other Contra)
 Costa County points, on the other)
 hand, as an extension and enlargement)
 of their existing service.)
)
)

Application No. 32309

Phillips and Avakian, by Spurgeon Avakian, for Stapel
 Truck Lines, applicant in App. No. 28649, and
 interested party in Apps. Nos. 28856 and 32309.
Scott Elder, for Circle Freight Lines, applicant in
 Apps. Nos. 28856 and 32309, and interested party in
 App. No. 28649.

William Meinhold, for Southern Pacific Company and
 Pacific Motor Trucking Company, protestants.

Robert W. Walker, William F. Brooks and Matthew H.
 Witteman, for The Atchison, Topeka & Santa Fe
 Railway Company and Santa Fe Transportation Company,
 protestants.

Frederick W. Mielke, for Delta Lines, Inc., protestant.

N. R. Moon, for Merchants Express Corporation, protestant.

Willard S. Johnson, for J. A. Nevis Trucking, Inc.,
 protestant; and for J. Christenson Co., interested party.

Clifton E. Brooks, for Delivery Service Co., interested party.

Edward S. Waldie, for Inter-Urban Express Corporation,
 interested party.

J. A. Jeans, for West Berkeley Express and Draying Co.,
 interested party.

O P I N I O N

In these proceedings each applicant seeks a certificate authorizing operation as a highway common carrier between San Francisco and East Bay points, and certain points in Contra Costa County. Essentially, they are continuations of matters previously heard and decided. Each was reopened for further hearing concerning territory where the operating authority originally sought had been denied. Applicants also propose to serve points, once withdrawn but which now have been reinstated. One of them would extend its operations to points not formerly involved. General commodities would be transported.

Public hearings were held before Examiner Austin at San Francisco, Pittsburg, Antioch and Lafayette, when evidence was offered and the matters were submitted on briefs, since filed. All three proceedings were consolidated for hearing and decision. The common carriers in the field, both rail and truck, appeared either as protestants or as interested parties.

A comprehensive showing was presented. Applicants described the nature of their proposals and produced supporting shipper witnesses. Through their respective operating officials, protestants described the service which they severally provide.

The service which each applicant undertakes to inaugurate will be described separately.

Proposal of Stapel Truck Lines (App. No. 28649)

(1)

Stapel Truck Lines seeks authority, in that phase of the proceeding now under consideration, to operate as a highway common

(1) When this proceeding was instituted, Stapel Truck Lines was a partnership composed of Harold A. Stapel, Harland H. Stapel and Clayton C. Koons. Following the original submission of this matter, Koons acquired the interests of his partners in the line pursuant to authority granted by the Commission (Decision No. 44708 in Application No. 31666, dated August 29, 1950). Since then he has conducted the operation individually, under the name of Stapel Truck Lines. For convenience, this applicant will be referred to as Stapel.

carrier between San Francisco, Emeryville and Oakland, on the one hand, and, on the other hand, Port Chicago, Pittsburg, Antioch and certain intermediate points. ⁽²⁾ By Decision No. 43827 ⁽³⁾ rendered February 14, 1950, in Application No. 28649, Stapel was authorized to operate between the San Francisco Bay points mentioned and Orinda, Lafayette, Walnut Creek, Danville and Concord; however, authority to serve Pittsburg and Antioch was withheld. Pursuant to the order reopening this proceeding, Stapel now proposes to serve these points. The application was amended to include Port Chicago, specified originally but withdrawn prior to the first hearing. It now has been restored as a point to which this applicant would extend its service.

Proposal of Circle Freight Lines (Apps. Nos. 28856 and 32309)

In these proceedings Circle Freight Lines ⁽⁴⁾ in effect seeks operating authority as a highway common carrier between San Francisco and certain East Bay points, ⁽⁵⁾ on the one hand, and, on the other hand, (a) Port Chicago, Pittsburg, Antioch, Oakley, Knightsen, Brentwood, Orinda, Lafayette and intermediate points; (b) Bethel Island; and (c) points situated within one mile laterally (1) of

(2) Stapel seeks authority to serve points intermediate to those mentioned above, situated on State Highways Nos. 24, 21 and 4, and on unnumbered State highways between Concord and Port Chicago, and between Port Chicago and Pittsburg.

(3) Re Stapel Truck Lines, Decision No. 43827, 49 Cal. P.U.C. 392,406.

(4) Circle Freight Lines is a partnership composed of Gilbert J. Munson and Gordon A. Samuelson, who are engaged in business under this trade name. For convenience, this applicant will be referred to as Circle.

(5) In addition to San Francisco, Circle's operations would encompass Oakland, Emeryville and those parts of Albany, Alameda, Berkeley and Piedmont included in the description of the Oakland Pickup and Delivery Zone, contained in Highway Carriers' Tariff No. 2.

Marsh Creek Road, extending from Clayton to the intersection of that road and State Highway No. 4; and (2) of State Highway No. 4 extending from Pittsburg to Brentwood. This proposal stems both from the original application and from that subsequently filed.

By Decision No. 43825, rendered February 14, 1950, in Application No. 28856,⁽⁶⁾ Circle was authorized to operate between San Francisco and certain East Bay points,⁽⁷⁾ on the one hand, and, on the other hand, Walnut Creek, Danville, Saranap, Concord, Pacheco,⁽⁸⁾ Clayton and intermediate points in Contra Costa County, as well as points situated within one mile laterally of State Highway No. 21 between Pacheco and Danville. The application was denied both as to Pittsburg and Port Chicago. That proceeding having been reopened, Circle has renewed its proposal to serve these points.

