

Decision No. 5044S**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into regula- )  
 tion of the operations of carriers of )  
 property for compensation subject to )  
 the jurisdiction of the Commission. )

Case No. 5478

(For List of Appearances see Appendix A)

O P I N I O N

Prior to the instant proceeding, the Commission last conducted a formal investigation into the operations of all carriers of property subject to its jurisdiction in 1948 in Case No. 4823. Almost continuously since then the Commission has informally considered the regulatory problems concerning the transportation industry in the State of California.

By order dated July 14, 1953, the Commission directed an investigation be made into the construction of the applicable regulatory statutes, the definitions therein, the regulatory policies to be pursued thereunder and such other matters as may be germane to the regulation of all carriers of property for compensation within California subject to its regulatory jurisdiction.

Public hearings were held at San Francisco and Los Angeles before Commissioners Craemer, Mittelstaedt, Potter, Mitchell and Scoggins and Examiner Silverhart. Oral argument was had before the Commission en banc subsequent to which the matter was taken under submission.

The Commission for a long time has been cognizant of and has recognized the problems involved in the regulation of for-hire transporters of property. The Commission's Decision No. 42646, in Case No. 4823, dated March 22, 1949, contains a discussion of regulatory legislation and court decisions affecting transportation

of property for hire over the public highways covering the period from 1912 to 1949. The Commission therein pointed out the action it had taken to regulate the transportation industry and described the difficulties, administrative and legal, it had encountered. The Commission appended to such decision suggested remedial legislation by way of revisions of the Public Utilities Act, the Highway Carriers Act and the City Carriers Act. Such remedial legislation failed of passage at the 1949 session of the Legislature, as had other remedial legislation presented at the 1939 and 1941 sessions.

The Legislature, also, was aware of the problems involved and by Senate Resolution 213, 1951 session, an interim committee was created to study the regulatory problems of highway carriers and report its recommendations to the 1953 Legislature. The committee's report recommending certain legislative changes in the Public Utilities Code resulted in the introduction of Senate Bill 103 at the 1953 Regular Session. Senate Bill 103 failed of passage. Thereafter, Assembly Concurrent Resolution No. 107 requested the Commission to re-examine the entire transportation industry in the State of California and to adopt such policies, together with their implementation, which will insure reasonable, efficient and dependable service to the shippers and to the general public.

While the Supreme Court of this State recently decided a series of cases involving the Highway Carriers Act and the Public Utilities Act, the end result of the decisions rendered, in our opinion, leaves the fundamental question of conflict between these two acts unresolved. Each of these decisions was rendered by a divided court, either in the decision proper or upon denial of rehearing, except the case of Nolan vs. Public Utilities Commission, 41 Cal. 2d 392, decided August 18, 1953, in which the court unanimously affirmed the action taken by this Commission. In the three other cases, Samuelson vs. Public Utilities Commission, 36 Cal

2d 722, Souza vs. Public Utilities Commission, 37 Cal 2d 539, and Alves vs. Public Utilities Commission, 41 Cal 2d 344, the court annulled the Commission's orders.

The Commission recognizes that problems exist in the transportation industry. However, it is our view that the record in the instant proceeding reveals that the situation requiring attention primarily concerns the transportation of property by highway carriers.

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Case No. 4823, an investigation upon the Commission's own motion into the operations of all carriers of property for compensation subject to the jurisdiction of the Commission, resulted in Decision No. 42646 dated March 22, 1949, which contains language as follows:

"Declaration of Policy

1. The Commission should be liberal in granting certificates of public convenience and necessity.
2. Contract and radial permittees are placed on notice that if they have reason to believe their operations come within the provisions of the Public Utilities Act, they should file applications for certificates.
3. The Commission in granting certificates of public convenience and necessity will follow a policy of strictly limiting such certificates to the scope of operation justified by the showing made, giving consideration to such matters as types and quantities of commodities, and the areas to be served.
4. Permitted carriers who operate in violation of Section 50-3/4 of the Public Utilities Act are placed on notice that they may be ordered to cease and desist therefrom or that their permits may be suspended or revoked.
5. The rate stabilization program of the Commission will be continued vigorously. Carriers who willfully violate the Commission's rate orders will be prosecuted by the Commission by suing for penalties provided for by the statutes or by suspension or revocation of certificates or permits or both. Shippers who knowingly aid or abet carriers in rate violations will be prosecuted under the penalty provisions of the Acts."

The Evidence

(1)

Comprehensive exhibits prepared by the Chief of the Permits and Fees Section of the Commission as a result of an analysis and study of records on file with the Commission and the returns to a questionnaire sent to a representative group of carriers of property were placed in evidence by counsel for the Commission's staff.

Exhibit 3 indicates that from the promulgation of the "Declaration of Policy" to July 28, 1953, 282 certificates of public convenience and necessity were granted - 66 for the transportation of general commodities, 157 for petroleum products of which 144 were granted pursuant to Statutes 1949, Ch. 1399, which made provisions for petroleum irregular route carriers, and 59 for special commodities. Approximately 260 of the above certificates were granted to existing permitted carriers. According to the record, permits were issued to 18,451 carriers during the same period.

A comparison between highway carriers holding permits and certificated highway carriers by number, gross operating revenues and vehicles operated is afforded by the following table:

	1951			1952		
	Number	Gross Operating Revenue	Vehicles Operated	Number	Gross Operating Revenue	Vehicles Operated
Certificated* Carriers	406	\$134,798,485	21,726	411	\$144,879,609	23,832
Permitted Carriers	13,844	216,529,231	54,407	14,335	239,682,266	58,231

\*Includes revenue derived from and vehicles operated in their permitted carrier operations. Such revenue and vehicles are not included in the figures shown for permitted carriers.

