

Decision No. 17833

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 WILLIAM DEYSHER and BERNARD LAFARGUE,
 co-partners, doing business under the
 firm name and style of Deysher and
 Lafargue, for certificate of public
 convenience and necessity to operate
 an auto truck line service between
 Reclamation-Novato, and the City and
 County of San Francisco.

Application No. 11094

ORIGINAL

Harry A. Encell and Jas. A. Miller, by Harry A. Encell;
 Carlos R. Freitas; and Thos. P. Boyd, for Applicants,
 R. W. Palmer and W. J. Cummings, for Northwestern Pacific
 Railroad Company, Protestant,
 A. E. Weston, for American Railway Express Company,
 Gwyn H. Baker for San Rafael Freight and Transfer
 Company, Protestant.

BY THE COMMISSION -

O P I N I O N

William Deysher and Bernard Lafargue, co-partners, doing business under the firm name and style of Deysher and Lafargue, by their amended application have petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by them of an automobile truck service for the transportation of farm products, supplies and food stuffs between the City and County of San Francisco as one terminus, and the Freitas Ranch in Novato Township as another terminus; between San Francisco and a point called Reclamation in Sonoma County; and all intermediate points on the above mentioned routes, including points on the Greenbrae and Alto roads between Kentfield and Alto, and points on the Tiburon road between Sausalito and Alto, and all points for a distance of five miles on either side of the above mentioned routes.

A public hearing on this application was conducted by Examiner Handford at San Anselmo, the matter was duly submitted and is now ready for decision.

Applicants propose to charge rates in accordance with a schedule marked "Exhibit A", and filed with the amended application herein; to operate on a schedule of two round trips daily; and to use as equipment 3 - 5 ton; 1 - $3\frac{1}{2}$ ton; and 1 three-quarter ton White Trucks and 1 - 5 ton trailer, a total rated capacity of 24 $\frac{1}{2}$ tons.

Applicants rely as justification for the granting of the desired certificate upon the following alleged facts; that service between the Freitas Ranch in Novato Township, Marin County, and San Francisco was commenced September 17, 1923, and between Reclamation and San Francisco on February 21, 1924, and that such service has continued without interruption since said dates; that petitioners now transport from their patrons an average of 630 ten gallon cans of milk daily; that the service rendered has been satisfactory to shippers and consignees in regards time of transportation, and elimination of unnecessary handling. Applicants further allege that prior to the inauguration of the service now sought to be authorized by certificate an application was filed with the Railroad Commission and that the application was denied on the ground that the legislature by amendment to the statutory law had relieved carriers of farm products from the necessity for procuring a certificate for the carriage of such commodities.

Wm. Deysher, one of the applicants herein, testified that in 1923 he was requested by Mr. Freitas, the largest dairy owner in Marin County, to establish a service for the transportation of milk to San Francisco as the service then available was not satisfactory. An application was filed with the Commission and was denied for the reason that the Crittenden Amendment to Chapter 213, Statutes of 1917, relieved carriers of products to and from farms of the requirement to obtain certificates for such hauling.

(Decision No. 12595 on Application No. 3987, decided September 13, 1923). Following the denial of the application service was commenced and has been continuously maintained. When applicants were advised of the action of the California Supreme Court in

declaring the Crittenden amendment unconstitutional and that the transportation service operated was subject to the jurisdiction of the Railroad Commission, the instant application was filed in order that the business might be operated in accordance with the statutory law. Applicants have an investment of \$37,175 in trucks and trailers and a property investment in land, buildings, ship equipment, tools, truck parts, platforms and tarpaulins amounting to \$17,750, or a total investment of \$54,925. During the year 1924 a total of 221,384 cans of milk were transported and during 1925, 260,958 cans. Witness further testified that no compensation has been received for the haul of empty cans returning to shippers or for any commodities hauled to dairies from which milk shipments originated.