⁽⁹⁾
By Application No. 32309, filed after Application No. 28856 had been reopened, Circle proposed to operate between the Bay points mentioned above (including Emeryville), and Antioch, Oakley, Knightsen, Brentwood, Orinda, Lafayette and intermediate points. Authority to serve these points, among others, had been sought originally in Application No. 28856, but was withdrawn prior to the initial hearing in that matter. By an amendment to Application No. 32309, Circle also undertook to extend its service to Bethel Island, and to points within the lateral zones described above.

(6) Re Circle Freight Lines, Decision No. 43825, 49 Cal. P.U.C. 377,385.

(7) The East Bay points covered by this certificate comprise "Oakland and those parts of Albany, Alameda, Berkeley and Piedmont described in the description of the Oakland Pickup and Delivery Zone in the Commission's Highway Carriers' Tariff No. 2 *** *." Emeryville was not included among those specified.

(8) This authority extended also to points situated within a radius of one mile from the Walnut Creek city limits, and within a radius of two miles from the Concord city limits.

(9) Application No. 32309 was filed by Circle on April 14, 1951. An amendment to this application, extending applicant's proposal to Bethel Island and to certain lateral points, was filed during the course of the hearing.

Former Decisions

Following the hearings held initially in both the Stapel and the Circle applications (Apps. Nos. 28649 and 28856), both matters were submitted. Since they involved questions of general policy affecting the certification of highway common carriers--a subject which then occupied the Commission's attention--the disposition of these proceedings necessarily was delayed. After rendition of the decisions upon these applications (Decisions Nos. 43825 and 43827), petitions for rehearing and reconsideration were filed by interested parties. By orders dated April 18, 1950, rehearing was denied, but each proceeding was reopened for further hearing to permit consideration of the public need, if any, for extending applicants' operations, respectively, to the points as to which certification had been withheld. In the meantime, Circle having sought a review by the Supreme Court of the Commission's order in a companion case determining its status as a highway contract carrier, hearings in the reopened proceedings were delayed still further, pending the ruling of the court in that matter. (10) As stated, the three applications were consolidated. The two applications originally filed (Apps. Nos. 28649 and 28856) were submitted upon the evidence received during the course of both the initial hearings and the hearings held subsequent to the reopening of these matters.

Applicants explained the nature of their operations, both present and proposed. Each in turn will be considered.

(10) In a complaint proceeding determined contemporaneously with the certificate proceedings mentioned, the Commission held that Circle had been operating unlawfully as a highway common carrier between certain points common to both proceedings, and, accordingly, Circle was directed to discontinue such operations (Pacific Southwest Rd. Ass'n. v. Samuelson et al, Decision No. 43829, dated February 14, 1950, 49 Cal. P.U.C. 427, 440). Upon review, this order was set aside by the Supreme Court (Samuelson v. P.U.C. (1951) 36 Cal. 2d 722).

Stapel's Operations

This carrier's activities were described by Clayton C. Koons, present owner of the line. In addition to the service conducted under the certificate mentioned, it also operates as a highway contract carrier between the Bay Area and such Contra Costa County points as Pittsburg, Antioch, Port Chicago, Oakley and Brentwood. This operation, instituted in 1946, was curtailed materially to meet the requirements of the Commission's order, rendered February 4, 1950. (11) At Pittsburg, Port Chicago and Antioch, freight is delivered about six times a month. The service is now confined to some ten shippers, with whom contracts have been negotiated.

The facilities used to provide the service were described. At Walnut Creek, where applicant maintains its headquarters, a terminal is located, and another may be established at Antioch, if necessary. A dispatcher, whom shippers may contact by telephone, is stationed at Alameda. To supply the service some eight units of (12) equipment are available.

Statements were submitted disclosing this applicant's financial status. The evidence indicates that it is financially capable of conducting the operation.

Pickup and delivery service is supplied throughout the Bay Area. Ordinarily, this is provided by two trucks, dispatched each morning from Walnut Creek. An additional truck would be furnished when necessary. Shipments are picked up until 6 p.m., but to assure overnight delivery, telephone requests for pickup service must be received by 3:30 p.m. Freight collected moves directly to

(11) Pacific Southwest Rd. Ass'n. v. Stapel et al., Decision No. 43828, 49 Cal. P.U.C., 407,426. Here, Stapel was required to discontinue certain operations as a highway common carrier which, the Commission found, had been conducted unlawfully.

(12) This equipment, which is of varying capacities, comprises three tractors, three semitrailers and five trucks. All is van-type except one flat-rack semitrailer.

the Walnut Creek terminal, where it is segregated and reloaded for distribution. Under its proposal, applicant would continue to provide this service.

Trucks would be dispatched from Walnut Creek, on the following morning, over five distinct routes, viz.: (a) to Walnut Creek, locally; (b) to the Danville area; (c) to Lafayette and Orinda; (d) to Pittsburg and Antioch; and (e) to Gregory Village, Pacheco, Port Chicago and Concord. Delivery would be completed at varying times, along these routes. (13)

Merchants located at Port Chicago, Pittsburg and Antioch have expressed a desire for applicant's service, voicing these requests about six times monthly. Because of the cease-and-desist order, applicant has refrained from expanding these operations. In recent years, it was shown, the population of these communities has increased substantially.

