

**ORIGINAL**Decision No. 44864

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 HAROLD B. BOYLE, an individual, doing )  
 business as BOYLE & SON, for a certifi- )  
 cate of public convenience and necessity )  
 authorizing extension of operations as a )  
 common carrier for the transportation of )  
 property by motor vehicle between (a) )  
 Escondido and other presently authorized )  
 and proposed points, and Rainbow, serving ) Application No. 30481  
 intermediate and certain off-route points; )  
 (b) Los Angeles and Los Angeles Harbor and )  
 other presently authorized and proposed )  
 points and certain other presently served )  
 and proposed points along U. S. Highway 101 )  
 between Santa Ana and Oceanside and east of )  
 Oceanside in the general vicinity of )  
 Escondido. )

Glanz & Russell, by Theodore W. Russell, for applicant.  
H. J. Bischoff and W. A. Steiger for Southern California Freight  
 Lines and Southern California Freight Forwarders; Gordon & Knapp,  
 by Sanford A. Waugh, for Pacific Freight Lines and Pacific Freight  
 Lines Express; Frederic A. Jacobus, Louis M. Welsh, and William F.  
Brooks for The Atchison, Topeka & Santa Fe Railway Company and  
 Santa Fe Transportation Company, protestants.

O P I N I O N

Harold B. Boyle, an individual, doing business as Boyle  
 & Son, is now engaged in business, as a highway common carrier (a)  
 between San Diego, on the one hand, and Escondido, San Pasqual,  
 Palomar Mountain, and Warner Dam Site (Lake Henshaw) on the other  
 hand, serving Valley Center, Rincon, Amago, and other intermediate  
 points, in the transportation of general commodities; (b) between  
 Santa Margarita Ranch and Oceanside, in the transportation of "beans  
 only"; and (c) "between the Santa Margarita Ranch, on the one hand,

and Los Angeles and Los Angeles Harbor (San Pedro and Wilmington), on the other hand, serving also intermediate points, including among the latter, Laguna Beach, Dana Point, Santa Ana, Costa Mesa, Irvine Ranch, Irvine Station, San Juan Capistrano, Serra, San Mateo, San Onofre, and Las Flores," in the transportation of "farm products and necessities and supplies". Applicant was authorized to perform the latter service via U. S. Highways 101 and 101-A and named streets and highways now known as State Highways Nos. 22, 55, and Laguna Canyon Road, with the right to serve all points within a distance of ten miles on either side of Highways 101 and 101-A, between Santa Margarita Ranch and Santa Ana and Newport Beach and within a distance of three miles of Highway No. 55 between Newport and Santa Ana. The service is restricted between Santa Ana and Los Angeles Harbor and between Los Angeles and Los Angeles Harbor, and shipments must originate at, or be destined to, farms within the said described territory<sup>(1)</sup>.

By this application, authority is sought to (1) extend and enlarge the present San Diego-Escondido operation northerly and westerly from Escondido to Rainbow (near Fallbrook) and Oceanside, serving Vista and Fallbrook and all other intermediate points and off-route points within a lateral area of ten miles, except points on U. S. Highway No. 101 south of Oceanside; (2) extend and enlarge the Los Angeles-Santa Margarita Ranch operations to permit the transportation of general commodities between the Los Angeles Territory, described in Item No. 270-A of the Commission's Highway Carriers' Tariff No. 2, and Escondido and other

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(1) See Decisions Nos. 5122, 10548, 23738, 36441, 38258. Other decisions pertaining to the sale and transfer of said operating rights are Nos. 9068, 12342, 15416, 15530, 19853, and 31577.

points in the vicinity thereof, now served and proposed to be served from San Diego, also serving intermediate points along U. S. Highways 101 and 101-A, lying south of Santa Ana to and including Oceanside, including all off-route points within a lateral area of ten miles from all routes as far south as the community of Miramar, situated on U. S. Highway 395 approximately fifteen miles north of San Diego.

Applicant does not propose to render a service between the Los Angeles Territory and San Diego and no evidence was offered in support of such service. Shipments originating in San Diego will not be transported north of the Santa Margarita Ranch, and shipments originating in Los Angeles will not be transported south of Miramar.

Applicant also has the required authority to transport property as a city, contract, and radial highway common carrier. He now participates in the rates of the Southwestern Motor Tariff Bureau Local and Proportional Freight Tariff No. 18-A, California P. U. C. No. 10 of Agent J. L. Beeler. If favorable action is taken upon this application, it is proposed to enlarge participation in said tariffs to include the service herein requested.

Twelve days of public hearings were held at Escondido, Vista, and Los Angeles between December 18, 1949, and May 12, 1950. The matter was submitted on briefs which have been filed.

The evidence shows that applicant is now rendering an overnight, and in some instances, same-day, delivery between San Diego and the Escondido area. He is also giving a late-afternoon and evening pickup, mainly agricultural products, in the Escondido area, with early-following-morning delivery at Los Angeles.