Manuel Freitas, a witness for applicant, testified that he was engaged in the dairy business at Reclamation in Marin County; that applicants were now and for 2½ years had been transporting milk from his dairy to San Francisco and rendering satisfactory service,

Witness formerly transported milk by rail, such service being very unsatisfactory, particularly as regards the return of empty cans. An average of 50 cans of milk are shipped daily from witness' dairy, and a continuation of the present satisfactory service is desired.

Anton F. Silveria, residing at the Miller Ranch about 4½ miles north of San Rafael, testified that he shipped an average of 40 cans of milk daily by applicants' service which he has used for the past year and a half.

He formerly shipped by railroad and found such service to be unsatisfactory, trouble being experienced in the return of empty cans, cans being thrown off train while in motion resulting in loose dirt in cans and additional labor in picking up and cleaning containers. The present service gives a pick-up and delivery at the dairy as against a wagon haul having been required to and from the railroad. This witness desires a continuation of the present

satisfactory service and the opportunity to ship groceries, provisions and dairy supplies from San Francisco direct to his ranch.

Four other dairymen, operating in the territory now served by applicants, testified as to the satisfactory service rendered and as to their desire for its continuance. These witnesses had all previously used rail service and had complaints against such service which the use of applicants' truck service had eliminated.

The granting of the application is protested by Northwestern Pacific Railroad Company and San Rafael Freight and Transfer Co. No evidence was offered in behalf of protestant, Northwestern Pacific Railroad Company.

A. H. Marx, President of San Rafael Freight & Transfer Co., testified that his company had made active efforts to secure the milk haul from the dairies now served by applicants; that he was familiar with contracts which had been made for milk hauling in the territory; that his company was in position to immediately install the same service as now rendered by applicants having available 2 - $1\frac{1}{2}$ ton, 2 - 1 ton, and 1 - $\frac{3}{4}$ ton trucks which were not kept fully engaged in the business of his company over its authorized route.

After full consideration of the record herein, we are of the opinion that applicants have presented an affirmative showing justifying the granting of the desired certificate insofar as authority is requested for the transportation of milk from the territory herein sought to San Francisco and for the return of empty containers. The record shows that applicants began their operation in good faith by reason of the Crittenden amendment to the Auto Stage and Truck Act (Chapter 213, 1917 Statutes) and after an application had been denied by this Commission during the effective term of the Crittenden amendment. After said amendment was declared unconstitutional by the California Supreme Court, applicants duly filed the instant application to validate

the operation which had been commenced and continued for a considerable time. The record is conclusive that satisfactory and dependable service has been rendered and that a continuance of such service is desired by the dairymen.

Regarding the back-haul of commodities from San Francisco to the territory from which milk shipments originate, we are of the opinion that such right should be restricted to the handling of groceries, provisions, ranch and dairy supplies and only when such shipments are consigned to ranches or dairies from which shipments of milk or dairy produce originate. The order herein will so provide.

O R D E R

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

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by William Deysher and Bernard Lafargue, co-partners, doing business under the firm name and style of Deysher and Lafargue, of an automobile truck service for the transportation of milk and dairy products between the City and County of San Francisco as one terminal, and the Freitas Ranch in Novato Township, Marin County, as another terminus; between San Francisco and a point called Reclamation in Sonoma County; and all intermediate points on the above mentioned routes including points on the Greenbrae and Alto roads between Kentfield and Alto, and points on the Tiburon road between Hilarita and Alto, and all points for a distance of five miles on either side of the above mentioned routes. Also for the transportation of returning empty containers, groceries, provisions, ranch and dairy supplies only when such shipments are consigned to ranches or dairies from which milk or dairy shipments originate, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same hereby is issued to William Deysher

and Bernard Lafargue, co-partners, doing business under the firm name and style of Deysher and Lafargue in conformity with the foregoing declaration and subject to the following conditions:

1- Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.

2- Applicants shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates and time schedules, such tariffs of rates and time schedules to be filed in conformity to amended Exhibit "A", as filed herein and in accordance with the provisions of this declaration and order, and in form and substance satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed thirty (30) days from the date hereof.

3- 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.

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

For all purposes, not hereinabove specified, the effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 5th day of

January, 1927.

W. B. ...
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Leon ...
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COMMISSIONERS.