

Decision No. 22276

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 CLARK BROS., for an order describing  
 the territory comprehending Pajaro  
 Valley as included within operative  
 rights. )  
 ) Application  
 ) No.16388  
 )

**ORIGINAL**

BY THE COMMISSION -

OPINION and ORDER

This is an application by A. B. Clark and Kenneth C. Clark, co-partners, doing business under the name of Clark Bros., for an order of the Railroad Commission clarifying the operating rights heretofore granted to them by the Commission, with particular reference to the territory referred to in said certificates as Pajaro Valley.

There are no rate or service changes involved in this proceeding, the whole object of the application being to obtain, by formal order of the Commission, an interpretation of existing orders defining the territory applicants have been authorized to serve.

Applicants are engaged in the business of a transportation company, as that term is defined in Chapter 213, Statutes of 1917, as amended, under and by virtue of three certificates of public convenience and necessity heretofore granted to them by this Commission. By Decision No.15477, rendered October 1, 1925, on Application No.11168, applicants were authorized to operate as a common carrier of berries, green fruit and vegetables between points in the Pajaro Valley on the one hand, and San Francisco, Oakland, Mountain View and San Jose on the other; this business being confined to northbound movement only. By Decision No.17453, rendered October 13, 1926, on Application No.12636, applicants were granted an extension and enlargement

of their operative rights to include the transportation of general freight between San Francisco and San Jose on the one hand and Watsonville and points west and east thereof between Aptos and Betabel on the other hand, including pick-up and delivery service in the Pajaro Valley. By Decision No. 18021, rendered February 23, 1927, on Application No. 13334, applicants were granted a further extension and enlargement of their operative rights to include the transportation of general freight between Oakland, Emeryville and San Leandro on the one hand and Watsonville and Aptos and Betabel and all intermediate points in the Pajaro Valley on the other hand, and for the transportation of petroleum products in metal containers or drums, but not in tanks, between refineries located in the vicinity of Richmond, Martinez and Oleum, and Watsonville and Aptos and Betabel and all intermediate points in the Pajaro Valley on the other hand. All of the orders referred to above failed to definitely fix the extent of Pajaro Valley or to clearly define the territory to be served.

Applicants desire that the territory comprehended within the term Pajaro Valley be more definitely described in order that there may be no confusion as to the points between which applicants are authorized to operate under the three certificates above enumerated. It has been and is the understanding of applicants that the term Pajaro Valley as used in these proceedings includes all territory 6 miles on each side of the main highway from Aptos on the west through Watsonville to Betabel on the east. Applicants declare that they have regularly been rendering service to points within said territory in the performance of the transportation service authorized by said three certificates of public convenience and necessity in the belief that Pajaro Valley is generally and commonly understood to include the territory as herein described.

They declare further that public convenience and necessity require that they continue to render service to and from all points in the Pajaro Valley as defined herein.

We are of the opinion that this is a matter in which a public hearing is not necessary and that the application should be granted. We are of the further opinion that the clarification of the previous orders of the Commission may best be accomplished by the granting of a new certificate issued in lieu of the certificates granted to applicants by Decision No.18021, issued on Application No.13334, Decision No.15477, issued on Application No.11168 and Decision No.17453, issued on Application No.12636.

A. B. Clark and Kenneth C. Clark, co-partners, are hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

#### ORDER

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by A. B. Clark and Kenneth C. Clark, co-partners, operating under the name of Clark Bros., of a truck line as a common carrier of berries, green fruit and vegetables, northbound between Pajaro Valley points, including Aptos, Aromas, Watsonville, Betabel on the one hand, and San Juan, San Francisco, Oakland, Mountain View and San Jose on the other hand; also general freight between Watsonville and San Jose and San Francisco, and between Watsonville and Betabel and points west of Aptos Creek;

also general freight between Oakland, Emeryville and San Leandro on the one hand and Watsonville, Aptos and Betabel and other points in the Pajaro Valley on the other hand; also petroleum products in metal containers and drums, but not in tanks, between refineries located at and in the vicinity of Richmond, Martinez, and Oleum, and Watsonville and Aptos and Betabel and all other points in the Pajaro Valley on the other hand, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for the above described service be and the same is hereby granted to A. E. and Kenneth C. Clark, co-partners, operating under the name of Clark Bros., with the understanding that said certificate authorizes service over and along the following routes:

Via Santa Cruz highway from Watsonville to its junction with the state highway near San Juan, thence over the state highway to San Jose, thence via the main highway to Oakland or San Francisco, and from Oakland via the main highway to refineries at and in the vicinity of Richmond, Martinez and Oleum, and

Via the main highway in Pajaro Valley from Aptos on the west through Watsonville to Betabel on the east, and via highways diverging from said main Pajaro Valley highway to all points in said valley located within six (6) miles on either side of said main Pajaro Valley highway.

IT IS HEREBY FURTHER ORDERED that said applicants shall file within ten (10) days from the date hereof an acceptance of the certificate herein granted, which acceptance shall contain a declaration that it is accepted as a certificate in lieu of existing rights, and shall within thirty (30) days from the date hereof make such tariff and time schedule filings as are required by the Commission's General Orders.

The right herein authorized shall be subject to the following further conditions:

1- 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.

2- No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

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

Dated at San Francisco, California, this 2nd day of

April, 1930.

C. J. Seaver

Leon A. White

John S. Lott

W. A. C.  
COMMISSIONERS.