

ORIGINAL

Decision No. 58246

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of the DRAYMEN'S ASSOCIATION OF)	
SAN FRANCISCO for an order requir-)	Application No. 39276
ing radial highway common carriers)	
to file and publish tariffs show-)	
ing their rates and charges.)	

(Appearances are listed in Appendix A)

O P I N I O N

On July 26, 1957, the Draymen's Association of San Francisco, petitioner herein, filed its application requesting that the Commission issue an order requiring radial highway common carriers to file and publish their rates, charges, and classifications or that the Commission issue its order instituting an investigation of the matters pertaining to such request. On November 9, 1957, said petitioner filed an amendment requesting that any order which the Commission might issue requiring radial highway common carriers to file and publish their tariffs should, for the time being, and pending further investigation, be limited to those commodities pertaining to which minimum rates have heretofore been established and are presently applicable.

Public hearings on the amended application were held before Commissioner Matthew J. Dooley and Examiner Wilson E. Cline in San Francisco on November 13, 1957, and before Examiner Wilson E. Cline in San Francisco on November 14, 1957; in Los Angeles on

November 15, 1957; in San Francisco on January 8 and 9, 1958; in Los Angeles on January 16 and February 3 and 4, 1958; and in San Francisco on March 15, 1958. After the filing of opening and closing briefs oral argument was held before the Commission en banc and Examiner Wilson E. Cline in San Francisco on June 23, 1958, at which time the matter was taken under submission.

Radial Highway Common Carriers
re Other Transportation Companies
under the California Constitution

The sections of the California Constitution with which we are concerned in this proceeding appear in Article XII.

Section 17 in part reads as follows:

"Sec. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control...."

Section 20 in part reads:

"Sec. 20. No railroad or other transportation company shall raise any rate of charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circumstances whatsoever, except upon a showing before the railroad commission provided for in this Constitution, that such increase is justified,...."

Section 21 in part provides:

"Sec. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons or in the facilities for the transportation of the same classes of freight or passengers within this state. It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates."

Section 22 in part provides:

"Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission than the rates, fares and charges which are specified in such tariff...

"No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution, and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution."

Section 23 in part provides:

"Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any... plant or equipment within this State, for the transportation or conveyance of...freight of any kind,...either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for...services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution..."

In the case of People vs. Western Airlines, Inc., 42 Cal. 2d 621 (1954) the California Supreme Court has carefully considered the meaning of the phrase "other transportation companies". At pages 635 and 641 in this decision the court said:

"Sections 20 and 22 directly confer upon the commission power over the rates of 'transportation companies' and Section 20 directly prohibits such companies from increasing their rates without commission authorization. The next inquiry is whether this defendant is a transportation company within the meaning of these sections.

...

"The argument of the defendant that the specific references in Article XII to 'railroad and other transportation companies' must for certainty limit the 'other transportation companies' mentioned to ground carriers, is without merit. Airline carriers, like motor trucks and automobile stages, are forms of transportation unknown at the time the constitution was adopted, and whether or not the legislature has since that time acted with reference to them, they are within the regulatory powers of the commission under the principles laid down in the Short Line Railroad cases."

The case of Western Association of Short Line Railroads vs. Railroad Commission, 173 Cal. 802 (1916), involved applications by two railroad associations requesting that the Commission assume the regulatory jurisdiction granted to it by the Constitution over the Wichita Transportation Co., which was engaged in the business of transporting freight in motor trucks as a common carrier between San Diego and El Centro, as well as to intermediate and other points in this State, and over the Peninsula Company, which was engaged in the transportation of passengers in automobile busses, as a common carrier. At page 805 the Court said:

"...It is not questioned but that the Peninsula Company and the Wichita Transportation Company are public transportation companies, are common carriers, and are public utilities within the definition of Section 23, Article XII, of the constitution. As little will it be questioned but that if the quoted language of Section 22 stood alone as a subject of construction it would

be unhesitatingly held, in the present day, as it is held in construing similar language in other states, that it conferred upon the Railroad Commission regulatory powers over all transportation companies, therein including transportation companies of the classes under consideration."

These two cases make it clear that radial highway common carriers are other transportation companies under the above quoted provisions of Article XII of the California Constitution.

The Commission May Exercise its Discretion
in Determining Whether to Require Radial
Highway Common Carriers to File Tariffs.

In this proceeding the Commission is concerned with several sections of the Public Utilities Code which relate to the meaning of the term "Radial Highway Common Carrier" and which provide for the regulation of rates charged by such carriers.

Sec. 211 and 213 of the Public Utilities Code which appear in the Public Utilities Act in part provide:

"211. 'Common carrier' includes:

...

"(d) Every highway common carrier and every petroleum irregular route carrier operating within this State."

"213. 'Highway Common Carrier' means every corporation or person owning, controlling, operating, or managing any auto truck, or other self-propelled vehicle not operated upon rails, used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city, or city and county, except passenger stage corporations transporting baggage and express upon passenger vehicles incident to the transportation of passengers.

"'Highway common carrier' does not include any such corporation or person while operating within lawfully established pickup and delivery limits of a common carrier in the performance for such carrier of transfer, pickup, or delivery services provided for in the lawfully published tariffs of such carrier insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any city or three miles from the post office of any unincorporated point."

Sections of the Highway Carriers Act which is a part of Division 2 of the Public Utilities Code pertaining to regulation of related business with which we are concerned in this proceeding provide:

"3502. The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public.

"3511. 'Highway Carrier' means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle,...

"3513. 'Highway common carrier' means every highway carrier operating as a common carrier, other than a petroleum irregular route carrier, subject to regulation as such by the Commission under Part 1 of Division 1 (Public Utilities Act).

"3515. 'Highway permit carrier' means every highway carrier other than a highway common carrier or a petroleum irregular route carrier.

"3516. 'Radial highway common carrier' means every highway carrier operating as a common carrier not subject to regulation as such by the Commission under Part 1 of Division 1 (Public Utilities Act).

"3517. 'Highway contract carrier' means every highway carrier other than (a) a highway common carrier, (b) a radial highway common carrier, (c) a petroleum contract carrier, or (d) a petroleum irregular route carrier.

"3661. It is the policy of the State to be pursued by the Commission to establish such rates as will promote the freedom of movement by carriers of the products of agriculture, including livestock, at the lowest lawful rates compatible with the maintenance of adequate transportation service.

"3662. The Commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable and non-discriminatory maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier for the transportation of property and for accessorial service performed by it.

...

"3663. In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points.

"3664. It is unlawful for any highway permit carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the Commission under this article.

"3665. The Commission shall make such rules as are necessary to the application and enforcement of the rates established or approved pursuant to this chapter.

"3667. No highway permit carrier shall charge, demand, collect, or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the Commission; nor shall any such carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the Commission."

