

Decision No. 46406

ORIGINAL

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)
 certificate of public convenience)
 and necessity to operate an automobile)
 freight service for the transportation) Application No. 30144
 of property as a common carrier between)
 the Los Angeles Drayage Area and)
 certain territory immediately adjacent)
 thereto, and Paso Robles, California,)
 over specified routes, serving certain)
 intermediate and certain off-route)
 points.)

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., an individual doing business as Smith Transportation Co., herein seeks a certificate of public convenience and necessity authorizing the establishment of a highway common carrier service for the transportation of property, except uncrated new furniture and household goods, between all points and places in the Los Angeles Drayage Area, as that term is defined in Items Nos. 30, 31, 32 and 33 of City Carriers' Tariff No. 4 and Highway Carriers' Tariff No. 5 of the Public Utilities Commission, and certain areas immediately

adjacent thereto, on the one hand, and, on the other hand, points on and near U. S. Highway No. 101 and State Highways Nos. 1 and 150 between Buellton and Paso Robles via designated routes.

By Decision No. 45297, dated January 23, 1951, this Commission granted applicant a certificate of public convenience and necessity authorizing the "transportation of farm produce moving southerly, and general commodities freight moving northerly, between all points and places along U. S. Highway No. 101 and State Highways Nos. 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."

This authority was further limited by prohibiting the applicant from publishing tariffs describing pickup and delivery zones in the Los Angeles and Vernon areas, including any points or places beyond the areas authorized to be served, and by limiting applicant's southbound transportation to farm products and his northbound transportation so as to prohibit the hauling of uncrated new furniture or household goods, liquid commodities

in bulk in tank trucks, high explosives and commodities requiring refrigeration.

The route authorized was "between Los Angeles and Buellton over and along U. S. Highway 101."

Under date of February 1, 1951, the California Farm Bureau Federation filed a petition for rehearing on the following grounds:

1. The decision failed to prescribe just and reasonable origin and destination areas both in Los Angeles, as a consuming and supply center, and in the northern territory;
2. The decision failed to give a realistic consideration to the needs of agriculture so far as southbound traffic is concerned;
3. The decision placed undue restrictions on applicant, which were, in effect, "penalties against his prospective shippers"; and,
4. The decision failed to authorize "the regulated competition found to be desirable", and failed to provide "adequate and dependable transportation service for the products of agriculture."

Under date of February 8, 1951, the applicant likewise filed a petition for rehearing for the purpose of oral argument on the following grounds:

1. The decision did not follow the established concepts of requirements of valid proof in public convenience and necessity cases;
2. The decision is arbitrary and unreasonable;

3. The certificate granted is unduly and unlawfully restricted; and

4. The decision tends to establish rules of law which are highly undesirable from the standpoint of sound regulation.

Under date of March 13, 1951, the Commission issued its order granting a rehearing. A public hearing was held on August 22, 1951, before Commissioner Craemer and Examiner Syphers, at Los Angeles, at which time further evidence was adduced and the matter submitted.

At the rehearing the prior record in this case was referred to and, in effect, incorporated in the instant proceeding, and the testimony submitted was in addition to and supplemental of the prior testimony.

A representative of the transportation department of the Public Utilities Commission presented a study in connection with this application, which had been made by the Commission's staff under his direction. This study was received in evidence as Exhibit 43.

The purpose of the study was to determine as accurately as possible the actual tonnage of general commodities and fresh fruit and vegetables moving between the Los Angeles Metropolitan Area, on the one hand, and the Santa Maria Valley area, on the other hand, by motor trucks operating over U. S. Highway No. 101 via Montalvo. All commercial vehicles passing the Montalvo weighing station during a period of forty-eight hours, from 8:00 a.m., March 27, 1951 to 8:00 a.m., March 29, 1951 were checked.

From the data so obtained the report, designated as Exhibit 43, was compiled. It was found that the number of vehicle units operated by the various classes of carriers was as follows:

<u>Class of Carrier</u>	<u>No. of Carriers</u>	<u>Empties</u>	<u>Loaded</u>	<u>Total</u>	<u>Average No. Vehicles per Carrier</u>
Certificated	50	53	472	525	10.5
Permitted	270	228	559	787	2.9
Proprietary	305	227	483	710	2.3
Interstate	<u>34</u>	<u>15</u>	<u>43</u>	<u>58</u>	<u>1.7</u>
	659	523	1,557	2,080	3.2

During the period of the check the total poundage transported amounted to 36,243,138 pounds. Of this amount the certificated carriers transported 40.5%, the permitted carriers 41.1%, proprietary carriers 16.2%, and interstate carriers 2.2%. This poundage was further broken down in the study as to types of commodities hauled and the direction of the haul.

