

ORIGINAL

Decision No. 34360

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LINTON L. LOWRY, )  
an individual, doing business under the name and )  
style of MID-STATE EXPRESS COMPANY, for a certifi- )  
cate of public convenience and necessity authorizing )  
the operation of automobile trucks over the public )  
highways of the State, between San Francisco, )  
Oakland, Emeryville and Berkeley, on the one hand, )  
and Pinole, Rodeo, Crockett, Vallejo, Napa, Benicia, )  
Cordelia, Suisun, Fairfield, Vacaville, Dixon, )  
Davis, Woodland, Sacramento, North Sacramento, )  
Orinda, Lafayette, Walnut Creek, Port Costa, )  
Martinez, Concord, Associated, Port Chicago, Pitts- )  
burg, Antioch, Rio Vista, Isleton, Walnut Grove, )  
West Sacramento, Dublin, Danville, Diablo Country )  
Club, Alvarado, Newark, Centerville, Irvington, )  
Niles, Pleasanton, Livermore, Tracy, Byron, Brent- )  
wood, Oakley, Stockton, Manteca, Modesto, Lodi, Galt, )  
points between Galt and Sacramento, and all points )  
intermediate thereto, on the other hand, for the )  
transportation, as a common carrier, of furniture. )

Application  
No. 21863

GWYN H. BAKER, for Applicant.

GERALD DUFFY & GEORGE T. HURST, for The Atchison,  
Topeka & Santa Fe Railway Company, Protestant.

MCCUTCHEON, OLNEY, MANNON & GREENE, by F. W. Mielke,  
for The River Lines, Protestant.

F. X. VIEIRA, for Southern Pacific Company and  
Pacific Motor Trucking Company, Protestants.

J. W. KENDALL, for Bekins Van Lines, Inc.,  
Interested Party.

EDWARD STERN, for Railway Express Agency, Incor-  
porated, Interested Party.

W. G. STONE, for Sacramento Chamber of Commerce,  
Interested Party.

WALTER A. ROEDE, for San Francisco Chamber of  
Commerce, Interested Party.

BY THE COMMISSION:

O P I N I O N

In the above-entitled application, as amended, Linton  
L. Lowry, doing business as Mid-State Express Co., requests a  
certificate of public convenience and necessity authorizing him

to establish and operate a highway common carrier service between San Francisco, Oakland, Emeryville and Berkeley, on the one hand, and on the other hand numerous points in the area comprised in general by Vallejo, Napa, Fairfield, Woodland, North Sacramento, Sacramento, Galt, Lodi, Stockton, Modesto, Tracy, Livermore and Niles. He proposes to use numerous routes between those places serving all points thereon or within ten miles thereof.

Public hearing thereon was held before Examiner Paul during which evidence was offered and the matter having been submitted on briefs, since filed, is now ready for decision.

Applicant proposes to transport uncrated and unwrapped new radios, refrigerators, stoves, washing machines, sewing machines, floor coverings viz. linoleum, mats, matting or rugs, bicycles, baby carriages, go carts, doll buggies, office furniture and office equipment, and new or used household furniture from retail stores in San Francisco, Oakland, Emeryville, Berkeley and Alameda, on the one hand, to the homes or offices of the purchasers of such commodities, located at the various points proposed to be served, for their use and not for resale. He also proposes to transport the same commodities from wholesale stores and jobbers to retail stores or from store to store where such goods are to be offered for resale. The distinction between the two types of services is an accessorial service in connection with commodities transported to the homes or offices of purchasers for their use. This accessorial feature contemplates the placement of the various articles at the request of the consignee. Bedsteads would be assembled, stoves would be placed as directed, but not connected, refrigerators and radios would also be placed and connected to see that they are in proper working order. In fact, all commodities delivered to a home or office would be arranged as requested. If any articles are

unacceptable they would be returned for exchange or credit. Likewise, used items would be returned for trade-ins.

For that transportation which includes an accessorial service, applicant proposes to charge distance rates, which in general apply as piece or set rates with some exceptions in regard to heavy articles on which weights in excess of certain minimums would be charged at a rate on a weight basis for the excess. In those cases where no accessorial service is performed in connection with transportation, the proposed distance rates are on a weight basis in cents per hundred pounds excepting certain articles of upholstered or overstuffed furniture, including sofas, davenports, chairs and chesterfield sets on which rates on a piece or set basis are proposed.

