

Decision No. 95587.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
LOUIS E. SMITH, E. S. CALVERT and
W.M. MARKO, copartners doing business
under the firm name and style of
SMITH TRUCKING SERVICE, for a
certificate of public convenience and
necessity to operate a motor truck
service for the transportation of
property as a common carrier between
Sacramento and Redding and certain inter-
mediate points, via the East Side Highway,

ORIGINAL

(Application No. 17640.)

Sanborn & Roehl, by Frank B. Austin,
Attorneys for applicants.
E. W. Hobbs, for Southern Pacific Company.
Edward Stern, for Railway Express Agency, Inc.
W. G. Stone, for Sacramento Chamber of Commerce.
Guy Hill, for Pacific Greyhound Lines, Inc.

HARRIS, COMMISSIONER:

O P I N I O N

By the application as amended, Louis E. Smith asks for a certificate of convenience and necessity to operate an auto truck service for the transportation of property as a common carrier over the east side state highway between Sacramento and Redding and serving in addition to the termini intermediate points as follows: Vina, Los Molinos, Red Bluff, Cottonwood and Anderson; the service to include pick-up and delivery within the corporate or town limits of each of said termini and intermediate points.

Applicant proposes rates which are substantially the same as those charged by the Pacific Motor Transport, one of the carriers now serving the points above named.

Applicant's time schedule is for an over night service north bound, leaving Sacramento at 11:00 p.m. and arriving the

next morning as follows: At Vina, 4:00; at Los Molinos, 4:30; at Red Bluff, 6:00; at Cottonwood, 8:00; at Anderson, 8:30; at Redding, 9:30; and on the return trip leaving Redding at noon and arriving at Sacramento at 9:00 p.m. the same day.

Applicant testified that he expected to move north daily about eight tons of general freight such as groceries and hardware and south about three tons of farm and dairy products and canned fruit.

The freight transportation facilities under regulation now operating over the route and to the points above referred to are the Southern Pacific Company, the Pacific Motor Transport, the Railway Express Agency, Inc., and the Pacific Greyhound Lines, Inc. They all appeared as protestants.

The Southern Pacific Company has a mixed train (passenger and freight) which receives freight at Sacramento up to 5:00 p.m. each day and makes platform delivery the next morning at about the following times: Los Molinos, 7:00; Red Bluff, 7:15; Cottonwood, 8:31; Anderson, 9:16; Redding, 9:34; Vina, 10:30 for three days of the week and 3:30 p.m. for three days.

The Pacific Motor Transport uses the Southern Pacific trains and its station arrivals are therefor the same as above stated. It has a pick-up and delivery service at Sacramento, Los Molinos, Red Bluff, Anderson and Redding beginning deliveries upon the arrival of train. It does not pick-up and deliver at Vina as the volume of business does not justify it, nor at Cottonwood, there being no demand for it. This service has been established from Sacramento to Redding for over two years and has been installed at the other points since. Local draymen who know their locality and people are employed.

The Railway Express Agency operates over the Southern Pacific trains between the points involved. The Pacific Greyhound also serves all these points several times each day but has a weight limit not to exceed one hundred (100) pounds for a single piece.

Protestants all urge that they can handle all the business, that they are giving adequate service at reasonable rates and that new operators should not now be permitted to invade the territory which they have pioneered.

Hearings were had at Sacramento, Redding and Red Bluff. Over fifty (50) witnesses testified.

There were witnesses who said that the new service would act as a detective to drive out "wild cat carriers" who preferred trucks because they rendered personal service such as the taking of orders by the truck drivers; who thought regulated truck service will enable them to compete with peddler trucks; who believed the railroads should have competition; who believed the railroads should be supported; who feel that railroad service is more dependable and thought they gave greater security in collecting for damaged goods.

The evidence does not show that public convenience and necessity requires the issuance of the certificate applied for. On the contrary it shows that the service of the protesting carriers is adequate to handle all the business which is offered at rates substantially the same as applicant proposes and on a time schedule substantially as favorable as applicant's.

