

ORIGINAL

Decision No. 46430

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, G. R. CULY, and FRANK)
 CULY, JR., copartners, doing busi-)
 ness as CULY TRANSPORTATION CO.,) Application No. 31936
 for a certificate of public conven-)
 ience and necessity to operate as a)
 highway common carrier for the)
 transportation of property.)

Edward M. Berol and Bertram Silver for applicants.
William F. Brooks for The Atchison, Topeka & Santa Fe Railway
 Company and Santa Fe Transportation Company; Warren V. Glass
 and H. J. Bischoff for Southern California Freight Lines and
 Southern California Freight Forwarders; Donald Murchison and
 Gordon, Knapp and Gill by Joseph C. Gill for Pacific Freight Lines
 and Pacific Freight Lines Express; Douglas Brookman by Donald
Murchison for California Motor Express and California Motor Transport
 Ltd., protestants.

O P I N I O N

By Decision No. 44531, dated July 11, 1950, applicants
 were authorized to transport general commodities ⁽¹⁾ as a highway
 common carrier between the San Francisco Territory and the San Diego
 Territory ⁽²⁾. Applicants now seek authority to enlarge their cer-
 tificated service as follows:

(1) Commodities excepted are (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.

(2) Generally speaking, San Francisco Territory embraces San Francisco, points south thereof to and including San Jose, and the industrial 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.

General Commodities: (except the commodities listed in footnote (1).

(a) between the San Francisco Territory, on the one hand, and points along U. S. Highway 101 between Camp Pendleton and the San Diego Territory, inclusive, on the other hand, restricted to shipments weighing not less than 4,000 lbs. or shipments carrying a charge applicable to a shipment of not less than 4,000 lbs;

(b) between Fresno, on the one hand, and the San Diego Territory, on the other hand, also restricted to shipments weighing not less than 4,000 lbs. or shipments carrying a charge applicable to a shipment of not less than 4,000 lbs;

(c) between points along U. S. Highway 101, between San Jose and Salinas, inclusive, on the one hand, and the San Diego Territory, on the other hand, restricted to shipments weighing not less than 30,000 lbs. or shipments carrying a charge applicable to a shipment of not less than 30,000 lbs;

(d) between the San Francisco Territory and the San Diego Territory (via various highways passing through Crockett, Pittsburg, Tracy and Manteca, thence via U. S. Highways 99 and 101 to San Diego), serving all points along said routes between the San Francisco Territory and Tulare, inclusive, on the one hand, and the San Diego Territory, on the other hand, and subject to a similar weight restriction of 30,000 lbs.

Groceries and Grocers' Supplies: (as described in Item No. 360 Series of Highway Carriers' Tariff No. 2).

(a) between points along U. S. Highway 99, between Sacramento and Tulare, inclusive, on the one hand, and the San Diego Territory, on the other hand, with the right to provide service to points and places located within twenty (20) miles laterally of said highway between Sacramento and Tulare, inclusive, restricted to shipments weighing not less than 30,000 lbs. or shipments carrying a charge applicable to a shipment of not less than 30,000 lbs.

The proposed additional transportation service will be on an "on-call" basis and rates to be assessed, and rules and regulations pertaining thereto, will conform to the tariffs of this Commission applicable to the commodities proposed to be transported.

Public hearings were held before Examiner Chiesa at San Francisco, San Diego and Los Angeles. The matter was submitted on briefs which have been filed.

The evidence shows that applicants are now providing a direct overnight service between the San Francisco Territory and the San Diego Territory, operating approximately seven schedules nightly via U. S. Highways 101 and 101-A. The proposed servicing of points between San Jose and Salinas and between Camp Pendleton and the San Diego Territory would be handled by equipment operated on one or more of the said schedules. The proposed service between the San Francisco Territory-Tulare and Sacramento-Tulare areas and the San Diego Territory would be performed "on-call".

Applicants called a total of nineteen shipper or consignee witnesses in support of their request for the various services as herein proposed. Two witnesses represented one shipper, Cudahy Packing Company; two other witnesses represented Wellman-Peck Corporation; and one witness represented a shipper which was going out of business. Of the remaining witnesses, some were testifying as shippers and others as consignees of the same shipments. All of the witnesses were in some type of food manufacturing, processing, canning, packing, or brokerage business.