In support of his application, applicant testified that he began his operations during May 1930 under a contractual arrangement with John Breuner Co. which conducts furniture stores at Oakland, Berkeley, Sacramento and Stockton. At the inception of his service, so the witness stated, he performed what he termed was in effect a delivery service for that company from its Oakland store. Through connections made there, he gradually extended his service both as to shippers and territory served until the present time. Applicant's authority to perform for-hire operation is limited to that of a radial highway common carrier at this time. His equipment consists of five Chevrolet trucks equipped with van type bodies with a rated capacity of  $1\frac{1}{2}$  tons. Blankets are used to protect shipments from damage in transit. All shipments are uncrated and unwrapped with very few exceptions.

To many of the nearby points applicant is operating about three times a week, that is, on Tuesdays, Thursdays and

Saturdays. To more distant points such as Sacramento and Stockton he generally operates once a week. He proposes to continue the same service if certificated.

Six public witnesses testified in support of the application and it was stipulated between the parties that ten other shippers, if called, would testify substantially the same.

Most of the witnesses were representatives of retail and wholesale dealers in furniture and house furnishings, including one furniture dealers association. A few represented furniture manufacturers. Thirteen of the firms are located at San Francisco and three at Oakland. In general, the substance of the testimony of the witnesses was that the service for which applicant seeks authorization is necessary in their businesses. A few of them desire a service which would place shipments in the homes of customers, except in the case of shipments consigned to dealers in which a sidewalk delivery service would be sufficient. All stated that they need a service for the transportation of shipments of furniture unwrapped and uncrated which would be reasonably protected by coverings by the carrier and that there is no other carrier which provides a service between the points comparable to that proposed by applicant. Some of them indicated that they favor rates on a piece basis as proposed, rather than on a weight basis as that would enable them to determine the

exact delivered price of the various items sold.

The application was opposed by The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Pacific Motor Trucking Company and The River Lines. Interested parties were Bekins Van Lines, Inc., Railway Express Agency, Incorporated, Sacramento Chamber of Commerce and San Francisco Chamber of Commerce. The only testimony offered by any of them was that of an operating witness of Southern Pacific Company and Pacific Motor Trucking Company who described the rail and truck services provided by those carriers. Taken together the protestants serve many, although not all the points involved. It was not shown that any of the protestants provide a service for the transportation of the commodities applicant proposes to transport when such commodities are uncrated and unwrapped. Nor was it shown that any of the protestants provide any service to the off-route points.

Protestants contend that the rates proposed by applicant on a piece basis (that is for each article or group of articles) instead of a weight basis, do not comply with the minimum rate orders of the Commission applying to the property proposed to be transported. They also contend that the proposed rates which include charges for accessorial services as well as charges for transportation, should state such charges separately as provided for in section 14(a) of the Public Utilities Act.

Protestants took the position that the evidence shows the applicant's present service is the same as that he proposes under the certificate sought herein and is illegal and that the certificate should on that account be denied. However, it does not appear that applicant wilfully commenced and knowingly carried on an illegal operation, but rather that the business developed gradually from a small beginning in response to the need of various shippers for the service. There is no evidence of any lack of good faith by applicant, and in view of the public demand for the service it would not be in the public interest to deny the certificate.

The evidence in this record is clearly conclusive that there is a definite need for that type of service. In our opinion a certificate should be granted to applicant to fill that need.

As contended by protestants the rates proposed by applicant are inconsistent with the minimum rates established by the Commission for carriers generally for transportation of the character involved herein. The minimum rates were prescribed following extensive public hearings and are on a weight basis in so far as they relate to transportation of the type performed by applicant. (Rates of All Common and Highway Carriers, 41 C.R.C. 671, as amended). The proposed rates are generally on a "piece" basis, that is, rates in cents for each article or designated group of articles. Applicant has not shown that the proposed "piece" rates would produce charges no lower than those produced by the established minimum rates; that lower rates than those prescribed as minima

are justified for the service in question, or that a weight basis would be improper for that service. Unless and until such a showing is made, applicant will be required to maintain rates no lower than, and in the same form as those provided by outstanding minimum rate orders.