On March 21, 1952, a group of certificated carriers and railroads filed a petition for writ of mandate with the California Supreme Court praying that the Commission be required to order radial highway common carriers to file tariffs of their rates with the Commission. Such petition was presented as an original matter without any preliminary formal demand being made upon the Commission. The Supreme Court denied the writ without opinion on April 28, 1952, California Motor Transport Co., Ltd., et al. v. Public Utilities Commission, S.F. No. 18594.

On May 16, 1952, the same group of carriers filed a formal petition with the Commission requesting "that this Commission fully assume the powers and discharge the duties conferred upon it by

Article XII, Section 22, of the Constitution of the State of California, by establishing rates of charges for the transportation of freight by all other transportation companies operating as common carriers over the public highways of this State, whether operating over regular routes or between fixed termini or not, and to issue a general order or such order or orders as may be appropriate to require all other transportation companies operating as common carriers as aforesaid to forthwith file with the Commission their schedules of rates, charges and classifications".

On June 6, 1952, the Secretary of the Commission directed a letter to the attorneys for the petitioners stating:

"In effect, the petition requests the institution of an investigation on the Commission's own motion,...

"The Commission is of the opinion that 'radial highway common carriers' may well be 'other transportation companies' within the meaning of the Constitution. If there were no existing legislation providing for the regulation of 'radial highway common carriers', the Commission would be inclined to institute an investigation of the nature requested. However, since 1935 such carriers have been subject to regulation under the Highway Carriers' Act. (Public Utilities Code, Sections 3501-3809.)...

"The Highway Carriers' Act is part of a comprehensive legislative plan providing, in part, 'for the regulation of rates of all transportation agencies'...(Sec. 3502.) In view of this legislation, and without any implication that the Commission may be without power to require the filing of tariffs under the Highway Carriers' Act, it has been concluded that the Commission should not institute an investigation for the purpose of determining whether, in the exercise of such powers as may have been conferred by Article XII, Section 22, of the Constitution, 'radial highway common carriers' should be ordered to file tariffs."

The petitioners then applied to the Supreme Court for the second time for a writ of mandate on the specific ground that Article XII, Section 22, requires the Commission to order all radial highway common carriers to file rates with the Commission. California Motor Transport Co., Ltd., et al. v. Public Utilities Commission, S.F. No. 18650, June 20, 1952.

At the request of the Supreme Court the attorney for the Commission filed a reply to the petition for writ of mandate in which it was pointed out that the amendment of October 10, 1911 made the following changes in Section 22 of Article XII of the California Constitution:

~~"Said 6commissioners shall have the power, and-it shall-be-their-duty, to establish rates of charges for the transportation of passengers and freight by railroad s or and other transportation companies,...~~

The legislative plan for the regulation of rates of all property transportation agencies was reviewed and it was urged that the determination of whether or not radial highway common carriers should be required to file tariffs is a matter within the discretion of the regulatory agency. The last two paragraphs before the conclusion in the reply stated:

"It is not true, as suggested by petitioners..., that the Legislature has failed to grant to the Commission authority to establish rates of 'radial highway common carriers'. The Legislature has specifically empowered the Commission to establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier' (Highway Carriers' Act, Public Utilities Code Sec. 3662), and the latter term includes 'radial highway common carriers'. (Sec. 3515.) The Commission has established minimum rate tariffs for 'radial' and other permit carriers.

"The Legislature has provided in effect that it is within the discretion of the Commission to establish minimum or maximum rates, or both, for 'radial' and other permit carriers, or to require the filing of tariffs by such carriers. But petitioners have not requested the Commission to take any action under the regulatory statutes."

By its denial of the petition for writ of mandate the Supreme Court apparently has sustained this Commission in its position that the determination whether radial highway carriers should be required to file tariffs of their rates with the Commission is discretionary rather than mandatory.

It should be noted that in this proceeding applicant is requesting the Commission to take the action it prays for under the California Constitution, or under the regulatory statutes, or under both.

Types of Carriers Operating with
Radial Highway Common Carrier Permits

The record in this proceeding requires the Commission to consider the following types of carriers presently operating with radial highway carrier permits:

1. Heavy haulers.
2. Dump truck operators.
3. Haulers of agricultural commodities and commodities used in agricultural operations from and to place of agricultural production.
4. Special messenger carriers.
5. Other radial highway common carriers.

1. Heavy Haulers

Both the Northern Group and the Southern Group of heavy haulers were opposed to any order which would require them to file tariffs of their rates. The users of heavy hauler service actively participated in the hearing and presented evidence in support of the position taken by the heavy haulers in opposition to any tariff filing requirement. Included among the users who presented such evidence are the Department of Public Works of the State of California, the Northern and the Southern Chapters of the Associated General Contractors, Guy F. Atkinson Company, Ball and Simpson and Kaiser Steel Corporation.

Some of the traffic of the heavy haulers is exempt from the minimum rates because Minimum Rate Tariff No. 2 provides that the rates shall not apply to shipments moved on "lowbed" equipment, and hence said traffic is not within the scope of the present application. Because the field of service of the heavy haulers extends beyond this limited scope, however, the heavy haulers have proposed that if an order is issued requiring radial highway carriers to file tariffs that the following described traffic be exempt from such requirement:

"Commodities of unusual size, bulk or weight as require special equipment, or special handling

in connection with the loading or unloading, or special services in connection with the movement thereof, and, in connection therewith, commodities not of unusual size, bulk, or weight, when moving in connection with commodities of unusual size, bulk or weight, requiring special equipment, handling or special services."

Heavy hauling is a specialized type of service. It requires the use of specially designed and specially constructed motive equipment as well as special noncarrier equipment designed and used to load and unload heavy shipments and to move them into and out of location. The heavy hauler also engages skilled employees such as engineers, riggers, millwrights, steam fitters, boilermakers, and operating engineers. Service of the heavy haulers is different from and noncompetitive with that of the usual certificated common carriers with neither the special equipment nor the skilled personnel to perform the services required of the heavy haulers.

The heavy haulers quote firm prices when they undertake to do a job. These prices are based on estimates which are made by a professional engineer or estimator who carefully determines the origin and destination conditions, the route of movement, and the cost of performing many incidental services such as planking roads, shoring bridges, and building bridges and fords. The estimator must also carefully evaluate certain risk elements such as the probability of snow, rain and heavy water run off. Each job is a separate and distinct project which must be appraised pricewise in relation to its own peculiar character. The users of the service of the heavy hauler in turn submit their own bids on the entire project in reliance upon the accuracy of the heavy hauler's estimate and his quotation of a firm price. The record shows that this freedom on the part of the heavy haulers to compute and quote firm prices for their services is satisfactory and desirable both to the carriers and to the users of the service. If an effective tariff filing were required of the heavy haulers firm pricing would no longer be possible.

In many heavy hauling jobs transportation forms but a small part of the entire service, which may involve the movement of heavy objects out of and into buildings, the planking of highways, the construction of access roads, the temporary removal of telephone and power wires and in some instances the construction of dams to permit equipment to pass over streams. Any order which would require the publication of a tariff of the transportation service only and leave the incidental service free for negotiated pricing would be ineffective because the tariff would not price the entire service. The record shows that the publication of a tariff which would try to cover the nontransportation services as well as the transportation services of the heavy hauler would be difficult, costly and impractical.

