

ORIGINAL

Decision No. 62224

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
CULY TRANSPORTATION CO., INC., a
corporation, doing business as
CAL-CANADIAN MOTOR EXPRESS, for an
in-lieu certificate of public
convenience and necessity to operate
as a highway common carrier for the
transportation of property and to
extend its present certificate.

Application No. 42743

Donald Murchison, for the applicant.
E. J. Langhofer, for the San Diego Chamber
of Commerce, interested party.
Elmer J. Sjostrom, for the Commission staff.

O P I N I O N

A hearing on this application was held before Examiner Kent C. Rogers in Los Angeles on December 6, 1960. Prior to this hearing applicant served copies of the application on competing highway common carriers and served notice of the hearing on said carriers. No protests were received by the Commission. On February 28, 1961, the Commission made its "Order Setting Aside Submission and Reopening for Further Hearing". Pursuant thereto, a further hearing was held on the application in Los Angeles before Examiner Rogers on April 27, 1961, and the matter was submitted.

Applicant now operates as a highway common carrier for the transportation of commodities, subject to the usual exceptions, generally between the San Francisco, Los Angeles and San Diego territories and certain intermediate points; between Sacramento and Tulare and the latter two territories; and for the carriage of fresh fruits and vegetables, between certain points in San Diego

County and the San Francisco Territory. It requests authority to extend such highway common carrier operations to transport general commodities with exceptions:

1. TO, FROM AND BETWEEN all points and places located in the Los Angeles Basin Territory as described in Item 270-B of Minimum Rate Tariff No. 2.

2. BETWEEN the San Francisco Territory as described in Item 270-3-C of Minimum Rate Tariff No. 2 on the one hand, and the said Los Angeles Basin Territory on the other hand.

3. BETWEEN the said Los Angeles Basin Territory on the one hand, and the San Diego Territory as described in Item No. 271-3 of Minimum Rate Tariff No. 2 on the other hand, via U. S. Highways 101, 101-A, 101 By-pass and 395, serving all intermediate points and all points and places located within twenty miles laterally of the said highways named.

Explosives, ammunition and/or component parts thereof will not be transported to or from the Naval Ammunition Depot at Fallbrook, California.

4. BETWEEN the said San Francisco Territory on the one hand, and the said San Diego Territory on the other hand.

5. BETWEEN all points and places located on U. S. Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway.

6. BETWEEN all points and places located on U. S. Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway on the one hand, and the Los Angeles Basin Territory and the San Diego Territory on the other hand, via U. S. Highways 99, 101, 101-A, 101 By-pass and 395,

with service to all intermediate points located on and along said highways and serving all points within twenty miles laterally of said highways mentioned.

Applicant will use all available public highways between points proposed to be served and within the cities proposed to be served and will use such streets and highways as may be necessary to serve consignees and consignors located in said cities.

The proposed service is to be on call daily except Sundays and holidays, with Saturday delivery on request. Applicant is presently a party to Interstate Freight Conference, Inc., Agent, California Common Carrier Motor Freight Local and Joint Tariff No. 10; Cal. P.U.C. No. 2; and E. J. McSweeney, Agent, Local and Joint Freight and Express Tariff No. 1; Cal. P.U.C. No. 1, in the publication of its rates and charges with respect to the commodities which it presently transports between the points which it now serves as a highway common carrier. Applicant proposes to establish rates substantially in conformity with the rates presently published in the above described tariff.

Applicant has, or will acquire, terminals for the use thereof in Sacramento, Los Angeles, San Francisco, Oakland, San Diego, Stockton, Modesto, Fresno, Bakersfield, San Bernardino, and Santa Ana. Its main terminal, including offices, and docks, is now in Los Angeles at which point it can accommodate approximately ten trucks at one time.

The application alleges, in justification of the granting of the requested authority, that applicant has operated between many of the points to be served as a highway common carrier and to others as a permitted carrier continuously for a period of many years; that subsequent to the issuance of the original

certificate applicant received numerous requests for service from various other shippers having movements of general commodities to, from, and between all points and places located in applicant's present service area; that during the past three years there has been an ever-increasing demand made upon applicant for the service herein proposed; that during the past few years, and since the issuance of the original certificate to applicant herein, there has been a substantial increase in population and industry in the points and places presently served and proposed to be served by applicant; that applicant's regular customers frequently have occasion to tender shipments which require split deliveries where both deliveries are within applicant's presently authorized service area as a common carrier and, in other instances, where only one delivery would be within the area, and other deliveries outside the area, which situation allegedly places a rate burden upon applicant's regular customers. This so-called penalty is one of the things applicant will eliminate by the expansion of its services within the entire Los Angeles Basin area.

Applicant called seven shippers or their representatives as witnesses. The companies the witnesses represent have frequent less-than-carload shipments of general commodities between the Los Angeles Basin Territory, the San Diego Territory, and the routes between Los Angeles and Sacramento, and between Los Angeles and San Diego, and between said points via all major highways. Each of the witnesses testified that his company desires that applicant be given the authority requested by applicant and that that company will use the applicant's services in the future.

In addition, a representative of the San Diego Chamber of Commerce presented evidence to show that Southern California is experiencing a tremendous growth.

In addition to the witnesses who appeared at the hearings, the record shows that applicant has many shippers who ship to and from the areas applicant seeks to serve.

The staff witness presented in evidence Exhibit No. 12 relative to the financial condition and equipment ownership of the applicant.

