

Decision No. 30499

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CHARLES B. LEE, doing business under )  
the fictitious firm name and style )  
of FARMERS TRUCKING SERVICE, for a )  
certificate of public convenience and )  
necessity to operate a motor truck )  
service as a common carrier between )  
points in Imperial Valley, Imperial )  
County, California, and the City of )  
Los Angeles. )

Application No. 20873

ORIGINAL

W. C. SNYDER, for Applicant;

J. J. DEUEL and HAROLD W. DILL, for Truck & Warehouse  
Association of Imperial and San Diego  
Counties, Protestants;

HENRY J. BISCHOFF, for Southern California Freight Lines  
and Southern California Freight Forwarders,  
Protestants;

WALLACE K. DOWNEY, for Pacific Freight Lines, Protestant;

EDWARD STERN, for Railway Express Agency, Inc., Protestant;

R. E. WEDEKIND, for Southern Pacific Company, Pacific  
Motor Transport Company and Pacific Motor  
Trucking Company, Protestants;

C. F. REYNOLDS, for San Diego Chamber of Commerce and  
Port of San Diego, Interested Parties.

BY THE COMMISSION:

O P I N I O N

By this application, Charles B. Lee, operating under the  
fictitious name and style of Farmers Trucking Service, seeks a  
certificate of public convenience and necessity for the establishment  
and operation of an automotive service as a highway common carrier  
of vegetables, fruits, produce, melons, cantaloupes, hay, and grain

between various points in the Imperial Valley and Los Angeles and intermediate points.

A public hearing in this matter was conducted by Examiner Austin at El Centro and Los Angeles, when the matter was submitted on briefs which have since been filed, and the matter is now ready for decision. The evidence in Case 4088, part "R", and Case 4145, part "E", was by stipulation of counsel made a part of the record in this proceeding, by reference.

The granting of this application was protested by the Truck & Warehouse Association of San Diego and Imperial Counties, Southern California Freight Lines, Southern California Freight Forwarders, Pacific Freight Lines, Railway Express Agency, Inc., Southern Pacific Company, Pacific Motor Transport Company, and Pacific Motor Trucking Company. The Port of San Diego and the San Diego Chamber of Commerce appeared as interested parties.

Applicant amended his original application by providing a schedule of rates and a map of the territory proposed to be served. Testifying in his own behalf, Lee stated he would eliminate his request to haul hay and grain, would further confine his proposal to the hauling of produce, vegetables, melons, and cantaloupes, and would transport these commodities only from points in the Imperial Valley to Los Angeles. He contemplated no back haul from Los Angeles and would render no service to or from San Diego.

Applicant has been operating, he stated, for some four years past out of El Centro; he has served Niland one year, and other Imperial Valley points for three years. During that time he hauled produce for some forty shippers; in this connection, loading platforms were maintained at Calipatria and El Centro. His current proposal

contemplates a change of platform from Calipatria to Niland, the establishment of a new platform at Westmoreland, and the continued maintenance of his loading facilities at El Centro. His general method of operation provides for a pickup at the various farms and ranches served, a delivery to loading platforms, and the transfer of commodities there to line-haul trucks for transportation to the Los Angeles commission markets, principally that at Central and Ninth Streets.

Applicant has three vehicles available for this operation, one a half-ton truck, one a four-wheeled  $5\frac{1}{2}$ -ton truck, and one a ten-wheel three-axle truck with a capacity of nearly eight tons. The ten wheeler is used as a line-haul truck to Los Angeles, the four wheeler occasionally goes to Los Angeles, while the one-half ton truck is used mostly in pickup service. At the beginning of the season, little equipment is needed, but as the season advances, he will be able to acquire additional equipment either by purchase on credit or by lease. In connection with the latter proposal, Lee introduced four documents which were designated as "offers" on the part of various truckers to lease to him certain equipment. He stated that in the past he had used as many as eight trucks under a similar arrangement. In the future, he proposed to lease equipment in accordance with the Commission's requirements. Formerly, Lee has leased equipment on a commission basis, whereby he received from the operators ten per cent of the gross receipts. Concerning the purchase of equipment on credit, Lee testified he could arrange for such payments, and had more than \$700. in cash available in the bank.