- (1) Exhibits 1 and 2 - Statistical Report, Carriers of Property, 1952.  
 Exhibit 3 - Certificates of Public Convenience and Necessity issued subsequent to Dec. No. 42646, March 22, 1949.  
 Exhibit 4 - Number of Permitted Carriers Licensed.  
 Exhibit 5 - Number of Highway Contract Carrier Permits.  
 Exhibit 6 - Gross Intrastate Trucking Income 70 Selected Carriers January 1948 - June 1953.  
 Exhibit 12 - Analysis of Replies to Trucking Questionnaire forwarded to 1,529 carriers of property, both certificated and permitted, whose gross revenues for calendar year 1953 would appear to be \$50,000 or more.
- (2) Extracted from Exhibit 1.

On January 1, 1949, there were 13,654 permitted carriers and 19,888 permits in force. As of August 1953, there were 14,746 such carriers possessing 21,942 effective permits. The following table sets forth the number of carriers whose permits were revoked (exclusive of transfers) and the duration of permits for the calendar years 1946 through 1952:

<u>Period Licensed</u>	<u>Number of Carriers Whose Permits were revoked</u>						
	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950</u>	<u>1951</u>	<u>1952</u>
Under 1 year	5130	6217	4650	4017	2980	2542	1296
Between 1 and 2 years	1301	1895	1894	1458	1011	923	829
Between 2 and 3 years	480	604	658	788	546	386	268
Between 3 and 4 years	226	306	301	344	356	245	140
Between 4 and 5 years	154	217	199	167	174	186	101
Over 5 years	472	489	445	469	363	331	234
Total Revocations	7763	9728	8147	7243	5430	4613	2868
Licensed Carriers as of December 31	15635	14681	13654	12574	12967	14110	14746

The foregoing table demonstrates that 58.6% of such carriers suffered revocation of their permits in less than one year from issuance thereof; 20.3% in more than one year but less than two; 8.2% in more than two years but less than three; 4.2% in more than three years but less than four; 2.6% in more than four years but less than five; and 6.1% in over five years. In the main, such revocations were caused by failure to continue in effect accident liability insurance protection, to pay fees required by the Transportation Rate Fund Act, and by cessation of operations.

(5)  
Classifications of highway carriers by gross annual income reported to the Commission for the year 1952 shows that 41.6% of the carriers received revenue of less than \$5,000 per annum from for-hire

(3) The number of permits in force exceeds the number of permitted carriers because a carrier may hold one or more of the permits provided for in the Public Utilities Code, viz.: Radial Highway Common Carrier, Highway Contract Carrier, Petroleum Contract Carrier, Household Goods Carrier, City Carrier.

(4) Taken from Exhibit 1.

(5) From Exhibit 1.

trucking operations, 90.7% less than \$50,000 per annum, and 9.3% received \$50,000 or more per annum. The group of carriers in the "under \$50,000 gross income" class operated 45.2% of the vehicles, received 15.6% of the total gross revenue while the group of carriers with receipts in excess of \$50,000 each, operated 54.8% of the vehicles and accounted for 84.4% of the total gross revenue.

(6)  
The following table shows the manner in which certificated and permitted carriers in the "\$50,000 or more" group shared the 1952 gross revenue:

<u>Class of Carrier</u>	<u>No. of Carriers</u>	<u>Per Cent</u>	<u>Gross Revenue</u>	<u>Per Cent</u>	<u>Vehicles Operated</u>	<u>Per Cent</u>
Certificated	262	19.5	\$142,261,416*	43.8	22,427*	49.8
Permitted	<u>1,083</u>	<u>80.5</u>	<u>182,058,536</u>	<u>56.2</u>	<u>22,588</u>	<u>50.2</u>
Total	1,345	100.0	324,319,952	100.0	45,015	100.0

\*Also includes income received and vehicles operated under permits. Such income and vehicles are not included in the figures given for permitted carriers.

Exhibit 1 contains an analysis of quarterly reports of gross operating revenue filed with the Commission by for-hire carriers covering operations conducted during July, August and September 1952. Such analysis shows that 1,423 carriers whose entire income was derived from subhauling operations received an aggregate income of \$5,148,493 and that 2,493 carriers whose income was partially derived from subhauling operations received an aggregate income of \$11,227,566.

Exhibit 1 converted such income to a yearly basis and after adjusting for deficiencies in the filed reports set forth approximately \$75,000,000 as the total amount paid for subhauling operations

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(6) Reproduced from Exhibit 1.

during 1952. As of August 1953,<sup>(7)</sup> 18 highway carriers each possessed a certificate of public convenience and necessity and<sup>(8)</sup> also held a highway contract carrier permit. As of the same date, 232 certificated carriers each held both a highway contract carrier permit and a radial highway common carrier permit.

<sup>(9)</sup>  
A study of 1,300 highway carriers each of whose gross revenues for the calendar year 1953 appeared to be \$50,000 or more revealed the following:

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(7) Taken from Exhibit 5.

(8) Id.

(9) Exhibit 12 Supra, Note 1.

	Carriers Primarily Engaged in Specialized*		Carriers of General Commodities		Consolidated Totals	
	Trucking Operations					
	<u>Permitted Carriers</u>	<u>Certificated Carriers</u>	<u>Permitted Carriers</u>	<u>Certificated Carriers</u>	<u>Permitted Carriers</u>	<u>Certificated Carriers</u>
Carriers Reporting	693	116	366	125	1059	241
Carriers Operating Terminals	86	20	114	88	200	108
Carriers Operating Special Pickup and Delivery Trucks	37	16	61	60	98	76
Carriers Holding I.C.C. Authority	89	55	111	104	200	159
Carriers Subhauling for Others	358	67	224	54	582	121
Carriers Using Subhaulers in Own Operations	369	72	214	72	583	144
Carriers Having Written Contracts	105	21	135	38	240	59
Carriers Having Oral Contracts	144	30	201	65	345	95
1952 Gross Revenue	\$87,581,144 (Total \$125,616,070)	\$38,034,926	\$61,417,614 (Total \$146,611,738)	\$85,194,124	\$148,998,758 (Total \$272,227,808)	\$123,229,050
Per Cent Revenue	69.7	30.3	41.9	58.1	54.7	45.3

\* Transportation of general commodities  
not exceeding 10% of operations.



