

ORIGINAL

Decision No. 84993

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of ROBERT E. SMITH, doing business
as ALCAL MAIL SERVICE, for a
certificate of public convenience
and necessity authorizing the
transportation of general commodities
as a highway common carrier between
certain designated points within
the State of California.

Application No. 55483
(Filed February 6, 1975)

Edward J. Hegarty, Attorney at Law, for Robert E.
Smith, dba Alcal Mail Service, applicant.
George M. Carr, Attorney at Law, for Data Trans-
portation Co., Inc., and Neptune World-Wide
Moving, Inc., protestants.

O P I N I O N

Applicant, Robert E. Smith, doing business as Alcal Mail Service, is a radial highway common carrier as defined in Section 3516 of the Public Utilities Code. Applicant here applies, pursuant to Sections 1063 and 1064 of the California Public Utilities Code and Sections 206(a)(6) of the Interstate Commerce Act, for a certificate of public convenience and necessity authorizing the transportation of general commodities, with certain exceptions, between all points and places generally in and within 10 miles of the San Francisco Territory.

Applicant is presently authorized to transport general commodities between all points within the State of California. Applicant is conducting, and has for the past two years conducted, operations in intrastate commerce between points in and within 10 miles of the boundaries of the San Francisco Territory. In addition,

motor carrier service has been provided in connection with interstate shipments moving between points within the commercial zones of San Francisco Bay Area cities and other cities in the territory here sought to be served. This service has been conducted pursuant to the exemption from federal regulation set forth in Section 203(b)(8) of the Interstate Commerce Act concerning traffic moving between points within commercial zones.

The application was listed on the Commission's Daily Calendar of February 7, 1975 and was published in the Federal Register on March 5, 1975.

A protest and request for hearing was filed April 9, 1975 by Data Transportation Co., Inc. (Data) and Neptune World-Wide Moving, Inc. (Neptune). The protest was confined to the proposed interstate operations.^{1/} Public hearing was held in San Francisco on June 2 and 3, 1975 before Examiner Tanner. The matter was submitted for decision on the latter date.

Applicant testified that his service consists of mail pickup delivery, and the transportation of general merchandise and advanced office products. The latter category includes computers and computer components, copiers, word processing equipment, and electronic office machines and related fixtures. It is these commodities moving in interstate commerce which is the primary issue to be resolved here.

The operations are conducted in light commercial trucks and vans all radio dispatched. The business is managed out of applicant's home. Neither applicant nor his wife, who handles many

^{1/} The protest was modified at the hearing to pertain only to electronic and tabulating equipment and related fixtures moving in interstate commerce.

of the office duties, are salaried. Four employees, two of which are part-time, complete the work force. Applicant and most of his employees are fire fighters with the Hayward Fire Department. It is applicant's intention to devote all his time to the trucking business as soon as the volume of business permits. In his opinion the granting of the authority sought herein would result in the business expansion necessary to meet this objective.

According to the witness, 65 percent of his current business is the transportation of electronic equipment, 25 percent of which is interstate in character. He urged that interstate authority be granted as it would substantially aid in offering a complete service to the shippers he now serves.

Two witnesses testified on behalf of applicant. Both ship electronic equipment, one primarily word processing equipment, the other, principally office copiers. Both would expand their use of applicant's services should the authority sought here be granted. Both testified that their business required carrier service which can quickly respond to service requests with little or no prior notice.

Protestants are specialized carriers of the equipment here in issue. Neptune pioneered many of the techniques now in use today in connection with the transportation of delicate, expensive electronic machines. Both protestants offered exhibits reflecting the wide variety of specialized handling equipment used in loading, transporting, unloading, and placement of such equipment. Both indicated that capacity for additional traffic is available. Neptune presented a study of equipment utilization for 1974 for their Oakland, San Jose, and San Francisco operations (Exhibit 10). The study was based on 173 1/3 hours per month per vehicle and indicates an overall equipment utilization of 68.4 percent.

Data's and Neptune's objection to granting this application is based primarily on their view that the involved transportation requires special equipment and highly trained employees, and secondly that the demand in the San Francisco Bay Area is such that an additional competitor would result only in adding to their excess capacity.

The record shows that applicant has experienced one instance resulting in damaged goods. A claim was filed and paid. The shipper continues to use applicant's services. The record is also clear that applicant in no way has the equipment or experience of the protestants for handling electronic equipment. That fact does not establish whether he has or lacks the necessary fitness and ability to transport electronic machines.

Regarding the issue of interstate commerce, the record indicates that the preponderance of interstate shipments of electronic equipment are exempt from federal regulation. The record further indicates that the granting of this application will not alter that situation. It then appears that the protests involve but a fraction of the interstate service subject to this application. No evidence was offered by applicant or protestants which would indicate the magnitude of the traffic which Data and Neptune wish to exclude. The geographic configuration of the San Francisco Territory considered with the application of the formula prescribed for determination of commercial zones^{2/} make it unlikely that a significant amount of traffic would fall within the area of concern to Data and Neptune. We are of the view that the exclusion of this traffic from the proposed operations would have a disproportionate adverse effect on the total operation.

^{2/} Title 49, Code of Federal Regulations, Part 1048.101.

No objection to granting this application, other than that discussed above, has been received. Two shipper's witnesses were present at the first day's hearing. It was stipulated that neither ships nor receives office or business machines, computers, copiers, electronic tabulating equipment, and machines and related furniture or fixtures, and that applicant's services are now used, and should this application be granted will continue to be used to the extent of the increased territory.

Cross-examination of applicant developed information indicating that his documents may not conform to the requirements of Items 255 and 256 of Minimum Rate Tariff 2. Applicant is placed on notice that in absence of authority permitting deviation from such tariff requirements, he must conform to those rules.

Findings

1. Applicant has conducted highway carrier operations in intrastate commerce within and between points in the San Francisco Territory and 10 miles thereof.
2. Applicant has conducted highway carrier operations in interstate commerce between points within the commercial zones of the cities located within the San Francisco Territory and 10 miles thereof.
3. Applicant has the facilities and equipment necessary to perform the service proposed herein.
4. Applicant has adequate financial resources and experience to perform the proposed common carrier services.
5. Public convenience and necessity require that 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 operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.
6. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application should be granted as set forth in the ensuing order. The territorial description of the authority granted reflects the names of redesignated highways and roads and does not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Robert E. Smith, doing business as Alcal Mail Service, 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 Robert E. Smith, doing business as Alcal Mail Service, authorizing him 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 he accepts the certificate he 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 his 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, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 15th day of OCTOBER, 1975.

I dissent:

[Signature] Commissioner

[Signature] President
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Robert E. Smith, an individual, doing business as Alcal Mail Service, 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:

- I. Between all points and places in and within 10 miles of the boundaries of San Francisco Territory as follows:

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof.

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to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

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

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment 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, 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

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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-type trucks or trailers or in hopper-type trucks or trailers.
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.

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Appendix A

ROBERT E. SMITH
(an individual)
doing business as
ALCAL MAIL SERVICE

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In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

(END OF APPENDIX A)

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