ORIGINAL

Decision No. 38374

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LEON R. MEEKS, for authority to increase rates.	Application No. 26893

BY THE COMMISSION:

Appearances

Phil Jacobson, for applicant.
J. J. Deuel for California Farm Bureau Federation, interested party.
Benjamin Chapman for Office of Price Administration, interested party.
John C. Stevenson for Local 93, Milk Drivers and Dairy Employees Union, interested party.

O P I N I O N

Leon R. Meeks, an individual engaged in the transportation of dairy products, seeks authority under Section 63(a) of the Public Utilities Act to increase his rates for the transportation of milk and cream.

A public hearing was had before Examiner Bryant at Los Angeles on September 27, 1945 when the matter was submitted for decision.

Applicant is the holder of two certificates authorizing operation as a highway common carrier, and of a permit authorizing operation as a highway contract carrier. Only the common carrier rates are involved in this proceeding. The first certificate was acquired in December, 1943, and the second in August, 1944.[1] The tariffs maintained by the predecessor owners were adopted at the time of acquisition, and have been continued without change. The first tariff provides rates on milk and cream from dairies in the vicinity of Riverside, Colton, San Bernardino and Redlands of 16 cents per 10-gallon can to creameries in San Bernardino and 21 cents to creameries in El Monte, Pasadena and Los Angeles. The second tariff provides a rate of 15 cents per 10-gallon can from dairies in the Pomona Valley to creameries in San Bernardino, Alhambra, El Monte, Glendale, Pasadena and Los Angeles. Under the authority sought in this proceeding applicant would increase each of these rates by 2½ cents. The present and proposed rates include return of the empty cans from the creameries to the dairies.[2]

The application alleges that there have been substantial increases in Meeks' costs of operation, and that an increase in revenue is required in order that he may continue his services. Testifying in his own behalf, Meeks cited examples of advances in the cost of labor, materials and other expenses since the present tariff rates were established and adopted. He asserted that his operations were conducted in what he believed to be the most economical and efficient manner, and declared that he would not wish to continue them unless an increase in rates were authorized.

1\. Actual dates of the transfer of ownership, according to tariff withdrawal and adoption supplements filed by the vendor and vendee, were December 15, 1943, and August 18, 1944. The certificates were acquired under authority of Decisions Nos. 36704 and 37164; the highway contract carrier permit is No. 19-2101H.

2\. The tariffs also provide rates for the transportation of milk and cream in bottles in cases under which little if any traffic is transported, and one of the tariffs names rates on dairy supplies which applicant characterized as an "extinct" movement. No change is proposed in the rates on these commodities.

Revenue and cost studies were introduced and explained by a consulting engineer engaged by applicant, and by a senior transportation engineer of the Commission's staff. The carrier exhibit covers the 12 months ending March 31, 1945, with some figures for succeeding months through July. The exhibit of the Commission engineer reflects the years 1943 and 1944, and the 12 months ending July 31, 1945. His exhibit includes the development of rate bases for each of the periods covered. Only the carrier witness undertook to allocate revenues and expenses between the certificated and the contract operations.

Both engineers supplemented the book figures with modifications and adjustments deemed by them to be appropriate. The carrier engineer recalculated drivers' wages on the basis of $1.11 per hour in lieu of $1.00 per hour as paid at the time of the hearing, and added $4,800 annually as a salary for Meeks. It was explained that although Meeks spends his full time in managing the operations, no provision was made in the books for any manager's salary. Adjustments made by the Commission engineer included the addition of $5,000 as a salary for Meeks, and a recalculation of depreciation expense on the basis of a longer life for revenue equipment than employed by the carrier. His study did not show the effect of any increase in labor costs. He said that it was clear that Meeks would be faced with a substantial increase in labor costs in the immediate future, but the character and volume of the wage demands were not sufficiently concise to permit him to develop an accurate adjustment of operating expense.

The revenues, expenses, and calculations therefrom, as shown in the exhibits, are set forth in the table which follows. The year 1943 is omitted for the reason that applicant had no certificated operations until December of that year. The table covers combined operations as a common carrier and as a contract carrier.

Table 1

	Operating Revenue (Gross) $	Operating Expense $	Operating Revenue (Net) $	Rate Base (a) $	Rate of Return (b) %	Operating Ratio (b) %
Year ended December 31, 1944						
Company book figures	121,736	117,379	4,357	38,161	11.42	96.42
Adjusted by Commission engineer	121,736	119,062	2,674	42,262	6.33	97.80
Year ended March 31, 1945						
Company book figures	146,435	142,205	4,230	40,943	10.33	97.11
Adjusted by applicant's engineer (current wages)	146,435	147,006	(571)	41,342	Loss	100.39
Adjusted by applicant's engineer (expected wages)	146,435	153,276	(6,841)	41,865	Loss	104.67
Year ended July 31, 1945						
Company book figures	144,047	143,494	553	44,770	1.24	99.62
Adjusted by Commission engineer	144,047	144,043	4	49,728	.008	99.98

(a) Rate bases as of March 31, 1945 calculated from figures of applicant's engineer; other rate bases developed by Commission engineer.