(10) Reports developed by Commission transportation engineers from road checks relating to the movement of general freight traffic over U. S. Highways 99 and 101 between the Los Angeles area, on the one hand, and the central areas of California, on the other hand, and over the main highways east of the San Francisco Bay area between the San Francisco Bay area and the Sacramento-Stockton areas were placed in evidence as Exhibit 16 and Exhibit 15, respectively. Exhibits 15 and 16 taken together show, among other things, that a total estimated annual general commodity freight <sup>(11)</sup> tonnage of 4,654,910 tons would be transported by for-hire carriers between the areas immediately above named. Of such total, it was indicated that permitted carriers hauled 54.1% and certificated carriers moved 45.9%.

In Decision No. 42646, dated March 22, 1949, the Commission, among other things, found that between the metropolitan areas of San Francisco and Los Angeles approximately 14.6% of the general commodity traffic was moved by the certificated carriers, while 82.5% was moved by permitted carriers. The remaining 2.9% of the traffic was moved in shipper-owned trucks.

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(10) Basic information was collected by 24-hour checks of commercial vehicles, supplemented by shipping data obtained from the carriers' records. Checks were conducted November 2, 1953 through November 6, 1953 for Exhibit 15; and September 28, 1953 through October 2, 1953 for Exhibit 16. The information so obtained was segregated by class of carrier and expanded to an estimated annual tonnage basis.

(11) General commodity freight does not include fresh fruits and vegetables, frozen foods, grain products, lumber, iron and steel, new furniture, used household goods, livestock, cement, explosives, auto truck-a-way, roadbuilding equipment, heavy machinery, building materials, and commodities moving in bulk (tank, hopper and dump trucks).

The evidence here shows that between the Los Angeles Territory and the San Francisco-Oakland bay area 50.5% of general commodity freight is transported by certificated carriers, 46.8% is moved by permitted carriers and 2.6% is handled by proprietary carriers. Between the San Francisco Bay, Sacramento and Stockton areas 33.3% of general freight is transported by certificated carriers, permitted carriers move 39.7% and proprietary carriers handle 27%. This and other evidence of record indicates that the gap hitherto existing between permitted and certificated carriers as to their respective shares of revenue and tonnage has been greatly constricted.

California Motor Transport Co., Ltd., Delta Lines, Inc., Merchants Express Corporation, Pacific Freight Lines, Southern California Freight Lines, Valley Motor Lines, Inc., each of whom is a highway common carrier possessing certificates of public convenience and necessity issued by this Commission, and California Motor Express, Ltd., Pacific Freight Lines Express, Southern California Freight Forwarders and Valley Express Company placed in evidence Exhibit 17. This exhibit shows that their total annual revenues for all shipments (including permitted operations) for the year 1953 ranged from \$3,413,966 to \$9,275,513 and that from 93 to 96% of such revenues were derived from the transportation of shipments weighing

less than 2,000 pounds. They also placed in evidence Exhibits 18, 19 and 20 based upon data contained in Exhibit 12. These exhibits set forth revenue comparisons between permitted carriers and certificated carriers as to shipments under 2,000 pounds, and are summarized as follows:

Total Revenue of Highway Carriers of General Commodities

	<u>Number</u>	<u>Total Revenue</u>	<u>Per Cent of Total Revenue</u>
Permitted Carriers	366	\$61,417,614	41.9
Certificated "	125	85,194,124	58.1

Total Revenue of Highway Carriers of General Commodities with 50% or More of Shipments under 2,000 Pounds

Permitted Carriers	129	\$20,744,859	26.7
Certificated "	81	57,049,983	73.3

Total Revenue of Highway Carriers of General Commodities with 75% or More of Shipments under 2,000 Pounds

Permitted Carriers	95	\$15,167,610	22.7
Certificated "	71	51,718,829	77.3
(12)		(13)	

Proposals of Staff Transportation Committee

1. The Commission should consider a restatement of the policy it enunciated in Decision No. 42646, in Case No. 4823, dated March 22, 1949.

2. Certificates of public convenience and necessity, when granted, should be broad enough in scope to provide a well-rounded and economical operation to meet the needs of commerce.

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(12) The substance of such proposals is set forth by means of paraphrase.

(13) The committee consists of five members selected by the Commission from its staff.

3. The Commission should consider modifying the procedure governing certificate applications as follows:

- a. The form of the application should be prescribed, printed and supplied without charge to the applicant by the Commission. Applicant should be required to set forth evidence therein, in affidavit form, sufficient to make out a prima facie case.
- b. Notice of filing of an application should appear on the Commission's calendar, and copies of the application should be available for inspection by protestants at the Los Angeles and San Francisco offices of the Commission and at such other places as the Commission may designate.
- c. Protests should be verified, set forth the substance thereof in affidavit form, and filed with the Commission.
- d. After analysis of the pleadings, it should determine whether a hearing is required.

4. The Commission should require highway contract carriers to enter into bilateral contracts for a term extending over at least a series of shipments. Such contracts should be reduced to writing prior to the performance of transportation or not later than 15 days after the completion thereof and kept available by the carrier for inspection by the Commission.

5. The Commission should require a carrier conducting its transportation activities pursuant to two or more different types of operating authority to keep records from which the authority under which the carrier transported any shipment could be determined.

6. The Commission should make available a qualified member of its staff to acquaint an applicant for a permit with the various types of trucking authority and the rules in connection therewith.

Where a proposed operation appears beyond the scope of permit authority, the applicant should be admonished to seek a certificate of public convenience and necessity or to confine such operation within the scope of a permit. A permit, when issued, should enumerate the commodities to be transported and describe the territory to be served.

7. The Commission should require an independent contractor subhauler to obtain a highway contract carrier permit.

8. The Commission should require prime carriers to file with it copies of their agreements with subhaulers within 15 days after completion of the transportation involved. Such agreements should contain a provision requiring payment by prime carriers to subhaulers not later than ten days after completion of the transportation.

9. The Commission should screen very carefully an application by a carrier to secure authority both as a common carrier and as a highway contract carrier of the same commodities between the same points in view of the limitations contained in Section 3542 of the Public Utilities Code.

