

Loumbos, Schwoboda, McGoldrick for applicant in
Application 18934, and protesting Applications
18926 and 18923.

BY THE COMMISSION:

O P I N I O N

Jos. Barrere, Inc. (Application 18923) by this application seeks a certificate of public convenience and necessity for the operation of automobile trucks as a common carrier for the transportation of milk and cream, and milk and cream products between points in the territory which may roughly be described as Jenner, Duncan's Mills, Monte Rio, Trenton and Bodega Bay on the one hand, and stations located on the rails of the Northwestern Pacific Railroad Company at Valley Ford, Santa Rosa, Beltane, Sonoma, Petaluma, Ignacio, Reclamation, Solano, San Rafael and Sausalito on the other. This applicant will haul only to the railroad depots for shipments destined to San Francisco and San Francisco Bay consuming territory. It is the desire to handle only dairy products, but because of occasional emergency situations the application was amended to include the transportation of shipments weighing not over one hundred pounds into the dairy destination points.

Guy Jameson, an individual (Application No. 18926), desires by this application a certificate of public convenience and necessity authorizing the enlargement and extension of existing common carrier trucking rights now covered by Application No. 7948, Decision No. 11066, issued October 7, 1922, which rights embrace only the territory between Petaluma, Fallon and Tomales, and are restricted by their terms to the transportation of cream, live

chickens in crates, and feed. By our Decision No. 25908, Case 3483, May 1, 1933, Jameson vs. Siemsen, we referred to the fact that Jameson was not complying with the limitations contained in his certificate of public convenience and necessity both as to the territory served and the commodities transported. The instant application is a desire on the part of Jameson to correct this situation and make lawful the services actually being rendered. This application seeks authority to include within the operating rights the stations of Petaluma, Tomales, Fallon, Valley Ford and Bloomfield, and the intermediate points except the territory between Petaluma and Two Rock, and authority to serve the dairy farms for two miles on each side of the highway traversed. Applicant also desires to carry general freight as set out in Exhibit "A" attached to and made part of the application.

H. F. Siemsen (Application No. 18934) seeks a certificate of public convenience and necessity to operate a common carrier truck service between Petaluma, Tomales, Fallon, Bloomfield, Valley Ford, Marshall, Freestone, Occidental and Bodega and the surrounding territory not to exceed four miles distant from the main highway.

A public hearing was held at Petaluma June 30, 1933, before Examiner Geary, and the proceedings having been duly submitted are now ready for our opinion and order. By stipulation the applications were heard on the one record and will be disposed of in one decision.

These three offers of common carrier service, while to some extent serving the same territory and handling similar commodities, do actually involve distinctive services to the public.

Barrere, Inc., will transport only the products of the dairies and primarily to the railroad depots, although occasional shipments may be transported to the local creameries. The charges to be assessed will be on the mileage basis and under the same rules as now govern in the tariffs on file by this applicant for services rendered under authorized certificates between other points in California where connections are made with the Southern Pacific Company. It was shown by testimony of witnesses that the dairy tonnage formerly moved in connection with the Northwestern Pacific Railroad but that the through traffic had in recent years been diverted almost entirely to uncertificated operators who haul within the territory but who are not giving completed, reliable or satisfactory services. It was further shown by competent witnesses that the milk and cream will be moved to the railroad stations in special trucks equipped for this kind of tonnage, which should be kept at a low temperature in order to preserve the quality, a service not now being performed by trucks operating under the provisions of the Transportation Act.

Testimony was introduced on behalf of applicant Jameson to the effect that there was a necessity for the enlarged territory to Valley Ford via the highways through Fallon and Bloomfield, and also that because of changed conditions it was now necessary to make the pickups at the dairy farms within two miles of the highway instead of continuing the service as heretofore from designated shipping platforms located on the highways and also that conditions have changed since our Decision No. 11066, supra, making necessary the handling of the general freight required by the ranchers.

The testimony also showed that Jameson has entered into

negotiations with the management of the Pacific Motor Transport Company and would in the very near future handle under contract tonnage in connection with this express company to through destination points. It would further appear from this record that Jameson, who purchased the operative rights in June, 1929, was not familiar with the statutory requirements or the use of his published tariffs, and unintentionally permitted services not legally authorized.

The testimony introduced on behalf of H. F. Siemsen (Application 18934) showed that this applicant's services now being rendered without a certificate and under what are claimed to be verbal contracts, have been highly satisfactory and as recited in Decision 25908, Case 5483, May 1, 1935, were recently taken over from a party named Thornberry who had performed the services under similar contracts for years past.

A number of witnesses testified to the details and the necessity for the services being rendered by Siemsen, and to the regular and reliable schedules. There were some 20 to 25 witnesses in the court room who desired to take the witness stand in support of this applicant, but after some discussion among the attorneys for the applicants it was stipulated that their testimony, being purely cumulative, would be considered as part of the record without the individuals actually taking the stand.

The territory proposed to be served is largely a dairy and farming section, the tonnage more or less seasonable, and being of a perishable nature requires upon short notice added trucks to meet the crop conditions into the consuming centers. It is a fact that there has been and is today more or less unlawful operation in this territory, to the great detriment of the producer,

consumer and the legal transportation units. This Commission is of the opinion, after a careful study of the record, that it will be in the interest of dependable and adequate transportation and to the benefit of the general public to authorize the proposed additional services.

We are of the opinion that the above numbered applications and each of them should be granted.

The applicants are 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

Public hearing having been held in the above proceedings and the matters submitted,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by these three applicants of auto truck services as common carriers for the transportation of property.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to Jos. Barrere, Inc. (Application 18923) as described in the application and in the opinion which precedes this order, for an auto truck service as a common carrier between Jenner, Duncan's Mills, Monte Rio, Trenton and Bodega Bay on the one hand, and stations located on the rails of the Northwestern Pacific Railroad Company at

Valley Ford, Santa Rosa, Beltane, Sonoma, Petaluma, Ignacio, Reclamation, Solano, San Rafael and Sausalito on the other.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to Guy Jameson (Application 18926) as described in the application and in the opinion which precedes this order, of an auto truck service as a common carrier, in lieu of the rights heretofore granted by Decision No. 11066, Application No. 7948, October 7, 1932, between Petaluma, Tomales, Fallon, Valley Ford and Bloomfield and intermediate points, except between Petaluma and Two Rock.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity for such service be and the same is hereby granted to H. F. Siemsen (Application No. 18934) as described in the application and in the opinion which precedes this order, of an auto truck service as a common carrier between Petaluma, Tomales, Fallon, Bloomfield, Valley Ford, Marshall, Freestone, Occidental and Bodega and intermediate points.

IT IS HEREBY FURTHER ORDERED that the authorities herein granted are subject to the following conditions:

1. Applicants shall file their written acceptance of the certificates herein granted within a period of not to exceed fifteen (15) days from the date hereof.
2. Applicants shall file in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof time schedules and tariffs of rates covering the service herein authorized, in a form 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 vehicles may be operated by applicants herein unless such vehicles are owned by said applicants or are leased by them under contracts or agreements 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 24th day of July, 1933.

CC Janney
Leon Whidell
W. A. Lee
M. B. Harris
W. H. W. W. W.
Commissioners.