Circle's Operations

The operations conducted by this carrier, as well as those which it offers to provide, were described by Gordon A. Samuelson, one of the partners. Since March 1950 it has operated as a highway common carrier, serving the territory covered by its certificate. As a highway contract carrier, it also serves Orinda, Lafayette, Port Chicago, Pittsburg, Antioch, Oakley, Knightsen, Brentwood, Bethel Island and Marsh Creek Road points. In this capacity, it has entered into transportation agreements with some 14 shippers.

The facilities used to provide the service were described. Its principal office and terminal are situated at Concord, where freight originating in the Bay Area is segregated for distribution

(13) It is contemplated that Walnut Creek local deliveries would consume most of the day. Throughout the Danville area where, because of the hills some points would be difficult of access, most of the day would be required. At Pittsburg and Antioch, deliveries ordinarily would be completed by noon. In the Lafayette and Orinda area, deliveries would commence during the early morning.

throughout the Contra Costa territory. A local office is maintained in Oakland, where telephone facilities are available to shippers desiring to reach applicant, and a dispatcher is constantly on duty.

(14)
The equipment utilized comprises some eight units; possibly two more might be added if necessary to meet traffic requirements.

The record indicates that Circle is financially qualified to supply the service, if authorized to do so. This appears from statements which were submitted.

Pickup and delivery service is provided both in San Francisco and at East Bay points. Freight is picked up during the afternoon. To insure overnight delivery, telephone requests for pickup service must reach the dispatcher by 3:30 p.m. At Contra Costa points westbound freight is picked up by trucks engaged in delivering freight originating in the Bay Area. The same equipment is used to perform both the pickup and delivery, and the line-haul operations. (15)
Under its proposal, applicant would continue to provide this service.

Shipments dispatched from the Concord terminal would be distributed over five separate routes, viz., (a) to Clyde, Port Chicago and Pittsburg; (b) to Pittsburg and Antioch, serving Pacheco en route; (c) to Antioch, Oakley, Knightsen, Brentwood, Bethel Island and Marsh Creek Springs, returning via Clayton; (16)
(d) to Pleasant

(14) This equipment comprises four van-type trucks, two tractors and two semitrailers, one of van type and the other an open flat rack. Both trucks and semitrailers are of five-ton capacity.

(15) After completing the distribution of freight at Contra Costa points, the equipment used for this purpose proceeds to the Bay Area where it is employed in performing the pickup service. For this purpose some four or five trucks are used.

(16) Over this route traffic would move in either direction, depending upon traffic requirements. Ordinarily, freight would first be delivered at points where the largest volume of tonnage had been consigned. Obviously, this would vary from day to day.

Hills and Danville; and (e) to Walnut Creek, Lafayette and Orinda. Concord would also be served locally by a separate truck.

Prompt distribution of the traffic would continue to be afforded. Trucks engaged in this service would leave the Concord terminal by 8 a.m., and deliveries would commence as early as practicable. Some shippers open their establishments later than others, thus necessitating duplication of operations. Freight ordinarily would be distributed by noon throughout this territory.

No general survey of potential traffic appears to have been made. However, at both Pittsburg and Antioch applicant has been requested by several firms to transport their shipments. This business was rejected. The growth and development of both Bethel Island and the Marsh Creek area were described. (17)

Evidence was offered indicating the volume of tonnage which applicant has handled. (18) On the average, it was said, applicant's trucks move loaded to about 75 per cent of their capacity. Traffic originating in the Bay Area predominates substantially over that moving westbound, the latter being quite small in volume.

(17) Bethel Island, an agricultural area lying seven miles north-east of Oakley and Knightson, is also a fishing resort. Several business establishments are located there. Marsh Creek Springs, situated some 12 miles southeast of Concord on Marsh Creek Road, is an important resort. Along State Highway No. 4, between Pittsburg and Antioch, there are some large manufacturing plants and also a few recreational resorts.

(18) The record discloses that during the first quarter of 1951, the aggregate tonnage carried by Circle, both in its capacity as a highway common carrier and also as a contract carrier, was as follows:

	Pounds
Common Carrier Traffic.....	972,484
Contract Carrier Traffic	220,645
TOTAL	1,193,129

Shipper Witnesses

Applicants called some 38 shipper witnesses representing firms engaged in business at various points within the affected territory. (19) Of these, 13 were produced by Circle alone, and the remainder testified on behalf of both applicants. In our consideration of their testimony, we shall deal separately with those situated within the Pittsburg area, with those at Bethel Island and Marsh Creek, and with those in the Lafayette-Orinda territory.

We shall consider first the witnesses appearing as spokesmen for the Pittsburg area, of whom there were 20. (20) They are engaged in the distribution of various products; generally they are fairly representative of the retail establishments found in this territory. All of them draw heavily upon wholesale distributors and suppliers situated in San Francisco and East Bay. This traffic moves regularly and in substantial volume. (21)

Expeditious delivery of these shipments, it was shown, is universally required. This is necessary to replenish stocks which usually are small, to facilitate the quicker turnover of merchandise, and to permit fuller utilization of limited storage space. Frequently,

(19) The shipper witnesses mentioned above were distributed throughout the territory involved, as follows: Port Chicago, 3; Clyde, 1; Pittsburg, 6; Antioch, 7; Brentwood, 3; Bethel Island, 4; Marsh Creek Road, 1; Orinda, 8; Lafayette, 5.