Having carefully considered the testimony of said witnesses, we are unable to find that public convenience and necessity require that applicants be authorized to establish a highway common carrier service for the transportation of general commodities other than food products. Applicants also failed to show a substantial public need for the transportation of food products between the San Francisco Territory, on the one hand, and points between Camp Pendleton and the San Diego Territory, on the other hand; between points between San Jose and Salinas, on the one hand, and the San Diego Territory, on the other hand; and between points between the San Francisco Territory and Tulare, on the one hand, and the San Diego Territory, on the other hand.

Only four witnesses mentioned a need for the service proposed between the San Francisco Territory, on the one hand, and points between Camp Pendleton and the San Diego Territory, on the other hand, and each of said witnesses stated that there was only an occasional need for such service. As for the proposed service between points between San Jose and Salinas, on the one hand, and the San Diego Territory, on the other hand, only two witnesses indicated a limited need for such service, both shipped canned goods and dried fruits and vegetables southbound only. At least one of

the protestants furnishes common carrier service between the said areas.

The contention that there is a public need for the proposed highway common carrier service between points between the San Francisco Territory and Tulare, on the one hand, and the San Diego Territory, on the other hand, is not supported by substantial evidence. Except for the testimony of one witness representing a sugar refining company located at Crockett, the evidence is too meager to support a finding that there is a public need for said service. Many of the places along said route now have available the common carrier service of one or the other of the protestants. The evidence shows that said sugar refining company now receives a satisfactory transportation service from several types of carriers, rail, highway common carrier and permitted, including the service performed by applicants. A considerable portion of said proposed route is within that area encompassed by the twenty-mile lateral zone included in the Sacramento-Tulare and San Diego Territory proposal.

We are, however, of the opinion that sufficient evidence was presented to justify applicants' request for authority to transport groceries and grocers' supplies in shipments of 30,000 lbs. or more between points located between Sacramento and Tulare, on the one hand, and the San Diego Territory, on the other hand, including the service to points located within twenty miles laterally of U.S. Highway 99, between Sacramento and Tulare, and also including the right to serve Fresno within said area with shipments of similar commodities weighing 4,000 lbs. or more.

There were seven witnesses who testified that the companies they represented had need for shipments to or from Fresno, and approximately eleven of the witnesses testified in favor of the proposed Sacramento-Tulare area service. We do not deem necessary a detailed exposition of their testimony. The area proposed to be

served includes the large and productive San Joaquin Valley where all kinds of fruits and vegetables are grown, canned and packed. On the other hand, San Diego is one of the principal sea food packing cities of the West Coast. The testimony clearly shows that there is a regular movement of the said commodities between the two areas and that public convenience and necessity require that applicants' proposed service be authorized to this extent.

Upon the findings and conclusions hereinabove set forth, this application will be granted in part and denied in part.

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 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., authorizing them to establish and operate a service as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of groceries and grocers' supplies, as described in Item No. 360-C of Highway Carriers' Tariff No. 2, and including frozen meat, between points located along U. S. Highway No. 99 between Sacramento and Tulare, inclusive, on the one hand, and the San Diego Territory, as described in the appendix to this order, on the other hand; with the right to provide service to points located within twenty (20) miles laterally of U. S. Highway 99, between Sacramento and Tulare, inclusive, subject to the following restrictions and conditions:

A P P E N D I X

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 Bestonia 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.

That applicants shall not transport any shipments weighing less than 30,000 lbs., or carrying a charge lower than that applicable to a shipment of 30,000 lbs., except that between Fresno, on the one hand, and the San Diego Territory, on the other hand, applicants may transport shipments weighing not less than 4,000 lbs. or carrying a charge not lower than that applicable to a shipment of 4,000 lbs.

(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, 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 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 Sacramento and San Diego, U. S. Highways Nos. 99 and 101 or 101-A.

Within the lateral zone between Sacramento and Tulare, inclusive; the most appropriate route or routes.

(3) That in all other respects Application No. 31936 be, and it hereby is, denied.

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

Dated at San Francisco, California, this 20th day of November, 1951.

J. J. [Signature]
 President
Justus J. Gabeira
Harold P. Kille
[Signature]
[Signature]
 Commissioners