

Decision No. 18538

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of SHAKARIAN, KARDASHIAN, PERUMEAN
and STRATTON for certificate of
public convenience and necessity to
operate automobile truck service for
dairy products, supplies, etc., be-
tween the Ontario district and Los
Angeles, El Monte and Pasadena. } APPLICATION NO. 13526.

Richard T. Eddy, for Applicants.

Phil Jacobson, for Keystone Express and
Joseph K. Hawkins, Protestants.

O. K. Morton, for H. A. McClyment,
Trustee in Bankruptcy of Relph Trans-
portation Company, Protestant.

BY THE COMMISSION:

O P I N I O N

Applicants herein, Shakarian, Kardashian, Perumean and Stratton, a co-partnership, seek a certificate of public convenience and necessity for the operation of an automobile truck service to transport milk and other dairy products and dairy feed and supplies between the Ontario district and Los Angeles, El Monte and Pasadena.

A public hearing herein was conducted by Examiner Williams at Ontario, at which time the matter was duly submitted and now is ready for decision.

Applicants desire to serve approximately the same territory that has been served by the Relph Transportation

Company, a co-partnership composed of William, Joseph, Harry and John Relph, by virtue of Decision No. 15996 on Application No. 11316, dated February 15, 1926. It appears from the testimony that two of the applicants, Perumean and Stratton, a co-partnership, in December 1926 sought to purchase the certificate and equipment of the Relph Transportation Company; that an agreement was reached between the parties for the transfer; and that on January 1, 1927, the Relph Transportation Company, through William Relph, its president, ceased operation and turned the business and equipment over to applicants Perumean and Stratton, and the transportation service has since been conducted by them. At the time of this cessation of business, the parties had an escrow arrangement whereby the partnership, Perumean and Stratton, was to purchase for \$3,000 the certificate and equipment of the Relph Transportation Company. It appears, however, that soon after applicants undertook the operation of the Relph service, the vehicles of Relph were repossessed by their legal owners and applicants were required to expend about \$9,000 in cash and assume about \$11,000 indebtedness in order to provide vehicles to continue the service. About the same time Perumean and Stratton withdrew from the escrow arrangement. Soon thereafter a partnership composed of Isaac Shakarian, Tom Kardashian, Joe Perumean and S. J. Stratton, the present applicants, was formed and the present application was filed. Applicants herein have continued to give service at the rates already established to the shippers heretofore served by Relph Transportation Company, and with their own equipment.

It further appears that on January 22, 1927, the Relph Transportation Company became bankrupt through proceedings in the Federal Court, and that H. A. McClyment of Riverside, California, was appointed trustee in bankruptcy for the benefit of the creditors. In such capacity the trustee protested the granting of the instant application. It was not disputed by this protestant, however, that the service had been given by applicants herein, and that the bankrupt, Relph Transportation Company, had performed no service of any character since January 1, 1927; nor did the protestant attempt to show any present agreement on his part, or on the part of the bankrupt, to provide equipment and resume service under the certificate. The theory upon which the trustee protested was mainly because of the negotiations which had preceded the bankruptcy matter and the assumption that all the service conducted on and after January 1 had been conducted as an agency for the bankrupt, and that the certificated rights of the Relph Transportation Company were therefore not imperiled. It was admitted by this protestant that civil action for breach of contract between some of the present applicants and the trustee was probable. The record, however, is perfectly clear that whatever may be the relation between the bankrupt and the partnership of Perumean and Stratton, or the present applicants, out of which civil litigation may develop, the service has been conducted by the present applicants, or part of them, in good faith, and for the benefit of public producers and creameries, since January 1, 1927.

That this service has been entirely satisfactory

was the testimony of Mike Dethé, Guy Bare, Mrs. L. A. Merson, H. A. Luickensmeyer, W. A. Imback, Homer A. Younkin, C. C. Nicholson, W. P. Kingsbury, Charles Robson and Alexander Grant, all milk producers of the district involved and shipping an aggregate of 231 10-gallon cans daily to Los Angeles. In addition, Thomas H. Brice, manager of the California Milk Producers' Association, testified that in the month of December the Relph Transportation Company gave very poor service, and that at his request applicants herein, some of whom conduct service of the same character from other regions, were asked to take over the Relph service for the benefit of the milk producers. Mr. Brice further testified that practically all the shippers served by applicants are members of the Milk Producers' Association, and that the Association prefers the service of a carrier not serving independent dairymen, thus avoiding the mixing of the products of different dairies destined to different points and resulting generally in more direct and efficient service.