(b) Before income taxes.

(_____) Indicates loss.

A representative of a labor union which asserts jurisdiction over applicant's drivers testified that the men were unwilling to continue work at the present wage rate of $1.00 an hour, and were insisting upon a scale of $1.11 an hour. He stated that the creameries which applicant serves pay $1.11 an hour to their drivers for similar work, and that all of the drivers were represented by the same union. He asserted that applicant's men had taken and passed an official strike vote, but had agreed to withhold further action awaiting decision of the present application.

Although the usual notices were mailed to parties believed to be interested, the creameries were not represented at the hearing. A representative of the California Farm Bureau Federation made the statement that his association objected to the proposed increase of 2½ cents per can, but would not oppose an increase of 2 cents. He said that the studies of the two engineers showed a 2-cent increase to be justified when the threatened wage advance was taken into consideration. The Office of Price Administration was represented at the hearing and participated in cross-examination of the witnesses, but did not offer direct evidence. Its representative said that his agency would offer no objection to an increase of 1½ cents per can, but believed that any greater increase would not be justified.[3] He urged that the Commission examine the proofs carefully, giving particular consideration to the national stabilization policy.

From the record in this proceeding it appears that Meeks' certificated operations did not reach important proportions until his second certificate was acquired in August, 1944. He testified

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[3] He said that he could not introduce evidence in support of this conclusion for the reason that an accountant assigned by the Office of Price Administration to study Meeks' records had later left its employ.

that operation under the first certificate was negligible except for an abnormal period of about four months from February through May, 1945, and that at the time of the hearing the traffic handled thereunder constituted only two or three per cent of his total tonnage. Thus it will be seen that in the disposition of this proceeding the Commission is called upon to determine within workable limits the future revenue needs of a highway common carrier operation which has been in the hands of the present applicant for little more than a year. The record does not include any information concerning the financial experience of the previous owners. The revenue and cost studies of the two engineers cover the operating experience of Leon R. Meeks as distinguished from the operating experiences of the certificated common carrier services by whomsoever owned.

The study of the carrier engineer is quite complete in most respects for the time period which it covers. Starting as it does with April 1, 1944, it covers a year of which more than four months antedated acquisition of the second certificate which now accounts for the preponderant part of applicant's traffic. Nevertheless, the exhibit is of particular interest for the reason that it undertakes to make a segregation between the common carrier and the contract carrier operations. The question naturally arises, to what extent, if at all, applicant's over-all financial experience might have been affected by the contract service. The showing in this respect is not altogether complete, but it may be calculated from the exhibit introduced by the carrier witness that the contract operations as a whole have failed to earn their proportionate share of the required revenue.[4] Needless to say, patrons of the common carrier service should not be expected to make up revenue deficiencies incurred through other operations.

If the adjusted figures offered by the carrier engineer are given full value, without regard to the fact that the period covered is apparently not representative of present or future conditions, it will be seen (Table 1) that the net operating loss for the year was $571 on the basis of current wages, and $6,841 on the basis of wages sought by the employees. This raises the question whether applicant's financial requirements should be measured by current or anticipated conditions. Any rate increase which may be authorized

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[4] The following table was developed from the carrier engineer's figures by eliminating therefrom the increase in expense which would result from the potential raise in wages, but allowing his $4,800 adjustment for Meeks' salary. The certificated rates per can are as shown in the tariffs, and the contract rates are as disclosed by applicant's testimony. The actual losses per can and per haul are substantially less than those shown below, due to the fact that the engineer's expense figures include those of two contract hauls which are not listed, but the relationship between the two operations appears to be fairly well disclosed by the table.

Certificated	Number of Cans	Total Expense	Revenue Per Can	Total Revenue	Loss
Pomona Valley-Los Angeles	553,768	$ 85,142	15¢	$ 83,065	$2,077
Pomona Valley-Pasadena	86,072	13,595	15¢	12,911	684
San Bernardino-Los Angeles	59,506	12,285	21¢	12,496	211*
Totals	699,346	$111,022		$108,472	$2,550
Contract					
San Jacinto-various	98,547	$ 23,144	20¢	$ 19,709	$3,435
Pomona-Corona	21,569	2,683	10¢	2,157	526
Pomona-Riverside	10,128	2,522	16¢	1,620	902
El Monte-Pasadena	61,974	7,637	10¢	6,197	1,440
Totals	192,218	$ 35,986		$ 29,683	$6,303

*Profit

LOSS PER CAN - Certificated..........0.36 cents
LOSS PER CAN - Contract..............3.28 cents

in this proceeding will apply in the future and not in the past, and future conditions should therefore be considered if they are predictable with sufficient certainty. There is no conflict in the evidence that the applicant must expect to pay higher wages to his drivers in the future. Nevertheless, neither the fact nor the amount of such a wage adjustment is susceptible of definite determination in advance. It does not appear from the record that any contract for the payment of higher wages has been executed, nor does it appear that Meeks has offered or agreed to such payment. In view of the uncertainty often present in matters of this kind, the patrons of Meeks' common carrier service should not be required to pay transportation rates predicated upon the unsettled wage demands. Current wages will be used in measuring applicant's revenue requirements for purposes of this decision.