2. Dump Truck Operators.

A representative of the California Dump Truck Owners' Association participated in the oral argument before the Commission en banc to state the opposition of this association to the tariff filing requirement in so far as it might apply to dump trucks and requested that the dump truck operators be exempt from any tariff filing requirements which might be adopted.

He pointed out that dump trucks make short hauls in different types of places and terrains and operate under a variety of conditions, especially in construction work, and contended that because of this a specific fixed rate is not practical for dump truck operation. He claimed that minimum rates are the only type of rates which will permit the for-hire dump truck industry to survive.

3. Haulers of Agricultural Commodities and Commodities Used in Agricultural Operations from and to Place of Agricultural Production.

The California Farm Bureau Federation, the California Cattlemen's Association and the California Wool Growers Association all had witnesses who testified at the hearings in their behalf.

It was pointed out that it is the policy of the State for the Commission to establish such rates as will promote the freedom of movement by carriers of the products of agriculture, including livestock, at the lowest lawful rate compatible with the maintenance of adequate transportation service.

These groups are concerned with transportation of agricultural products and farm supplies on the farm, between farms, and over private roads, roads on levee banks, weak bridges and other structures with load limits, dirt roads and other inadequate highways and under many unpredictable circumstances due to weather conditions.

It was contended that the service of radial highway common carriers with flexible rates to meet variable conditions is essential to the agricultural industry and that any order requiring such carriers to file rates would destroy the necessary flexibility and expansive ability of such carriers to respond to seasonal and local transportation requirements and would be contrary to the public interest and a denial of demonstrated public need.

The Cannery League of California and several of the radial common carriers which transport fresh fruits and vegetables from the farms to the processing plants also opposed the granting of the application.

The hauling of fresh fruit and vegetable is to a large extent handled by contract carriers. Because of the heavy volume and short season on many of the products, a large number of subhaulers who are radial highway common carriers with a few pieces of equipment are employed by the larger carriers operating as prime contractors with the canneries. Dual operations as a contract carrier and as a radial highway carrier are necessary to enable some carriers to continue in business. A carrier may

operate as a contract carrier during the harvesting season and as a radial highway carrier during the balance of the year. Also, a contract carrier may only be able to secure hauling contracts from or to certain points without a contract haul for the return movement. As a radial highway common carrier he may be able to pick up return loads in the nearby area to transport back to the original starting point.

These parties contend that the flexibility and availability of equipment offered by radial highway common carriers in the handling of emergency moves that occur throughout the year is a vital factor in California transportation, and any restriction or limitation on their present status will be detrimental to the agricultural and canning interests of the State of California.

4. Special Messenger Carriers.

The Red Arrow Bonded Messenger Company opposed the application and requested that in the event the Commission issues an order requiring radial common carriers to file tariffs that the following described carriers be exempt from the order:

"Special messenger companies operating passenger type automobiles or station wagons, or other vehicles having a gross loaded weight not in excess of 5,000 pounds."

Red Arrow conducts a typical special messenger service offering expedited service at premium rates. Messengers in passenger cars, station wagons or on bicycles deliver small packages, run errands, make purchases and perform various other types of miscellaneous messenger service that might be requested.

The rates charged for these special services are far in excess of the Commission's minimum rates and vary according to distance traveled and the time requirements of the shipper.

Three types of service are offered. First, there is an expedited service for emergencies called the direct special

service which involves a direct trip to the shipper and from there to the consignee. Since there is no opportunity for consolidation this service is assessed at the highest rate. Secondly, there is the deferred special service with delivery guaranteed within two hours. As there is some possibility of consolidation, a lower rate is charged for this service. Lastly, there is the same day service which provides for delivery being made at some time during the day of receipt. This service is performed at the lowest rate.

In any tariff which might be filed by a special messenger service the various classes of service based on the customer's time requirements would have to be defined and some sort of intra-city mileage tables or zone system would have to be devised for each origin and destination city. Some provision would also have to be made for charges for special service related to the delivery such as purchasing articles for a consignee. At the present time the dispatcher estimates the additional time required and quotes a flat rate.

It was pointed out that Red Arrow and each other messenger company would have to have its own individual tariff because each specializes in different lines of business; they could not join in agency or group tariffs; and each would have to proceed independently to make the necessary adjustment in rates.

5. Other Radial Highway Common Carriers.

Counsel representing a large group of radial highway common carriers have pointed out that the radial highway common carriers supplement the basic transportation service furnished by the highway common carriers. Because of the flexibility of their rates and their statewide mobility they can be on hand at the peak shipping periods in agriculture and in other industries and promptly move freight which cannot expeditiously be handled by the highway common carrier. Members of the shipping public who testified in this proceeding all agreed that the pool of radial highway common carriers was needed

to meet peak periods of operation and to meet special situations where limitations of equipment, operating rights or rate structure prevent the highway common carriers from satisfying the demand for transportation service.

Testimony was also adduced in the record that if the radial carriers were required to file rates, the flexibility resulting from negotiable rates would disappear, the expense incident to rate-filing and rate-changing would result in many marginal highway carriers going out of business, and the cost of operating with filed rates would deter many persons from entering the field of radial highway common carriage.

The rates and operating rights of the highway common carrier contemplate a back and forth movement over the same route or between the same points and do not permit the acceptance of shipments to new points at negotiated rates. It is contended that the absence of a regular operation by the radial highway common carrier makes it economically necessary for him to be able to adjust his rates to suit the circumstances of a particular shipment; that such circumstances vary so greatly that they cannot properly be expressed through an established rate as in the case of shipments by highway common carriers.

On the other hand the proponents of the application urge that a tariff filing requirement for radial highway common carriers is necessary to enable this Commission to enforce the Constitutional provisions pertaining to rate regulation of common carriers. Unless a carrier has a tariff of its rates on file with the Commission, how can the public and this Commission determine what the established rates of the carrier are, and whether or not a common carrier is discriminating in charges or facilities between places or persons or in the facilities for the transportation of the same classes of freight or passengers within California or whether it is violating

the long-and-short-haul provisions of the Constitution? Further, without established tariff filing procedures, how can this Commission effectively enforce the provision of the Constitution which prevents a common carrier from raising its rates under any circumstances whatsoever, except upon a showing before the Commission that such increase is justified? Unless a common carrier expresses the extent of his holding out to perform service in a tariff, how can this Commission effectively determine whether a carrier is engaged in the transportation of property on any public highway between the same points both as a common carrier and as a highway contract carrier in violation of Section 3542 of the Public Utilities Code?

The testimony of the tariff publishing agents in this record shows that an average radial highway common carrier could file and publish his tariff through a tariff bureau at a cost ranging from \$10 to \$20 per month. The cost for larger carriers would be considerably greater and the cost of filing an individual tariff would also be considerably greater.

