

ORIGINAL

Decision No. 57172

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations and  
practices of HAROLD E. SMITH dba  
SMITH-WAY FREIGHT SYSTEM.

Case No. 6012

James E. Eddy, attorney for the Commission's  
staff.  
Smith, Van Dyke & Hildreth, by Jack E. Hildreth,  
for respondent.  
Glanz & Russell, by Arthur Glanz, for Desert  
Express and Victorville-Barstow Truck Line,  
interested parties.

O P I N I O N

The Commission instituted an investigation on its own motion into the operations and practices of Harold E. Smith, doing business as Smith-Way Freight System, hereinafter referred to as respondent, for the purposes of determining whether respondent has operated, or is operating, as a highway common carrier between the cities, towns and communities of Los Angeles, Lancaster, Bell Gardens, Vernon and Palmdale, without first having obtained a certificate of public convenience and necessity, or being possessed of or having acquired rights to so operate as required by Section 1063 of the Public Utilities Code.

Public hearings were held in Los Angeles before Examiner Mark V. Chiesa. Oral and documentary evidence having been adduced, and the matter having been submitted for decision, the Commission makes its findings and conclusions as follows:

Respondent, Harold E. Smith, at all times hereinafter mentioned held Radial Highway Common Carrier Permit No. 19-48226 issued to him by this Commission on July 30, 1954, Contract Carrier Permit No. 19-47853 issued April 15, 1954, and City Carrier Permit No. 19-47854 issued April 15, 1954. Respondent had not applied for nor did he possess a certificate of public convenience and necessity authorizing him to operate as a Highway Common Carrier as required by Section 1063 of the Public Utilities Code.

Respondent's principal place of business is in Los Angeles. His operations commenced in 1954. At the time of the Commission's staff investigation, June, July and August of 1957, he was operating fourteen trucks. As will be seen by the tabulations hereinafter set forth, respondent was, during the periods indicated, transporting daily shipments for various shippers between Bell Gardens and Lancaster, Los Angeles and Lancaster, Vernon and Lancaster, Los Angeles and Palmdale, and Vernon and Los Angeles.

The record shows that during the four-week operating periods of June 17 to 21, June 24 to 28, July 1 to 5, and July 8 to 12, 1957, all dates inclusive, respondent held only one oral contract with the California Pacific Crayon Company. None of the shipments for this company are included in the tabulations.

The evidence further shows that during said periods respondent transported daily shipments between the places and on the days indicated as follows (Exhibit No. 2):

Between Bell Gardens and Lancaster

<u>1957 June</u>	17	18	19	20	21	24	25	26	27	28
Outbound Shipments	3	4	2	4	4	3	2	1	3	2
Inbound Shipments	-	-	-	1	-	1	-	1	1	1
<u>1957 July</u>	1	2	3	5	8	9	10	11	12	
Outbound Shipments	1	3	3	2	2	3	5	2	2	
Inbound Shipments	-	1	-	1	1	-	1	-	-	

Twenty different shippers engaged respondent for the transportation of the 60 shipments shown to have been transported between Bell Gardens and Lancaster on the days indicated.

Between Los Angeles and Lancaster

<u>1957 June</u>	17	18	19	20	21	24	25	26	27	28
Outbound Shipments	7	11	8	15	12	9	13	9	17	11
Inbound Shipments	-	-	-	-	-	2	-	1	-	1
<u>1957 July</u>	1	2	3	5	8	9	10	11	12	
Outbound Shipments	12	13	12	10	12	11	11	8	15	
Inbound	-	-	-	-	-	-	3	3	-	

Sixty-nine different shippers engaged respondent for the transportation of the 226 shipments shown to have been transported between Los Angeles and Lancaster.

Between Vernon and Lancaster

<u>1957 June</u>	17	18	19	20	21	24	25	26	27	28
Outbound Shipments	4	3	3	6	2	4	3	4	6	2
Inbound Shipments	-	-	-	-	-	-	-	-	-	-
<u>1957 July</u>	1	2	3	5	8	9	10	11	12	
Outbound Shipments	5	3	4	3	4	2	-	6	3	
Inbound Shipments	-	-	-	-	-	-	-	-	-	

Fifteen different shippers engaged respondent for the transportation of the 67 shipments shown to have been transported between Vernon and Lancaster.

