

ORIGINAL

Decision No. 27975

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
WM. M. SMITH and MAKIN H. SMITH, Jr., )  
co-partners doing business under the )  
registered name and style of TRANS )  
BAY MOTOR EXPRESS CO., for a certifi- )  
cate of public convenience and )  
necessity to operate motor express )  
service as a common carrier between )  
SAN FRANCISCO and EAST BAY CITIES. )

Application No. 19893.

Wm. W. Hoffman, for complainant.  
E. H. Hart, for Pacific Motor Tariff Bureau, protestant.  
G. E. Duffy and Berne Levy, for The Atchison, Topeka  
and Santa Fe Railway, as it may appear.  
Douglas Brookman, for United Parcel Service, protestant.

BY THE COMMISSION:

O P I N I O N

Applicants Wm. M. Smith and Makin H. Smith, Jr., co-partners doing business under the name and style of Trans Bay Motor Express Company, seek a certificate of public convenience and necessity authorizing the transportation of packages by motorcycle trucks between the City and County of San Francisco and the East Bay cities of Oakland, Berkeley, Alameda and Emeryville.

A public hearing was conducted by Examiner Geary at San Francisco April 29, 1935, and the matter was duly submitted.

The service of applicants was commenced in September, 1932, by Mr. Frank Hillendahl and was sold on January 2, 1933, to the applicants who have continuously operated the business since that date.

Applicants own three motorcycles and rent an additional car and make four round trips a day between San Francisco and East Bay cities. The cars are all equipped with side-car equipment

and only small packages are transported. The application and testimony show that prior to the commencement of these operations Harry E. Brown inaugurated a motorcycle service between the points here involved and when this service was inaugurated the said Brown visited the office of this Commission seeking information and was advised at that time that the Commission had not assumed jurisdiction over motorcycle transportation and it was upon this advice that the predecessor of the applicants established the service.

In the year 1933, Case No. 3343, Regulated Carriers vs. H. E. Brown, was instituted and this proceeding brought in issue the question of jurisdiction over motorcycle transportation but Case No. 3343 was dismissed after Brown ceased his operations and it was not until January 24, 1935, in Case No. 3867, by Decision No. 27688, that this Commission definitely declared that it had jurisdiction over motorcycles by authority of Section 1, Subdivision (c) of the Auto Truck Transportation Act (Chapter 213, Statutes 1917, as amended).

The services of applicants have now been rendered for a period of approximately three years without authority of the statute but by reason of best available information that the operations were such as not to require a certificate. Only two witnesses were sworn and they were members of the applicants' operating company. This testimony was to the effect that the general public has been continuously served with a quick pick-up and delivery system handling principally the following commodities: automobile supplies, small machinery parts, nursery supplies, flowers, furs, dry goods, motion picture parts, dental supplies, refrigeration, machine parts; and there was submitted into the record some 30 letters addressed to the Commission praising the quick and reliable package service, declaring that it was a necessity,

and urging that a certificate be granted.

Protestants contend that the services conducted by applicants are in competition with their activities, and showed that there was at the present time an abundance of daily service by motor trucks; also that most of the certificated operators between the points involved are not using their equipment to capacity. The testimony of the witnesses for protestants, however, indicated they were principally handling heavy commodities and while they do perform expedited service when demands are made by shippers, it is clearly evident that they are not rendering a small package service such as these applicants are giving and which the public requires.

The applicants' business is now showing small profits due principally to the fact that the owners are performing practically all of the labor required and only withdrawing from the business small weekly compensation. It is apparent that the greater part of the service being rendered is of an emergency nature and has been built up over the three year period when the operations were being conducted on the theory that motorcycles did not come under the jurisdiction of the Railroad Commission.

We are of the opinion that the public convenience and necessity has been clearly proven by virtue of the fact that there is and has been for some years past a constant demand for the service and while no advertising is being done, a clientele has been established who, by use of the telephone, keep the vehicles employed. It does not appear that this special small package service is in active competition with protestants' truck operations.

A certificate of public convenience and necessity should be granted.

William M. Smith and Makin E. Smith, Jr., co-partners doing business under the registered name and style of Trans Bay Motor Express Co., are 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 in the above entitled proceeding, the matter having been submitted and being now ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by William M. Smith and Makin E. Smith, Jr., a co-partnership doing business under the name and style of Trans Bay Motor Express Co., of a motorcycle truck service as a common carrier for the transportation of property between the City and County of San Francisco and Oakland, Berkeley, Alameda and Emeryville.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted to William M. Smith and Makin E. Smith, Jr., a co-partnership doing business under the name and style of Trans Bay Motor Express Co., for the operation of the service hereinabove described, subject to the following conditions:

1. Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof, stipulating in said acceptance that said certificate is accepted for the exclusive use of motorcycle trucks and that the certificated right herein shall never be claimed as permitting the use of other vehicles than three wheel motorcycles in contradistinction from four-wheel auto trucks of the conventional commercial type and/or automobile chassis.

2. Applicants shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than ten days' notice to the 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 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 days' notice to the 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 secured.

5. No vehicle may be operated by applicants herein unless such vehicle is owned by said applicants or is leased by them 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 the date hereof.

Dated at San Francisco, California, this \_\_\_\_\_ day of May, 1935.

Leon Whittell  
M. A. Cur  
M. B. Harris  
W. H. ...

Commissioners.