

Decision No. 45297

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 GEORGE C. SMITH, JR., an individual  
 doing business under the firm name of  
 SMITH TRANSPORTATION CO., for a cer-  
 tificate of public convenience and  
 necessity to operate an automobile freight  
 service for the transportation of property  
 as a common carrier between the Los Angeles  
 Drayage Area and certain territory imme-  
 diately adjacent thereto, and Paso Robles,  
 California, over specified routes, serving  
 certain intermediate and certain off-route  
 points.

ORIGINAL

Application No. 30144

Glanz & Russell, by Arthur H. Glanz and Theodore W. Russell, for applicant. Gordon & Knapp, by Wyman C. Knapp, for Pacific Freight Lines, Pacific Freight Lines Express, and Arroyo Grande Truck Company; Douglas Brookman, for California Motor Express Ltd.; C. W. Cornell, Joseph C. Gill, and E. L. H. Bissinger, for Southern Pacific Company and Pacific Motor Trucking Company; Bart F. Wade, for Asbury Transportation Company; protestants. J. J. Deuel and Edson Abel, for California Farm Bureau Federation, interested party.

## O P I N I O N

Applicant George C. Smith, Jr., doing business as Smith Transportation Company, seeks a certificate of public convenience and necessity authorizing the establishment of a highway common carrier service for the transportation of general commodities between Los Angeles and certain adjacent communities, on the one hand, and points on and near U. S. Highway 101 and State Highways 1 and 150 between Buellton and Paso Robles, on the other hand. The application was opposed by the highway common carriers and the railroad corporation now serving this area, which appeared as protestants.

Public hearings were held before Examiner Rowe at Los Angeles, Santa Maria, San Luis Obispo, and Paso Robles during the latter part of 1949 and the early part of 1950. The matter was submitted on briefs, which have since been filed.

Applicant described his present operation and his proposal, and also testified as to his experience, operating equipment and facilities, and financial condition. Many public witnesses also testified on his behalf. Through their respective operating officials, protestants described the character of the service which they severally provide. They called many shipper witnesses who testified as to the satisfactory service they provided and as to the fact that such witnesses had no need for a new service.

A number of collateral issues were discussed at length in the briefs but require only passing comment in this opinion. Most of the criticism directed against the activities of applicant during and immediately preceding the hearings must be largely disregarded as they apparently resulted from his nonjudicial training and his eagerness to qualify for operating rights. While his contacts with at least one witness may have been questionable, it has not been shown to have substantially prejudiced the presentation of the protestants' case. There was no indication that his counsel was in any way responsible for applicant's actions. It is the opinion of the Commission that the fact that applicant thought that he was privileged to seek business during and previous to the hearings should not alone be ground for denying his application. This fact will be considered with other matters in determining whether a certificate of public convenience and necessity should be granted applicant, and the extent of operating rights to be conferred thereby.

Applicant proposes to continue to use the equipment and facilities devoted to his present operation. This equipment and these terminal facilities appear adequate for the operation which will herein be authorized. He now has forty-one units of equipment and plans to secure additional equipment as needed. A small dock is leased and maintained at 1013 East Fifth Street in Los Angeles. In Santa Maria he has a terminal which covers half a block. This terminal has office facilities and paved streets on three sides. Applicant has from 20 to 25 employees including office workers, drivers, and dock workers. Seven of these employees are located in Los Angeles, including five drivers, one dispatcher, and one billing clerk.

From the evidence of record, the Commission is of the opinion and finds that generally each of the protestants furnishes an efficient and comprehensive service to the areas in which they possess operating authority, with the following exceptions. In the area south of the Santa Maria River, within the scope of its certificated territory, protestant Arroyo Grande Truck Company has not been hauling farm produce into the Los Angeles and San Francisco produce markets in any substantial volume. In this same area, especially in the Santa Maria Valley, protestant Pacific Freight Lines has been carrying produce southbound for only one large grocery concern in any substantial volume or regularity. In the area south of the Santa Maria River, which divides the counties of San Luis Obispo and Santa Barbara, it is hereby found as a fact that there is public convenience and necessity requiring a highway common carrier service for the transportation of farm produce to the Los Angeles produce market by applicant. Likewise, it is found that there is no public convenience and necessity requiring any additional transportation facility for the carriage of any other freight than farm produce from

the area between Paso Robles and Buellton along or laterally from U. S. Highway 101, nor State Highways 1 and 150 to the Los Angeles area.

A more complex problem is presented by the request of applicant for authority to carry general freight from the Los Angeles area to the northern points such as Santa Maria, San Luis Obispo, Paso Robles and surrounding areas. Witnesses representing ten substantial shippers from the Los Angeles area testified that those shippers needed an additional highway common carrier to transport their freight to the northern area sought to be served. They are, and for varying periods of time have been, using applicant's service which they uniformly recommend as efficient and satisfactory in every way. With one exception these shippers are located in the general area where farm produce will be transported from the Santa Maria territory.