(20) In connection with the showing presented by these witnesses, there must also be considered the testimony of the eight shippers, engaged in business in this area, who were called at the initial hearing. Of these, two were located at Port Chicago and six at Pittsburg.

(21) Shipments designed to maintain stocks at a proper level move at regular intervals. In the meantime, smaller shipments move intermittently to meet emergency requirements. Ordinarily, orders are transmitted through salesmen who call upon the trade, or by mail. When a more urgent need for prompt delivery arises, orders are placed by telephone.

emergencies arise when the commodity sought is not at hand, and prompt delivery is indispensable to meet the demands of customers. Consequently, a fast and dependable trucking service is essential to their needs.

These shippers, it appears, desire the establishment of the proposed operations. All of them stated they would use either or both applicants, if they were certificated, to handle their tonnage moving from the Bay Area. In the past, several had employed them, apparently as contract carriers, before the service had been withdrawn, at the carrier's instance. A few have continued to use them under similar arrangements. ⁽²²⁾ This subject was not explored extensively.

In the past, it was said, applicants had provided a satisfactory service, in their capacity as contract carriers. Shippers who had employed them characterized it as expeditious and dependable. First-morning delivery was afforded, usually by noon or earlier; in this respect the service was superior to that supplied by other carriers. There were but few damage claims and these were settled promptly.

To accommodate their needs, these shippers currently have used the facilities afforded by the other common carriers in the field. All, save a few, have employed one or more of these carriers; some, however, were not familiar with the nature of the service which

(22) Some nine shippers formerly had used the facilities of either or both of the applicants, but no longer do so. About eight shippers continue to employ either or both of them as contract carriers.

(23) they had provided. A few have used Pacific Greyhound buses for the transportation of small shipments requiring expedition. However, this carrier affords neither pickup nor delivery service.

Complaints were voiced by many shippers regarding the service which had been supplied by these carriers. (24) Some stated they had no such complaints. (25) These related to delays encountered both in the delivery of shipments, and in the settlement of claims for loss or damage to freight.

Many of these complaints appear to be well founded. The record amply supports the charges, expressed by some nine shippers, that delivery of their freight had been delayed as long as two or more days. These delays, it appears, occurred consistently and repeatedly. On the other hand, ten shippers testified they had experienced no such delays. The record also supports the complaints of some three shippers concerning protracted delays occurring in the adjustment of claims. However, these were not shown to be of frequent occurrence.

Competition among the carriers would be advantageous, several shippers asserted. This seems to represent a general or uncritical opinion. None undertook to explain or amplify the views thus expressed.

(23) Of the shippers within this area, 17 customarily employ Delta to handle their freight; 15 use Southern Pacific-Pacific Motor; eight use Santa Fe; and nine use Valley, via Stockton. Three shippers had not used Southern Pacific-Pacific Motor, and eight had not used Santa Fe. Several were not familiar with the service afforded by these carriers. As to Delta, this was true of one shipper; as to Southern Pacific-Pacific Motor, three shippers; and as to Santa Fe, seven shippers. Some four shippers have used Pacific Greyhound Lines for the transportation of shipments under 100 pounds in weight. This service is provided between stations only.

(24) The complaints directed against these carriers were thus distributed among them: Delta, 15 shippers; Southern Pacific-Pacific Motor, 11 shippers; Santa Fe, 4 shippers; and Valley, two shippers. Eight shippers complained generally of the existing service.

(25) Of these shippers, two referred to the service afforded by Delta and one, to that supplied by Southern Pacific-Pacific Motor. Two shippers testified generally in this respect.

A few shippers, it was shown, have resorted to proprietary facilities. Three consignees testified they had found it expedient to haul supplies from the Bay Area in their own trucks, in order to have the merchandise available when needed. Assertedly, they had done so because the service afforded by the existing carriers was neither satisfactory nor dependable. At times, some consignors have employed their own equipment to distribute their products. However, this occurred infrequently.

The requirements of Bethel Island for transportation service were related by four shipper witnesses, residing in that area.

Bethel Island, a tract of some 3,500 acres, is situated in the Delta Region about seven miles northeast of Oakley and Knightsen. This territory is devoted primarily to farming and the production of livestock; ⁽²⁶⁾ over weekends it is also a popular fishing resort. Exclusive of week-end visitors, some 400 people reside here permanently. On the island there are 32 business establishments of various types, all located within a district about one-half mile in length. ⁽²⁷⁾

The existing public transportation facilities, it was said, are wholly inadequate to meet the needs of those engaged in business in this locality. No common carrier serves the territory directly. To obtain supplies, they must go to nearby communities such as Pittsburg and Oakley, or even to Stockton and the Bay Area.

(26) The island, which is surrounded by a levee some 13 miles in circumference, is subdivided into about seven farms.

(27) Among these business establishments there are hardware, grocery, bait and variety stores, restaurants, bars, automotive repair shops and boat harbors.