It is proposed to establish at least two schedules daily between the San Diego and Escondido-Vista-Fallbrook area, and at least one regular daily schedule between the Los Angeles Territory and the Escondido-Vista-Fallbrook area serving points intermediate of Santa Ana, Laguna Beach, and Oceanside from line-haul equipment. In the vicinity of Escondido, Vista, and Fallbrook some deliveries will be made directly from line-haul trucks and some with pickup and delivery trucks after arrival at the Vista and Escondido terminals. Pickups will be handled in a similar manner. Service six days a week is proposed.

Applicant maintains his general office at Escondido where terminal facilities consist of office, shop, combination dock and warehouse and yard. He also has terminal facilities at San Diego and Vista. At Vista there is a loading platform, small warehouse space and place for repair and maintenance. The San Diego terminal consists of a small office space and partially covered dock. No terminal is now maintained in Los Angeles although one is proposed. Applicant owns 58 pieces of revenue equipment distributed among the three terminals. The equipment consists of tractors, full and semitrailers, pickup and delivery trucks, van and stake trucks, and flats. As of October 31, 1949, applicant's assets amounted to \$179,944.23 and his net worth was in excess of \$50,000 (Exhibit No. 3). He has been engaged in the truck transportation business in the vicinity of Escondido since 1919 and for several years between said area and San Diego (Dec. No. 38258, dated September 25, 1945). Common carrier rights into Los Angeles were acquired in June of 1943 (Dec. No. 36441).

The record clearly shows, and we find, that applicant is financially responsible and is an experienced and capable operator and possesses sufficient equipment of the type required for the proposed operation.

Concerning the need for the service, as proposed, the evidence shows that the area applicant seeks to serve, particularly the area in the vicinity of Escondido, Vista, and Fallbrook, and the area along and laterally of U. S. Highway 101 south of Santa Ana, is principally agricultural. The primary need for a truck transportation service, as shown by this record, is for the transportation of farm products out of said area to Los Angeles or San Diego, and the transportation of dry freight, general commodities, consisting of l.c.l. shipments from Los Angeles or San Diego into the Escondido, Vista, and Fallbrook area.

As heretofore stated, applicant is now authorized to transport "farm products and necessities and supplies" between Santa Margarita Ranch and Los Angeles and Los Angeles Harbor, and certain named intermediate points southerly of Santa Ana and Costa Mesa, serving also a lateral area 10 miles from U. S. Highway 101. He also has a certificate, unrestricted as to commodities, between San Diego, on the one hand, and Escondido, Palomar Mountain, Lake Henshaw, San Pasqual, and intermediate points, on the other hand. It does not appear that the latter rights include any areas laterally of the authorized routes.

Generally, the present application seeks to enlarge applicant's highway common carrier operating rights to include a service to and from the Los Angeles Territory and San Diego, on the

one hand, and an area, described generally, as that portion of San Diego County lying north and west of San Diego, San Pasqual, and Lake Henshaw, excepting points along Highway No. 101 south of Oceanside, and including a service between Los Angeles and the area between Santa Ana and Oceanside.

The evidence of record is insufficient to support a grant of such an enlargement of applicant's present operating authority. On the other hand, we do find that there is substantial evidence to justify a service as proposed between the Los Angeles Territory and San Diego, on the one hand, and Escondido, Vista, and Fallbrook, and the surrounding territory, on the other hand. Many shippers and public witnesses testified that applicant has been serving them satisfactorily for many years in the transportation of farm products and general commodities to and from said area and the cities of Los Angeles and San Diego. Practically all of these witnesses testified that Boyle has been rendering a superior service for them. They also testified that the service of other carriers, both trucking companies and railroads, has not, in the past, been entirely satisfactory. Until recently only one highway common carrier, Southern California Freight Lines, protestant herein, served the Vista and Fallbrook communities. Beginning in June, 1950, the Santa Fe Transportation Company has also been serving The Atchison, Topeka & Santa Fe Railway points in said area.

In our opinion, this record does not contain substantial evidence to justify a finding that a highway common carrier service is necessary, or would be in the public interest, between points intermediate to the Los Angeles Territory and the Escondido, Vista, and Fallbrook area, as proposed. The communities along U. S.

Highway No. 101 between Santa Ana and Oceanside, are small and situated considerable distances from each other. Highway common carrier transportation service is now available from at least two of the largest operators in Southern California, the protestants Pacific Freight Lines and Southern California Freight Lines, and, at some points, the Santa Fe Transportation Company also has authority to operate. We also find there is a lack of substantial evidence to justify a highway common carrier service as proposed between Los Angeles Territory and the off-route points along U. S. Highway 101.