The Commission finds as a fact that public convenience and necessity require that the areas in which these ten shippers are located be served by applicant for the carriage of general commodities to the Santa Maria area with exceptions noted in the following order. This portion of the Los Angeles area required to be served is located west of the Los Angeles River, east of Spring Street and is bounded on the south by Olympic Boulevard. The area to be served will also include territory three hundred feet in every direction from the intersection of Century Boulevard and Alameda Street. Likewise, it will include the 4400 block on East Washington Boulevard, the 2300 block on East Vernon Avenue, the 2600 block on East Olympic Boulevard, and the 1800 block on East 25th Street, all in the city of Los Angeles or the city of Vernon.

While some receivers of freight in the northern area expressed a desire that applicant carry their freight from Los Angeles shippers, located without the previously described area to be certificated, this testimony is not considered of sufficient weight to justify the Commission in authorizing applicant to serve such shippers. The proposed service of applicant in the area which is hereinafter being certificated is in the public interest and will not affect the business of any protestant to the extent of requiring any curtailment or impairment of its service.

The witnesses representing receivers of freight in the northern area had some criticism of the service of each of the protestants. This was directed to late deliveries, handling of claims, and discourtesy of drivers. There was a strong conflict in this evidence and the Commission is inclined to discredit such evidence on behalf of applicant. Discourtesy of drivers is a matter too indefinite, and involving too much the personality of the witness for the Commission to give great weight to such testimony when other witnesses testified that the same men were obliging and courteous. Without fully trying each alleged claim as a separate issue, testimony with regard to claims is of inconclusive value and must be weighed against the testimony to the contrary, of other witnesses. Considering all the evidence of record as to time of pickup and delivery, and time in transit, the Commission is unable to find that protestants have been seriously remiss in this regard in the territories involved. Consequently, the rights granted herein to applicant are not issued because of a lack of good service to the Santa Maria area. At the same time, it is the opinion of the Commission that the competition herein authorized will tend to improve the existing service of protestants.

One of the material factors moving the Commission to grant applicant authority to transport any general freight is the need of the farmers in the area heretofore described to move their produce promptly and efficiently to the Los Angeles produce market. The southbound movement alone could not very well result in a profitable operation without a balancing northbound movement of freight. This factor, considered with the showing of public convenience and necessity, justifies granting to applicant authority to carry freight from the limited Los Angeles area.

This action is justified also in view of the testimony of the expert witness who made a comprehensive study of the areas involved. He stated that there has been vigorous growth in the areas involved and he predicted a like growth in the future. This growth in population is and will be matched by a similar growth in industry and commerce. This testimony was undisputed. Considering all the factors involved, the Commission is of the opinion and finds that a certificate of public convenience and necessity should issue. The establishment of the proposed service as herein limited is required by public convenience and necessity.

Applicant's Los Angeles service area will include the territory as limited and is required by public convenience and necessity. In other portions of the Los Angeles territory there is insufficient evidence of any public need for the proposed service. There is substantial evidence that public convenience and necessity would not be served by the entry of a new carrier because of traffic conditions and the crowded dock space of shippers. In fact, if the entire Los Angeles and adjacent area sought to be served were included, applicant, we believe, could not adequately serve all the area profitably.

The rates to be established are those provided in John Beeler's Southwestern Motor Tariff Bureau Local and Proportional Tariff No. 18-A, to which applicant proposes to become a party. Applicant will be required to include in his tariff, pickup and delivery zone descriptions as to the Los Angeles-Vernon area, which include no territory in excess of, or outside the boundaries above indicated.

George C. Smith, doing business as Smith Transportation Company, is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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 and between fixed points. 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

Application as above-entitled having been filed, public hearings having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to George C. Smith, doing business as Smith Transportation Company, authorizing the establishment and operation of service as a highway common carrier (as defined in Section 2-3/4 of the Public Utilities Act) for the transportation of farm produce moving southerly, and general commodities freight moving

northerly, between all points and places along U. S. Highway 101 and State Highways 1 and 150, and within a distance of five miles laterally of said highways, which said points and places lie south of the Santa Maria River and include and are north of Buellton and Solvang, on the one hand, and on the other hand, all points and places in the City of Los Angeles located east of Spring Street and west of the Los Angeles River and north of Twelfth Street, and also all points and places within a radius of three hundred feet of the intersection of Century Boulevard and Alameda Street, and all points and places within the 4400 block on East Washington Boulevard, the 2300 block on East Vernon Avenue, the 2600 block on East Olympic Boulevard, and the 1800 block on East 25th Street, all within either the City of Los Angeles or the City of Vernon, California.

Said certificate is granted subject to the following conditions.

- a. Applicant shall have no lawful authority to publish tariffs describing pickup and delivery zones in the Los Angeles and Vernon areas, including any points or places beyond the areas above defined.
- b. Applicant shall not engage in the transportation of any freight having a southerly movement which cannot be defined as farm products, nor shall applicant engage in the transportation of any freight having a northerly movement consisting of uncrated new furniture or household goods, liquid commodities, in bulk, in tank trucks, high explosives, or commodities requiring refrigeration.

(2) That, in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.



- (b) Within sixty (60) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables.
- (c) Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted, over and along the following routes:

Between Los Angeles and Buellton over and along U. S. Highway 101

(3) That, in all other respects, said Application No. 30144 is hereby denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 23rd day of January, 1957.

R. E. Dwyer  
Justice J. C. Quinn  
Harold A. Kils  
James H. Potter

COMMISSIONERS