10. All carriers, both permitted and certificated, holding and continuing operations under permits should review their operations immediately and file applications for certificates of public convenience and necessity if their existing operations, to the extent they purport to be under permit, seem in fact to be highway common carriage.

11. The Commission should continue a liberal certification policy as the best means of providing for the people of the State a stable truck transportation industry capable of providing a sound, economical and efficient service to the shipping public.

(14)  
Position of Various Parties and Their Proposals

The Permitted Carriers Conference of the Motor Truck

Association of California took the position that effective regulation required a substantially liberalized policy in granting certificates to permitted carriers, coupled with better enforcement of the statutes

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(14) Paraphrase is utilized to set forth the main positions and principal proposals.

governing permitted carriers. It made the following proposals:

1. That the Commission adopt a policy designed to accomplish certification of permitted carriers' operations to the extent that a substantial service is performed, with due regard to availability of equipment, financial fitness and transportation experience of an applicant.

2. That the Commission adopt a simplified procedure for processing certificate applications which would eliminate or reduce formal hearings in connection therewith.

3. That the Commission adopt a similar liberalized program for the extension of existing certificated operations.

4. That the Commission, concurrently with the adoption of a liberalized certificate procedure, should require:

- a. Radial highway common carriers to file tariffs.
- b. Highway contract carriers to file quarterly confidential reports setting forth names of the persons for whom contract carriage was performed during the quarterly period.
- c. Permitted carriers holding both contract and radial permits to designate on shipping documents under which type of permit the service has been performed.

5. That the Commission should institute proceedings looking toward the application of minimum rates to cover all fields of motor carrier transportation not presently covered by minimum rates excepting unprocessed agricultural commodities and products moving to farm sites.

6. That the Commission should adopt a policy of screening carefully the financial fitness of any new applicants for permits and of restricting the territorial and commodity scopes of such permits to conform to the financial ability of the applicant and the immediate intended use of the permit.

The Permitted Carriers Conference of the Truck Owners

Association of California endorsed and supported the proposals made by the Staff Transportation Committee (Exhibit 7). In addition thereto this conference made proposals as follows:

1. That the Commission should exercise maximum control and enforcement over all laws, rules and regulations pertaining to rates.
2. That the Commission should provide a new procedure for the certification of carriers which should be extremely liberal, simple and inexpensive.
3. That such liberalized method should apply equally to permitted and certificated carriers.

Security Truck Line, a certificated carrier and a highway permit carrier, joined in the proposals made by the Staff Transportation Committee and, in addition, proposed:

1. That transportation performed under an arrangement whereby the carrier appropriates a single piece of equipment to one shipper at one time be classified as proper permitted carriage.
2. That the Commission review the operations of radial highway common carriers in order to determine whether a change of status is required. In applications for certificates made as a result thereof, radial operations should be deemed a showing of public convenience and necessity so far as applicable.

The California Railroad Association supported the Transportation Committee's proposals only in part. As to the unsupported part thereof it made the following proposals:

1. That the Commission should deny an application for a certificate which the applicant is willing to accept but which upon its face would not enable the carrier to perform a well-rounded economical operation or meet the needs of commerce.

2. That the Commission should require a hearing on a certificate application when requested by an interested carrier.

3. That minimum rates should be prescribed covering all sub-haul operations.

4. That the Commission's jurisdiction over the safety of the operation of for-hire vehicles should be enlarged.

California Motor Transport Co., Ltd.,\* and California Motor Express, Ltd., Delta Lines, Inc.,\* Merchants Express Corporation,\* Pacific Freight Lines\* and Pacific Freight Lines Express, Southern California Freight Lines\* and Southern California Freight Forwarders, Valley Motor Lines, Inc.,\* and Valley Express Company took the position that the record indicates that certificated highway common carriers and not permitted carriers are predominant in the transportation of general commodities moving in shipments weighing less than 2,000 pounds. These companies contended that the statutes and the decisions of the Commission and the Supreme Court clearly set forth the distinction between a highway common carrier, radial highway common carrier and highway contract carrier. They stated that for regulation to be effective the law must be obeyed and that enforcement of such law should be easy of accomplishment. Their proposals follow:

1. That a certificate of public convenience and necessity should not be granted where the existing services adequately meet the requirements of the shipping public.

2. That the Commission should periodically survey the standards of service maintained by all common carriers.

3. That in certificate applications, evidence of prior illegal operations should not be received to prove public convenience and necessity.

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\* Each of these companies is a highway common carrier possessing certificates of public convenience and necessity issued by this Commission.



4. That the "Declaration of Policy" (Decision No. 42646, dated March 22, 1949) should not be applied to permitted carriers commencing operations as highway common carriers after March 22, 1949.

5. That the Commission should establish rates for the transportation of all commodities pursuant to Section 3662 of the Public Utilities Code.

6. That the Commission should establish rates for radial highway common carriers, consistent with cost of service upon an hourly or per-mile basis except where it is shown that the costs of a lawfully conducted radial carrier operation are no greater than the costs of a certificated highway carrier service under similar conditions and require all radial highway common carriers to file and publish tariffs.

The Truck Owners Association of California made proposals as follows:

1. That a highway contract carrier should have at least one written contract when applying for a permit. All contracts should be in writing.

2. That prior to the issuance of a permit, the Commission should determine whether the applicant possesses the necessary ability and experience to perform the proposed operation. Upon so finding, the Commission should issue the permit attaching such terms and conditions thereto as it deems necessary to protect persons utilizing the service.

3. That the Commission should require carriers to procure and maintain adequate cargo insurance. Subhaulers shall not be employed unless the overlying carrier has on file with the Commission a proper bond in the sum of not less than \$2,000.

4. That delegation of exclusive use of equipment to one shipper at one time should be deemed prima facie evidence of radial carriage.

5. That the Commission should revoke, in whole or in part, certificates of public convenience and necessity when operations thereunder have not been performed for one year.

6. That present highway permitted carriers which seek certificates in place of permits must apply to the Commission by December 31, 1955, for authority based on operations prior to July 1, 1953, making a showing of public convenience and necessity and in this connection the Commission shall give liberal consideration to their past operations as an important factor.