Some rely upon itinerant jobbers who call at the island. Inbound freight moving via Santa Fe must be picked up at Oakley by the consignees, to whom notice of arrival has been mailed by the station agent.

If Circle were certificated to serve this territory, local dealers could draw upon wholesale suppliers located in the Bay Area. This is desirable, it was said, because of the availability, in that market, of more extensive stocks, at lower prices, than under present conditions. There would be a more frequent movement of traffic. Better transportation facilities might attract salesmen who now shun the island. The local Chamber of Commerce, it appears, has informally endorsed Circle's proposal.

The proprietor of a resort on Marsh Creek Road described his need for more adequate transportation service. This resort, situated about 12 miles southeast of Concord and located on a tract of some 500 acres, comprises stores, restaurants, cabins, a swimming pool and picnic grounds. Nearby, on this tract, cattle are raised for market. This locality is not reached directly by any highway common carrier. Supplies, of which a substantial volume is procured in the Bay Area, move via Southern Pacific-Pacific Motor to Concord, where they must be picked up by the consignee. To obtain them, the resort utilizes its own truck. This has proved both inconvenient and expensive. Smaller shipments are dropped off by Pacific Greyhound stages, passing the resort along Marsh Creek Road. This witness stated that Circle's service, if established, would be used regularly and extensively. He also described generally the development of the Contra Costa territory, pointing out its need for suitable public transportation service.

Some 13 shipper witnesses, situated in the Lafayette-
Orinda territory, were called by Circle. (28) They were engaged in
business, as retail dealers of various types, at Lafayette, Orinda
and nearby. (29) Collectively, they dealt in a wide variety of products.

All voiced the need for an adequate transportation service
from the San Francisco Bay Area. Their supplies are drawn from
wholesale distributors situated at San Francisco and East Bay points.
The traffic moves regularly, frequently and in substantial volume.
Expeditious delivery is essential to permit the replenishment of
depleted stocks, and to obtain merchandise for which there is an
urgent need. (30) All testified that if Circle's service were certifi-
cated, they would use it regularly. Some receive freight which Circle
has handled as a contract carrier, the charges being paid by the
consignors. This service, they said, had proved satisfactory.

With one exception, all have used either Merchants or
Stapel for the transportation of their products. (31) None complained
of the service afforded by Stapel; in fact, two stated it had been
satisfactory. However, several complained of Merchants' service.

(28) Stapel, which serves the territory as a highway common carrier
under the certificate granted by Decision 43827, did not partici-
pate in this phase of the hearing. It did not oppose the
certificate sought here by Circle.

(29) Of these shipper witnesses, five were located at Lafayette,
six at Orinda, and two along the Tunnel Road near these
communities.

(30) Expeditious delivery, it was said, is required for such items
as electrical and motor parts, liquors, drugs and perishable
commodities.

(31) Merchants' facilities have been used by 12 shippers, and
Stapel's, by nine. One shipper, recently established in busi-
ness at Orinda, had employed neither carrier, using his own
truck instead to obtain supplies from the Bay Area.

A review of the record supports the complaints expressed by five shippers regarding undue delays in the delivery of freight, ranging from two to four days. The evidence likewise supports the complaint of one shipper concerning protracted delays encountered in the adjustment of damage claims. Several shippers announced their satisfaction with the service which had been provided by this carrier.

To some extent, proprietary facilities have been used. However, these would be curtailed substantially, it was said, if Circle were permitted to operate as a highway common carrier. ⁽³²⁾ A few shippers favored competition among the carriers in the field.

This brings us to the showing offered by protestants, which we shall now consider.

Protestants' Showing

The major carriers now serving this territory appeared as protestants and, through their operating officials, described the nature of the operations in which they severally were engaged. Such a showing was presented by Southern Pacific Company-Pacific Motor Trucking Company, Santa Fe Transportation Company, Delta Lines, Inc., Merchants Express Corporation and J. A. Nevis Trucking Inc. ⁽³³⁾ Each in turn will be considered.

Both Southern Pacific and Pacific Motor supply a transportation service between San Francisco and East Bay points, and Port Chicago, Pittsburg, Antioch and Brentwood. Carload shipments

(32) Supplies were distributed to some six shippers through facilities provided by Bay Area wholesale firms. This traffic consisted largely, though not entirely, of liquor. Five shippers testified they had used their own trucks to obtain merchandise from the Bay Area. This, they said, had entailed considerable expense. If Circle were certificated, their use of such facilities would be reduced, though not entirely eliminated.

(33) For brevity the protesting carriers will be referred to, respectively, as Southern Pacific-Pacific Motor, Santa Fe, Delta, Merchants and Nevis.

move by rail, and less-carload traffic by truck. Pacific Motor provides an overnight service, traffic from the Bay Area being accorded first-morning delivery at Contra Costa points. ⁽³⁴⁾ It also performs pickup and delivery service both in the Bay Area and at Contra Costa points. Ample equipment is available to supply an adequate service.

Santa Fe provides a trucking service between rail points, extending from the Bay Area (San Francisco-South San Francisco; and Richmond to Oakland, inclusive) to Port Chicago, Pittsburg, Antioch, Oakley and Knightsen. Shipments, consolidated at the San Francisco and Oakland terminals, move overnight to Contra Costa points where first-morning delivery is accorded. ⁽³⁵⁾ Pickup and delivery service is furnished at all points. In the Bay Area telephone requests for pickup service must be received before 3 p.m. to permit overnight delivery. However, shipments will be picked up as late as 6 p.m. Adequate facilities are available.