Findings

The Commission finds:

1. The Legislature of the State of California in enacting the Highway Carriers' Act of 1935 provided a comprehensive plan for the regulation of highway carriers.
2. This plan, which was designed to meet reasonable public demands, did not require radial highway common carriers to file tariffs.
3. The absence of this requirement permits a flexibility of rates as was clearly intended by the Legislature.

Conclusion

The Commission rejects applicant's contention that the tariff filing requirement is necessary to prohibit unlawful discrimination and unjustified rate increases. The record in the instant

proceeding discloses that not one shipper or shipping group appeared in support of the application, but that many appeared in opposition to it.

After a careful review of all the evidence in this proceeding, the Commission finds and concludes that it would not be in the public interest for it to exercise its discretionary power and require all radial highway common carriers to file and publish tariffs and that the application herein should be denied.

O R D E R

Public hearings having been held in the above-entitled matter, the matter having been submitted and based upon the evidence of record and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that:

The application of the Draymen's Association of San Francisco is denied.

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

Dated at San Francisco, California, this 7th day of April, 1959.

Commissioners Fox and Dooley dissent with respect to denial of application as to requiring radial highway carriers to file and publish tariffs except heavy haulers, dump truck operators, haulers of agricultural commodities and special messenger carriers. A formal written dissent will be filed later.

President

Theodore H. Hume
Everett B. Hume

Commissioners

Commissioner Fox

Commissioner Dooley

APPENDIX A
Page 1 of 3

LIST OF APPEARANCES

Berol and Silver by Edward M. Berol and Bruce R. Geernaert, and Russell Bevans, for Draymen's Association of San Francisco, petitioner.

H. J. Bischoff for Fair Transportation Standards, Inc.; Ralph T. Close, Donald E. Cantlay and Lloyd R. Guerra for Western Truck Lines, Ltd., intervenors in support of petition.

Armand Karp for Callison Truck Lines, Inc., intervenor.

Norman R. Moon for M. & L. Trucking Company; Natalie Gail for Gale Messengers; A. D. Carleton, Manager, Traffic Department, for Standard Oil Company of California; W. M. Cheatham for Western Traffic Conference, Inc., and Dohrmann Commercial Company-Dohrmann Hotel Supply Company; Arlo D. Poe and J. C. Kaspar for California Trucking Associations, Inc.; Charles C. Miller and James M. Cooper for San Francisco Chamber of Commerce; B. R. Garcia for B. R. Garcia Traffic Service; R. E. Campbell, in propria persona; E. R. Chapman for Foremost Dairies, Inc.; Harold Shifflet for Shifflet Bros.; J. J. Damerell for The Western Union Telegraph Company; Thomas R. Dwyer for Common Carrier Conference of California Trucking Association, Inc.; John MacDonald Smith for Southern Pacific Company and The Atchison Topeka and Santa Fe Railway Company; L. E. Osborne for California Manufacturers Association; Ralph S. Schmitt for G. W. Thomas Drayage and Rigging Company, Inc.; J. Edgar Dick for California Cattlemen's Association; L. H. Wolters for Foremost Dairies, Inc.; Richard A. Bennett for West Coast Freight Traffic Bureau; J. X. Quintrall for California Trucking Association; Adolph Battaini for Sheedy Drayage Company; W. P. Scott for Bigge Drayage Company; Philip A. Winter for Service Company; B. E. Rowland for Willig Freight Lines; Milton A. Walker for Fibreboard Paper Products Corporation; J. L. Beeler, Agent, for Southwestern Motor Tariff Bureau; John Coburn for McCarthy Draying Company; William M. Edwards for Paxton Truck Company; R. E. Fels for American Furniture Transport, Inc.; Jackson W. Kendall for Bekins Van & Storage Company and Bekins Van Lines, Inc.; Gordon, Knapp, Gill & Hibbert by Joseph C. Gill for Belyea Truck Company, Paxton Truck Lines, Progressive Transportation Company, Haddock Transportation Company, Lyon Aircraft Service, a Division of Lyon Van & Storage Company; T. A. L. Loretz, in propria persona; W. G. O'Barr for Los Angeles Chamber of Commerce; Harold E. Schiffner for Lacey Trucking Company; Charles C. Stratton for California Milk Tanks and Western Milk Transport; C. S. Thomas for Randy's Garment Delivery; R. H. Tomlinson for Western Union Telegraph Co.; Lois & White for Meat Packers Refrigerated Service; Don Neher for W. H. Adams and Shell Oil Company; Aaron H. Glickman for California Motor Tariff Bureau; E. E. Bolz for Western Union Telegraph Company; Jack P. Sander for Gerber Products Company; Lonnie Case for Lonnie Case Trucking, Inc.; Gerald Charles Turner for Owens Illinois Glass Company; W. F. McCann for Johnson & Johnson, interested parties.

APPENDIX A
Page 2 of 3

Eugene A. Reed, for Oakland Chamber of Commerce; Roger L. Ramsey and Preston W. Davis for Red Arrow Bonded Messenger Corporation; Carl F. Breidenstein for Cannery League of California; W. P. Wing, Secretary, and Chas. E. Blaine & Son, Traffic Managers, for California Wool Growers Association; William N. Shubin for Harry McKenzie Trucking Company; Tom Meyer for Morris Draying Company; J. J. Deuel and Bert Buzzini for California Farm Bureau Federation; J. Hills Wyltic for Security Truck Lines; George E. Buckley for J. M. Buckley & Son; William R. Sweeney and Thomas P. Foye of Sweeney, Stearns & Foye for Leonard Hurd Trucking, Jim Phillips Trucking, Robert Organ, Valley Transportation, Donald M. Starr, R. Thompson, Frank Mensley, Jim Robertson, Herb Williams, Russell Bradbury, Chief Trucking, Ed Ray Trucking, Jim Pratt Trucking, John Young Trucking, R. & L. Trucking, Dick Evans, Vick Eels, Roland F. Mason, Lyle M. Smith, Herbert Williams, Bernard Lee, and Ellis D. Arnett; Ralph S. Schmitt for G. W. Thomas Drayage & Rigging Co., Inc.; Bill Johnson for Bill Johnson Truck Line; Frank Loughran for Bassco Drayage, Bigge Drayage Company, Dalzell Rigging Company, Doudell Trucking Company, Foster Drayage Company, Hoagland Transportation, Holt Bros., McLaughlin Draying Company, Marin Van & Storage Company, Harley Murray, Rev-A-Lon Transportation Company, Scoffone Trucking, Security Truck Lines, Senna Trucking Company, Sheedy Transportation Company, G. W. Thomas Drayage & Rigging Company, Weaver Tractor Company, West Transportation Company, Wilkins Draying Company and Claude C. Wood Company; G. V. Clark for Clark Trucking Service, Inc.; Kenneth A. Ross, Jr., for Associated General Contractors of America, Southern California Chapter; Harley W. Murray for Harley Murray; Howard Clark for Senna Trucking Company, Inc.; Harold Shifflet for Shifflet Bros.; John William Yandell for Yandell Trucking; A. W. Hays for A. W. Hays Trucking, Inc.; Johnson & Stanton by Gardiner Johnson, Thomas E. Stanton, Jr., and Fred H. Drucker for the Northern California Chapter of the Associated General Contractors; D. H. Spencer for Spencer Truck Company; J. K. Pellett for California Spray Chemical Corp.; W. F. McCann for California Manufacturers Association; Don Turrentine for the Wine Institute; E. Alan Mills for California Grape and Tree Fruit League; Graham, James & Rolph by Boris H. Lakusta for American Transportation Co., Associated Transportation Co., Inc., Azusa Transfer Co., Art Baker Transportation, Inc., Bay Freight Lines, Lincoc Trucking Co., Bobs Delivery Service, Elmo Brewer Trucking, Eugene Brewer, J. M. Buckley & Son, Butane Transport Co., California Milk Tanks & Western Milk Transport, R. Cali & Bros., Don Carr Trucking, Inc., Cecchini Trucking Co., O. E. Craig, Citizens Transportation Co., Commercial Drayage Company, Crowson Transportation Co., Dart Transportation Service, Devine & Son Trucking Co., Ferro Bros. Trucking Co., Fisk Trucking & Transfer Company, Forrest Freeze Trucking; C. L. Freeman, General Trucking, Thomas W. Griffin, Halbert Bros., Inc., A. W. Hays Trucking, Inc., Heidelbaugh Transportation Co., H. & N. Transfer, Jarvis Trucking Co., Jones Transportation Co., Vincent W. Kuehn Moving Service, Walter A. Lambert Trucking, Lyon Van & Storage Co., Mercury Freight Lines, Milano Trucking Company, Mingle Transportation Co., Morris Draying Company, W. D. Nichols Trucking Co., Oertly Bros. Trucking Company,