Generally, his operations extended from December to July, inclusive; he does not propose a regular schedule, preferring rather to operate "on call," to suit the convenience of shippers, since

farm pickups were available for shipment at different times during the day, dependent upon crop and season.

According to his estimate, the time required to make the run from platform to market will consume from six to seven and one-half hours; in addition, approximately three hours are required from farm to platform, including loading and reloading. This will meet the shippers' demands that their produce be delivered to the Los Angeles markets no later than 1:00 A.M. and preferably by midnight, in order that they may obtain the best prices.

He expects to pick up at farms as late as 6:00 P.M. and deliver loads to market by midnight; the farmer ordinarily assists in field-loading and the consignees assist in market unloading. No extra charge will be assessed for either split pickups or split deliveries.

Applicant further testified that, contrary to past practice, his line-haul truck drivers would not perform the pickup service except when they received a full truckload; that to cover the area proposed to be served he would need three pickup trucks; that he did not favor general solicitation but rather preferred to work for the farmers he knew - a position which he cannot, of course, maintain should he be granted a certificate, for then he would be obliged to serve all who may tender him shipments of the commodities he holds himself out to carry. It is applicant's design to restrict his dedication of service to those areas near large centers of population such as El Centro. His proposed rates are from field to market; he proposes no operation from packing-sheds in the Imperial Valley to Los Angeles. During 1935 he served fourteen consignees at the City Market and the Terminal Market at Los Angeles; ordinarily, he testified, he delivered

to his last consignee at 3:00 A.M. In regard to the "on call" service, Lee testified, he would have transportation facilities available at ranches within two hours after receiving the call; however, he usually knew each day when to call for next day's shipments. Concerning his patronage, applicant testified that in the El Centro district including Seely, Mt. Signal, Calexico, and Holtville, he served some thirty growers, in the Niland district nine, and in the Westmoreland district none, although about eight growers had asked for his service. Three growers testified in behalf of applicant, stating that his service would be a convenience to them.

Although applicant Lee is not in a position to supply the number of line-haul trucks necessary to completely serve the rather extensive area in the Imperial Valley where he proposes to operate, nevertheless it appears that he can obtain a sufficient number of trucks to care for any demands made upon him.

The service of protestants in this area is not, according to the record, satisfactory to the shippers, and it appears that this applicant's offer of service will assist in satisfying the demands of the farmers and growers in this area.<sup>(1)</sup>

From the record we find that applicant Lee has for the past four years served in good faith a limited number of growers in the Niland, Westmoreland, and El Centro districts, the Imperial Valley, and is now proposing a general public service within this restricted area only. Although applicant possesses but limited equipment, it appears that during the peak seasons he can obtain from other truckmen additional equipment.

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For a more complete statement of conditions prevailing in the Imperial Valley, which, in the Commission's judgment, indicate a need for a service of this character, reference is made to Decision No. 30498, in Application No. 20725, this day decided.

In view of applicant's limited proposal, by which he seeks to transport only produce, vegetables, melons, and cantaloupes from certain points in the Imperial Valley, on the one hand, to Los Angeles, on the other hand, with no back-haul of any description, we are of the opinion that applicant should be granted a certificate of public convenience and necessity to establish and operate the service proposed.

CHARLES B. LEE 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

A public hearing having been held, the matter having been duly submitted, and the Commission being now fully advised in the premises:

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Charles B. Lee of an automotive service for the transportation of fresh fruits, fresh vegetables, edible nuts, fresh or dried beans, fresh or dried peas, as a highway common carrier, as such is defined in Section 2-3/4 of the Public Utilities Act, from El Centro, Niland, and Westmoreland, and an area within a fifteen mile radius of each of said points, on the one hand, to Los Angeles, on the other hand, via U. S. Highway No. 99, as a seasonal service from approximately November 1st of each year to

approximately August 1st of the succeeding year.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to CHARLES B. LEE, an individual, doing business under the fictitious firm name and style of FARMERS TRUCKING SERVICE, subject to the following conditions:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant 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. Applicant 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, a time schedule or 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 applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

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 3<sup>rd</sup> day of January, 1938.

William A. Mason  
Leon A. Sullivan  
John A. DeWitt  
Raymond J. ...  
... & ...

Commissioners.