

Decision No. 44531

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
F. O. CULY, H. F. CULY, D. O. CULY,
D. P. CULY, and G. R. CULY, copartners
doing business as CULY TRANSPORTATION
CO., for a certificate of public
convenience and necessity to operate
as a highway common carrier for the
transportation of property between
San Francisco Territory and San Diego
Territory.

ORIGINAL

Application
No. 28750

Edward M. Berol and Bertram S. Silver for applicants.
Donald Murchison for Pacific Freight Lines, Pacific Freight
Lines Express and Sterling Transit Company, Inc.; Douglas
Brookman for California Motor Transport Company, Ltd.,
California Motor Express, Ltd., Valley Express Co. and
Valley Motor Lines, Inc.; H. J. Bischoff for Southern
California Freight Lines and Southern California Freight
Forwarders; William F. Brooks and Frederic A. Jacobus
for The Atchison, Topeka and Santa Fe Railway Company and
Santa Fe Transportation Company and W. A. Gregory and
Joseph C. Gill for Southern Pacific Company and Pacific
Motor Trucking Company, protestants.

O P I N I O N .

By this application, as amended, F. O. Culy, H. F. Culy,
D. O. Culy, D. P. Culy, G. R. Culy and Frank Culy, Jr., copartners
doing business as Culy Transportation Co., seek a certificate of
public convenience and necessity authorizing operations as a highway
common carrier for the transportation of general commodities, with
certain exceptions, between San Francisco Territory and San Diego
Territory, as defined in Items 270 series and 271 series, respec-
tively, of Highway Carriers' Tariff No. 2.⁽¹⁾

⁽¹⁾ Generally speaking, San Francisco Territory embraces San Fran-
cisco, points south thereof to and including San Jose, and the in-
dustrial and business areas on the east side of San Francisco Bay
extending from Point Richmond on the north to San Jose on the south.
San Diego Territory includes the general area bounded by La Jolla on
the north, Lakeside and Jamul on the east, the Mexican border on the
south and the Pacific Ocean on the west.

Various highway common carriers, express corporations or freight forwarders and rail carriers engaged in transporting property moving between points in the same territories protested the granting of the application. Public hearings were held before Examiner Bradshaw at San Francisco, San Jose and San Diego. Briefs have subsequently been filed.

According to the testimony, applicants have engaged in the transportation of freight since 1934 and during such period have conducted operations between the San Francisco Bay area and San Diego. An exhibit of record purports to indicate that their revenues increased from \$75,830 in 1940 to \$525,802 in 1948 and that during each of these years operations were conducted at a profit. As will later appear, all of the revenue received did not accrue from transportation between the territories embraced in the instant application.

Applicants' equipment consists of 16 tractors, 19 semi-trailers and 10 miscellaneous units, most of which are so-called "pickup" type trucks. Headquarters, shops for repair work and terminal facilities are maintained upon property owned by applicants at San Diego. Terminal facilities upon leased property are located in Alameda. Arrangements for office space and pickup and delivery service have been made with other carriers at San Francisco and San Jose. Pickup and delivery service in the East Bay cities is performed by applicants' equipment as well as by certain other carriers. It is proposed that pickup and delivery work between San Francisco and San Jose be handled by a highway common carrier which operates between these points. Shipments in lots of 4,000 pounds and over will be picked up and delivered by line-haul equipment wherever practicable.

