

Decision No. 15946

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application )  
of ELMER F. SMITH for certificate )  
of public convenience and neces- )  
sity to operate freight truck serv- )  
ice between Burbank and various )  
points in Southern California. )

APPLICATION NO. 11911

ORIGINAL

Elmer F. Smith, Applicant, in Propria Persona.

Phil Jacobson, for San Fernando Haulage Company  
and Burbank Transfer Company, Protestants.

E. J. Bischoff, for Coast Truck Line and Serv-  
ice Motor Express, Protestants.

D. W. Layne, for Pacific Electric Railway Com-  
pany, Protestant.

BY THE COMMISSION:

O P I N I O N

Elmer F. Smith has made application to the Railroad Com-  
mission for a certificate of public convenience and necessity  
to operate freight truck service between Burbank and various  
points in Southern California.

A public hearing herein was conducted by Examiner Wil-  
liams at Los Angeles.

Applicant proposes a service between Burbank and any  
point in any direction from Burbank for and in behalf of the  
Empire China Company of Burbank, for the distribution of its  
manufactured products. Applicant also proposes similar serv-

ice for and in behalf of J. R. Wartman Plaster Company of Burbank, as well as the transportation of household goods in territory similar to that in which the other services are conducted, and limited by Section 2 of applicant's Exhibit "A", which provides:

"Section 2 - Limits of territory served:

North - as far as Santa Barbara, Coast Route, and Taft and Bakersfield via Ridge Route.

East or Southeast - through Pomona to El Centro in Imperial Valley.

South - Via Santa Ana to San Diego.

South and West - to all Pacific Coast points from Balboa to Santa Monica, inclusive.

Above territory to include right of delivery to all points within a radius of 25 miles either side of main highways traveled between Burbank and points named."

Applicant offers as equipment one 1-ton Ford truck and one 1½-ton Graham truck. According to his testimony, he has been engaged in truck transportation, with headquarters in Burbank, for four years, his principal business comprising the delivery of semi-porcelain dishes from the factory of the Empire China Company to various customers, under a verbal contract with the Company. The Empire China Company has an investment of over \$600,000 in kilns, and markets its products largely in California by both rail and truck.

W. G. Jackson, President and general manager of this Company, testified that truck delivery, particularly in Southern California, is advantageous to the Company because of the ability to load at the plant, in bulk, without the necessity of furnishing containers or packing, and delivery at store-door

to the consignee, and the skill and care of applicant in transporting such shipments without injury. He testified further that a recent contract with a large chain store system necessitates delivery of large quantities of dishes at 26 different stores by such bulk shipment, and that the services of applicant have been utilized for this purpose at points along or near the routes shown in Section 2 of Exhibit "A" quoted above. The convenience and necessity of this method of delivery is best illustrated by the witness, who testified that frequently consignments to four or five different customers are carried upon the same truck. Another example of the need of having a ready-to-serve carrier such as applicant, Mr. Jackson testified, was an order received by the Company from the United States Navy for 13,000 dinner plates, to be delivered within a limited time at San Diego. Mr. Jackson stated that the bulk of the movement from the factory by truck, practically 60 per cent, was to points in the city of Los Angeles, and applicant testified that the greater part of his movement in and out of Burbank was under 12 miles, and that the only back haul he made was return material to the china factory. The china factory receives a supply of kaolin, feldspar and silica from Los Angeles in bulk, by truck, but not from applicant, and receives similar supplies from Alberhill and Lincoln by rail. Other supplies are received over the line of protestant San Fernando Haulage Company, but Mr. Jackson testified that its service was not useful for the transportation of china products because of the requirements as to crating and packing, which most of the customers do not consent to pay for.

Applicant's service for the Wartman Company is the transportation of plastering material, forms, tools and equipment from Burbank to various points, mostly in the city of Los Angeles, and the transfer of such cargoes from one point of use to another, regardless of any return movement to Burbank, although a great deal of the return movement has been into Burbank. Applicant admitted that he had not transported any household goods between any points during the last year.

The granting of the application herein was protested by the Coast Truck Line, operating between Los Angeles and San Diego, on the ground that it has now before this Commission its application (No. 11188), asking authority to extend its pick-up service in Los Angeles to any point within 25 miles of Seventh Street and Broadway. This radius of operation would enable protestant to perform the service for consignors at Burbank whom applicant herein proposes to serve. At the conclusion of the testimony this protestant asked leave to file points and authorities upon its further protest, as a matter of law, that the Commission was without jurisdiction to grant the certificate prayed for because the need shown is not a public need or convenience, but the private need of two consignors whom the applicant agrees to serve exclusively, as he testified.

We cannot agree with this protestant that the instant case does not contain essential elements of public convenience and necessity. It is a service distinctly affecting consignees, and applicant proposes service to all consignees at approximately 100 points, all of which are fixed termini between which he proposes to operate. The interest of the

consignor is not the only interest involved herein. The testimony clearly shows that by the direct method of distribution specially provided by applicant, economies in the sale and distribution of the product of the Empire China Company are accomplished, with benefit to the consignees, and in the end these economies are reflected in benefit to the general buying public. The facts in this proceeding, we believe, differentiate it from the precedent cited by protestant in the application of O. W. Jackson (Decision No. 15065).

Applicant proposes two other classes of service, one being the movement of plastering material, tools and equipment between Burbank and various points, and the other the transportation of household furniture. There is no proof of any demand for applicant's service in the transportation of household furniture, and applicant's own testimony is that he has not moved furniture within the past year; hence this offer of service may be disregarded.

We therefore find as a fact, upon the record herein, that public convenience and necessity require the service proposed by applicant, other than the transportation of household goods, and that a certificate for such service should be granted. An order will be entered accordingly.

#### O R D E R

Elmer F. Smith having made application to the Railroad Commission for a certificate of public convenience and necessity to operate an auto truck freight service between Burbank and various points in Southern California, a public

hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA  
HEREBY DECLARES that public convenience and necessity require the operation of the service as proposed by applicant herein, for the transportation of manufactured china-ware and of building materials, plaster, forms, tools and equipment, between Burbank and Santa Barbara, Bakersfield, Pomona, El Centro, Santa Ana, San Diego, Santa Monica and Balboa, and points intermediate thereto, over and along the following routes:

North as far as Santa Barbara via Coast Route, and to Taft and Bakersfield via Ridge Route; east or southeast via Valley Boulevard and State Highway through Pomona to El Centro in the Imperial Valley; south, via Santa Ana to San Diego; and south and west, to all Pacific Coast points from Balboa to Santa Monica, inclusive;

together with the right of pick-up or delivery of all commodities herein specified within twenty-five (25) miles on either side of the highways traversed; and provided, that all consignments transported either originate at the plant of the Empire China Company or the plant of the J. R. Wartman Plaster Company in Burbank, or are destined to each or either of them; and for no other service, and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same heroby is granted, subject to the following conditions:

- I. Applicant shall file with this Commission, within twenty (20) days from date hereof, his written acceptance of the certificate herein granted; shall file, in duplicate, time schedules and tariff of rates identical with

those as set forth in Exhibit attached to the application herein within a period of not to exceed twenty (20) days from date hereof; and shall commence operation of the service hereby authorized within a period of not to exceed thirty (30) days from date hereof.

- II. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been secured.
- III. No vehicle may be operated by applicant under the authority hereby granted unless such vehicle is owned or is leased by applicant 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 and after the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of February 1926.

H. R. Brundage

C. Seavey

Leon Whitall

Commissioners.