In addition to the road checks made at Montalvo, the study further included data received from the Division of Highways, Department of Public Works, of the State of California, in the form of traffic counts at varying intervals, which had been made at the El Rio weighing station located a short distance south of Montalvo. From this data the traffic count of commercial vehicles was charted and tabulated.

As a result of this study, the staff arrived at the following estimated annual tonnage transported between the Los Angeles Metropolitan Area and the Santa Maria Valley area:

<u>Class of Carrier</u>	<u>Tonnage</u>	<u>Per Cent</u>
Certificated	42,315	21.8
Permitted	92,286	47.4
Proprietary	59,838	30.8
Interstate	-	-
Total	<u>194,439 (Tons)</u>	<u>100.0</u>

The tonnage transported was further analyzed as to weight groups, and it was found that 99% of the shipments transported by certificated carriers are in weight groups under 4,000 pounds, as contrasted to 94% of shipments transported by permitted carriers. It was further observed that the tonnage transported by proprietary carriers generally is in truckload lots.

The witness compared the study presented in Exhibit 43 with two previous road checks of commercial vehicles conducted at Montalvo. This comparison indicates that there has been an increase of 37.3% in vehicle units passing through the checking point as of March, 1951, as compared with March, 1946. Likewise, there has been an increase in poundage of 21.4%. These increases are shown in the following table:

<u>Date</u>	<u>Vehicle Units Checked at Montalvo</u>	<u>Pounds of Freight</u>
March 1946	2,497	10,341,600
March 1951	3,428	12,556,518

Consideration was given in the study to vehicle units generally engaged in the transportation of general commodities, fresh fruit and vegetables, and frozen food, which operated empty in one direction or another. A summary of these findings is set out below:

<u>Class of Carrier</u>	<u>Empty Vehicle Units</u>	
	<u>Southbound</u>	<u>Northbound</u>
Certificated	16	1
Permitted	83	36
Proprietary	111	45
Interstate	6	1
Total	<u>216</u>	<u>83</u>

From this summary it appears that vehicle units operated by certificated carriers are generally in revenue service on

both the "going" and "return" trips.

It was pointed out that some certificated carriers employ other carriers under lease or subhauling arrangements in the direction of movement where the traffic is heavy, and that generally the return trip for this type of carrier is made empty.

For the shorter distances it was pointed out that the proprietary carriers transport a substantial amount of the traffic, whereas, when the line-haul distance increases, the percentage relationship of tonnage transported by carriers generally changes from proprietary carriers to for-hire carriers. Charts and statistics were compiled in the report to indicate these findings.

Exhibit 44 is a supplemental sheet which was submitted in connection with the study previously referred to. The witness testified that the applicant herein, during the period of study, transported in excess of 40% of all freight handled by permitted carriers between the zones in question. It was further testified that, in arriving at this percentage, traffic information obtained from thirty-one (31) permitted carriers was included.

The applicant introduced Exhibit 45 which is a study of the economic development in San Luis Obispo County and the western part of Santa Barbara County during the period 1940-1950. This study shows the growth of those areas. The applicant also introduced Exhibit 46, showing the number of shipments handled by applicant during the period July 6 to 13, 1951, classified as to points of origin and destination.

A witness for Pacific Freight Lines, one of the protestants in this matter, presented Exhibit 47, which exhibit

shows the revenue by months for the Santa Maria station of Pacific Freight Lines for the period January, 1948 to June, 1951. This witness also testified that the tonnage into Santa Maria has decreased during the period from 1948 to the middle of 1950, and at that time an increase was noted due to the war activities and the resultant hauling to military establishments. He further pointed out that his company has additional equipment which could be used in hauling additional tonnage to Santa Maria.

Testimony was presented by this same witness to the effect that, during the produce season, the Pacific Freight Lines' equipment is practically loaded each day from Santa Maria, whereas, when the produce is not in season, that company will have one-half schedule to one schedule per day running empty from Santa Maria.