APPENDIX A
Page 3 of 3

Orange Belt Trucking, Owens Valley Freight Lines, Pauls Trucking Service, Ralph Panella Trucking, Parker Trucking, Peoples Machinery Movers, Inc., Percy & Fairman, Ted Peters Trucking Co., Inc., Progressive Transportation Co., Quick Service Transfer Co., Real Transportation Co., Redway Transfer Co., Shirley Robertson Trucking, Seaboard Transportation Co., Security Truck Line, Shifflet Bros., Signal Trucking Service, Ltd., Snyder Transfer Company, Inc., Spencer Truck Co., W. J. Tanahill & Sons, Truck Transport, Union Transportation Co., Western Transport Service, Inc., Williams Transportation Company, Yandell Truckaway, Inc., protestants.

Wyman C. Knapp for Belyea Truck Co., Pearson Truck Co., Paxton Truck Co., Lyon Van & Storage Co., Progressive Transportation, Haddock Transportation Company, Smith Bros. Truck Company, Hulbert Bros. Truck Company, Pioneer Truck Company, Weble Transport Company, R. G. Miller Trucking Co., and Citizens Transportation Company, protestants and intervenors.

C. Ray Bryant, John R. Laurie, Grant Malquist, Norman Haley, J. M. Jenkins, Edward E. Tanner and R. A. Lubich, for the Commission staff.

D I S S E N T

I dissent from the foregoing decision denying the application of the Draymen's Association of San Francisco only with respect to those radial highway common carriers whose types of operations do not fall within the generally accepted categories of heavy haulers, dump truck operators, haulers of agricultural commodities and commodities used in agricultural operations from and to places of agricultural production, and special messenger carriers. In respect to the excepted groups of carriers, the record clearly shows that many services performed by such radial highway common carriers (heavy haulers, dump truck operators, haulers of agricultural commodities and commodities used in agricultural operations from and to the place of agricultural production, and special messenger carriers) are not sufficiently delineated and definable to enable such carriers to file and establish rates for such services and that reasonable charges therefor can be fixed only after a determination of the facts and circumstances relating to the particular services required by the shipper. If the transportation and accessorial services offered by a radial highway common carrier are so unique and unusual that the reasonable charges therefor cannot properly be established prior to the request for service in each instance, it is impractical and not in the public interest to require such radial highway common carriers to establish fixed rates for such services.

The radial carriers not encompassed within the excepted group above set forth have as the bulk of their traffic, general commodities, the same as the certificated common carrier. The traffic of these radial carriers far exceeds the traffic of the

special types of radial carriers above mentioned. The decision of the majority is impliedly based on the fringe and special operations of such special types of carriers and not on the general traffic of the so-called general radial highway common carrier.

It is my considered judgment that the Commission, in the exercise of its sound discretion, should require all radial highway common carriers, except those engaged in special operations hereinbefore enumerated, to file and publish tariffs for the transportation of commodities for which minimum rates heretofore have been established and are presently applicable. Such tariffs should set forth the general scope of operations of the radial highway common carrier both as to geographical area of operation and commodities handled, together with any limitation as to weight of shipments, or otherwise, as well as the established rates and charges. Since the Supreme Court of California has held that it is the infrequency of operation between fixed points over a particular route which distinguishes the operations of a radial highway carrier from those of a certificated highway common carrier, either point to point rates or distance, or both, may be provided in the tariff.

A review of the pertinent provisions of the California Constitution and the pertinent sections of the Public Utilities Code, as well as the relevant court decisions will, I am satisfied, sustain my dissent. In support of this view, I find particularly

pertinent the language from the majority opinion, commencing on page 2 and ending with the first partial paragraph on page 17 thereof, which reads as follows:

"Radial Highway Common Carriers
re Other Transportation Companies
under the California Constitution

"The sections of the California Constitution with which we are concerned in this proceeding appear in Article XII.

"Section 17 in part reads as follows:

'Sec. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control....'

"Section 20 in part reads:

'Sec. 20. No railroad or other transportation company shall raise any rate or charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto, under any circumstances whatsoever, except upon a showing before the railroad commission provided for in this Constitution, that such increase is justified,....'

"Section 21 in part provides:

'Sec. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons or in the facilities for the transportation of the same classes of freight or passengers within this state. It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates.'

"Section 22 in part provides:

'Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission than the rates, fares and charges which are specified in such tariff...

'No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon the Public Utilities Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Public Utilities Commission in this Constitution, and the authority of the Legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this Constitution.'

"Section 23 in part provides:

'Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any... plant or equipment within this State, for the transportation or conveyance of...freight of any kind,...either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for...services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution...'

"In the case of People vs. Western Airlines, Inc., 42 Cal. 2d 621 (1954) the California Supreme Court has carefully considered the meaning of the phrase 'other transportation companies'. At pages 635 and 641 in this decision the court said:

'Sections 20 and 22 directly confer upon the commission power over the rates of 'transportation companies' and Section 20 directly prohibits such companies from increasing their rates without commission authorization. The next inquiry is whether this defendant is a transportation company within the meaning of these sections.

