

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
KISTER and LAWTON for certificate of
public convenience and necessity to
operate freight service between Oro-
ville and points within a radius of
fifty miles thereof, and between
Oroville and points in the Sacramento
and San Joaquin Valleys and the San
Francisco Bay District.

ORIGINAL

Application No. 11566.

Scott Lawton, for the Applicants.

L. N. Bradshaw, for the Southern Pacific Company, Protestant.

Charles R. Detrick, for Western Pacific Railroad Company,
Sacramento-Northern Railroad Company, San Francisco-
Sacramento Railroad, Central California Traction
Company, and Tidewater Southern Railroad Company,
Protestants.

W. E. Bulkeley, for Liberty Transfer Company and Consolidated Furniture Moving Corporation, Protestants.

BY ~~THE~~ COMMISSION:

O P I N I O N

By their application, as amended, Charles Kister and Scott Lawton, co-partners doing business under the firm name and style of Kister & Lawton, seek a certificate of public convenience and necessity authorizing them to conduct an automotive freight service for the transportation of property, as follows:

1. To haul the following commodities, viz.: household goods, furniture, corrugated pipe, store fixtures, live stock,

machinery, lumber, olives, poles, cement, wool, fruit, grain, baled hay, box shooks, powder and general freight, N.O.S.- from one place to another in the following specified districts:- Miners Ranch, Hurleton, Forbestown, Bidwell Bar, Harts Mill, Berry Creek, Merrimac, Buck's Ranch, Oroville, Thermalito, Crums Ranch, Pentz, Cherokee, Yankee Hill, Concow, Paradise, Magalia, De Sabla, Stirling City, Rackerby, Brownsville, Challenge, Wyandotte, Bangor, Loma Rica and Los Verjels.

2. To haul furniture, household goods, farm products, farm machinery and supplies as covered by the Crittenden amendment, to and from railroad terminals on the one hand, and points not served by railroad, and between farm and orchard,

Between Oroville and :-

Palermo, Biggs, Durham, Orland, Nelson, Live Oak, Hazelbush, Honcut, Gridley, Chico, Richvale, Butte City, Central House and Manzanita; also, to haul wool from Oroville to Vina; also, to haul green olives from Corning and Olinda to Oroville.

3. To haul household goods, furniture and store fixtures-

Between Oroville and :-

Redding, Dunsmuir, Weed, Wheatland, Lincoln, Roseville, Sacramento, Stockton, Modesto, Vallejo, Concord, Berkeley, Oakland, Alameda, San Francisco, Hamilton City, Yuba City, Willows, Corning, Los Molinos, Marysville, Vina and Olinda.

The equipment to be used in this service comprises 1-3 ton International truck; 2 2-ton Nash trucks; 2 1½-ton Federal trucks (used mostly in Oroville local service); 1 1-ton International truck; 1 1-ton Ford truck; and 2 1-ton Ralston trailers. No regular time schedule will be observed, applicants proposing to operate exclusively on call. No specific routes

are delineated, but it appears that applicants will follow the public highways between the points named. A schedule of proposed rates accompanies the application.

Public hearings were held before Examiner Austin at Oroville on September 23d and 24th, 1925, when evidence was offered, the matter was duly submitted, and it is now ready for decision.

Applicants and their predecessors for many years have conducted a general trucking and storage business at Oroville, from time to time hauling goods from and to outside communities, farms, orchards and mines; and they now seek a certificate embracing all the territory alleged to have been served. The record shows that they are financially responsible and have adequate means to conduct this service.

Speaking generally of the commodities handled, the testimony of one of applicants shows that they have hauled hay from farms and orchards; hay and grain to cars; also fresh fruits, sheep, cattle, lumber, machinery and household goods.

To a large extent applicants' activities have been centered upon the transportation of fruit and grain from farms and orchards within a radius of three to four miles from Oroville into Oroville itself, where they are stored or delivered to the rail carriers; aside from Oroville, most of their hauling terminates at warehouses or railroad stations. But very little of their business moves exclusively between railroad stations; as a rule most farm products and supplies are hauled respectively to and from the nearest railroad station. Between Oroville, Paradise, Magalia and Stirling City, applicants during the past four years have hauled only one shipment of

machinery, which moved from Magalia to a mine in the Big Bend territory. Between Oroville, Palermo and Concord, on the one hand, and Gridley and Biggs and points north, on the other hand, within the past six months applicants have handled one shipment from Honcut, one from Oroville to Palermo, some barley from Gridley, and nothing from Biggs or from one of these points to another. During the same period they have hauled nothing from Willows, Corning or Orland to Oroville, nor from Oroville to points in the vicinity of Willows; and no shipments have been made from Yuba City and Marysville to points shown in section 2 of the application (above set forth) excepting 150 tons of brick which moved from Marysville to Oroville. With respect to furniture and household goods, applicants have hauled ten or twelve loads to the San Francisco Bay District, and some return loads from Oakland to Oroville; no loads have moved from Orland or from Bay points to intermediate points, such as Vallejo, Sacramento or Stockton. Applicants stipulated to haul these commodities only between Oroville and points shown in its tariff, eliminating service between intermediate points. No furniture vans will be provided, applicants using ordinary trucks. Mr. Lawton stated generally that applicants have hauled to all the points mentioned in the application, and have hauled all the items, but not all the items to all the points.

