

Decision No. 27987

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
WILLIAM M. SMITH, MAKIN H. SMITH, JR., )  
and V. FRED JAKOBSEN, co-partners, )  
doing business under the name and )  
style of TRANSBAY MOTOR EXPRESS CO., )  
for a certificate of public convenience )  
and necessity authorizing partial aban- )  
donment of service between San Francisco )  
and Piedmont, Oakland, Berkeley, Alameda )  
and Emeryville, California. )

ORIGINAL

Application No. 23980

BY THE COMMISSION:

O P I N I O N

William M. Smith, Makin H. Smith, Jr. and V. Fred Jakobsen, co-partners, doing business as Transbay Motor Express Company, are engaged in the transportation of property as common carriers by motorcycle truck between San Francisco, Oakland, Berkeley, Alameda, Emeryville and Piedmont, pursuant to a certificate of public convenience and necessity as authorized and described in Decision No. 27975, as amended by Decisions Nos. 29291, 31863, and 31972.

On January 29, 1941 the Superior Court of the State of California, in and for the county of Alameda, by its Decision No. 157130, enjoined V. Fred Jakobsen, a co-partner, from engaging in the carrying or delivery of retail merchandise described in the decision of said Court as being

"Merchandise destined for delivery to any person who is the consumer of such merchandise or who will not, in the normal course of business, resell or dispose of the same."

The instant application, therefore, seeks an order of this Commission whereby Transbay Motor Express Company may restrict its operative right to exclude the transportation of the property

described in the Court order referred to above.

As additional justification for the authority sought, applicants further allege as follows:

"That applicant Transbay Motor Express Co. has at no time sought to engage in or to conduct a retail parcel delivery business, and does not in fact solicit or encourage the movement of such traffic; that applicant's business has been almost wholly confined to the handling of wholesale merchandise, such as that moving from manufacturer to manufacturer, jobber to jobber or store to store, and only on rare occasions have isolated shipments been handled of such a nature as may be classed as retail merchandise. That such shipments do not equal one-half of one percent of applicant's monthly business in terms of shipments handled, and the gross revenue derived therefrom is less than \$15 per month; that the shipping public, through its patronage (or lack of patronage), has not considered applicant as being engaged in the handling of retail merchandise.

"That numerous other carriers, including United Parcel Service, Bay District, and Railway Express Agency, Inc., publish rates specially designed for the handling of retail merchandise, and a large portion of this class of traffic is also being handled by the United States mails."

This appears to be a matter not adversely affecting the public interest and one in which a public hearing is not necessary. The application will be granted.

#### O R D E R

IT IS ORDERED that Decision No. 27975, dated May 20, 1935, on Application No. 19893, be and it is hereby amended by adding thereto the following restriction:

No shipment of merchandise shall be transported which is destined for delivery to any person who is the consumer of such merchandise or who will not, in the normal course of business, resell or dispose of same.

In all other respects, Decision No. 27975 shall remain unchanged and in full force and effect.

The foregoing authority is contingent upon the filing by applicants, within thirty (30) days from the effective date of this order, on not less than two (2) days' notice to the Commission and the public, a supplement to its tariff, in triplicate, containing the restriction herein granted.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 4<sup>th</sup> day of February, 1941.

[Signature]  
[Signature]  
Ray & Riley  
Justus J. Casner  
Francis R. Havenner  
COMMISSIONERS