Delta operates as a highway common carrier between the Bay Area, ⁽³⁶⁾ and the Sacramento-Stockton territory. Among other points, it serves Port Chicago, Pittsburg and Antioch. Terminals

(34) During the evening San Francisco traffic collected that day moves over the Bay Bridge to Oakland, where it is consolidated with shipments picked up in East Bay cities. Leaving the Oakland terminal by 7 a.m., this traffic moves by truck to Contra Costa points. At Pittsburg deliveries commence at 8:30 a.m.; at Antioch, from 8:15 to 9 a.m.; and at Port Chicago, from 9:30 to 10 a.m. Traffic destined to Brentwood moves via Tracy, leaving that point at 6:30 a.m.

(35) The traffic moves from Oakland directly to the points mentioned, or it is back-hauled from Stockton. At these points shipments are delivered during the morning hours, between 8 a.m. and 12:30 p.m.

(36) Within the Bay Area, Delta serves San Francisco, South San Francisco and East Bay points, extending from Richmond to San Leandro, inclusive.

are maintained at San Francisco, Oakland and Pittsburg. Its facilities and equipment are adequate to provide the service offered. Between the Bay Area and the Contra Costa points mentioned, an overnight service is supplied, affording first-morning delivery. (37) Freight destined to these points is distributed from the Pittsburg terminal where equipment, used for that purpose, is stationed. Within the Bay Area pickup and delivery service is afforded, shipments being picked up until 6 p.m. Telephone requests for pickup service must be received by 4 p.m., to assure overnight delivery.

Merchants operates throughout a wide territory as a highway common carrier. Here, we are concerned only with its operations between San Francisco and East Bay, and Orinda and Lafayette. Between these points an overnight service is provided; the details were not shown. Terminals are maintained both at San Francisco and Oakland. Sufficient equipment is available to supply an adequate service.

Under a certificate limited so far as material here to the transportation of heavy shipments of iron, steel and related commodities, (38) Nevis operates as a highway common carrier within the territory extending from Santa Rosa and Sacramento, on the north, to Santa Barbara and Santa Ana, on the south. This would include service between Pittsburg and the Bay Area. Headquarters are maintained at

(37) At Pittsburg, local delivery service commences at 8 a.m.

(38) The shipments which this carrier may transport are subject to prescribed minima. Generally, they move subject to a 30,000-pound minimum; however, between Pittsburg and the Bay Area, shipments of iron and steel may be carried subject to a minimum of 5,000 pounds.

Pittsburg, where also both terminal and shops are located. Sufficient equipment and facilities to provide an adequate service are available. With minor exceptions, this comprises flat-bed open equipment designed to accommodate the commodities mentioned. ⁽³⁹⁾ Between Pittsburg and the Bay Area an on-call service is offered, available 24 hours daily. A large share of the tonnage handled between these points is supplied by Columbia Steel Company, which maintains a plant at Pittsburg. This traffic is substantial in volume.

Both Santa Fe and Nevis anticipate severe competition from applicants, if they are permitted to enter the field. Santa Fe solicits actively for freight moving between the points which it serves, within the territory involved. Though the volume of this traffic was not shown precisely, it was said to be substantial. Nevis likewise fears the inroads of competition upon traffic moving between Pittsburg and the Bay Area. However, it offered no objection to a certificate authorizing the transportation of the commodities which it customarily handles, in lots weighing 10,000 pounds or less.

(39) This equipment is intended primarily to move heavy shipments of iron and steel articles. The trucks are constructed to facilitate the loading and transportation of these commodities.

Performance Studies

Information was submitted by certain protestants designed to reflect their actual performance of the service which they undertook to provide. Such a showing was made by Southern Pacific-Pacific Motor, Delta and Merchants.

Southern Pacific-Pacific Motor offered an abstract of less-carload shipments transported during selected periods from the Bay Area to Port Chicago, Pittsburg and Antioch. Numerous consignors and consignees were listed; a wide variety of commodities was handled. This study fairly reflects a cross-section of the less-carload traffic moving outbound from the Bay Area to the destination points selected. It covers a total of 751 shipments.

This exhibit purports to show the time consumed in the transportation of the shipments listed. In each instance it indicates the date when the waybill and the freight bill were issued and

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- (40) This exhibit covered all shipments moving during four separate five-day periods which were selected as typical, viz: January 8-12; January 22-26; June 4-8; and June 18-22, 1951. Time did not permit the preparation of studies involving longer periods, as originally contemplated, it was said.
- (41) By far, the greater part of the shipments covered by this exhibit moved from San Francisco and Oakland. It also included shipments moving from Peninsula points, extending southward from San Francisco to Palo Alto; and those moving from East Bay points, extending from Richmond to Hayward.
- (42) These shipments were distributed among the destination points mentioned, as follows: Port Chicago, 89; Pittsburg, 462; and Antioch, 200.

(43)
when the delivery receipt was signed. The time in transit is considered to run from the date of the waybill to the date shown on the delivery receipt. For convenience the freight bill is dated at Oakland rather than at destination, the date shown being that of the day following dispatch of the shipment from Oakland. It is assumed that the shipment would be delivered on the day thus indicated. However, the delivery receipt bears the date of actual delivery of the shipment to the consignee at destination. This study was not designed to reflect the time when the shipments were actually picked up nor when any request was made for pickup service.