The Motor Truck Association of Southern California stated that the Commission by the employment of its powers in a course of positive action under existing statutes could solve many of the regulatory problems in the highway carrier industry.

Associated Dump Truckers of California, Inc., approved the proposals presented by the Staff Transportation Committee and the Permitted Carriers Conference of the Truck Owners Association of California.

California Dump Truck Owners' Association stated that it generally supported the Staff Transportation Committee's proposals. It was not in accord with the committee's proposals that subhauling be performed under a highway contract carrier permit and that the subhauler be paid not later than ten days after completion of the transportation service. California Dump Truck Owners' Association stated that the majority of dump truck subhaulers also operate as primary carriers under radial highway common carrier permits. It took the position that to require such subhaulers to operate under highway contract carrier permits might bring them in conflict with

(15)  
Section 3542 of the Public Utilities Code. The Association pointed out that the Commission's City Carriers' Tariff No. 6 and Highway Carriers' Tariff No. 7, governing dump truck operators, provide that the carrier may extend the time of payment of the transportation charges for a period of 20 days following the last day of the month in which the transportation was performed.

Other parties than those above named presented proposals the majority of which, in one form or another, can be found among the recommendations hereinbefore set forth.

Position of and Proposals by California Farm Bureau Federation, Cattlemen's Association, California Wool Growers Association and Western States Meat Packers

These organizations stated that reasonable, efficient and dependable transportation service is presently available to the agricultural industry, and expressed the desire that no changes be made which would curtail such service. They agreed with the Staff Transportation Committee's proposals as to written contracts and records. They disagreed with the committee's proposals as to sub-haulers and took the position that a subhauler required no authorization from this Commission to conduct his operations, being clothed with the operating authority possessed by the prime carrier.

Position of and Proposals by Various Shippers

California Hardware Company stated that it utilized both certificated and permitted carriers. It indicated it preferred the use of a restricted number of certificated carriers.

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(15) Section 3542 provides as follows:

No person or corporation shall engage or be permitted by the Commission to engage in the transportation of property on any public highway, both as a common carrier and as a highway contract carrier of the same commodities between the same points.

William Volker & Company and Gough Industries adopted a position similar to that of California Hardware Company.

Monolith Portland Cement Company declared that the Commission did not possess the power to require a permitted carrier to enter into written contracts with his shipper. Further, it stated that such a requirement would cause additional expense and administrative detail.

The California Manufacturers' Association presented the position and proposals of the following shippers:

The Cannery League of California took the position that it is not in the public interest nor within the jurisdiction of the Commission to designate the kinds of commodities which should be transported by the various types of carriers. It stated that any restrictions of or limitation upon the flexibility offered by highway contract and radial highway common carriers would be detrimental to the agricultural and canning interests of the State of California.

Fibreboard Products, Inc., Glass Containers, Inc., and Independent Paper Stock Company stated that their prime concern was that the efficient, economical and flexible service of highway carriers not be impaired or restricted.

They proposed that the permits of radial highway common carriers and highway contract carriers should not contain restrictions as to commodities to be transported nor as to the territories to be served.

Gerber Products Company opposed the issuance of permits limited as to the commodities to be transported and the territory to be served. It also opposed the Staff Transportation Committee's proposals that contracts contain a provision for a term covering at least a series of shipments as being unreasonable and restrictive of the right to contract. It made proposals as to minimum rates and also proposed that the Commission adopt such policies as will provide

a sound transportation system for the general shipping public that would automatically benefit all forms of transportation.

The position taken by Gerber Products Company was adopted by Sherwin Williams Company of California and the Philadelphia Quartz Company of California. The latter company opposed the proposal that written contracts cover at least a series of shipments upon the further ground that such a requirement would render impossible the execution of a contract for one shipment.

Kaiser Steel Corporation stated that the transportation of its products from mill to customer was best accomplished by use of permitted carriers. It proposed that the Commission not set minimum rates but permit charges for transportation to be freely negotiated between the carrier and shipper.

#### Conclusions

We have carefully considered all the evidence and all the proposals put forward herein. The proposals presented generally were meritorious. However, amendments to existing statutes or new legislation would be required in order to utilize a goodly number of such proposals.

The Commission's experience with the administration of the Highway Carriers' Act since its passage in 1935 has been such that, in our opinion, said statute, when related to the Public Utilities Act, presents a regulatory problem concerning which there is no feasible solution except through remedial legislation. On a number of occasions, the Commission has suggested or supported remedial legislation calculated to harmonize the provisions of these two statutes but such proposed legislation was not adopted. It may well be that the proponents of the Highway Carriers' Act could not have envisioned the problem which it has created but time and experience demonstrate the unworkability of said Act because of its fundamental conflict with the Public Utilities Act.

The fact is that these two statutes in their practical operation, are mutually antagonistic when an attempt is made to harmonize them. Based upon years of experience in administering these two Acts, we have no hesitancy in saying that from a practical standpoint a given operation by a permitted carrier may be said to be that of a highway common carrier under the Public Utilities Act unlawfully operating without a certificate and at the same time that of a radial highway common carrier, or even a contract carrier, under the Highway Carriers' Act. However, from a legal standpoint, a given operation may not be two different things at one and the same time and in case of conflict between the Public Utilities Act and the Highway Carriers' Act, the former must prevail. It must have been the intent of the Legislature that the Highway Carriers' Act be given meaning and effect but, apparently, it was not perceived by the Legislature that, in the giving of such meaning and effect, the Public Utilities Act would be infringed. Even as a practical matter, all must agree that a given operation cannot be two different things at one and the same time and be subject to two different standards of regulation, each conflicting with the other, if efficiency, reality and successful administration are to be achieved. Such is the difficulty which this Commission has faced over the years in administering two mutually antagonistic statutes.

