

ORIGINALDecision No. 84212

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SMITH TRANSPORTATION CO., a
California corporation, for an
extension of its Certificate of
Public Convenience and Necessity to
operate as a highway common carrier
for the transportation of property
in intrastate and interstate and
foreign commerce, and for an in
lieu Certificate of Public
Convenience and Necessity Therefor.

Application No. 54362
(Filed October 2, 1973)

Murchison & Davis, by Donald Murchison, Attorney at Law,
for applicant.

Silver, Rosen, Fischer & Stecher, by John P. Fischer,
Attorney at Law, for Golden West Freight Lines; and
Karl K. Roos, Attorney at Law, for Atlas Marine
Freight Lines; protestants.

T. H. Peceimer, for the Commission staff.

O P I N I O N

Smith Transportation Company, presently rendering service as a highway common carrier, requests authority to extend service to points in the San Joaquin Valley along Interstate Highway No. 5 and State Highway Nos. 145 and 99, as far north as Madera including off-route points within 20 miles of said highways.

Applicant requests authority to provide service to the extended areas on shipments moving in intrastate, interstate, and foreign commerce. Copies of the application were served upon the existing carriers with which the proposed service might compete and an appropriate notice was published in the Federal Register.

Public hearings were held before Examiner Banks in Fresno on February 27 and 28, 1974, March 1, 1974, and in San Francisco on

May 6 and 7, 1974, and June 18 and 19, 1974. The application was protested by Golden West Freight Lines (Golden). While not in appearance at the original hearings, an appearance and protest was filed at the series of hearings in San Francisco by Atlas Marine Freight Lines (Atlas). Atlas based its protest on an application concurrently pending before the Commission to serve a portion of the territory sought by the applicant. The applicant objected to Atlas' participation in the proceeding for failure to file its protest within the time required by the Commission's Rules of Practice and Procedure but was overruled by the examiner.

The case was submitted without briefs on June 19, 1974 at the conclusion of the hearing.

Certain procedural issues raised at the hearing require our attention.

The first is a motion by Golden to strike evidence and testimony presented by applicant in the form of a survey by an independent research organization as part of applicant's case claiming such deprives protestants of the right of cross-examination. Both of the expert witnesses describing the methods used in conducting the survey and describing the analysis of the survey were thoroughly and extensively cross-examined. Protestants' motion suggests that protestants have the inherent right to cross-examine each of the parties surveyed. Protestant's objections are without merit. The Commission has consistently permitted the use of surveys without requiring that cross-examination of those surveyed be permitted (Golden West Airlines (1967) 67 CPUC 770).

Applicant's Presentation

Applicant began operations in 1937, operating both as a permitted carrier and as a certificated carrier. Applicant's present authority is contained in Appendix A to Decision No. 76947 dated March 17, 1970. Terminals are maintained at Pico-Rivera, Santa

Barbara, Oxnard, San Luis Obispo, and Santa Maria. As of February 1, 1974 applicant owned and operated 454 pieces of equipment. Applicant's net worth as of December 31, 1973 was \$783,929.24, with a net working capital of \$454,283.89.

Applicant conducts a specialized operation, providing overnight service between all points served while accomodating each customer's particular transportation requirements, including weekend pickup and delivery when needed. No local service is provided in the Los Angeles area and none is proposed.

Applicant proposes to render the same service to the proposed extended territory by providing whatever facilities are necessary to give service equivalent to that currently provided in its certificated territory. Applicant's financial and operational ability to perform the proposed service is without question.

The decision to extend its services was based first on a survey conducted by the applicant's president and then on a later survey conducted by an independent professional research organization. In addition, applicant's president stated that the decision was partly based on loss of actual and potential industrial customers from the coastal cities served by the applicant to the San Joaquin Valley area where, it is alleged, land prices and wages are more attractive to industry.

Applicant's president testified that it operates out of the Los Angeles area minimizing the need for elaborate terminal facilities in outlying areas since equipment moving out of Los Angeles is block loaded for direct delivery without rehandling at the destination. Such operations constitute a saving while expediting deliveries to the consignee.

The survey which the applicant presented was conducted by Polimar Research Associates (Polimar) of Fresno, California. Polimar has been engaged in conducting market research for a variety of customers since 1960. It deals in numbers only, summarizing the

information gathered. In engaging Polimar, applicant sought to present a comprehensive, unbiased, independent survey of the need to improve transportation service in and out of the San Joaquin Valley. While the use of a research firm is somewhat unique, it is alleged that it eliminates any question that the information gathered or the individual witnesses presented in support of an application are biased or prejudiced in favor of the applicant, and that arguments concerning the preference and prejudice of supporting witnesses are not representative of the overall need for additional service.

In making the survey, Polimar's president stated that the questions asked on the personal interview were carefully phrased to avoid suggesting an answer and that all of the interviewers were professionally trained before proceeding into the field. In order to get frank and unbiased answers to the survey questions, the interviewers guarantee that the information would remain confidential and the answers, as well as the person interviewed, anonymous. Under the circumstances, no individual users of transportation services were presented as being typical of those interviewed and that of necessity they remain anonymous, which is designed to lend weight to the analysis of the survey.