The exhibit indicates that all save a small share of the shipments covered were afforded overnight delivery at the Contra Costa points shown. Of the total number, 91.2 per cent were delivered on the first day after leaving the Bay Area; 4.8 per cent on the second day; and four per cent on the third day or later. ⁽⁴⁴⁾

Delta's study embraced all shipments delivered during a five-month period to certain shippers whom applicant had called

(43) Generally, the waybill is dated as of the day when the shipment is received by the carrier from the consignor. Ordinarily, this corresponds with the date appearing on the shipping order or bill of lading prepared by the consignor but occasionally there may be variances in these dates, particularly when delivery to the carrier has been delayed.

(44) The delivery date of a minor fraction, viz., 0.93 per cent, was unknown. This is included in the four per cent mentioned above.

(45)
 during the course of the hearing. These shipments, aggregating 613 in number, moved during the period January to May, inclusive, 1951. Included within this abstract were all points served by Delta in the affected territory.

The exhibit discloses that all save 14 of the shipments covered were accorded first-day delivery. Of the 14 shipments mentioned, ten were delivered on the second day and the remainder, on the third day or later. In some 26 instances, it was said, an examination of the shipping documents revealed discrepancies between the dates shown on the freight bills and those appearing on the corresponding bills of lading. These, however, were satisfactorily explained; the delays indicated were attributable to causes for which this carrier cannot be held responsible.

Merchants' showing was on a less extensive scale. This was designed to refute the testimony offered by two shipper witnesses whom Circle had produced, one of whom was engaged in business at Orinda and the other at Lafayette. In answer to statements made by the former that overnight service had not been supplied, Merchants produced the billing covering some four shipments, consigned to this witness, which had moved over weekends during a given monthly period. The Lafayette shipper had complained of delays encountered in the delivery of a specific shipment. A search of Merchants' records failed to disclose such a shipment, it was said. (46)

(45) The distribution of these shipments among the shippers called by applicant and the total number delivered at each point, are indicated in the following tabulation:

	<u>No. of Shippers Served</u>	<u>No. of Shippers Called by Applicant</u>	<u>No. of Shipments Delivered</u>
Port Chicago	1	3	33
Clyde	1	1	4
Antioch	7	7	289
Pittsburg	6	6	287
TOTAL	15	17	613

(46) Merchants' representative testified he had been advised by the consignor at San Francisco that Stapel, rather than Merchants, had handled the shipment in question. Although this clearly was hearsay, it was received without objection. In this respect it does not differ from evidence of the same character offered by applicants, which also was received without objection.

Conclusions

Applicants contend that, upon the showing made, they are entitled to certification, both under the Commission's present liberal policy and also under the more rigid standards formerly observed. These claims were sharply challenged by protestants. Both contentions will be considered.

A policy of liberality in the certification of highway common carrier operations was announced by Decision No. 42646, rendered March 22, 1949 in Case No. 4823. There, permitted carriers were admonished to apply for certificates if they had reason to believe that their operations would fall within the purview of the Public Utilities Act. Such certificates would be limited in scope, in consonance with the showing made, with respect both to the commodities transported and the area served. This policy has been implemented by later decisions. (48)

For several years, the record shows, applicants have served this territory as permitted carriers. Operating since 1946 as radial and contract carriers, both Stapel and Circle have reached all save

(47) Re Investigation into Operations of all Carriers of Property,
48 Cal. P.U.C. 587,598.

Among these decisions the following may be cited:

(48) Re Peninsula Motor Express - 49 Cal P.U.C. 807

Re Hemsted - 50 Cal P.U.C. 1

Re Merchants Express, Corp. and Nielsen Freight Lines - 50 Cal P.U.C. 392

Re Warren Transportation Co. - 50 Cal P.U.C. 476

Re Nevis - 50 Cal. P.U.C. 609

Re Kings County Truck Lines - 50 Cal P.U.C. 701

Re Stockton Motor Express - 51 Cal P.U.C. 16

Re M. G. Marinelli, dba M & L Trucking Co., Dec. No. 46241,
in App. No. 31880 (Not reported).

Re Machado Truck Lines - 51 Cal P.U.C. 404.

(49)
a few of the points involved. Throughout this period, applicants have been engaged continuously in the transportation of general commodities, originating largely in the Bay Area, there being little return movement. It is true that, in response to the Commission's orders and directives, these operations have been somewhat curtailed, but this circumstance should not militate against the applicants here. Moreover, they are not properly chargeable with responsibility for the delays that have occurred in the disposition of these matters.

Obviously, applicants had good reason to believe that their operations, respectively, fell within the provisions of the Public Utilities Code relating to the certification of highway common carriers. By its decisions in the two complaint proceedings, mentioned above, the Commission expressly so held and it there directed the discontinuance of such operations unless applicants should obtain appropriate certificates. Even now, as indicated by their briefs, applicants are apprehensive that the legality of their present operations as permitted carriers, though conducted in good faith, may again be drawn in question.