...

'The argument of the defendant that the specific references in Article XII to 'railroad and other transportation companies' must for certainty limit the 'other transportation companies' mentioned to ground carriers, is without merit. Airline carriers, like motor trucks and automobile stages, are forms of transportation unknown at the time the constitution was adopted, and whether or not the legislature has since that time acted with reference to them, they are within the regulatory powers of the commission under the principles laid down in the Short Line Railroad cases.'

"The case of Western Association of Short Line Railroads vs. Railroad Commission, 173 Cal. 802 (1916), involved applications by two railroad associations requesting that the Commission assume the regulatory jurisdiction granted to it by the Constitution over the Wichita Transportation Co., which was engaged in the business of transporting freight in motor trucks as a common carrier between San Diego and El Centro, as well as to intermediate and other points in this State, and over the Peninsula Company, which was engaged in the transportation of passengers in automobile busses, as a common carrier. At page 805 the Court said:

'...It is not questioned but that the Peninsula Company and the Wichita Transportation Company are public transportation companies, are common carriers, and are public utilities within the definition of Section 23, Article XII, of the constitution. As little will it be questioned but that if the quoted language of Section 22 stood alone as a subject of construction it would

be unhesitatingly held, in the present day, as it is held in construing similar language in other states, that it conferred upon the Railroad Commission regulatory powers over all transportation companies, therein including transportation companies of the classes under consideration.'

"These two cases make it clear that radial highway common carriers are other transportation companies under the above quoted provisions of Article XII of the California Constitution.

"The Commission May Exercise its Discretion
in Determining Whether to Require Radial
Highway Common Carriers to File Tariffs."

"In this proceeding the Commission is concerned with several sections of the Public Utilities Code which relate to the meaning of the term 'Radial Highway Common Carrier' and which provide for the regulation of rates charged by such carriers.

"Sec. 211 and 213 of the Public Utilities Code which appear in the Public Utilities Act in part provide:

'211. 'Common carrier' includes:

...

'(d) Every highway common carrier and every petroleum irregular route carrier operating within this State.'

'213. 'Highway Common Carrier' means every corporation or person owning, controlling, operating, or managing any auto truck, or other self-propelled vehicle not operated upon rails, used in the business of transportation of property as a common carrier for compensation over any public highway in this State between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city, or city and county, except passenger stage corporations transporting baggage and express upon passenger vehicles incident to the transportation of passengers.

'Highway common carrier' does not include any such corporation or person while operating within lawfully established pickup and delivery limits of a common carrier in the performance for such carrier of transfer, pickup, or delivery services provided for in the lawfully published tariffs of such carrier insofar as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any city or three miles from the post office of any unincorporated point.'

"Sections of the Highway Carriers Act which is a part of Division 2 of the Public Utilities Code pertaining to regulation of related business with which we are concerned in this proceeding provide:

'3502. The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public.

'3511. 'Highway Carrier' means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in transportation of property for compensation or hire as a business over any public highway in this State by means of a motor vehicle,...

'3513. 'Highway common carrier' means every highway carrier operating as a common carrier, other than a petroleum irregular route carrier, subject to regulation as such by the Commission under Part 1 of Division 1 (Public Utilities Act).

'3515. 'Highway permit carrier' means every highway carrier other than a highway common carrier or a petroleum irregular route carrier.

'3516. 'Radial highway common carrier' means every highway carrier operating as a common carrier not subject to regulation as such by the Commission under Part 1 of Division 1 (Public Utilities Act).

'3517. 'Highway contract carrier' means every highway carrier other than (a) a highway common carrier, (b) a radial highway common carrier, (c) a petroleum contract carrier, or (d) a petroleum irregular route carrier.

'3661. It is the policy of the State to be pursued by the Commission to establish such rates as will promote the freedom of movement by carriers of the products of agriculture, including livestock, at the lowest lawful rates compatible with the maintenance of adequate transportation service.

'3662. The Commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable and non-discriminatory maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier for the transportation of property and for accessorial service performed by it.

...

'3663. In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points.

'3664. It is unlawful for any highway permit carrier to charge or collect any lesser rate than the minimum rate or greater rate than the maximum rate established by the Commission under this article.

'3665. The Commission shall make such rules as are necessary to the application and enforcement of the rates established or approved pursuant to this chapter.

'3667. No highway permit carrier shall charge, demand, collect, or receive for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges or greater than the maximum rates and charges applicable to such transportation established or approved by the Commission; nor shall any such carrier directly or indirectly pay any commission or refund, or remit in any manner or by any device any portion of the rates or charges so specified, except upon authority of the Commission.'

"On March 21, 1952, a group of certificated carriers and railroads filed a petition for writ of mandate with the California Supreme Court praying that the Commission be required to order radial highway common carriers to file tariffs of their rates with the Commission. Such petition was presented as an original matter without any preliminary formal demand being made upon the Commission. The Supreme Court denied the writ without opinion on April 28, 1952, California Motor Transport Co., Ltd., et al. v. Public Utilities Commission, S.F. No. 18594.

"On May 16, 1952, the same group of carriers filed a formal petition with the Commission requesting "that this Commission fully assume the powers and discharge the duties conferred upon it by

Article XII, Section 22, of the Constitution of the State of California, by establishing rates of charges for the transportation of freight by all other transportation companies operating as common carriers over the public highways of this State, whether operating over regular routes or between fixed termini or not, and to issue a general order or such order or orders as may be appropriate to require all other transportation companies operating as common carriers as aforesaid to forthwith file with the Commission their schedules of rates, charges and classifications'.

"On June 6, 1952, the Secretary of the Commission directed a letter to the attorneys for the petitioners stating:

'In effect, the petition requests the institution of an investigation on the Commission's own motion,...

'The Commission is of the opinion that 'radial highway common carriers' may well be 'other transportation companies' within the meaning of the Constitution. If there were no existing legislation providing for the regulation of 'radial highway common carriers', the Commission would be inclined to institute an investigation of the nature requested. However, since 1935 such carriers have been subject to regulation under the Highway Carriers' Act. (Public Utilities Code, Sections 3501-3809.)...

'The Highway Carriers' Act is part of a comprehensive legislative plan providing, in part, 'for the regulation of rates of all transportation agencies'...(Sec. 3502.) In view of this legislation, and without any implication that the Commission may be without power to require the filing of tariffs under the Highway Carriers' Act, it has been concluded that the Commission should not institute an investigation for the purpose of determining whether, in the exercise of such powers as may have been conferred by Article XII, Section 22, of the Constitution, 'radial highway common carriers' should be ordered to file tariffs.'

"The petitioners then applied to the Supreme Court for the second time for a writ of mandate on the specific ground that Article XII, Section 22, requires the Commission to order all radial highway common carriers to file rates with the Commission. California Motor Transport Co., Ltd., et al. v. Public Utilities Commission, S.F. No. 18650, June 20, 1952.

