

Decision No. 19779

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 (1) C. G. LUSHER for certificate of)
 public convenience and necessity to)
 operate (2) Express and Freight ser-) APPLICATION NO. 14526.
 vice as a common carrier between)
 Escondido, California, and Valley)
 Center, California, and environs.)

C. G. Lusher, Applicant,
in propria persona.

BY THE COMMISSION:

O P I N I O N

Applicant herein, operating under the name of "Orange Packet Line," seeks a certificate of public convenience and necessity for the transportation of freight between Escondido and Valley Center and points in Woods and Bear Valleys.

A public hearing herein was conducted by Examiner Williams at Escondido.

Applicant is a rancher and dairyman on the Palomar highway and owns two trucks which he has been using since January 4, 1928, in the transportation of milk and dairy products from certain ranches to Escondido, and transporting in return miscellaneous freight. This service had previously been conducted by one Fred Wood without certificate from this Commission, and applicant herein purchased the business and one of the trucks on the date stated, not knowing that a certificate under the law is required. When advised that

such a certificate was necessary, applicant herein promptly filed his application.

Eleven dairies served by applicant ship approximately eighty 10-gallon cans daily to Escondido consigned to Wharton's Dairy at Escondido, the Pure Milk Dairy of San Diego and the San Diego Milk Producers Association, and these cans are in turn either delivered in Escondido or shipped to San Diego for use in creameries there. Two round-trips daily are required over a loop route of forty miles. There is no other means by which the milk producers are able through a public carrier to deliver their milk to market. Ten of the eleven shippers joined in a written request to this Commission (Exhibit No. 1) that applicant be granted a certificate to continue the service, stating "his truck line is satisfactory, and that no other daily service is being offered or planned, to our knowledge."

Applicant owns the equipment used in the business, subject to a debt of about \$130.00, and drives one truck himself. Applicant testified that since he purchased the business in January, the gross receipts have averaged \$300 a month.

No one appeared to oppose the proposed service, which will be largely a feeder system for the other transportation companies, and there appears no reason why the certificate should not be granted applicant, because of the apparent necessity of a public carrier for the convenience of milk producers and shippers, an industry that is growing rapidly in the region affected. Applicant included the transportation of livestock in his application, but withdrew this request at the hearing.

Applicant also amended his rates, as shown in Exhibit "A," as follows:

Milk and Cream: Between Escondido and points not in excess of two miles, 7½¢ per 10-gallon can; more than two miles and not more than four miles, 10¢ per 10-gallon can; from points more than four miles, 25¢ per can; where extra man is required to bring milk to roadside, 30¢; off roadside, pickup or delivery, 30¢ per can.

Express: 25¢ per package. Fragile commodities or glassware, \$1.00 per 100 pounds or less; over 100 pounds, 50¢ per 100 pounds or fraction.

Freight: Pickup or delivery at roadside, on route \$2.50 per ton; off roadside delivery \$3.00 per ton.

The above rates are substantially those that have been charged in the past and are apparently satisfactory to the shippers. We therefore find as a fact that public necessity and convenience require the service as proposed by applicant, and a certificate therefor will be granted.

C. G. Iusher is 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.

O R D E R

C. G. Lusher having made application to the Railroad Commission for a certificate of public convenience and necessity to establish service as a common carrier for the transportation of freight between Escondido and Valley Center and points in Woods and Bear Valleys, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the establishment of service by applicant herein for the transportation of milk, cream and dairy products and freight and express between Escondido, Valley Center, Woods Valley and Bear Valley and all points intermediate, over and along the following route:

From Escondido via Palomar Road to Valley Center; thence continuing over Palomar Road to its junction with the Saddler Grade Road, to Bear Valley Road; thence over Woods Valley Road to Blum's Corner at the intersection of Woods Valley Road and Palomar Road, and returning via Palomar Road to Escondido, with the right of diversion over Lilac Road, to the F. Potts Dairy and return; also diversion over Miller's Road to serve the A. H. Miller and L. A. Wayne Dairies, and also over the Vesper Road and MacTan Road to serve the William Frizzell Dairy; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof.
2. Applicant shall file, in duplicate, within a period of not to exceed twenty (20) days from the date hereof, tariff of rates set forth as an amendment to the application in the preceding opinion, and time schedules identical with

those attached to the application, or rates and time schedules satisfactory to the Railroad Commission, and shall commence operation of said service within a period of not to exceed sixty (60) 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 applicant herein unless such vehicle is owned by said applicant or is leased by him 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 18th
day of May, 1928.

Leon Whitall
P. L. Seaver
Edward D. ...
Thos. J. ...
M. J. ...

Commissioners.