Harold F. Culy, one of the applicant partners, hereinafter called Culy, testified that an overnight service is proposed between

San Francisco and San Diego territories and that no common carrier service will be rendered from, to or between any intermediate points. It is contemplated that line-haul equipment will depart from San Francisco or Oakland and San Diego at 3:00 p.m., 5:00 p.m. and 6:00 p.m., and arrive at the destination terminal the following morning at 7:00 a.m., 9:00 a.m. and 10:00 a.m., respectively. Between San Jose and San Diego U. S. Highways 101 and 101 Alternate will be used. According to Culy, it is anticipated that less-truckload shipments arriving at San Diego on the 7:00 a.m. truck will be transferred to delivery equipment not later than 8:30 a.m. Similarly, applicants expect that freight reaching San Diego at 9:00 a.m. will be loaded on delivery trucks by 10:00 a.m. and deliveries effected during the balance of the forenoon and early afternoon. They anticipate that traffic reaching San Diego at 10:00 a.m. will be delivered during the afternoon, with the exception that shipments to some outlying districts might not be delivered until the next morning. Generally speaking, the proposed rate structure is based upon the minimum rates established by the Commission.

According to testimony of protestants' officials, the service rendered by the existing highway common carriers and express corporations from the San Francisco Bay area affords second-day deliveries in San Diego. This is also true with respect to less-than-carload shipments moving via Southern Pacific Company from the Bay area to Los Angeles; thence Santa Fe to San Diego. Both carload and less-than-carload shipments transported by the Santa Fe from Bay points, it was testified, are delivered in San Diego on the third morning. Pacific Freight Lines' general manager testified that when full truckloads of freight are ready for movement at San Diego before 12:00 noon deliveries can be made in San Francisco by about 10:00 a.m. the following day.

The record also discloses that Santa Fe Transportation Company, pursuant to a certificate of public convenience and necessity granted by Decision No. 43355, dated October 4, 1949, in Application No. 27203 (49 Cal. P.U.C. 98), proposes to establish a service whereby shipments made from the Bay area during the afternoon will arrive at San Diego at 3:30 p.m. the following day. It was stated that most of the freight will be delivered on the day of arrival. In the opinion of Culy, if line-haul equipment does not reach San Diego until 3:30 p.m., it is doubtful whether deliveries can be made to the trade before afternoon closing hours.

Applicants assert that they desire to serve the public in the movement of freight between the San Francisco and San Diego territories. They claim that under present conditions it is impossible for them to determine what service can or can not be rendered without violating the law. According to Culy, so far as he is informed, no existing highway common carrier operates or offers a through overnight service between the points involved in this proceeding.

An exhibit was received in evidence listing numerous shipments transported between the San Francisco and San Diego areas during 1947 and 1948. The list does not purport to include all shipments, but only those considered typical of applicants' traffic. A wide variety of commodities are indicated as having been transported, especially from the Bay area to San Diego. From the number of shipments listed, it appears that canned goods, printed matter, dried fruit, machinery, coffee, roofing material and sugar are the principal southbound commodities, while canned tuna, meat, fish and frozen foods compose most of the tonnage moving from the San Diego area. A relatively large proportion of the shipments were in truck-load lots or were within the higher weight brackets for which rates

are generally provided. A break-down, by certain weight groups, of the number of shipments listed follows:

	<u>Southbound Shipments</u>	<u>Northbound Shipments</u>
Under 4,000 pounds	190	71
From 4,000 and including 10,000 pounds	26	35
From 10,001 to and including 20,000 pounds	31	15
From 20,001 to and including 40,000 pounds	184	26
Over 40,000 pounds	<u>105</u>	<u>14</u>
Total	536	161

By way of comparison, the shipments transported jointly by California Motor Express and Southern California Freight Forwarders between San Francisco and San Diego territories during September, 1949, averaged 309 pounds southbound and 502 pounds northbound. The average weight of shipments transported by Southern California Freight Lines between San Francisco Territory and southern California during the same month was 3,786 pounds southbound and 3,638 pounds northbound.