In support of the application seven shippers were called, and the testimony of nine more was embodied in a stipulation. These witnesses for the most part were engaged in conducting orchards at various points, including Palermo, Oroville, Corning, Clinda and Marysville. Some of them used their own trucks, but all testified they had made use of applicants' service and found it satisfactory. Their testimony taken collectively indicates that applicants have hauled fertilizer, hay and oranges to and from an orchard near Palermo; that from the Hearst orchards near Palermo they hauled a

few truckloads last year; that from a 7000 acre ranch near Oroville they have hauled approximately 150 tons annually during the past four years comprising farm products moving from the ranch to Oroville and Durham; that from a 3000 acre tract near Oroville applicants during the past year hauled 118 tons of rice, hay and hogs; from an orchard near Palermo, and also at Corning, applicants hauled to Oroville 21 tons of products during 1924, five or six tons in 1925, and it is estimated that during the present season they will haul 30 tons. The superintendent of Ehmman's olive groves, maintaining groves at Olinda, Marysville and Oroville, testified that applicants for the past three years have hauled olives from the orchard at Olinda to Oroville, the quantity during the present season being estimated at from 125 to 150 tons. He had found the rail service unsatisfactory and slow and consequently is now using trucks exclusively. Olives are a delicate product requiring expeditious handling, such as can be afforded only by a trucking service. Another witness testified he had employed applicants to haul machinery and supplies from Oroville to the Surcease mine at Yankee Hill and had found the service satisfactory. The parties stipulated that the testimony of nine additional witnesses would be substantially similar to that given by the witnesses called and in addition that one retail lumber dealer of Oroville would use applicants' service for the distribution of lumber and that another witness, the county purchasing agent, would use this service to distribute corrugated pipe in Butte county. Aside from the testimony which has been reviewed, no further showing was made respecting any traffic handled by applicants, or any specific need for future service.

Testimony was given regarding the proposed rates which differ according to the character of territory traversed, being

higher in the mountains than in the level hauls in the valley.

The granting of this application was protested by Southern Pacific Company, Western Pacific Railroad Company, Sacramento Northern Railroad Company, San Francisco-Sacramento Railroad Company, Central Traction Company, Tidewater Southern Railroad Company, Liberty Transfer Company, and Consolidated Furniture Moving Corporation.

Protestant Southern Pacific Company offered evidence showing the character of its service between Anderson and Oroville. This indicates that a shipment of olives originating at Olindo cannot be delivered in Oroville under 48 hours. .

In this proceeding the applicants seek to serve a wide territory, but have offered little aside from general testimony to show a public need for this transportation service. One of the applicants stated generally that they had shipped all of the commodities described in their application and had served all of the points, but had not shipped all such commodities between all of these points, and he also described very generally the character of commodities handled. In addition, there is some testimony by applicant and some shippers showing the movement of a small volume of traffic between certain specific points, much of this evidence being quite general in character. A showing such as this is wholly insufficient to support so comprehensive an application. In proceedings of this nature the burden rests upon applicant to establish a public need for the proposed service, a requirement which is not satisfied by mere general statements accompanied by a few specific instances of shipments, not even shown to be typical of the service generally accorded. For instance, the record shows that but one shipment of machinery has been handled from Oroville to the territory around Magalia and Stirling City; that two shipments have been made between Oroville, Palermo and Concord to Gridley and Biggs and points north; and similar

statements might be made with respect to other important points. Within the past four years applicants have hauled only 12 loads of furniture to the San Francisco Bay region and a few return loads. This, clearly, is insufficient to establish a necessity for the proposed service. With respect to the transportation of fruit and farm products to Oroville and other communities from the surrounding farms and orchards, it is sufficient to say that applicants have not proposed or shown any regular routes or regularity of operation, hence they have not established the need for a certificate as to this service.

The record, however, does establish a need for the transportation of fruit, farm products and farm supplies between Oroville on the one hand, and Palermo, Durham, Corning and Olinda on the other hand, and a certificate will be granted permitting such operations. This comprises the only transportation service for which a public need was shown by the evidence. In view of what we have stated, it will be necessary for applicants to modify the tariffs accompanying their application.

Upon full consideration of the evidence, we are of the opinion and hereby find as a fact that public convenience and necessity require the operation by Charles Kister and Scott Lawton, co-partners doing business under the firm name and style of Kister & Lawton, of an automotive truck service for the transportation of fruit, farm products and farm supplies between Oroville, on the one hand, and Palermo, Durham, Corning and Olinda and each of said points, on the other hand.

An order will be entered accordingly.

O R D E R

Public hearings having been held in the above entitled appli-

cation, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact which appear in the opinion preceding this order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the operation by Charles Kister and Scott Lawton, co-partners doing business under the firm name and style of Kister & Lawton, of an automotive truck service for the transportation of fruit, farm products and farm supplies between Oroville, on the one hand, and Palermo, Durham, Corning and Olinda and each of said points, on the other hand.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to said Charles Kister and Scott Lawton, co-partners doing business under the firm name and style of Kister & Lawton, for the operation of the service hereinabove described, subject to the conditions hereinafter set forth.

IT IS FURTHER ORDERED that in all other respects said application be and the same is hereby denied.

The authority herein granted is subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file in duplicate tariff of rates and time schedules in a form satisfactory to the Commission within a period of not to exceed twenty (20) days from date hereof; and shall commence the operation of the service herein authorized within a period of not to exceed thirty (30) days from date hereof.
2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
3. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased

by them under a contract or agreement on a basis
satisfactory to the Railroad Commission.

For all other purposes, except as hereinabove stated, the
effective date of this order shall be twenty (20) days from the
date hereof.

June
~~May~~ 1926. Dated at San Francisco, California, this 24th day of

H. B. ...
C. ...

Leon ...

Commissioners.