"At the request of the Supreme Court the attorney for the Commission filed a reply to the petition for writ of mandate in which it was pointed out that the amendment of October 10, 1911 made the following changes in Section 22 of Article XII of the California Constitution:

'Said 6 commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad s or and other transportation companies,...'

The legislative plan for the regulation of rates of all property transportation agencies was reviewed and it was urged that the determination of whether or not radial highway common carriers should be required to file tariffs is a matter within the discretion of the regulatory agency. The last two paragraphs before the conclusion in the reply stated:

'It is not true, as suggested by petitioners..., that the Legislature has failed to grant to the Commission authority to establish rates of 'radial highway common carriers'. The Legislature has specifically empowered the Commission to establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier' (Highway Carriers' Act, Public Utilities Code Sec. 3662), and the latter term includes 'radial highway common carriers'. (Sec. 3515.) The Commission has established minimum rate tariffs for 'radial' and other permit carriers.

'The Legislature has provided in effect that it is within the discretion of the Commission to establish minimum or maximum rates, or both, for 'radial' and other permit carriers, or to require the filing of tariffs by such carriers. But petitioners have not requested the Commission to take any action under the regulatory statutes.'

"By its denial of the petition for writ of mandate the Supreme Court apparently has sustained this Commission in its position that the determination whether radial highway carriers should be required to file tariffs of their rates with the Commission is discretionary rather than mandatory.

"It should be noted that in this proceeding applicant is requesting the Commission to take the action it prays for under the California Constitution, or under the regulatory statutes, or under both.

"Types of Carriers Operating with
Radial Highway Common Carrier Permits

"The record in this proceeding requires the Commission to consider the following types of carriers presently operating with radial highway carrier permits:

1. Heavy haulers.
2. Dump truck operators.
3. Haulers of agricultural commodities and commodities used in agricultural operations from and to place of agricultural production.
4. Special messenger carriers.
5. Other radial highway common carriers.

" 1. Heavy Haulers

" Both the Northern Group and the Southern Group of heavy haulers were opposed to any order which would require them to file tariffs of their rates. The users of heavy hauler service actively participated in the hearing and presented evidence in support of the position taken by the heavy haulers in opposition to any tariff filing requirement. Included among the users who presented such evidence are the Department of Public Works of the State of California, the Northern and the Southern Chapters of the Associated General Contractors, Guy F. Atkinson Company, Ball and Simpson and Kaiser Steel Corporation.

"Some of the traffic of the heavy haulers is exempt from the minimum rates because Minimum Rate Tariff No. 2 provides that the rates shall not apply to shipments moved on "lowbed" equipment, and hence said traffic is not within the scope of the present application. Because the field of service of the heavy haulers extends beyond this limited scope, however, the heavy haulers have proposed that if an order is issued requiring radial highway carriers to file tariffs that the following described traffic be exempt from such requirement:

'Commodities of unusual size, bulk or weight as require special equipment, or special handling

in connection with the loading or unloading, or special services in connection with the movement thereof, and, in connection therewith, commodities not of unusual size, bulk, or weight, when moving in connection with commodities of unusual size, bulk or weight, requiring special equipment, handling or special services.'

" Heavy hauling is a specialized type of service. It requires the use of specially designed and specially constructed motive equipment as well as special noncarrier equipment designed and used to load and unload heavy shipments and to move them into and out of location. The heavy hauler also engages skilled employees such as engineers, riggers, millwrights, steam fitters, boilermakers, and operating engineers. Service of the heavy haulers is different from and noncompetitive with that of the usual certificated common carriers with neither the special equipment nor the skilled personnel to perform the services required of the heavy haulers.

"The heavy haulers quote firm prices when they undertake to do a job. These prices are based on estimates which are made by a professional engineer or estimator who carefully determines the origin and destination conditions, the route of movement, and the cost of performing many incidental services such as planking roads, shoring bridges, and building bridges and fords. The estimator must also carefully evaluate certain risk elements such as the probability of snow, rain and heavy water run off. Each job is a separate and distinct project which must be appraised pricewise in relation to its own peculiar character. The users of the service of the heavy hauler in turn submit their own bids on the entire project in reliance upon the accuracy of the heavy hauler's estimate and his quotation of a firm price. The record shows that this freedom on the part of the heavy haulers to compute and quote firm prices for their services is satisfactory and desirable both to the carriers and to the users of the service. If an effective tariff filing were required of the heavy haulers firm pricing would no longer be possible.

"In many heavy hauling jobs transportation forms but a small part of the entire service, which may involve the movement of heavy objects out of and into buildings, the planking of highways, the construction of access roads, the temporary removal of telephone and power wires and in some instances the construction of dams to permit equipment to pass over streams. Any order which would require the publication of a tariff of the transportation service only and leave the incidental service free for negotiated pricing would be ineffective because the tariff would not price the entire service. The record shows that the publication of a tariff which would try to cover the nontransportation services as well as the transportation services of the heavy hauler would be difficult, costly and impractical.

"2. Dump Truck Operators.

"A representative of the California Dump Truck Owners' Association participated in the oral argument before the Commission en banc to state the opposition of this association to the tariff filing requirement in so far as it might apply to dump trucks and requested that the dump truck operators be exempt from any tariff filing requirements which might be adopted.

"He pointed out that dump trucks make short hauls in different types of places and terrains and operate under a variety of conditions, especially in construction work, and contended that because of this a specific fixed rate is not practical for dump truck operation. He claimed that minimum rates are the only type of rates which will permit the for-hire dump truck industry to survive.

"3. Haulers of Agricultural Commodities and Commodities Used in Agricultural Operations from and to Place of Agricultural Production.

"The California Farm Bureau Federation, the California Cattlemen's Association and the California Wool Growers Association all had witnesses who testified at the hearings in their behalf.

"It was pointed out that it is the policy of the State for the Commission to establish such rates as will promote the freedom of movement by carriers of the products of agriculture, including livestock, at the lowest lawful rate compatible with the maintenance of adequate transportation service.

"These groups are concerned with transportation of agricultural products and farm supplies on the farm, between farms, and over private roads, roads on levee banks, weak bridges and other structures with load limits, dirt roads and other inadequate highways and under many unpredictable circumstances due to weather conditions.

"It was contended that the service of radial highway common carriers with flexible rates to meet variable conditions is essential to the agricultural industry and that any order requiring such carriers to file rates would destroy the necessary flexibility and expansive ability of such carriers to respond to seasonal and local transportation requirements and would be contrary to the public interest and a denial of demonstrated public need.

"The Cannery League of California and several of the radial common carriers which transport fresh fruits and vegetables from the farms to the processing plants also opposed the granting of the application.

"The hauling of fresh fruit and vegetable is to a large extent handled by contract carriers. Because of the heavy volume and short season on many of the products, a large number of subhaulers who are radial highway common carriers with a few pieces of equipment are employed by the larger carriers operating as prime contractors with the canneries. Dual operations as a contract carrier and as a radial highway carrier are necessary to enable some carriers to continue in business. A carrier may

operate as a contract carrier during the harvesting season and as a radial highway carrier during the balance of the year. Also, a contract carrier may only be able to secure hauling contracts from or to certain points without a contract haul for the return movement. As a radial highway common carrier he may be able to pick up return loads in the nearby area to transport back to the original starting point.