The volume of freight moving from the Bay area to San Diego is substantially greater than that in the opposite direction. Applicants are parties to a contract with a shipper of soap at Long Beach covering the distribution of the latter's products throughout the territory extending from San Luis Obispo and Madera to Crescent City and Yreka. It was testified that the movement of traffic under this contract is substantial. According to Culy, it is proposed to continue the contract in effect, thereby providing loads for some equipment which otherwise would have to move empty to the Bay area. He declared, however, that it is not intended to transport the soap shipper's traffic in equipment containing shipments moving in highway common carrier service. Applicants also expect to retain in effect a contract covering the movement of coffee from San Francisco to Los Angeles, as well as another contract involving the movement of canned fish from Terminal Island to the Bay area. It was likewise asserted

that shipments moving under these two contracts would not be intermingled with freight transported by applicants as a highway common carrier.

An exhibit of record purports to indicate that during the months of January, April, July and October, 1948, and the first nine months of 1949, applicants' total revenues amounted to \$686,524. It is represented that of this amount \$252,734, or 37 percent, was derived from transportation between the San Francisco and San Diego territories. According to the testimony, \$310,274 of the balance of \$433,790 accrued from transporting shipments under the contract with the soap shipper at Long Beach. The revenue received under this contract during the year 1948, when applicants' total revenues amounted to \$525,802, was stated as having been \$205,463.

Numerous shippers and consignees of freight moving between San Francisco and San Diego territories testified on behalf of applicants. This testimony relates to the movement from the Bay area of shipments of a very diversified nature and of canned fish, fresh meat, packing house products, fruits and vegetables from the San Diego territory. It appears that some of the shippers make daily shipments, while others have occasion to ship less frequently and sometimes at very irregular intervals. Similarly, the volume and size of the shipments referred to in the testimony vary considerably according to the class of traffic and the nature of the shipper's business. Some of the witnesses indicated that they are interested in the movement of small shipments, while others stated that they make or receive both less-truckload and truckload consignments or are concerned with truckload movements exclusively. A substantial number of the witnesses declared that they have used applicants' service in the past; some asserted that they have not done so.

In almost every instance the public witnesses called by applicants contended that the element of time shipments are in transit is of importance to themselves or their customers and that an overnight service between San Francisco and San Diego territories is either essential or desirable. Various reasons were advanced in support of this position. In general, the reasons given by the witnesses fall within the following categories:

- (1) Buyers or branch houses insist on receiving goods as quickly as possible in order to keep stock inventories at a minimum;
- (2) Comparable service is necessary to enable San Francisco shippers to compete with those in the Los Angeles area and to increase sales in San Diego Territory;
- (3) Competition with other shippers or dealers is becoming keener than existed in previous years;
- (4) While shippers are accumulating orders to make up a truckload and thus take advantage of lower rates, some customers' stocks become depleted and immediate deliveries are necessary;
- (5) In order to obtain Government business it is frequently necessary to fill orders with the utmost dispatch;
- (6) Shipments often consist of repair parts required immediately due to machinery and other breakdowns or for some different reason there is an urgent need for materials;
- (7) It is necessary to purchase supplies in small quantities due to shortage of funds;
- (8) Consignees' facilities are inadequate to permit carrying large inventories of certain goods; or
- (9) The commodities in question are perishable or semi-perishable.

Certain witnesses testified that they have been unable to obtain better than second-morning service from the existing common carriers. It was stated that in some instances shipments were more than two days in transit and that the service was not satisfactory. A few complaints were made concerning delays, or loss or damage, arising from the interchange or transfer of freight by existing carriers at Los Angeles.

A resolution adopted by Western Traffic Conference, Inc., an organization of retail stores having members located at San Francisco Bay points and San Diego, urging that the application be given favorable consideration, was received in evidence. Certain statistics compiled by the San Jose and San Diego chambers of commerce depicting business growth and containing other economic information were also submitted.