Between Los Angeles and Palmdale

<u>1957 June</u>	17	18	19	20	21	24	25	26	27	28
Outbound Shipments	2	4	3	3	8	1	3	5	7	3
Inbound Shipments	-	-	1	-	-	1	-	-	-	-
<u>1957 July</u>	1	2	3	5	8	9	10	11	12	
Outbound Shipments	2	1	2	7	6	4	1	1	1	
Inbound Shipments	-	-	-	-	-	-	-	-	-	

Twenty-seven different shippers engaged respondent for the transportation of the 66 shipments shown to have been transported between Los Angeles and Palmdale.

Between Vernon and Los Angeles

<u>1957 June</u>	17	18	19	20	21	24	25	26	27	28
Outbound Shipments	2	5	7	6	4	4	5	2	4	5
Inbound Shipments	1	-	-	2	-	-	3	1	2	-
<u>1957 July</u>	1	2	3	5	8	9	10	11	12	
Outbound Shipments	3	4	3	6	7	3	3	3	6	
Inbound Shipments	2	1	3	-	-	3	3	1	2	

Eight different shippers engaged respondent for the transportation of the 106 shipments shown to have been transported between Vernon and Los Angeles. Although all but seven of said shipments were consigned by either the Western Auto Supply Company or Westinghouse Electric Corporation respondent made no claim that said transportation service was performed under contract with either of said companies.

Respondent contends (1) that the communities of Lancaster and Palmdale, not being incorporated cities, are not definite areas nor sufficiently defined to be considered as fixed points or termini, and (2) that "the carrier (respondent in this case) does not operate by individual shipments but operates by transportation lines", i.e., each single trip is one "transportation line" having "one end" (terminus) and "one beginning" (point of origin); that although shipments are delivered daily at intermediate points, the truck is in operation only between the two fixed termini consisting of the point of "beginning" (origin) and the "end" point (last destination point), and the number and/or regularity of shipments to any intermediate point or points is immaterial if the ultimate terminus varies on each trip.

The Commission is of the opinion and finds that for the purpose of this proceeding the communities of Lancaster and Palmdale need not be defined by metes and bounds; that they consist of the usual business and/or industrial sections and surrounding residential area; and that respondent's second and somewhat novel contention is not in accord with the decisions of the Commission nor those of the Supreme Court of this State.

We find that the shipments listed in Exhibit No. 2 in this proceeding and hereinabove tabulated were neither intracity shipments.

nor shipments transported under contract, and that said shipments were so numerous and regular between the said named cities and communities as to preclude service as a radial highway common carrier.

We also find upon the evidence of record that respondent was conducting an unrestricted transportation service as a highway common carrier for any and all persons who wished to hire him to transport their merchandise between the points and places as shown in the preceding tabulations; and that Harold E. Smith, doing business as Smith-Way Freight System, has operated as a highway common carrier, as defined in Section 213 of the Public Utilities Code, without first having obtained a certificate of public convenience and necessity from this Commission as required by Sections 1061 and 1063 of said code.

O R D E R

A public hearing having been held, the Commission being fully advised in the premises, having found facts as set forth in the foregoing opinion, and good cause appearing,

IT IS ORDERED:

(1) That Harold E. Smith, doing business as Smith-Way Freight System, be and he hereby is ordered to cease and desist from operating any auto truck as a highway common carrier, as defined in Section 213 of the Public Utilities Code, over any of the public highways of the State of California and particularly between the following termini:

Between Bell Gardens and Lancaster  
Between Los Angeles and Lancaster  
Between Vernon and Lancaster  
Between Los Angeles and Palmdale  
Between Vernon and Los Angeles

unless and until he shall first have obtained from this Commission a certificate of public convenience and necessity authorizing such operation as required by Section 1061 of said code.

(2) That the operating authority of Harold E. Smith, doing business as Smith-Way Freight System, as a Radial Highway Common Carrier is hereby suspended for a period of five consecutive days beginning at 12:01 a.m. on the second Monday after the effective date of this Order.

(3) That the Secretary of the Commission is directed to cause personal service of this order to be made on Harold E. Smith, doing business as Smith-Way Freight System, and the effective date of this order shall be twenty days after the date of such service.

Dated at San Francisco, California,  
this 12<sup>th</sup> day of August, 1953.

[Signature]  
President  
[Signature]  
[Signature]

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Commissioners

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.