

Decision No. 45492

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the)
 operations and practices of)
 Frank O. Culy, George R. Culy,)
 D. Paul Culy, Donald O. Culy and)
 Harold F. Culy, doing business as)
 Culy Transportation Company.)

Case No. 5172

ORIGINAL

Edward M. Berol for Culy Transportation Company,
 respondent. John Power for Field Division, Public Utilities
 Commission of the State of California.

O P I N I O N

This proceeding is an investigation instituted on the Commission's own motion into the operations and practices of Frank O. Culy, George R. Culy, D. Paul Culy, Donald O. Culy, and Harold F. Culy, doing business as Culy Transportation Company, hereinafter called respondents. By stipulation, Frank Culy, Jr., an additional partner, was added as a respondent, and he waived service of the Order of Investigation and notice of hearing herein.

The purposes of the investigation are to determine

- (1) whether respondents have operated as a highway common carrier over regular routes or between fixed termini in California, or are so operating as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, without authority;

- (2) whether respondents should be ordered to cease and desist from so operating as a highway common carrier until they have obtained authority so to do; and
- (3) whether the permitted rights, or any of them held by respondents, should be cancelled, revoked or rescinded.

A public hearing was held before Examiner Rowe at San Diego, on October 23, 1950, at which time oral and documentary evidence was adduced and the matter was submitted on briefs which are now on file. The matter is now ready for decision.

Respondents are engaged in operating auto trucks for the transportation of property, for compensation, over the public highways of this state. Since January 13, 1947, to and including the date of hearing, respondents have held, and now hold, the following permits issued by this Commission:

Radial Highway Common Carrier Permit
No. 37-2002.

Contract Carrier Permit No. 37-2003.

City Carrier Permit No. 37-2004.

By Decision No. 44531, dated July 11, 1950, on Application No. 28750, this Commission granted to the respondents 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, respectively, of Highway Carriers' Tariff No. 2.

No authority was conferred permitting transportation from, to or between intermediate points. Respondent commenced operations pursuant to this certificate on September 24, 1950.

An assistant transportation rate expert in the employ of the Commission's field division presented four reports, based upon examinations of respondents' records, designed to indicate respondents' noncertificated operations during the periods of June 6 to 11, 1949, inclusive, July 11 to 16, 1949, inclusive, August 1 to 6, 1949, inclusive, January 23 to 28, 1950, inclusive, and April 10 to 15, 1950, inclusive.

Exhibit No. 2, prepared by said expert, covering two six-day periods, one in June, 1949, and the other in July, 1949, shows a total of 31 shippers served. Exhibit No. 3, on the other hand, covering a six-day period in January, 1950, the same month this investigation was instituted, shows a total of nine shippers served, of whom only eight engaged the services of respondents. Similarly, Exhibit No. 4, covering a six-day period in April, 1950, shows that respondents served a total of only nine shippers.

One of the respondent partners testified that, pursuant to advice of counsel in November or December, 1950, he made a study of the company's operation, and ordered his dispatchers and other employees to cease accepting shipments of freight from casual shippers, and to accept freight only from the nine shippers with whom his company had contracts. These instructions applied, however, only to the noncertificated company operations.

Respondents had written contracts with Procter & Gamble Distributing Company, Hills Bros. Coffee, Inc., French Sardine Company, and Safeway Stores, Inc. The services for the remaining

five shippers were performed under long-standing oral contracts. Respondents act substantially as the delivery department for Procter & Gamble's warehouse in Long Beach. Ninety per cent of respondents' noncertificated operations are for said company.

The other eight shippers tender only truck-load shipments, with some so-called split deliveries. The Long Beach-Los Angeles area contract shippers' freight, and some San Diego contract shippers' freight, moves predominantly northward. This movement, particularly the freight of Procter & Gamble, enables respondents to balance their load factor, as the certificated movement is predominantly southbound.

The southbound consignors, such as Hills Bros., C-H Sugar Company, Colgate-Palmolive Peet Company, and Safeway Stores, Inc., are customers which respondents have been serving for a long period of time. The witness for respondents characterized this operation as highly specialized. This witness indicated that his company intended to retain permanently only the Hills Bros. Company contract, and eventually terminate the arrangement to carry other noncertificated southbound freight.

Upon careful consideration of the record in this proceeding, the Commission is of the opinion and finds that, during the year 1949, respondents operated auto trucks in the business of transporting property as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act, for compensation over the public highways of the State of California between fixed termini and over regular routes, to-wit; between San Francisco territory and San Diego territory, without possessing a prior

operative right therefor, and without having obtained a certificate of public convenience and necessity authorizing such operations; in violation of Section 50 3/4 of said Act.

In view of the issuance to respondents of the certificate of public convenience and necessity by said Decision No. 44,531, authorizing highway common carrier operations between San Francisco and San Diego, in view of the curtailment in service and the elimination of all service to casual shippers with whom binding contracts are not presently outstanding, and in view of the manifest purpose of respondents to carry on all their operations in a lawful manner, we are of the opinion that neither a cease and desist order, nor the cancellation, revocation, or suspension of respondents' permits is justified. An order will, therefore, be entered, discontinuing the proceeding.

O R D E R

A public hearing having been held in the above-entitled proceeding, evidence having been received and duly considered, the Commission now being fully advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that this proceeding be, and it hereby is, discontinued.

The Secretary is hereby directed to cause a certified copy of this decision to be served, personally or by registered mail, upon Frank O. Culy, George R. Culy, D. Paul Culy, Donald O. Culy, Harold F. Culy and Frank Culy, Jr.

This decision shall become effective upon the twentieth day after the date of such service.

Dated at San Francisco, California, this 27th day of March, 1951.

R. J. Anderson
Justus F. Gallen
Harold P. Hills
Lawrence P. Pottel
Edna L. McMill
COMMISSIONERS