A number of consignees and shippers at San Diego were called as witnesses by protestants. The consignee-witnesses are engaged in the wholesale hardware, wholesale drugs and liquors and department store businesses or receive shipments of unglazed steel windows. The others make shipments of onyx lamp bases, mops and mop handles, canned olives and electrical wiring for automobiles and trucks. Each of these witnesses testified that second-day service was received from the existing common carriers or that in most cases such a service is accorded them. The service was described as satisfactory. The department store witness and receiver of unglazed steel windows, however, declared that there were occasions when a next-day service might be helpful. The shipper of canned olives asserted that, while a service affording deliveries the following day after shipment would be a great help, it is not absolutely necessary. The shipper of electrical wiring characterized the existing service as very good, but said that it is not fast enough to suit his consignee.

Protestants contend that the proposed time schedules cannot be maintained unless applicants operate their trucks at excessive and dangerous speeds. Applicants, on the other hand, claim that, except for short delays when unusually unfavorable weather conditions prevail, the schedules are feasible without exceeding permissible speeds and assert that they have been providing overnight service since 1939.

As the proposed time schedules indicate, the contemplated elapsed time between terminals is 16 hours. The distance between San Francisco and San Diego via the route applicants propose to use is 535 miles.

Culy, in testifying that the proposed service is practicable, called attention to the fact that there are fewer towns along the Coast route and operations through the congested areas of metropolitan Los Angeles are avoided. He explained that strict supervision is maintained to prevent drivers from speeding and outlined the disciplinary measures which are taken when reports of operations at excessive speeds are received by the management. A driver in the employ of applicants for over 10 years testified that he has not experienced any difficulty in maintaining an elapsed time of 16 hours between San Francisco and San Diego with the type of equipment applicants use and that he does not drive over 50 miles per hour.

Pacific Freight Lines' general manager expressed the opinion that the actual elapsed time between terminals would approximate 21 hours. According to this and other witnesses for protestants, the existing common carriers are unable to provide an overnight service. Considerable testimony was given concerning the comparative advantages and disadvantages of operating trucks along the Coast route and the Valley routes over which most of protestants' operations are conducted. The evidence in this regard, however, is insufficient in detail to enable the Commission to determine which of the routes in question is the most feasible for expeditious through service between the San Francisco and San Diego areas. Moreover, the question at issue is whether applicants can provide the proposed service over the route they intend to use.

According to applicants' operating methods, so-called "long-line" drivers are used between San Jose and Long Beach, while "turn-around" drivers are utilized north of San Jose and south of Long Beach. Culy testified that the driving time from Oakland and San Francisco to San Jose is about one-and-one-half and two hours, respectively. He stated that the normal delay in changing drivers at San Jose ranges from 15 to 20 minutes. An exhibit of record, compiled from tachograph recordings, purports to indicate the arrival and departure times at terminals and points en route of ten typical loaded southbound and northbound trucks operated between San Jose and San Diego during August, September and October, 1949. The total elapsed time, stopover time en route, total running time and average running time per hour between San Francisco and San Diego appear in the following tabulation:

(A running time of two hours between San Francisco and San Jose and a 20-minute stopover time at the latter point have been added to the figures indicated in the exhibit.)

<u>Total Elapsed Time</u>	<u>Stopover Time En Route</u>	<u>Total Running Time</u>	<u>Average Running Time Per Hour (miles)</u>
<u>Southbound</u>			
15'20"	1'20"	14'00"	38.2
16'25"	2'25"	14'00"	38.2
16'50"	2'20"	14'30"	36.9
15'35"	1'40"	13'55"	38.4
16'25"	2'35"	13'50"	38.6
17'00"	2'45"	14'15"	37.5
16'10"	1'55"	14'15"	37.5
16'50"	2'55"	13'55"	38.4
18'00"	2'00"	16'00"	33.5
17'20"	2'45"	14'35"	36.9
<u>Northbound</u>			
16'55"	2'30"	14'25"	37.1
16'30"	2'20"	14'10"	37.7
17'10"	3'20"	13'50"	38.6
16'50"	2'25"	14'25"	37.1
16'40"	2'10"	14'30"	36.9
17'20"	3'20"	14'00"	38.2
18'00"	1'45"	16'15"	32.9
18'30"	1'50"	16'40"	32.1
17'50"	1'50"	16'00"	33.5
19'10"	3'45"	15'25"	34.6

