

Decision No. 23811.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of JOSEPH BARRERRE INC. for a
certificate of public convenience
and necessity for the transportation
of milk and cream, and milk and
cream products, between San
Francisco and East Bay Cities, and
Manteca, Lathrop, Los Banos,
Pleasanton, Los Gatos, San Jose and
points between.

Application No. 16587

ORIGINAL

Gwyn H. Baker, for Applicant.

BY THE COMMISSION:

O P I N I O N

Joseph Barriere Inc., a California corporation, has made application for a certificate of public convenience and necessity to enlarge its operations as a common carrier of milk, cream and dairy products between points east of Niles and San Francisco, Oakland, San Jose, and other points west of Niles, as granted originally by Decision No. 18289 on Application No. 13419.

Applicant also asks that the enlarged operation be consolidated with the existing rights.

A public hearing herein was conducted by Examiner Williams at San Francisco.

Applicant's service has been established for many years. Until recently, other certificated carriers served the same general field and served points not included in applicant's rights. These services have been abandoned by authority of the Commission. Applicant now proposes a complete service to the dairying regions east of Niles with termini at Manteca, Oakdale, Lathrop, Los Banos, and over routes shown in Exhibit "B" attached to the application, and also, Exhibits Nos. 1, 2, 3 and 4, filed at the hearing. Only freight received at points west of Niles is to be delivered

east thereof, and the only back-haul is to be empty containers. By this method applicant eliminates any competition with the common carrier service of William Giacomazzi between San Jose and San Francisco, authorized by Decision No. 11016 of September 26, 1922 on Applications Nos. 8055 and 8065. The service proposed affects only rail or express services which made no objection.

At the hearing applicant amended the application to provide for consolidation of all rights into one, to include an alternate route between Sunol and Mission San Jose, and to include powdered milk as a commodity.

Support was given the application by the testimony of Floyd E. Hayes, Manager of the Dairy Maid Creamery, Ltd. of Oakland, and L. E. Walters, Traffic Manager of Golden State Milk Products Company of San Francisco. Each testified that the Barriere service is necessary to them and the producers they patronize, and is unusually efficient.

It appears from the record that if applicant is permitted to enlarge operations, as proposed, it will be in a position to furnish quick and flexible movement of the perishable products of dairies and creameries along the routes designated to the large centers of population on the bay shore, and that such service will be of great value to the consumers as well as producers. This can best be accomplished by a certificate covering the entire operation, including additions, to be accepted in lieu of all other previous grants or rights. This is more desirable as there is no public carrier now maintaining or offering similar service from points east of Niles. Applicant proposed to assemble loads at Tracy and distribute them at bay-shore points.

Applicant proposes rates shown in Exhibit "A" attached to the application, and which rates are the same as now on file with the Commission except as to rates between Tracy, Livermore and Pleasanton, where a reduction of five cents per can is offered.

Applicant should file, in addition, rates for powdered milk in containers.

The record justifies granting the application, and an order accordingly will be entered.

Joseph Barrere Inc. 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.

ORDER

A public hearing having been held, the above application being under submission, and good cause appearing;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by Joseph Barrere Inc. of a service for the automotive transportation, as a common carrier, of milk, cream, dairy products and empty containers between San Francisco, Oakland, Emeryville, Piedmont, Berkeley, Albany, Alameda, San Leandro, Hayward and intermediate points; San Francisco, San Mateo, Palo Alto, Santa Clara, Los Gatos, San Jose and intermediate points and Tracy on the first hand; and Dublin, Santa Rita, Tracy, Lathrop, Oakdale, Los Banos, Pleasanton and intermediate points on the second hand; serving the dairies located in the territory and along the following pickup routes and two (2) miles laterally therefrom, which pickup routes are as follows:

PICKUP ROUTES

- (a) Beginning at Dublin thence easterly along the main highway to Lathrop via Santa Rita, Livermore (Livermore Junction) and Tracy;
- (b) Beginning at Santa Rita thence southerly along the main highway to Pleasanton;
- (c) Beginning at Pleasanton thence easterly along the main highway to Livermore;
- (d) Beginning at Tracy thence southeasterly along the main highway to Los Banos via Vernalis, Patterson, Crows Landing, Newman, Gustine, Ingomar and Volta.
- (e) Beginning at Tracy thence easterly via the main highway to Oakdale via Manteca and Escalon;
- (f) Beginning at Manteca thence southeasterly and easterly to Oakdale via Salida and Riverbank.

Providing that the lateral limits of the above routes may be calculated from any relocations of the highways of such routes.

The trucks of the applicant may be operated and routed over the above described pickup routes in a manner to give the most economical and efficient service.

Transportation between the pickup territory and creameries located at points named on the first hand hereinbefore set forth may be made via Castro Valley road or Hayward; or through San Jose via the Niles Canyon Road and Niles or via Sunol and the Mission Road. Between San Jose and San Francisco transportation may be made via either U.S. highway No. 101 or the Bayshore highway.

IT IS HEREBY ORDERED that a certificate therefor be, and it hereby is, granted to Joseph Barrere Inc. in lieu of all operating rights heretofore granted to Joseph Barrere Inc.

This certificate is granted subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within twenty (20) days from date hereof, said acceptance to stipulate that said certificate is accepted in lieu of all rights or certificates for such service previously acquired or granted to applicant herein.

2. Applicant shall file in duplicate and make effective within a period of not to exceed thirty (30) days from the date hereof a tariff constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, are identical with the rates and rules shown in the exhibit attached to the application, and time schedules satisfactory to the Railroad Commission.

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 27th day of

October - 1930.

[Handwritten signatures]

COMMISSIONERS.