Joseph Perumean, one of the applicants, testified that he has been conducting the service ever since January 1st, and that no service has been given to anyone outside the boundaries fixed for the Relph Transportation Company, and that no enlargement of these boundaries is sought. Isaac Shakarian, another applicant, testified that originally he advanced \$3,000 to the partnership of Perumean and Stratton to enable them to purchase the Relph operation, but that he had withdrawn his deposit after the loss of the vehicles which Relph had undertaken to deliver. Subsequent to that period he joined with the other parties in the present application.

The granting of the application was protested by Joseph K. Hawkins, who serves a large part of the same territory included in the Relph operation, on the ground that he has abundant facilities to perform the service. He testified that he is now transporting approximately fifteen hundred cans of milk daily to Los Angeles, operating ten trucks and four trailers, making two deliveries daily. He further testified that he has available eighteen trucks and twelve trailers.

Applicant Perumean, recalled to the stand, testified that he has been transporting seventy cans of milk daily to the Montana creamery in Pasadena and forty to a creamery in El Monte, this service not having been included in the Relph certificate.

It appears from the record presented that while applicants herein have conducted the operation from the Relph area, technically, perhaps, without valid authority, the service has been performed in good faith and with clear intent at all times to bring it within the law. It also appears that the service has been conducted efficiently and with profit to the members of the Milk Producers' Association who had formerly shipped by Relph. It is equally clear that since January 1, 1927, the Relph Transportation Company has not made any effort to perform this service, and that it is not now in a position to resume service and no offer is before this Commission for such resumption. In another proceeding, Case No. 2331, instituted on the motion of this Commission, the right of Relph to continue any operation and the propriety of revoking the present certificate, is now pending before this Commission without prejudice to

the instant proceeding in any way. We believe that public convenience and necessity require the operation of the service proposed by applicants herein and that a certificate therefor should be granted. An order will be entered accordingly.

O R D E R

Isaac Shakarian, Tom Kardashian, Joe Perumean and S. J. Stratton, a co-partnership, having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an automobile truck service for the transportation of dairy products, dairy feed and supplies, between points in the vicinity of Ontario and Los Angeles, El Monte, Pasadena and intermediate points, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation of automobile truck service as proposed by applicants herein, for the transportation of milk, cream and other dairy products between the districts indicated below and Ontario, El Monte, Pasadena and Los Angeles, and for the return transportation of articles and commodities necessary for the business of dairying and consigned only to dairymen shipping from said districts over applicants' service to Ontario, El Monte, Pasadena and Los Angeles, including feed, dairy supplies, acetylene tanks, ammonia vats, utensils and machinery used exclusively in the business of dairying, and for no other service or com-

modities, said districts being bounded as follows:

District No. 1: Bounded on the north by Holt Avenue, on the west by Euclid Avenue, on the south by Eucalyptus Avenue projected eastwardly to the junction of Padley Road and Norco Road, on the east by Norco road to San Diego Inland Road, thence westerly along Silo Street to Archibald Avenue, thence north to Holt Avenue.

District No. 2: Bounded on the north by Holt Avenue, on the east by Euclid Avenue, on the south by Eucalyptus Avenue and on the west by the Pomona-Corona Road and Garey Avenue;

provided, that applicants may pick up and deliver at no greater distance than one and one-half miles west of said roads, measured west from a line drawn north and south from the conjunction of the Pomona-Corona Road and Eucalyptus Avenue; over and along the following routes:

Via Valley Boulevard and Mission Road between Ontario and Los Angeles and El Monte.

Via Valley Boulevard and San Gabriel Boulevard between Ontario and Pasadena; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same hereby is granted to applicants Shakarian, Kardashian, Perumean and Stratton, subject to the following conditions:

- I. Applicants shall file with this Commission, within twenty (20) days from date hereof, their written acceptance of the certificate herein granted; shall file, in duplicate, time schedules and tariff of rates within a period of not to exceed twenty (20) days from date hereof, such time schedules and tariff of rates to be identical with those attached to the application herein, or time schedules and rates satisfactory to the Railroad Commission, and shall commence operation of the service hereby authorized within a period of not to exceed thirty (30) days from date hereof.

II. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.

III. No vehicle may be operated by applicants under the authority hereby granted unless such vehicle is owned by applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that as to all other portions of the application, the same be and they hereby are denied.

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

Dated at San Francisco, California, this 22nd day of June 1927.

Emmett
H. B. Brundage
C. L. ...
Leon ...
COMMISSIONERS.