The tachographs with which applicants' vehicles are equipped register the engine revolutions per minute, but do not record the speed per hour. A witness for protestants testified that, based upon some of the departure and arrival times shown in the exhibit, average speeds of from 38½ to 45 miles per hour would be necessary between certain points and require maximum speeds of from about 58 to 65 miles per hour in order to maintain the indicated average speeds. He cited two instances where the computed average speed between certain points was 65 miles per hour or over. This witness further stated that the lowest average speed noted for any of the movements shown for distances over 50 miles was 31 miles per hour and which would require a maximum speed of approximately 45 miles per hour. It was explained by Culy that the tachograph recordings do not show the points at which stops were made between terminals and that the stopover places shown in the exhibit were merely approximate locations based upon his understanding of the places at which drivers usually make stops en route.

According to applicants' witness, the proposed 16-hour schedule is predicated upon operations which do not exceed a maximum speed of 50 miles per hour. He reiterated that such operations are now being performed and declared that as long as the California Highway Patrol allows a 10-mile tolerance over the present maximum speed of 40 miles per hour prescribed by the Vehicle Code (Sec.515) applicants will be able to continue to maintain the 16-hour schedule. This witness further asserted that if it became necessary to observe an elapsed time of 17 or 18 hours, applicants could still provide an overnight service.

Protestants presented considerable evidence describing their operations as well as the terminal facilities and trucking equipment used in or available for both line-haul and pickup and

delivery service. They claim to be in a position to meet the transportation requirements as they arise.

Protestants further contend that applicants are not equipped to render adequate pickup and delivery operations to the entire public without discrimination and at the same time provide the type of service upon which their application is predicated. Evidence was submitted to show the extent of the terminal equipment required by protestants in order to afford a complete service to the public and the time entailed in assembling and delivering shipments in the areas involved. It should be observed, however, that the territorial scope of the several protestants' operations is not comparable to the service areas in which applicants seek to operate.

An important feature of the application in this proceeding is that applicants are proposing to establish a through common carrier service between two important metropolitan centers, without handling any traffic at intermediate points or subjecting through shipments to rehandling or consolidation with other traffic en route. It is also noteworthy that applicants offer to provide a more expeditious service than supplied by the present common carriers. In this connection, the record is in sharp conflict upon the proposition whether a 16-hour schedule can consistently be performed without operating equipment at unlawful rates of speed.

It appears, after carefully examining the record, that even if the proposed time schedule is not feasible applicants are in a position, by reducing over-the-road speeds and, perhaps, decreasing the length of time stops are made en route, to maintain a substantially faster service between the San Francisco and San Diego territories than protestants assert they are able to give. In our opinion, the evidence discloses that the need for an improved highway common carrier service between these areas is sufficient to

justify authorizing applicants to establish a highway common carrier service between the points they propose to serve.

Upon the facts presented, the Commission is of the opinion and finds that public convenience and necessity require the establishment and operation by applicants of service as a highway common carrier between the San Francisco and San Diego territories, as proposed in the application, as amended.

Applicants are hereby placed on notice that the Commission expects them to comply with the applicable State laws restricting the speed of vehicles on the highways. Any violation of such restrictions may be grounds for revocation or suspension of the operative rights hereinafter granted.

F. O. Culy, H. F. Culy, D. O. Culy, D. P. Culy, G. R. Culy and Frank Culy, Jr., copartners, are hereby 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. 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

Public hearings having been had and the Commission, upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is hereby granted to F. O. Culy, H. F. Culy, D. O. Culy, D. P. Culy, G. R. Culy and Frank Culy, Jr., copartners, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of general commodities, except (a) bank bills, currency or coin, deeds, drafts or valuable papers, precious metals or stones or articles manufactured therefrom, jewelry or other articles of extraordinary value; (b) used household goods; (c) acids; (d) animals or pets; (e) explosives or dangerous articles; (f) any article which would be liable to damage other shipments or equipment; and (g) commodities requiring special equipment other than refrigeration equipment, between San Francisco Territory and San Diego Territory, as described in the appendix to this order.