With respect to services accessorial or incidental to transportation, applicant will be required to describe the nature of all such services in his tariffs. Where these services are authorized by the Commission's minimum rate orders to be rendered without additional charge his tariffs may contain similar provisions. However, for other accessorial services he will be required to state the charge therefor in his tariff.

#### O R D E R

Public hearing having been held in the above-entitled proceeding, evidence adduced, the matter taken under submission, and the Commission now being fully advised therein and finding that public convenience and necessity so require:

IT IS ORDERED that a certificate of public convenience and necessity is hereby granted to Linton L. Lowry authorizing the establishment and operation of an automotive service as a highway common carrier, as defined in section 2-3/4 of the Public Utilities Act, for the transportation of furniture as described under that heading in Western Classification No. 69, C.R.C.--W.C. No. 2 of R. C. Fyfe, Agent, except the packing requirement thereof; also household refrigerators, stoves, floor coverings, viz. linoleum, mats, matting or rugs, radio receiving sets, radio receiving sets and talking machines combined, children's vehicles, bicycles, sewing machines and household laundry machines. The foregoing

transportation shall be performed between the following points, to wit:

(a) Between San Francisco and Oakland, on the one hand, and Modesto and all points intermediate to Modesto and Oakland, including San Leandro, Hayward, Alvarado, Centerville, Newark, Niles, Sunol, Dublin, Pleasanton, Livermore, Tracy, Vernalis and Manteca, on the other hand.

(b) Between San Francisco and Oakland, on the one hand, and Sacramento and Manteca and intermediate points, including French Camp, Stockton, Lodi, Galt, Thornton, Franklin and Elk Grove, on the other hand.

(c) Between San Francisco and Oakland, on the one hand, and Sacramento and all points intermediate to Sacramento and Oakland, including Berkeley, Richmond, San Pablo, Hercules, Crockett, Vallejo, Napa (by diversion) Cordelia, Fairfield, Vacaville, Dixon, Davis and Woodland (by diversion), on the other hand.

(d) Between San Francisco and Oakland, on the one hand, and Crockett and Stockton and intermediate points, including Martinez, Port Chicago, Pittsburg, Oakley, Concord, Clayton, Marsh Creek Springs, Brentwood, Byron and Holt, on the other hand.

(e) Between San Francisco and Oakland, on the one hand, and Fairfield and Thornton and intermediate points, including Rio Vista, Isleton and Walnut Grove, on the other hand.

(f) Between San Francisco and Oakland, on the one hand, and Concord and all points intermediate to Concord and Oakland, including Orinda, Moraga, Lafayette and Walnut Creek, on the other hand. Applicant may serve all points within ten (10) miles of the routes hereinafter set forth.



IT IS FURTHER ORDERED that Linton L. Lowry shall provide service under the foregoing certificate in compliance with and observe the following conditions and service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within thirty (30) days from the effective date hereof.
2. Applicant shall commence the service herein authorized within a period of not to exceed sixty (60) days from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall conform to the certificate herein granted, and be satisfactory to the Railroad Commission.
3. Applicant shall file, in triplicate, and make effective within a period of not to exceed sixty (60) days after the effective date of this order, on not less than ten (10) days' notice to the Railroad Commission and the public, a time schedule or time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. Subject to the authority of the Commission to change or modify them at any time by further order, applicant shall provide the service herein authorized over and along the following routes:

Over U. S. Highway No. 50 between San Francisco  
Oakland, Livermore, Stockton and Sacramento;

Over U. S. Highway No. 99 between Modesto and  
Sacramento;

Over U. S. Highway No. 40 between San Francisco,  
Oakland and Sacramento;

Over U. S. Highway No. 99-W between Davis and  
Woodland;

Over State Route No. 12 between Napa and Lodi;

Over State Route No. 29 between Napa and  
Vallejo;

Over State Route No. 40 between Hercules and  
Stockton;

Over State Route No. 24 between Oakland,  
Pittsburg and Sacramento;

Over State Route No. 21 between Cordelia and Newark; and

Over State Route No. 17 between Oakland and Newark.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 1<sup>st</sup> day of July, 1941.

[Signature]  
[Signature]  
Justin J. Coe  
Francis R. Havens  
[Signature]  
COMMISSIONERS