"These parties contend that the flexibility and availability of equipment offered by radial highway common carriers in the handling of emergency moves that occur throughout the year is a vital factor in California transportation, and any restriction or limitation on their present status will be detrimental to the agricultural and canning interests of the State of California.

"4. Special Messenger Carriers.

"The Red Arrow Bonded Messenger Company opposed the application and requested that in the event the Commission issues an order requiring radial common carriers to file tariffs that the following described carriers be exempt from the order:

'Special messenger companies operating passenger type automobiles or station wagons, or other vehicles having a gross loaded weight not in excess of 5,000 pounds.'

"Red Arrow conducts a typical special messenger service offering expedited service at premium rates. Messengers in passenger cars, station wagons or on bicycles deliver small packages, run errands, make purchases and perform various other types of miscellaneous messenger service that might be requested.

"The rates charged for these special services are far in excess of the Commission's minimum rates and vary according to distance traveled and the time requirements of the shipper.

"Three types of service are offered. First, there is an expedited service for emergencies called the direct special

service which involves a direct trip to the shipper and from there to the consignee. Since there is no opportunity for consolidation this service is assessed at the highest rate. Secondly, there is the deferred special service with delivery guaranteed within two hours. As there is some possibility of consolidation, a lower rate is charged for this service. Lastly, there is the same day service which provides for delivery being made at some time during the day of receipt. This service is performed at the lowest rate.

"In any tariff which might be filed by a special messenger service the various classes of service based on the customer's time requirements would have to be defined and some sort of intra-city mileage tables or zone system would have to be devised for each origin and destination city. Some provision would also have to be made for charges for special service related to the delivery such as purchasing articles for a consignee. At the present time the dispatcher estimates the additional time required and quotes a flat rate.

"It was pointed out that Red Arrow and each other messenger company would have to have its own individual tariff because each specializes in different lines of business; they could not join in agency or group tariffs; and each would have to proceed independently to make the necessary adjustment in rates.

"5. Other Radial Highway Common Carriers.

"Counsel representing a large group of radial highway common carriers have pointed out that the radial highway common carriers supplement the basic transportation service furnished by the highway common carriers. Because of the flexibility of their rates and their statewide mobility they can be on hand at the peak shipping periods in agriculture and in other industries and promptly move freight which cannot expeditiously be handled by the highway common carrier. Members of the shipping public who testified in this proceeding all agreed that the pool of radial highway common carriers was needed

to meet peak periods of operation and to meet special situations where limitations of equipment, operating rights or rate structure prevent the highway common carriers from satisfying the demand for transportation service.

"Testimony was also adduced in the record that if the radial carriers were required to file rates, the flexibility resulting from negotiable rates would disappear, the expense incident to rate-filing and rate-changing would result in many marginal highway carriers going out of business, and the cost of operating with filed rates would deter many persons from entering the field of radial highway common carriage.

"The rates and operating rights of the highway common carrier contemplate a back and forth movement over the same route or between the same points and do not permit the acceptance of shipments to new points at negotiated rates. It is contended that the absence of a regular operation by the radial highway common carrier makes it economically necessary for him to be able to adjust his rates to suit the circumstances of a particular shipment; that such circumstances vary so greatly that they cannot properly be expressed through an established rate as in the case of shipments by highway common carriers.

"On the other hand the proponents of the application urge that a tariff filing requirement for radial highway common carriers is necessary to enable this Commission to enforce the Constitutional provisions pertaining to rate regulation of common carriers. Unless a carrier has a tariff of its rates on file with the Commission, how can the public and this Commission determine what the established rates of the carrier are, and whether or not a common carrier is discriminating in charges or facilities between places or persons or in the facilities for the transportation of the same classes of freight or passengers within California or whether it is violating

the long-and-short-haul provisions of the Constitution? Further, without established tariff filing procedures, how can this Commission effectively enforce the provision of the Constitution which prevents a common carrier from raising its rates under any circumstances whatsoever, except upon a showing before the Commission that such increase is justified? Unless a common carrier expresses the extent of his holding out to perform service in a tariff, how can this Commission effectively determine whether a carrier is engaged in the transportation of property on any public highway between the same points both as a common carrier and as a highway contract carrier in violation of Section 3542 of the Public Utilities Code?

"The testimony of the tariff publishing agents in this record shows that an average radial highway common carrier could file and publish his tariff through a tariff bureau at a cost ranging from \$10 to \$20 per month. The cost for larger carriers would be considerably greater and the cost of filing an individual tariff would also be considerably greater.

"Findings

"The Commission finds:

"1. The Legislature of the State of California in enacting the Highway Carriers' Act of 1935 provided a comprehensive plan for the regulation of highway carriers.

"2. This plan, which was designed to meet reasonable public demands, did not require radial highway common carriers to file tariffs.

"3. The absence of this requirement permits a flexibility of rates as was clearly intended by the Legislature.

"Conclusion

"The Commission rejects applicant's contention that the tariff filing requirement is necessary to prohibit unlawful discrimination and unjustified rate increases. The record in the instant


the long-and-short-haul provisions of the Constitution? Further, without established tariff filing procedures, how can this Commission effectively enforce the provision of the Constitution which prevents a common carrier from raising its rates under any circumstances whatsoever, except upon a showing before the Commission that such increase is justified? Unless a common carrier expresses the extent of his holding out to perform service in a tariff, how can this Commission effectively determine whether a carrier is engaged in the transportation of property on any public highway between the same points both as a common carrier and as a highway contract carrier in violation of Section 3542 of the Public Utilities Code?"

It is clear to me that the provisions of the Highway Carriers Act respecting the establishment of minimum rates are consistent with the establishment of actual rates for radial highway common carriers. While radial highway common carriers have enjoyed freedom in negotiating rates with shippers, yet they are placed in a preferred position to pick and choose the desirable traffic which is not, to a large extent, enjoyed by the certificated highway common carriers who are required to accept all types of traffic. Such freedom and flexibility on the part of the radial highway common carrier, in my opinion, is not a part of true common carriage.

The requirement that radial highway common carriers file tariffs would reduce discrimination by such carriers, reduce the number of marginal operators, and definitely tend to stabilize the entire trucking transportation industry. If rates be compensatory,

then it can be expected that the certificated highway and the radial highway common carriers will provide sufficient equipment to handle the traffic tendered to them.

In my opinion, it is incumbent upon this Commission to exercise its sound discretion to maintain and preserve a sound transportation industry in the State of California, and that to achieve this end the requirement that so-called general radial highway common carriers file tariffs would be a major step in the right direction.


MATTHEW J. DOOLEY
Commissioner

I concur,


C. LYN FOX
Commissioner