2. That in providing service pursuant to the certificate herein granted applicants shall comply with and observe the following service regulations:

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

- (b) Within sixty (60) days after the effective date hereof, applicants shall 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 schedules on not less than five (5) days' notice to the Commission and the public.
- (c) Subject to the authority of the Commission to change or modify them by further order, applicants shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Between Oakland and San Jose: California Highway 17.

Between San Francisco and San Jose: U. S. Highways 101 and 101 By-pass.

Between San Jose and San Diego: U. S. Highway 101 to intersection with U. S. 101 Alternate three miles north of Oxnard; thence U. S. Highway 101 Alternate to intersection with U. S. Highway 101 south of San Juan Capistrano; thence U. S. Highway 101.

Within San Francisco Territory and San Diego Territory: Such streets and highways as may be necessary to serve consignors and consignees located within said territories, including the San Francisco Oakland Bay Bridge between San Francisco and Oakland.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco California, this 11th day of July, 1950.

R. B. Anderson
James H. Linnell
Harold P. Kille
James H. Linnell
Commissioners

A P P E N D I X

SAN FRANCISCO TERRITORY includes that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway No. 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and 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; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 40 to and including the City of Richmond; southwesterly along the highway extending from 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 water front and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

SAN DIEGO TERRITORY includes that area embraced by the following imaginary line: Starting at the northerly junction of U. S. Highways 101 E and 101 W (4 miles north of La Jolla); thence easterly to Miramar on State Highway No. 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway; thence southerly to Bostonia on U. S. Highway No. 80; thence southeasterly to Jamul on State Highway No. 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.

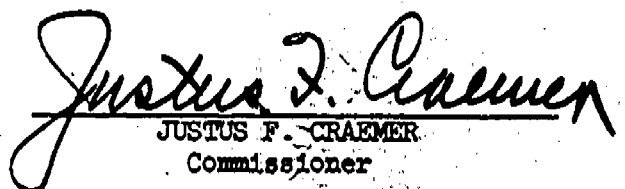
I concur in part and I dissent in part:

From the record made in this Application, need for an overnight truck-load service between San Francisco and San Diego and vice versa, has been sufficiently established. That it would serve public convenience and for competitive reasons is a necessity, has also been established.

Applicant's premise, however, that he can render a service between San Francisco and San Diego via highway route #101 on a sixteen-hour schedule, is one that immediately raises a question of doubt in the informed mind.

The average speed necessary as indicated by the table in the foregoing decision, calls for relatively high speeds for the entire distance. In my judgment, it is particularly inconceivable that such average speeds may be maintained along that portion of the route located between Santa Monica through the congested areas of western Los Angeles County to Long Beach, from Long Beach through the congested coastal areas of southern Los Angeles County and through the highly developed congested beach areas of Orange County to the San Diego County line. Similar conditions pertain to other locations along the route. It follows that much higher speeds must be maintained in all other sections of the route than indicated by the table set forth in the opinion.

I can concur in the need for the overnight service requested for truck-load lots if not operated at the proposed sixteen-hour scheduled rates of speed. I cannot concur in that portion of the opinion and order which grants less truck-load service under the various proposed schedules. In my opinion, it is a fiction to assume that any carrier could render less truck-load service under the proposed schedules and promise early following day delivery when we fully weigh the problems of pick-up at the point of origin and delivery at consignee destination points. In my judgment the conclusion is obvious, that the proposal to operate at the sixteen-hour schedules will compel operation in excess of legal speed limits.


JUSTUS F. CRAEMER
Commissioner