We do believe, however, that the testimony of the many witnesses, ranchers, and businessmen, justifies off-route service in the Escondido-Vista-Fallbrook area and along applicant's present routes in San Diego County, north of Miramar. Exhibit No. 4 is an extensive survey of this part of San Diego County and it was clearly shown, not only by the witness offering this exhibit, but by several other witnesses, that the character of this section is chiefly agricultural, with many small businesses, ranches, dairy farms, and stores situated throughout the territory off the principal highways. Obviously, a direct delivery to, or a pickup from, such places is a convenience, and a need therefor was established to our satisfaction. An off-route service for a distance of five miles on either side of the principal highways in the area now served and proposed to be served will meet the need as shown by the record.

Protestant Pacific Freight Lines will not be materially affected by this decision. The Atchison, Topeka & Santa Fe Railway Company and Santa Fe Transportation Company offered no evidence

upon which a denial of applicant's proposals could be justified. Southern California Freight Lines is the only protestant which has been rendering a service between Los Angeles and San Diego, on the one hand, and Escondido, Vista, and Fallbrook, and intermediate points, on the other hand. The evidence shows that applicant and this protestant have been competitors for the truck transportation business in said portion of San Diego County for many years. There is no evidence that protestant Southern California Freight Lines will lose any of its present business if applicant is authorized to perform a highway common carrier service for the shippers or consignees in the Escondido area. The evidence shows that said communities are experiencing a rapid growth and we believe an additional transportation service as hereinafter authorized will serve the public interest.

We have carefully considered the entire record in this proceeding and it is our opinion and we find that public convenience and necessity require that applicant be authorized to establish and operate a highway common carrier service between the Los Angeles Territory, on the one hand, and Escondido, Vista, and Fallbrook area, on the other hand, and that the present service between San Diego and Escondido be extended to Vista, Fallbrook, and Rainbow, with the right to serve off-route points as more specifically set forth in the order which follows this opinion.

Harold B. Boyle 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. 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 held in the above-entitled proceeding, the Commission being fully advised in the premises, and having found 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 Harold B. Boyle, an individual, authorizing him to establish and operate a service as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for the transportation of property (a) between Escondido and Rainbow, and intermediate points along and laterally within five miles of old and new U. S. Highway No. 395, but not including any point within the County of Riverside; (b) between the Los Angeles Territory, as described in Item 270-A of Highway Carriers' Tariff No. 2, on the one hand, Escondido and Rainbow and points intermediate of Escondido and Rainbow which are situated along and laterally within five miles of old and new U. S. Highway No. 395, but not including any point within the County of Riverside, on the other hand; and (c) between points laterally of and within five miles of the routes now authorized to be traversed between San Diego, on the one hand, and Escondido, Palomar Mountain, San Pasqual, and

Warner Dam Site (Lake Henshaw), on the other hand, as an extension and enlargement of, and to be consolidated with, applicant's present operating rights, subject to the following restrictions and conditions:

Applicant shall not transport any property having both origin and destination within the Los Angeles Territory, as described in Item 270-A of Highway Carriers' Tariff No. 2.

Applicant shall not transport any property having point of origin or point of destination between the said Los Angeles Territory, on the one hand, and the Escondido-Fallbrook area, as described in (b) of paragraph (1) of this order, on the other hand, except such property as he shall have been heretofore authorized to transport.

Applicant shall not transport any of the following property having point of origin or point of destination between the Los Angeles Territory (including said Territory) and Vista.

Used Household Goods, viz.: Household or personal effects commonly used in a household, such as clothing, furniture, furnishings, radios, musical instruments, stoves, and refrigerators;

Used Fixtures and Equipment such as furniture, furnishings, and other appurtenances commonly used in a store, office, museum, institution, hospital, or other establishment;

New Household Goods, Fixtures and Equipment as described above, when not intended for purposes of resale.

(2) That, in providing service pursuant to the certificate herein granted, there shall be compliance with 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 upon 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, tariffs and time schedules satisfactory to the Commission.

- (c) Subject to the authority of this Commission to change or modify such at any time, Harold B. Boyle, doing business as Boyle & Son, shall conduct said highway common carrier service over and along the following described routes:

Within the Los Angeles Territory: Over any and all streets and highways;

Within the Escondido-Fallbrook area: Over Old and New U. S. Highways No. 395 and all off-route state and county roads; also, county road between Bonsall and Rincon;

Between the Los Angeles Territory and the Escondido-Fallbrook area: Over U. S. Highways No. 101 and No. 101-A, State Highway No. 22, and county roads between Oceanside and Junction of U. S. No. 395 (via San Luis Rey) and county road between South Oceanside and Vista; and, for operating convenience only, applicant may use State Highway No. 55 and unnumbered state or county road between Laguna Beach and Irvine.

Any public highway, roads, or streets when necessary to reach off-route points.

- (3) Except as herein authorized, Application No. 30481 is hereby denied.

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

Dated at San Francisco, California, this 3rd day of October, 1950.

R. E. Dwyer  
Justus F. Cooney  
Robert F. Lawrence  
Harold P. Hull  
Resurrection Potter  
COMMISSIONERS