

ORIGINAL

Decision No. 48835

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 business)
 as CULY TRANSPORTATION COMPANY, to extend an)
 operation as a highway common carrier between) Application
 points north of San Diego, on the one hand, and) No. 33878,
 San Francisco, Los Angeles and San Diego) as amended.
 Territories, on the other hand, for the transporta-)
 tion of fresh fruits and vegetables.)

Bortram S. Silver, for applicants
Turcotto & Goldsmith by Frank Turcotto, for
Pixloy Transportation and Bisher Truck Lines,
 interested parties.

Robert W. Walker and Wallace L. Ware, for
The Atchison, Topeka and Santa Fe Railway Company
 and Santa Fe Transportation Company, protestants.
H. J. Bischoff, for Southern California Freight
Forwarders and Boyle & Sons, protestants.

O P I N I O N

The application as originally filed November 14, 1952,
 requested authority to transport fresh fruits and vegetables and
 perishable farm products from an area north of San Diego to other
 points now served by applicant. On February 27, 1953, by an
 amendment authority was also sought to carry general commodities
 between the area north of San Diego and San Diego. Subsequently,
 the request was reduced by eliminating the requested authority to
 transport now uncrated furniture and appliances and parts thereof.
 By a so-called second amendment the territorial scope of the area
 to be served immediately north of San Diego was reduced in size.
 Applicant proposes to publish rates for the requested service, and
 rules and regulations governing the same which, by and large, are
 those published by this Commission in Highway Carriers' Tariffs
 No. 2 and No. 8 and other tariffs of this Commission which may be
 applicable.

Public hearings were held before Examiner Rowe on April 7, 1953 in Escondido, on April 8, 1953 in Vista and on April 29 and June 22, 1953 in San Diego. Evidence both oral and documentary was adduced and the matter was duly submitted for decision on the latter date.

Some eight witnesses representing various dealers and mercantile establishments in the Vista, Escondido, San Marcos and Fallbrook area appeared in support of the request for authority to transport general commodities between such territory and San Diego. There was some rather indefinite criticism of the service of Southern California Freight Lines. Those witnesses praised the service of Boyle and Sons prior to its acquisition by Southern California Freight Lines, Ltd., a company which also holds the stock of Southern California Freight Lines and Southern California Freight Forwarders.

These witnesses generally expressed a preference for the service of Culy Transportation Company which had been instituted between that area north of San Diego and San Diego without first having received a highway common carrier certificate from this Commission.

Three substantial shippers of fresh fruits, vegetables and perishable farm products testified to the need for the transportation of said commodities to San Diego and to other points on applicants' system such as San Francisco and Los Angeles. These shippers had been using either Boyle and Sons, prior to the transfer of its stock or a contract carrier. They preferred a carrier such as Culy which was not presently serving the largest of such shippers. Five shippers from San Diego appeared for applicant. Their testimony was of unsubstantial value for the reason that they generally stated that they wished to have the applicants' service instituted into the area immediately north of San Diego because of the fact their customers, the witnesses previously referred to, had requested it.

This area just north of San Diego does not appear to be in need of the proposed service for the carriage of general commodities. Protestants Santa Fe Transportation Company and Southern California Freight Lines are presently rendering adequate transportation between that area and San Diego. Boyle and Sons which until recently has been rendering a service comparable to that now proposed by applicants, was compelled to sell because of its financial losses.

Applicants' financial position at present does not appear to be entirely assured. The local service of carrying general commodities if the expedited service offered is maintained would probably impose an additional financial strain upon it. The only proposed service supported by public witness testimony is that for the carriage of so-called emergency shipments of the smaller weights of shipments with an expedited movement. The fact that applicant has apparently instituted a local highway common carrier service without previous authorization from the Commission is considered with other factors in reaching the conclusion that this portion of the application should be denied. This denial has been decided upon without considering Boyle and Sons as a separate operating highway common carrier. This results from the evidence that said corporation no longer operates separately from Southern California Freight Lines.

The evidence shows that applicants proposed transportation of fresh fruits and vegetables and perishable farm products will enable them to more nearly balance their freight movement which now is predominantly southward. Protestant Santa Fe Transportation Company has not shown that it presently carries substantial quantities of such freight. Southern California Freight Lines does carry large quantities of such freight but giving authority to applicants,

to carry this freight will not materially affect the latter protestant for the reason that the freight of this type which applicant will be tendered is carried now in the main by noncertificated truckers. The Commission finds as a fact that public convenience and necessity require that applicants be authorized to operate as a highway common carrier for the transportation of fresh fruits and vegetables and perishable farm products as requested.

O R D E R

Public hearings having been held in the above-entitled proceeding, the matter having been submitted and the Commission 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 Company, authorizing the establishment and operation of service as a highway common carrier as that term is defined in Section 213 of the Public Utilities Code, for the transportation of fresh fruits and vegetables and perishable farm products between all points and places on U. S. Highway 395 between Miramar and Temecula, all points and places between Escondido and U. S. Highway 395 via California Highway 78 to Vista, unnumbered highway from Vista to U. S. Highway 395 via Bonsall and Fallbrook, all points and places between Escondido and Temecula via unnumbered highway from Escondido to Temecula via Valley Center, Lilac and Pala, serving all points named and intermediate points on the above routes on the one hand and on the other hand the San Diego, Los Angeles and San Francisco territories applicants are presently authorized to serve.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof and on not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective appropriate tariffs.
- (c) Subject to the authority of this Commission to change or modify the service or routes by further order, applicants shall conduct operations pursuant to the certificate herein granted to them over and along U. S. Highways 101 and 395 and California State Highways 71, 78 and 91 and all routes presently used by applicants in their present certificated operations and all public highways numbered and unnumbered from the newly authorized territory connecting with routes presently used by applicants in their present certificated operations.

(3) That except as provided in paragraphs numbered (1) and (2) Application No. 33878 be, and it hereby is denied.

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

Dated at San Francisco, California, this 14th day of July, 1953.

[Signature]
 PRESIDENT
[Signature]
[Signature]
[Signature]

COMMISSIONERS

Commissioner Kenneth Potter being necessarily absent, did not participate in the disposition of this proceeding.