

**ORIGINAL**Decision No. 36715

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ESKDALE) NEWTON, individual doing business as NEWTON) PASSENGER TRANSPORTATION CO. for a certifi-) cate of public convenience and necessity to) operate motor bus service for the transpor-) tation of passengers between Stockton and ) intersection of California Highway No. 88 ) (formerly known of as Waterloo Road) and ) the diverting canal and intermediate points) and from the intersection of Wilson Way and) E. Fremont Street to the intersection of ) Sargent Avenue and Poplar Street in the El ) Ricardo Terrace, east of Stockton and inter-) mediate points. )

Application No. 25808

BY THE COMMISSION:

**O P I N I O N**

Eskdale Newton, an individual doing business as Newton Passenger Transportation Company, has applied for a certificate of public convenience and necessity authorizing operation as a passenger stage corporation between the intersection of Wilson Way and E. Fremont Street and the intersection of Sargent Avenue and Poplar Street, east of Stockton, as an extension of his present operative right.

Applicant's present operative right was created by Decision No. 16212, as amended by Decision No. 24690, and acquired by applicant under authority of the Commission's Decision No. 32909. It authorizes automotive transportation as a common carrier of passengers between Hunter Square, in the city of Stockton, and the intersection of Waterloo Road and the Diverting Canal and intermediate points. This right is subject to the restriction that no passengers will be picked up on the inbound trip after passing the intersection of Cherokee Lane and Wilson Way, nor discharged on the

outbound trip before passing said intersection. Applicant requests a certificate de novo in lieu of this operative right, and in addition requests authorization for an extension of his present service as set forth in the next following paragraph, and a consolidation of this right with his other operative rights.

The extension sought would authorize operation by applicant from the intersection of E. Fremont Street and Wilson Way, easterly on E. Fremont to Sargent Avenue and return via Poplar and D Streets and over E. Fremont to the point of starting, a distance of approximately 2½ miles each way.

Fares are fixed at seven cents for adults and five cents for children. Time tables and description of equipment to be used are filed with the application.

Applicant justifies the additional service on the following grounds:

That no transportation facilities are available to the people living along the line of the proposed extension.

That persons living at the easterly terminus of the line are required to walk one mile to and from the nearest transportation facilities.

That there is a large cannery in the area with no adequate means of transporting employees to and from their work.

That numerous requests have been made for the service.

That the extension will serve a new Federal Housing project now under construction.

Stockton City Lines, Inc. operates a motor coach line on Ophir Street, parallel to, and two blocks west of, Wilson Way. Applicant has agreed not to pickup passengers on inbound trips or discharge them on outbound trips at points west of the intersection of Locust Street if prolonged to intersect E. Fremont Street. In view of this restriction, Stockton City Lines withdrew its objection.

We are of the opinion that the request for a certificate de novo in lieu of applicant's present operative right and the extension of such right, as above described, is in the public interest and will, therefore, be granted as provided for in the order which follows. No public hearing is necessary.

Eskdale Newton is placed upon notice that "operative rights" as such do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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.

O R D E R

It being hereby found that public convenience and necessity so require,

IT IS ORDERED that a certificate of public convenience and necessity is hereby granted to Eskdale Newton authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 24, Public Utilities Act, for the transportation of passengers between Stockton and the intersection of Waterloo Road and Diverting Canal, and the intersection of Sargent Avenue and Poplar Street and intermediate points, subject to the following restriction and conditions:

- (1) The foregoing certificate is in lieu of and not in addition to the operative right heretofore created by Decision No. 16212, as amended by Decision No. 24690, in Application No. 11549, and acquired by applicant herein under the authority of the Commission's Decision No. 32909, in Application No. 23336.
- (2) No passengers may be transported having both point of origin and destination between Hunter Square, Stockton, on the one hand, and the intersection of Cherokee Lane and Wilson Way and the intersection of E. Fremont Street and the prolongation of Locust Street, on the other hand.
- (3) The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act and further to the condition that Eskdale Newton, his successors or assigns, shall never claim before this Commission, or any court or other public body, a value for said operative rights or claim as the cost thereof, an amount in excess of that paid to the State as the consideration for such rights.

IT IS FURTHER ORDERED that the operative rights heretofore acquired by Eskdale Newton under the authority of said Decision No. 32909 are hereby revoked and annulled.

IT IS FURTHER ORDERED that in the operation of said passenger stage service, applicant shall comply with and observe the following service regulations:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Applicant shall comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
3. Subject to the authority of this Commission to change or modify it at any time by further order, applicant shall conduct said passenger stage operations over and along the following route:

Commencing at the intersection of E. Fremont Street and Wilson Way, thence easterly on E. Fremont Street to Sargent Avenue, thence north on Sargent Avenue to Poplar Street, the easterly terminus of the line, thence westerly on Poplar Street to E Street, southerly on E Street to Flora Street, thence westerly on Flora Street to D Street, to E. Fremont Street, thence westerly to the intersection of E. Fremont Street and Wilson Way.

4. Applicant shall turn its motor vehicles at the intersection of California State Highway No. 88 and the Diverting Canal at one terminus, and around the monument at the intersection of Hunter Square and Main Street at another terminus; and on the proposed extension, the easterly terminus shall be around continuous blocks, i.e., leave E. Fremont Street on Sargent Avenue to Poplar Street to E. Fremont Street, making a continuous loop.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23<sup>rd</sup>  
day of November, 1943.

Francis K. Davenport

H. B. Hall

Justin J. Casper

Richard L. Lachue

Francis J. Casey

COMMISSIONERS