Still referring to the revenue study submitted by applicant's engineer, it may be readily calculated that on the basis of current wages a rate increase of less than one-tenth of a cent per can would have been sufficient to off-set the operating loss of $571. A rate increase of 1½ cents per can would suffice to produce the operating ratio of 93 per cent used by the engineer in his final calculations, and would, incidentally, produce a rate of return of about 27 per cent before income taxes.[5] The engineer, basing his calculations upon the anticipated higher wages, expressed the opinion that the rates should be increased by 2 cents per can. He said that the sought increase of 2½ cents did not appear to be justified.

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[5] The rate of return after payment of income taxes would be materially less. The data of record do not permit exact calculations of this figure. On the basis of personal taxes of married couples with no exemptions for dependents and with separate returns for each, the rate of return after income taxes would be about 20 per cent. The calculations are based upon 891,564 cans hauled during the period of the engineer's study, and a rate base of $41,342 as shown in Table 1 hereof.

Turning to the study introduced by the Commission engineer, it will be seen that under his adjusted figures the carrier earned a profit of just $4 for the year ended July 31, 1945. The adjustments, although necessarily based upon some personal judgment, were not seriously challenged by the applicant and may be accepted as reasonable for purposes of this decision. The period covered may be considered fairly representative of current conditions, as it embraces virtually a full year of the certificated operations with which this proceeding is concerned. A rate increase of one cent on each of the cans transported during the period would have produced a net revenue of $8,503, with a resulting operating ratio of 94.43 per cent and a return on the investment of about 17 per cent before income taxes.[6] If the rate increase were taken on only the common carrier traffic, the net revenue would have been $7,196, producing an operating ratio of 95.24 per cent and a return of about 14.5 per cent before taxes.

From all of these data it must be concluded that no rate increase in excess of one cent per can may be considered justified by the evidence of record in this proceeding. The one-cent advance is allowable upon consideration of the over-all operations. Unfortunately, the record does not permit a complete segregation of the common carrier and contract expenses for any representative period, nor is there any information which would permit exclusion from the rate base of the assets devoted to contract services. The available evidence indicates, as hereinbefore explained, that the contract business has borne somewhat less than its full share of the transportation burden. The difficulty of determining Meeks' future

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[6] See comment in Footnote 5 regarding rate of return after payment of income taxes. The calculations are based upon 849,895 cans transported during the period, of which 130,695 were estimated to have moved under the contract permit. The rate base is $49,728 as shown in Table 1.

revenue needs with any degree of exactness is increased by the fact that substantial changes in his operations were made during and after the periods studied by the engineers. One of the certificated operations expanded materially in February, 1945, and subsided on June 1; one of the contract services was discontinued only ten days before the date of the hearing. However, the record shows beyond reasonable question that applicant must be permitted to make some increase in his common carrier rates. When recognition is given to the essential character of the transportation which he performs, and to the uncertainties with which he is now faced, the revenue which would result from a rate increase of one cent per can would not appear to be excessive. Under all of the existing circumstances and conditions, and upon this record, we are of the opinion that an increase in the common carrier rates of one cent per can will be justified. Meeks testified that it was his intention to increase some but not all of his contract rates. Should experience indicate to him the necessity for further rate adjustments, he should examine each of his operations separately with a view to determining whether different adjustments should be made in the several rates.

Upon careful consideration of all of the facts and circumstances of record in this proceeding, the Commission is of the opinion and finds as a fact that an increase in the highway common carrier rates of Leon R. Meeks in the amount of one cent per ten-gallon can is fully justified and necessary to the maintenance of adequate transportation service.

O R D E R

The above entitled application having been duly heard and submitted, full consideration of the matters and things involved having been had, and the Commission now being fully advised, IT IS HEREBY ORDERED that Leon R. Meeks be and he is hereby authorized to establish, on not less than thirty (30) days' notice to the Commission and to the public, an increase in his highway common carrier rates for the transportation of milk and cream in the amount of one cent per ten-gallon can.

IT IS HEREBY FURTHER ORDERED that in all other respects the above entitled application be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the express condition that applicant will never urge before this Commission in any proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the reasonableness of any particular rate or charge, and that the filing of rates and charges pursuant to the authority herein granted will be construed as consent to this condition.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall be void unless the rates and charges authorized in this order are published, filed, and made effective within ninety (90) days from the effective date hereof.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 6th day of November, 1945.

Commissioners