The principles which should control in a case of this kind were ably set forth in the Santa Clara Valley Auto Line case, decided September 26, 1917, (Vol. 14 of the Opinion and Orders of the C.R.C. page 118) in an opinion written by Commissioners Thelen and Gordon from which we quote as follows:

*As has been noted, section 5 of the act of May 10, 1917, provides in part that no transportation company shall commence operations unless it has first secured from the Railroad Commission a certificate declaring 'that public convenience and necessity' require such operation. This is the only test prescribed by the statute. Accordingly, when application is made to the Railroad Commission for an order authorizing automobile stages to operate, the sole test which the Railroad Commission may apply is whether or not the convenience and necessity of the public require that the service as contemplated by petitioner shall be rendered. This is not a question as to whether the public authorities shall extend a favor to existing operators by refusing to permit newcomers to enter the field or whether they shall extend a favor to the newcomer by permitting him to compete with existing companies. No person has a vested right to engage in a public utility service. The law looks not to the operator but to the convenience and necessity of the public and clearly contemplates that applications of this character shall be decided on the basis of this test alone and not on the basis of the desires or necessities of the operators. Operators may be permitted to enter the field only at such times and in such places and under such conditions as will best subserve the convenience and necessity of the public.

In cases involving the classes of utilities specified in section 50 of the Public Utilities Act, the Railroad Commission has consistently held that if the existing utility in a certain territory is giving good service at rates as low as may reasonably be expected and is meeting all the requirements of the public in such territory for additional service, the Railroad Commission will be slow to permit a competitor to enter the field unless the competitor by reason of superior natural advantages or patented processes or other means can give to the public either a service materially better or rates materially lower. This conclusion is based on the self-evident proposition that a utility which secures all the business in a certain territory is much better able to give good service at reasonable rates and to make the necessary extensions than though its revenues are diminished through competition. It is a well understood maxim that in cases of competition in public utility service, the public, in the long run, generally pays the bills, including the cost of all duplication and other economic waste.

In Pacific Gas and Electric Company vs. Great Western Power Company, Case No. 259, decided on June 18, 1912, (Vol. 1, Opinions and Orders of the Railroad Commission of California, p. 203), the Railroad Commission, at page 209, said:

' It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering cheap and efficient service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it

"may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in."

"In its decision in the Oro Electric case rendered on April 29, 1913, in Application No. 347 (Vol. 2, Opinions and Orders of the Railroad Commission of California, p. 748), the Railroad Commission, at page 755 said:

'A wise public policy demands that utilities which are doing their full duty to the public shall be treated with fairness and justice and liberality, and that they shall receive such protection to their investments as they may deserve, subject always to the contingency that if another utility can, by reason of superior natural advantages or patented processes or other means, give to the public a service as good as the existing utility, at rates materially less, the interests of the public must be deemed paramount and the new utility must be given an opportunity to serve the public. Under this new state policy, competition between public utilities is not of itself necessarily a good thing. Whether or not it is a good thing depends upon the results which flow from it in each particular case.'

"The foregoing decisions were rendered under the provisions of section 50 of the Public Utilities Act containing provisions with reference to certificates of public convenience and necessity almost identical with the provisions of section 5 of the act of May 10, 1917.

"We see no good reason which would justify a failure to apply to the present situation and to similar situations the principles announced in the Great Western Power Company case and the Oro Electric case, subject, of course, to such qualifications and modifications as may be necessary because of the nature of the business of automobile stages and the conditions under which such business is conducted.

The burden of proof, if a petitioner asks for an order declaring that public convenience and necessity require that he shall commence operations in a territory which is served by an existing utility, is upon the petitioner. He must show, affirmatively, that public convenience and necessity require that he shall enter the field. Pacific Gas and Electric Company vs. Great Western Power Company, supra, page 213."

I submit the following form of Order.

O R D E R

Louis E. Smith, H. S. Calvert and W. M. Marko, co-partners doing business under the firm name and style of Smith

Trucking Service, having filed a petition for an order declaring that public convenience and necessity require the operation by them of an auto truck service for the transportation of property as a common carrier over the east side state highway between Sacramento, Redding, and certain intermediate points, public hearings having been held thereon, the matter having been submitted and being now ready for decision, the Railroad Commission hereby finds as a fact that public convenience and necessity do not require the operation by petitioner of an auto truck service as requested in the petition herein.

Basing its Order on the foregoing finding of fact and on the other findings of fact which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above entitled proceeding be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of January, 1933.

C. L. Scully
Leon Schubert
W. A. Curran
M. B. Harris
W. H. ...
Commissioners.