The Public Utilities Act speaks one language while the Highway Carriers' Act speaks another language and yet, if success in regulation is to be achieved, each Act must understand the language of the other and be complementary thereto. There should be harmony in administration. Regulatory experience over the years demonstrates irreconcilable disharmony. The predicament presented by these two statutes is not unlike the predicament which would be presented by two baseball teams contesting in a game with each team observing a different set of rules of play and each team demanding that its set

of rules be used. Additionally, this problem is further complicated by the provisions of the sections of Article XII of the State Constitution relating to transportation companies, common carriers and public utilities.

As a general proposition, the operations of a carrier which occupies the status of a public utility do not present the problems and difficulties immediately hereinabove adverted to; it is the operations of the permit carrier which create such problems and difficulties.

We have here again referred to a situation which has commanded the attention of the Commission over the years and which does not improve with age but, on the contrary, becomes progressively worse as the highway carrier industry grows. Heretofore, on numerous occasions, we have outlined the problem which plagues us in the administration of these two statutes in the hope that remedial legislation would be forthcoming. In the continued hope that relief may be forthcoming, we have thus candidly restated this most besetting and vexatious problem.

It is our considered judgment that the conclusions which follow represent the optimum regulatory activities in which we can now engage within the framework of existing law.

While the Commission insists and will insist that all parties be afforded due process, we will endeavor to process certificate application proceedings with dispatch and a minimum of expense. If present rules of the Commission are not adequate to enable the accelerated and expeditious handling and disposition of such proceedings, the Commission by appropriate rule and regulation will make such changes therein as it may deem meet.

We cannot accept the contention that an independent contractor subhauler may conduct transportation activities for compensation over the public highways solely under the operating authority

of his prime carrier. An independent contractor subhauler is a highway carrier within the meaning of the Public Utilities Code and is required to have operating authority from this Commission. Independent contractor subhaulers who also conduct operations as prime carriers must of course comply with the provisions of Section 3542 of the Public Utilities Code. <sup>(16)</sup> Therefore, we will not here require all independent contractor subhaulers to obtain highway contract carrier permits. Rather, the type of permits or certificates which they must possess will depend upon the scope and nature of their operations.

Highway carriers operating under two or more different types of operating authority will be required to keep such records and in such form as the Commission determines necessary in order to assist it in establishing the authority under which a carrier transported any individual shipment. In each instance shipping documents, original and all copies, should bear a rubber stamp marking which readily identifies the authority under which a shipment is moving. Appropriate markings should be in substance as follows: "CERTIFICATED CARRIER", "CONTRACT CARRIER" or "RADIAL HIGHWAY COMMON CARRIER".

The Permits and Fees Section of the Transportation Division has heretofore informed applicants for permits of the various types of trucking authority and the rules pertaining to each. Such practice will be continued, as will the procedure of indicating upon the face of the issued permit the commodities the carrier proposes to transport and the territory he proposes to serve.

It is evident from the record herein that the highway transportation industry has reached a stage of development which makes it advisable that a time be designated, subsequent to which paragraphs 1, 2 and 3 of the "Declaration of Policy" set forth in Decision No. 42646, dated March 22, 1949, will no longer be effective.

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(16) Section 3542 of the Public Utilities Code is as follows:

No person or corporation shall engage or be permitted by the Commission to engage in the transportation of property on any public highway, both as a common carrier and as a highway contract carrier of the same commodities between the same points.



Highway carriers who, prior to September 10, 1953,<sup>(17)</sup> possessed permits issued by this Commission, pursuant to which they actively engaged in the transportation of property and continue so to do, and who have cause to believe that their operations may bring them within the ruling of the Supreme Court of California announced in the Nolan case,<sup>(18)</sup> supra, should file applications for certificates of public convenience and necessity not later than 90 days after the effective date of this decision. The Commission wishes to emphasize that it will require such applicants to affirmatively demonstrate that they possess the requisite financial resources, facilities, personnel, equipment and experience to provide and maintain a highway common carrier service to the satisfaction of the Commission. All such applications will be acted upon with such dispatch as the law and circumstances permit.

This procedure, we believe to be in consonance with equity and constructive regulation for the reason that many permitted carriers may have misinterpreted the decisions of the Supreme Court in the Samuelson, Souza and Alves cases, supra, and now find themselves operating in conflict with the later decision of that Court in the Nolan case.

All persons are hereby placed upon notice that, hereafter, any applicant for a certificate of public convenience and necessity who does not fall within the class immediately above described will not be permitted to present evidence in support of his application concerning the performance by him of transportation services which are beyond the scope of any operating authority possessed by him.

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(17) The date of denial of petition for rehearing in the Nolan case, supra.

(18) The court in this case held that a radial highway common carrier daily transporting shipments from San Francisco to Oakland, Newark and San Jose was operating between fixed termini and was a highway common carrier as to such operations. (See Public Utilities Code Sections 213, 215.) It should be noted, however, that the court did not decide that the transportation of shipments between named points less than daily would not constitute highway common carriage.

The evidence herein is insufficient to warrant consideration by the Commission in the instant proceeding of such matters as rates, tariff filings, cargo insurance and bonds.

No order is necessary in this proceeding and none will be issued.

This decision is effective the date hereof.

Dated at San Francisco, California, this 17 day of August, 1954.

John E. Mitchell  
President  
James J. Calmes  
Kenneth D. Dutton  
Gene Higgins

