

Decision No. 28870

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
LEMM L. TULL and ELMER O. TULL for a  
certificate of public convenience and  
necessity to operate as a highway  
common carrier between Chico and  
Chester.

Application No. 20500

**ORIGINAL**

APPEARANCES

J. M. McPherson, for Applicants;  
Thomas O'Hara, for Mt. Lassen Fast Freight, Protestant.

BY THE COMMISSION:

O P I N I O N

Lemm L. Tull and Elmer O. Tull, co-partners proposing to do business under the name of Chico-Chester Freight Service, seek authority to operate as a highway common carrier between Chico, on the one hand, and Chester, Lee's Camp, and Bill's Place, on the other, serving also the intermediate points of Forest Ranch, Lomo, Butte Meadows, Big Springs, and Hamilton Park. They propose to operate via Humboldt Road from Chico to Butte Meadows, thence via Deer Creek highway to its intersection with the Mineral-Susanville highway, and over latter highway to Chester. From Chester they propose to use local roads northerly to Lee's Camp, and southeasterly to Bill's Place. From May 1st to October 15th applicants propose a daily service to and from Chico and Chester and intermediate points, a semi-weekly service to Big Springs, Lee's Camp, Hamilton Park, and Bill's Place, and a weekly service to

Lee's Camp. The balance of the year a weekly service is proposed to and from Chico, Forest Ranch, Lomo, and Chester only. A flat rate of 40 cents per 100 pounds is proposed to Chester, 50 cents to the farther points, and 30 cents, 25 cents, and 15 cents to Butte Meadows, Lomo, and Forest Ranch, respectively.

Public hearing was held at Chico before Examiner Elder. The application was protested by Mt. Lassen Fast Freight serving Chico and Chester via Red Bluff en route between Sacramento and Susanville. The protest is not urged against the proposed service to the other points where, it appears, no service by any public carrier is now available.

The evidence shows that Chico is the wholesale center from which the other points involved draw their supplies. Chester, Lee's Camp, Bill's Place, and Hamilton Park are chiefly summer resorts. At Forest Ranch, Lomo, and Butte Meadows, are general merchandise stores, garages, liquor dealers, and hotels; and farms are located in the surrounding country. Traffic to all points except Chester is now transported by the owners themselves or by private carriers.

A need for the proposed service was expressed by the testimony of Howard L. Bixler, Chico Manager for Oroville Soda Works; Joseph Lee, proprietor of a resort at Lee's Camp; Chas. A. Smith, Hotel and Service Station proprietor, of Lomo; Harry C. Shuffleton, proprietor of a ranch, service station, and grocery store at Forest Ranch; Chas. E. Wallace, saloon proprietor of Chester; Chas. W. Sitten, Chico manager for Mebus & Drescher Co; E. Wayne Gillispie, Secretary-Manager of Home-Owned Businesses of Chico; and Lester Osborn, Secretary-Manager of Chico Chamber of Commerce.

Witnesses Smith and Shuffleton testified that they are now compelled to haul their own supplies from Chico to Lomo and Forest Ranch, due to the absence of any other service. Smith estimated his traffic as amounting to 1500 pounds per month, and Shuffleton estimated his at 1500 pounds a week. Witness Bixler testified that last year, when he had been able to do the hauling himself, he had sold 75 cases of beer a month at Forest Ranch. Being now too busy to continue the hauling, and having no other way to make delivery, he has lost the business. Witness Lee testified he performs his own hauling between Chico and Lee's Camp in order to obtain the supplies necessary to provision and maintain his camp. It was stipulated other witnesses would testify similarly.

Witnesses Bixler, Walters, Sitton, Gillispie, and Osborn expressed dissatisfaction with the existing service between Chico and Chester. From their testimony it appears that Mt. Lassen Fast Freight passes through Chico at 9:00 o'clock or later in the evening. Up to the day of the hearing it had no depot at Chico nor any arrangement for receiving freight destined to Chester. Patrons, however, had developed the practice of leaving their shipments on the side-walk in front of a place known as Max' Cafe, where the driver for the Mt. Lassen Fast Freight picked them up on his way through town. Large shipments, however, could not be so handled and witness Bixler testified to the loss of certain business at Chester through lack of more convenient depot facilities. According to witnesses Walters and Sitton, shipments left on the side-walk were sometimes missed by the driver, resulting in delays in shipments reaching consignees. The Association and

Chamber of Commerce representatives testified to a general dissatisfaction among Chico business men with the terminal facilities. It is significant in this connection that according to the testimony of Gene Antichi, one of the proprietors of the protestant company, protestant's volume of traffic out of Chico amounts only to about 100 pounds a week.

Applicant Lemm L. Tull testified he anticipates obtaining a total volume of traffic to all points of 19,000 or 20,000 pounds a week, which appears to be a conservative estimate. The partnership owns a  $1\frac{1}{2}$  ton Model A Ford truck, and is in a position to acquire a larger truck if needed. The evidence also shows there is a reasonable prospect that the operation can be conducted profitably.

In opposition to the application, witness Antichi testified that he and his partner acquired the line from Louis E. Smith, the original grantee, and have been operating it since October 16, 1935. Becoming aware, through complaints, of the inadequacy of the depot facilities at Chico, arrangements had been completed and made effective that day for Johnson's Truck Line of Chico to make afternoon pick-ups of Mt. Lassen Fast Freight shipments, and to hold them at the Johnson depot for pick-up by the Mt. Lassen Fast Freight line-haul truck as it passes through town. Mr. Antichi further stated, however, that his company's large equipment cannot be practicably operated over Humboldt and Deer Creek highways, and that his company is not in a position to serve the communities situated along them which applicants offer to serve.

That public convenience and necessity require the proposed service at these points, as well as at Chester and the other resort points, has clearly been shown. While the recent improvement in the depot facilities of the Mt. Lassen Fast Freight will no doubt eliminate the deficiency in its service to Chester, that improvement was not made until compelled by the threatened competition. The application, therefore, should be granted in full.

Lemm L. Tull and Elmer O. Tull are hereby placed on 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

A public hearing having been held in the above entitled matter, the matter having been submitted, and the Commission now being fully informed thereon:

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the operation by Lemm L. Tull and Elmer O. Tull, as co-partners doing business as Chico-Chester Freight Service, of an automotive service for the transportation of property as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, between

Chico, on the one hand, and Chester, Lee's Camp, and Bill's Place, and intermediate points, on the other, via Humboldt, Deer Creek, and Mineral-Susanville highways, and the most direct local highways between Chester and Lee's Camp, and Chester and Bill's Place; with authority, however, to suspend service to and from Butte Meadows, and to and from points beyond Chester during the winter season of each year from approximately October 1st to approximately the following May 1st.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity for said operation be and the same is hereby granted to Lemm L. Tull and Elmer O. Tull, as co-partners, doing business as Chico-Chester Freight Service, subject to the following conditions:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicants shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect shall be identical with the rates and rules shown in the exhibit attached to the application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
3. Applicants shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five (5) days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
4. 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 obtained.

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

Dated at San Francisco, California, this 8th day  
of June, 1936.

M B Harris  
Leon O'Whitely  
W J Am  
Walter M. M.  
Frank R. Miller

Commissioners.