The survey covered the five county areas of Fresno, Madera, Kern, Tulare, and Kings. This area had a 1970 population of approximately 1,036,000 people and some 18,000 business firms. From these 1,642 firms or companies in 31 business categories were determined to have high transportation requirements. The surveyors worked primarily from Fresno, Visalia, and Bakersfield. Preliminary telephone interviewing reduced the survey list to 1,119 firms and determined the name of the business firm representative to be contacted and interviewed in person. A total of 973 interviews were completed, some 88 percent of those interviewed.

We conclude that the survey to determine the extent of current satisfaction and whether there is a public need for the

proposed service was conducted independently and scientifically and that in the light of the method of conducting the survey, the analysis and conclusions drawn can be relied upon by us.

Protestants' Presentation

In support of its protest Golden presented copies of its authorities, equipment list, and financial report. It also expressed fear that the competition of applicant in the San Joaquin Valley would have an adverse effect on its operation.

The recitation of authority held and the physical facilities of Golden, along with testimony about the effect the grant of this application would have on its ability to meet the needs of its present customers does not warrent a conclusion that such would be the case. Golden would make a better showing of an adverse effect if it presented estimates of tonnage loss and a showing of the net effect on its financial ability to serve the area.

The only other party appearing in opposition, Atlas, does not now hold authority as a highway common carrier to serve the area involved in this application. It does however have a contemporaneous application pending.^{1/} The testimony offered by the witness appearing on its behalf tends to support the conclusion reached by Polimar that the existing service is unsatisfactory. Since Atlas is not currently serving the area there is no need to give further consideration to the effect the granting of this application may have on its ability to continue to serve its present customers.

Discussion

Applicant's presentation is unique as to proof of public convenience and necessity. However, its manner of compilation tends to eliminate the argument made against the testimony offered by users of transportation services that the presentation was not sufficiently representative. While we do not expect that our conclusion in this case will change the more orthodox fashion of presentation of proof of public convenience and necessity, we believe that the applicant has presented his case in a permissible manner.

^{1/} This application, A. 54320 was approved by Decision No. 84148 on March 4, 1975.

Protestants assert that the testimony of prospective shippers in support of the application is indispensable. Such evidence may be desirable from protestants' view but is not indispensable and may be supplied by other means.

We conclude that the granting of this application will not have any material adverse effect on the single protestant currently providing service.

Findings

1. Applicant is a highway common carrier operating between the Los Angeles region and coastal points as far north as Paso Robles.

2. The independent survey performed for applicant shows that there is sufficient current dissatisfaction with the services of existing certificated carriers to warrant the grant of an additional certificate into the area covered by this application.

3. Applicant possesses the necessary equipment, facilities, experience, and financial ability to provide the proposed service.

4. The certification of applicant will not materially alter the competitive picture nor adversely affect the existing certificated carriers.

5. Public convenience and necessity require that the applicant be authorized to engage in operations in intrastate commerce as proposed in the application and also require that applicant be authorized to engage in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.

6. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Conclusions

The Commission concludes that the application, as amended, should be granted, subject to the restrictions set forth in the appendix.

Applicant's operating authority will be restated in the form of a new certificate. The territorial description of the authority granted reflects the names of redesignated highways and does not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

The petition for a proposed report should be denied.

Applicant is placed on 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, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Smith Transportation Company, a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A of this decision.
2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or file tariffs in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 76947, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

4. The petition for a proposed report is denied.

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

Dated at San Francisco, California, this 18th day of MARCH, 1975.

William L. Stevenson
President
William Stevenson Jr.
Leonard Ross
Commissioners

Smith Transportation Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. Upon and along the following routes and between the points hereinafter specified, including all intermediate points, and with the right to make lateral departures therefrom within a radius of 10 miles of said routes:
 - a. Between all points and places on and along U.S. Highways Nos. 101 (Interstate No. 5) and 101-A (Interstate No. 405), State Highways Nos. 1, 23, 118, 126, 150 and 246 between the northwestern boundary of the Los Angeles Region as described in Note A and Paso Robles and Cambria; and between the foregoing points and places on the one hand and the Los Angeles Region on the other hand.
2. Between all points and places on and within 20 miles of the following routes:
 - a. Interstate Highway 5 and State Highways 145 and 99 between the northern boundary of the Los Angeles Region, and Madera; and
 - b. State Highway 41 between its junction with State Highway 1, and Fresno.
 - c. Service may be performed over all accessible public highways between all of said termini, intermediate and off-route points, in combination one with the other.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods and personal effects not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons,

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crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
12. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

Note A

LOS ANGELES REGION

Los Angeles Region includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and U.S. Highway No. 101 Alternate; northeasterly on Sunset Boulevard to California Highway 7; northerly along California Highway 7 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest to the Los Angeles County Line; southerly along the Los Angeles County Lines to its intersection with California Highway 71; southerly along California Highway 71 to California Highway 91; westerly along California Highway 91 to California Highway 55; southerly on California Highway 55 to the Pacific Ocean; thence northwesterly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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