Commissioners

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APPEARANCES

Ken D. Anderson, for Reilley Truck Line; J. H. Anderson, for River Lines, Inc.; Joe Araiza, for Santa Fe Transportation Company; C. N. Bates, for C. N. Bates Drayage; Edward M. Berol and Bertram S. Silver, for Culy Transportation Company, Sacramento Freight Lines, Highway Transport, Inc., Highway Transport Express, Robertson Drayage Company, Inc., Fortier Transportation Company, Miles Motor Transport System, Inc.; H. J. Bischoff, for Southern California Freight Lines and affiliated corporations; Clarence Breazell, in propria persona; Douglas Brookman, for California Motor Transport Company, Ltd., California Motor Express, Valley Motor Lines, Inc., Valley Express Company, Merchants Express Corporation, Walkup Drayage and Warehouse Company; Thomas C. Brooks, in propria persona; Les Calkins, for Les Calkins Trucking Company; Thomas B. Clark, for Inland Transportation Corporation; E. Conrad Connella and C. P. Montgomery, for Senna Trucking, Fore Trucking Company, West Transportation, Inc.; Robert J. Costello, for Shippers Express Company; William J. Davis, for California Motor Express, Ltd. and California Motor Transport Company, Ltd.; L. M. Duntley, for Pacific Freight Lines; Thomas R. Dwyer, for Delta Lines, Inc.; George Dyck, for Culy Transportation Company; Natalie Gail, for Gale Messengers; Antonio J. Gaudio, for Airport Drayage Company; Gordon, Knapp & Gill, by Hugh Gordon, for Pacific Freight Lines and Pacific Freight Lines Express; Parson Gregory, for Gregory Warehouse Company; Lloyd R. Guerra, for Western Truck Lines, Inc. and Cantlay & Tanzola, Inc.; C. H. Hansen, for Railway Express Agency, Inc. and Railway Express Agency of California; Marvin Handler and Daniel W. Baker, for Callison Truck Lines, West Berkeley Express, Potter Trucking Company, John Diani, Roy James and Son; Donald J. Harvey, for Continental Freight Lines; Harold M. Hays, for Intercity Transport Lines and Intercity Motor Lines; George T. Hurst, for Santa Fe Transportation Company; Willard S. Johnson, for J. Christenson Company, Alfred J. Olmo Drayage Company, Ted Peters Trucking Company, Inc., Devine & Son Trucking Company, Cal-Central Trucking Company, Inc., Hills Transportation Company, J. A. Nevis Trucking Company, Inc.; Armand Karp, for Callison Truck Lines; William J. Keane, for United Transfer Company-Carley & Hamilton, Inc.; Edward Lester, for Coast Line Truck Service, Inc.; Forrest E. Macomber, for Electric Transportation Corporation; David Macaulay, for Lawrence Moving and Storage Company; T. H. McCay, for Valley Vacuum Tank Truck Service; N. R. Moon, for M. & L. Trucking Company; Bernard S. Morris, for Morris Draying Company; Richard H. Murphy, for West Transportation, Inc.; John Newman, for Oilfield Vacuum Service; J. P. Nyhan, for Graystone Transportation; F. G. Pfommer, for Santa Fe Railway; Arthur C. Prickett, for American Transfer Company; Roger L. Ramsey and Preston W. Davis, by Roger L. Ramsey, for United Parcel Service; A. R. Reader, for Desert Express; Gordon A. Samuelson, for Circle Freight Lines; Mrs. M. Saufnauer, for Shippers Transport; M. D. Savage, for Savage Transportation Company, Inc.; Melvin D. Savage, Jr., for United States Express; Thomas P. Scott, for Brink's, Incorporated; L. J. Seely, for Kings County Truck Lines and Moser Freight Lines;

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Clifton Shifflet, for Shifflet Bros.; William N. Shubin, for Harry McKenzie Trucking Company; D. H. Spencer, for Spencer Truck Company; Richard Stokes, for Howard Terminal; K. R. Stoney, for Western Pacific Railroad; Merlyn F. Teskey, for Water-Land Truck Lines; Thacher, Jones, Casey & Ball, by Harrison A. Jones, for Parr Terminal Railroad; Paul E. Tibbetts, for Routh Transportation; Gerald H. Trautman, for The River Lines, Inc.; Ralph Twigg, for J. A. Nevis Trucking Company, Inc.; Peter Vinick, for Lodi Truck Service; E. S. Waldie, for Inter Urban Express Corporation; R. W. Walker, for Santa Fe Railway; F. E. Ward, for Valley Motor Lines, Inc. and Valley Express Company; E. Guy Warren, for Warren Transportation Company; Margery Watz, for Watz Van and Storage; R. E. Wedekind, William Meinhold and Frederick E. Ruhrman, for Southern Pacific Company, Central California Traction Company, Holton-Interurban Railway Company, Northwestern Pacific Railroad Company, Pacific Electric Company, San Diego and Arizona Eastern Railway Company, Sunset Railway Company, Visalia Electric Railway Company, Pacific Motor Trucking Company; Edward J. Willig, for Willig Freight Lines; Earl L. Wilson, for Pony Express; J. Hills Wythe, for Security Truck Line and Consolidated Terminals, Inc.; James G. Albright, for Albright Transportation Service Company; James F. Bartholomew, for Signal Trucking Service; James D. Boner, for B. & H. Truckaway Company; Harold M. Brake, for Brake Delivery Service and Meier Transfer Lines; John E. Cote, for Citizens Transportation Company; J. Cousimano, for Cousimano Truck Lines; E. A. Crawford, for B. & E. Trucking Company; Scott Elder, for Shippers Express Company; Herbert J. Griley, for Griley Security Freight Lines; H. T. Halbert, for Halbert Brothers, Inc.; Frank M. Hill, for Lifetime Motor Express; C. S. Hutchings and F. P. Dunn, for G.I. Trucking Company; Peter Kazarian, for Kay Trucking Company; Dan Keeney, for Keeney Truck Lines; David A. Kleimer, for Community Van Lines; Donald M. Ladd, Jr., for Union Pacific Railroad Company; Ray E. Magwess, for Imperial Truck Lines, Inc.; Chester Morrow, for Morrow Trucking Corporation; Jay C. Morse, for Jay C. Morse Trucking; Ransler L. Parks, in propria persona; A. J. Pierce, for Wells Truckaways, Ltd.; W. J. Pope, for Aetna Freight Lines; Benn W. Porter, for Furniture Fast Freight and Acme Truck Lines; Clyde Price, for V. P. Hunt Company; E. D. Robertson, for Schroder and Company; Ray A. Schneyer, for Ray Schneyer Transportation Company; Harold R. Sexton, for Wells Truckways, Ltd.; Frank F. Terramorse, for Comet Motor Lines, Inc.; Robert W. Walker and Henry M. Moffat, for the Atchison, Topeka and Santa Fe Railway and Santa Fe Transportation Company; LaFay Lindeman, for Lindeman Bros; Frank F. Terramorse, for Kentner Truck Line, Inc.; Vincent Matthew Smith, for National Trailer Transport and San Diego Fast Freight, respondents.

