

Decision No. 11610

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of JAMES BALLANTYNE for certificate of public convenience and necessity to operate a milk automobile truck service between points in the city of San Diego and points in the vicinity of Foster, El Monte, Lakeside and Santee, County of San Diego, State of California.

Application No. 7945.

P. S. Thacher for Applicant.
F. P. Dorsey for Protestant,
San Diego & Arizona Railway.
W. E. Libby for Protestant,
Bisher Truck Line.

BY THE COMMISSION.

O P I N I O N

A public hearing was held by Examiner Eddy at San Diego upon the above entitled application to establish an automobile truck service for the handling of milk from points in the so-called Lakeside District of San Diego County to the city of San Diego.

The applicant has entered into a contract with the Milk Producers Association of San Diego County, hereinafter referred to as the Association, to handle milk from the territory of origin above named to points in the city of San Diego, a service now being performed by the Association itself, but which it prefers to have performed under contract. Some 23 or 24 members of the Association, having a daily output of between six and seven tons of milk, reside in the Lakeside District and desire to ship their product to San Diego. Milk is a highly perishable commodity and

must be handled promptly and carefully so as to arrive at destination in the best possible condition. Experience has demonstrated that this can be accomplished only if the Association itself is able to dictate the conditions under which the milk is handled and the time of arrival in San Diego. The applicant proposes to pick up the milk twice daily and return the empty cans to the shippers. For this service, he is to receive from the Association 23 cents per ten gallon can from Lakeside and beyond, and 20 cents from stations below Lakeside, the schedule to be fixed by the Association and the contract to be terminated if the service performed is not satisfactory. All shippers served will be members of the Association and milk will be the only commodity handled. A 3-1/2 ton Moreland truck will be used, which the record indicates is ample to take care of the traffic involved.

At the hearing granting of the application was protested by A. C. Bisher, who operates a truck line between Ramona and San Diego and serves all the points of origin here named except El Monte. The latter point is located five or six miles off the highway from Lakeside, and is not included in Mr. Bisher's certificate. At the present time, Mr. Bisher is handling, in conjunction with the other traffic, milk from Ramona to San Diego. He desires to participate also in the service performed by the applicant and is willing to abide by the time schedule of the Association and to furnish the additional equipment necessary to handle its milk. In order to comply with the terms of the contract, he would be obliged, however, to operate a service separate and distinct from that now being performed by him under his present certificate.

A protest was also filed on behalf of the San Diego & Arizona Railway Company, which serves Lakeside. At one time that company operated a truck which brought the milk from the surround-

ing country into Lakeside, but the service was unsatisfactory because the railroad schedule did not meet the convenience of the Association, and the milk, upon arrival at San Diego, had to be handled by truck from the railway depot to the several distributing stations in that city.

A copy of the contract between the applicant and the Milk Producers' Association of San Diego County is attached to the application. It sets forth that the applicant has "written requests from the shippers in the Lakeside-Santee-Foster districts, asking that he transport for them their milk" and hereby contracts "for the hauling of the milk produced by such Lakeside, Santee and Foster shippers as have signed said requests". In other words, the application, contract and record all clearly show that the applicant does not desire to operate as a common carrier but to handle milk only for a limited number of individuals, members of the Milk Producers' Association, and under conditions and upon schedules fixed by that Association. Furthermore, the contract provides that it may be terminated if the milk is not handled in accordance with the terms thereof and the Association may then "procure other transportation." Apparently there is need for someone to handle milk between the points of origin named in the application and San Diego. This being true, an application should not be granted which would confine the enjoyment of this service to any individual or group of individuals. If the service is a public necessity the public, or that portion thereof, which desires to avail itself of the service should be permitted to do so whether members of the Milk Producers' Association or not.

The application will be denied without prejudice to the right of the applicant to file a new application to establish an automobile freight line as a common carrier of milk and cream only between the points named and the city of San Diego.

O R D E R

A public hearing having been held in the above entitled proceeding, evidence submitted and the Commission being fully advised,

IT IS HEREBY ORDERED that the above entitled application be, and the same hereby is denied.

✓ Dated at San Francisco, California, this 6th day
February
of January, 1923.

C. Seavey

Wm. Martin

J. H. Pittman
Commissioners