A consideration of all of the evidence herein, including that presented at the original hearings, together with briefs and petitions filed, leads us to the conclusion and we now find that public convenience and necessity require services by the applicant as hereinafter indicated. In Decision No. 45297 supra, applicant was authorized to transport farm produce moving southerly from a designated area in the vicinity of Buellton and Santa Maria, on the one hand, to a designated area within the Cities of Los Angeles and Vernon, on the other hand. The territorial limitations on farm produce contained in that decision have been attacked in the petitions for rehearing and upon a reconsideration of the evidence in that connection and with the new light afforded thereon by the study presented in Exhibit 43, we now find that applicant should be authorized to transport farm

produce and supplies and equipment used in the production thereof, from all points and places along U. S. Highway No. 101 and State Highways Nos. 1 and 150, and within a distance of five miles laterally of said highways, between Buellton and Paso Robles, on the one hand, to all points and places in the Los Angeles Drayage Area, as that term is defined in Nos. 30, 31, 32 and 33 of City Carriers' Tariff No. 4 and Highway Carriers' Tariff No. 5 of the Public Utilities Commission, on the other hand.

In enlarging the territorial scope of applicant's rights over those previously granted, we are aware of the problems in transporting farm produce as evidenced by this record. While applicant requested certain territory in addition to the Los Angeles Drayage Area, and we now find that our prior decision was unduly restrictive in limiting applicant's deliveries of farm produce to specific areas of Los Angeles, yet, on this record we do not believe it proper to grant applicant more territory than the established drayage area.

We further find that public convenience and necessity require the transportation of general commodities by applicant from the Los Angeles Drayage Area, on the one hand, to points and places along U. S. Highway No. 101 and State Highways Nos. 1 and 150, and a distance of five miles laterally of said highways between Buellton and Paso Robles, on the other hand.

The record does not justify authorizing the transportation of general commodities with the exceptions hereinafter noted, from the northern area to the Los Angeles area.

We further find that applicant is willing and able to render the service as herein authorized. The record supports this finding both as to applicant's financial condition and as to the equipment and facilities he has. Furthermore, he presently is performing a large percentage of the hauling in the areas concerned and the indications are that he will have continued shipper support.

Petitioners have attempted in petitions for rehearing, to point out a policy which should be followed in public convenience and necessity cases. It is our opinion that public convenience and necessity is a matter to be determined primarily upon the record in each particular case, and all of the ancillary questions which have been raised by petitioners must likewise be so determined. Obviously, the primary consideration in these matters is the public need, and in announcing our findings herein, we have taken this into consideration, first and foremost, in the light of this particular record. Furthermore, we are aware of the existing common carriers now serving the territory. We are aware of the growth in this area as evidenced by the record and in particular, Exhibit 45. We are aware of the testimony of public witnesses both from the Los Angeles area and from the

so-called northern territory and we are aware of all of the other factors which bear on the instant case as disclosed by the record.

It is proposed by applicant, "to charge the rates and charges as set forth in Southwestern Motor Tariff Bureau Local and Proportional Freight Tariff No. 18-A, Cal. P.U.C. No. 10, Agent J. L. Becler, with the exception that the applicant proposes to establish rates and charges on the transportation of fresh fruits and vegetables on a per-crate or other unit of packaging basis...". Since this proposed exception involves a substantial deviation from the basis of charges heretofore found reasonable by this Commission in its minimum rate orders, and since there is insufficient evidence in this record to justify such a deviation, we hereby specifically deny to applicant the right to establish rates and charges on the transportation of fresh fruits and vegetables on a per-crate or other unit of packaging basis. On this state of the record such rates should be on a poundage basis.

George C. Smith, Jr., doing business as Smith Transportation Co., 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 and rehearing 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, Jr., doing business as Smith Transportation Co., authorizing the establishment and operation of service as a highway common carrier (as such term is defined in Section 213 of the Public Utilities Code of the State of California) for the transportation of farm produce and supplies and equipment used in the production thereof, from

all points and places along U. S. Highway No. 101 and State Highways Nos. 1 and 150, and within a distance of five miles laterally of said highways, between Buellton and Paso Robles, on the one hand, to all points and places in the Los Angeles Drayage Area, as that term is defined in Nos. 30, 31, 32 and 33 of City Carriers' Tariff No. 4 and Highway Carriers' Tariff No. 5 of the Public Utilities Commission, on the other hand, and for the transportation of general commodities except uncrated new furniture, household goods, liquid commodities in bulk in tank trucks, explosives and commodities requiring refrigeration, from points and places in the Los Angeles Drayage Area as that term is hereinbefore used, on the one hand, to all points and places along U. S. Highway No. 101 and State Highways Nos. 1 and 150, and within a distance of five miles laterally of said highways, between Buellton and Paso Robles, on the other hand, subject to the following restriction:

Applicant shall not establish rates and charges on the transportation of fresh fruits and vegetables on a per-crate or other unit of packaging basis.

(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 No. 101.

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

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

Dated at San Francisco, California, this 13th day of November 1951.

R. J. [Signature]
President

Harold P. [Signature]

[Signature]

[Signature]

Commissioners