Gordan H. Garland, for Permitted Carriers Conference of Truck Owners Association of California; LaFay Lindeman, for Permitted Carriers Conference of Truck Owners Association of California; Frank F. Terramorse, for Permitted Carriers Conference; Russell Bevans, for Draymen's Association of San Francisco; Laurence E. Binsacca, for M.J.B. Company; C. R. Boyer, for Southwestern Portland Cement Company; Robert D. Boynton, for Truck Owners Association of California; Carl F. Breidenstein,

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for Cannery League of California; Matthew Clarke, for The Borden Company; Jack Clodfelter, for A. Schilling and Company; C. H. Costello, for Continental Can Company, Inc.; John B. Costello and William K. Smith, for General Mills, Inc.; Robert P. Danielson, in propria persona; D. O. Day, for Montgomery Ward and Company; Donald M. Detwiler, for Kraft Foods Company; J. J. Deuel and Edson Abel, for California Farm Bureau Federation; Harry W. Dimond, for John Breuner Company and Western Traffic Conference; Maxwell H. Elliott, for Executive Departments and Agencies of United States of America; Larry Fites, for Truck Owners Association of California; Waldo A. Gillette, for Monolith Portland Cement Company; Glanz & Russell, by Theodore W. Russell, for Permitted Carriers Conference of the Motor Truck Association of Southern California; Glenn T. Gleason, for Zellerbach Paper Company; Robert Hopping, for California Retailers Association; Clarence W. Hull, for Executive Departments and Agencies of United States of America; John S. Huntington, for Department of Defense; Robert Hutcherson and J. M. Connors, for Tide Water Associated Oil Company; William G. Jackson, for William Volker Corporation of San Francisco; Calvin J. Jacober, for Sherwin Williams Company of California and Shippers Traffic Association; N. V. Jacquemet, for Standard Oil Company of California; R. L. Johansen, for Dried Fruit Association, California Prune and Apricot Growers Association; C. W. Johnson, for Pacific Coast Tariff Bureau; S. C. Knight, for Kaiser Steel Corporation; William J. Knoell, for Pacific States Motor Tariff Bureau; P. Steele Labagh, for Cannery League of California; Harold L. Lincoln, for Fibreboard Products, Inc.; Frank Loughran, for Truck Owners Association of California; G. E. Lowe, for Kaiser Aluminum & Chemical Corporation; J. F. Maloney, for Columbia-Geneva Steel Division, U.S. Steel Corporation; Allen F. Mather, for Agricultural Council of California; H. L. Mathewson, for Pacific States Motor Tariff Bureau; Edward J. Maurer, for Delivery and Messenger Services Association of San Francisco, Inc.; W. F. McCann, for Pacco Products, Inc.; Charles R. McNulty, for Armco Drainage & Metal Products, Inc.; Fred Merkelbach, for Albers Milling Company; C. A. Millen, in propria persona; Claude Minard, for California Railroad Association; John E. Myers, for The Durkee Famous Foods, Division of the Glidden Company; Robert C. Neill, for Sunkist Growers, Inc.; James P. Nyhan, for Delivery and Messengers Association; Maurice A. Owens, for Draymen Association of Alameda County; Used Household Goods Carriers Conference; Arlo D. Poe, for Motor Truck Association of Southern California; Eugene A. Read, for Oakland Chamber of Commerce; Robert B. River, for California Western Transport Associates; Kenneth M. Robinson, for Permanente Cement Company; Walter A. Rohde, for San Francisco Chamber of Commerce; James L. Roney, for S&W Fine Foods, Inc.; Jack P. Sanders, for Gerber Products Company; A. F. Schumacher, for California Manufacturers Association Traffic Committee; A. F. Schumacher and P. N. Kujachich, for Owens-Illinois Glass Company, Pacific Coast Division; William J. Shaughnessy, for Executive Departments and Agencies United States of America;

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W. A. Stine, for Santa Clara County Farm Bureau; W. G. Stone, for Sacramento-Yolo Port District; Milton A. Walker, for Fibreboard Products, Inc.; Reginald F. Walker, for Spreckels Sugar Company; Eugene R. Warren, for Warren Grain Company; Earl S. Williams, for State of California, Department of Finance; Frank E. Winerow, for U.S. Army Hdq.; Louie H. Wolters and E. R. Chapman, for Golden State Company, Ltd.; Omelyny & Myers, by L. M. Wright, for Riverside Cement Company; W. H. Adams and M. S. Housner, for Shell Oil Company; Elmer Ahl, for Tank Truck Operators Tariff Bureau; Lester A. Bey, for William Volker & Company; E. O. Blackman, for California Dump Truck Owners Association; Herbert Cameron, for California Dump Truck Owners Association; L. F. De Martini, for Los Angeles County Farm Bureau; J. A. Gayle, for Union Oil Company of California; W. P. Gunn, for Best Foods; Franklin B. Hansen, for Associated Dump Truckers of California, Inc.; Harry Helferich, for American Fruit Growers, Inc. and California Grape and Tree Fruit League; E. W. Kerttu, for California Moving and Storage Association; T. F. Knight, Jr., for California Manufacturers Association; William J. Knoell, for Pacific States Motor Tariff Bureau; L. C. Monroe, for Union Oil Company of California; W. O. Narry and R. T. Hunt, for Richfield Oil Corporation; Juan Nevariz, in propria persona; W. G. O'Barr, for Los Angeles Chamber of Commerce; L. E. Osborne, for California Manufacturers Association; T. R. Phillips, for Western Growers Association; Ralph S. Schmitt, for Purex Corporation, Ltd.; Vincent Matthew Smith, for Motor Carrier Transportation Bureau and Harding Freight Service; Wright E. Toalson, for Mutual Orange Distributors; Francis W. Walker, for Associated Dump Truckers of California, Inc., interested parties.

Frank B. Austin, for the Commission Staff.