Applicants' proposals are coextensive with the operations conducted under their permits, as described above, both as to the points involved and the commodities transported. They now seek certificates covering precisely these operations, and no more. Neither occupies the role of a newcomer in the field. On the contrary, the position of each as a carrier participating in the available traffic, and competing with the existing carriers for a share of it, is well and long established.

(49) Neither Stapel nor Circle any longer serves under its permits the points which they reach as highway common carriers, respectively. Nor was Circle's service, as a permitted carrier, extended to the Marsh Creek or the Bethel Island areas until after the original hearings had been concluded.

Protestants question the sufficiency of such a showing. Proof of an applicant's previous operation as a contract carrier, they contend, does not establish the existence of public convenience and necessity for a highway common carrier service. Assertedly, such a showing would be incomplete unless it appears that the services provided by the existing common carriers are not adequate to meet the public need.

The policy announced by Decision No. 42646 does not contemplate the denial of a certificate solely because the existing carriers may be affording an adequate service. Whenever an applicant has met the elementary requirements spelled out by that decision, as indicated above, operating authority should not be withheld for that reason alone. This policy is designed to bring within the scope of adequate regulation the carriers which may be serving a given area, thus eliminating the unfair competition which otherwise would exist between certificated and permitted carriers. It is unnecessary to elaborate further, since this subject was fully considered in the decision mentioned.

In so holding we do not mean that, under the liberal policy, the nature of the service provided by the existing carriers no longer is deemed material, in applications of this character. On the contrary, this factor always should be considered and accorded due weight. Here, the record indicates that the protesting carriers have afforded a reasonably adequate service. There were some well-founded complaints, voiced by shippers whom applicants produced, but these fail to establish any substantial defects in the service customarily provided. The performance showing submitted by the carriers disclosed relatively few shipments where delays in delivery to the consignee had occurred. On the whole, the service has greatly improved since the original hearings.

The evidence does not indicate that applicants' entrance into the field would impair the ability of the existing carriers to serve this territory. The meager showing offered by only two protestants, regarding this subject, is not convincing. It does not rise above the stature of mere opinion, unsupported by any details.

The record, we find, fully warrants the issuance of the certificates sought. This showing extends not only to the points which applicants have long served but also to Bethel Island and the Marsh Creek territory. As to the latter, the evidence establishes a public need for the service which Circle seeks to provide. Accordingly, the applications will be granted.

Nevis suggests a limitation prohibiting the movement of iron and steel articles, including tin plate, in lots of 20,000 pounds or less. Though conceding they are not especially equipped to handle such shipments, applicants contend that as general commodity carriers, they should be free to accept all shipments offered. Upon the present record, we can find no adequate reason for restricting the certificates, as proposed.

O R D E R

Applications as above entitled having been filed, a public hearing having been held thereon when said matters were duly consolidated, the matters having been submitted, and the Commission now finding that public convenience and necessity so require,

I. IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Clayton C. Koons, an individual doing business as Stapel Truck Lines, authorizing the establishment and operation of a service as a highway common carrier (as defined by Section 213, Public Utilities Code) for the transportation of general commodities between San Francisco, Emeryville and Oakland,

on the one hand, and, on the other hand, Port Chicago, Pittsburg, Antioch and points intermediate to those mentioned, situated on State Highways Nos. 24, 21 and 4, and on unnumbered state highways between Concord and Port Chicago, and between Port Chicago and Pittsburg.

- a. Applicant is authorized to engage only in the transportation of those commodities which are specified in the Commission's Highway Carriers' Tariff No. 2.
- b. Applicant shall not engage in the transportation of:

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

Livestock, uncrated;

Liquid commodities, in bulk, in tank trucks;

High explosives, and

Commodities requiring refrigeration.

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

- (a) Within thirty (30) days after the effective date hereof, applicant 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, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

State Highways Nos. 24, 21 and 4;
unnumbered state highways between
Concord and Port Chicago and between
Port Chicago and Pittsburg.

II. IT IS FURTHER ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to Gilbert J. Munson and Gordon A. Samuelson, partners doing business as Circle Freight Lines, authorizing the establishment and operation of a service as a highway common carrier (as defined by Section 213, Public Utilities Code) for the transportation of general commodities between San Francisco, Oakland, Emeryville and those parts of Albany, Alameda, Berkeley and Piedmont included in the description of the Oakland Pickup and Delivery Zone, contained in Highway Carriers' Tariff No. 2, on the one hand, and, on the other hand, (a) Port Chicago, Pittsburg, Antioch, Oakley, Knightsen, Brentwood, Orinda, Lafayette and intermediate points; (b) Bethel Island; and (c) points situated within one mile laterally (1) of Marsh Creek Road, extending from Clayton to the intersection of that road and State Highway No. 4; and (2) of State Highway No. 4 extending from Pittsburg to Brentwood.

Applicant shall not engage in the transportation of:

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

Livestock, uncrated;

Liquid commodities, in bulk, in tank trucks;

High explosives; and

Commodities requiring refrigeration.

(2) That in conducting service pursuant to the certificate herein granted, applicants 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 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 certificate herein granted over and along the following routes:

State Highways Nos. 24, 21 and 4;
 unnumbered state or county roads
 between Oakley and Bethel Island
 and on unnumbered state highway
 between Concord and Port Chicago
 via Clyde.

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

Dated at San Francisco, California, this 6th day of

January, 1953.

P. J. ...
 President
Harold ...
...
...
 Commissioners