The applicant was incorporated in January, 1954. As of December 31, 1960, common stock having a par value of \$41,201 had been issued, and pursuant to a contract of sale will be acquired by Mr. L. J. Manlowe, the applicant's president, under terms dependent on the finally determined net value of the business. The present management assumed control of the corporation on or about May 31, 1958. Mr. Manlowe made substantial changes in methods of operation in order to reverse a history of prior operating losses and improve the financial condition of the corporation.

In 1957 and 1958 the current assets exceeded the current liabilities by a substantial margin. By the end of 1959 and the end of 1960 the current assets were approximately one-half of the current liabilities. In order to avoid bankruptcy an arrangement was negotiated whereby creditors' claims of approximately \$50,000 were to be paid at the rate of \$1,000 per month, and starting on September 1, 1960, were to be paid at the rate of \$1,500 per month. The applicant has been paying these claims at the rate of \$1,000 per month, and, according to the record, the creditors are satisfied with this sum rather than the agreed \$1,500. Through February, 1961,

a total of \$16,000 had been repaid to the creditors participating in the arrangement.

At the time this arrangement was entered into, the corporation was indebted to Transportation Indemnity in the amount of \$25,000 for liability insurance premiums, and to Truck Acceptance Corporation in the amount of \$100,000 for a cash loan. The \$25,000 indebtedness for insurance premiums is an indebtedness incurred by the prior management and is represented by a note. The \$100,000 indebtedness to Truck Acceptance Corporation is represented by a note issued by the corporation in exchange for cash from which Mr. Manlowe was repaid \$65,733 for funds advanced by him to the corporation, and he was given the balance on a loan from the applicant. The record shows that part of this money is to be used by Mr. Manlowe to complete the purchase of the capital stock of the applicant corporation. Each of these obligations, to-wit, the \$25,000 and the \$100,000 obligations referred to, has been subordinated to the creditors' obligation.

The staff found that the cash being generated from operations is apparently adequate for scheduled debt repayment under equipment obligations and with respect to payments being made under the arrangement with creditors. Adjusted operating results for the calendar year 1959 produced or generated cash of \$32,159 and for 1960, \$26,116. Operations for the calendar years 1957 and 1958 produced a cash drain of \$6,444. Cash flow in future years will be materially benefited by relief from income tax payments as a result of application of losses totaling \$183,438, incurred in the years 1955 through 1959 to income in 1960 and subsequent years. Prior losses of \$19,987

were so applied against the 1960 income and \$163,451 remained at December 31, 1960, to apply against future taxable income.

A comparison of applicant's current assets with its current liabilities for the years 1958 through 1960 is below:

Item	December 31			
	1957	1958	1959	1960
<u>Current Assets</u>				
Cash and Working Funds	\$ 816	\$ 10,212	\$ (3,951)	\$ 5,272
Special Deposits	14,905	23,491	8,308	4,562
Notes Receivable		42,265		10,000
Accounts Receivable	36,820	80,825	28,717	14,984
Prepayments	35,120	20,067	4,304	4,408
Materials and Supplies	22,124	17,797		
Total Current Assets	<u>\$109,785</u>	<u>\$194,657</u>	<u>\$ 37,378</u>	<u>\$ 39,226</u>
<u>Current Liabilities</u>				
Accounts and Notes Payable	\$ 82,852	\$118,791	\$ 62,818	\$ 63,930
Wages Payable	4,476	16,712	2,532	2,382
Taxes Accrued	15,489	9,326	4,883	3,924
C.O.D.'s Unremitted	970			223
Total Current Liabilities	<u>\$103,787</u>	<u>\$144,829</u>	<u>\$ 70,233</u>	<u>\$ 70,459</u>

(Red Figure)

Applicant's revenue equipment on hand at December 31, 1958, consisted of a large number of trucks, trailers and other equipment units deemed by present management to be obsolete and uneconomical to operate, and for this reason they were disposed of. On December 31, 1960, applicant had on hand and owned six tractors, eleven trailers, three trucks and four dollies. This equipment is supplemented by the extensive use of leased equipment. Using this method of operation, the applicant has changed its operating ratio from 99.60% in 1957 and 111.12% in 1958 to 90.14% in 1959 and 94.11% in 1960 (Table B on Exhibit No. 12). The extensive use of leased equipment appears fully justified herein.

Having made a thorough study of the applicant's finances, the Commission's financial examiner made the following conclusions:

a. The financial condition of the corporation, although still somewhat precarious, has materially improved as a result of policies of present management. Operating losses have been reversed and a two year record of earnings established, debt liquidation is proceeding in an orderly manner, and successful negotiation of an arrangement with creditors and subordination of the two major obligations of the corporation will probably allow restoration of a reasonable financial condition if earnings continue.

b. The corporation has received no permanent financial assistance from its present officers and stockholder, nor is there any definite commitment of the resources of the stockholder to meet the cash needs of the corporation as they develop.

c. If earnings can be expected to continue at the approximate level experienced in 1959 and 1960, and no substantial new obligations are incurred, cash flow generated from operations should be sufficient to provide for payment of equipment obligations and satisfaction of creditors' claims with payments as presently scheduled. A reasonable program for repayment of debts totaling \$125,000 now subordinated will be required in order to gear such cash requirement to funds generated by operations.

d. The financial condition of the corporation could be more quickly restored by additional investment by the principal stockholder or some commitment of personal resources to the corporation's needs. The present shareholders have, in fact, worsened the financial condition of the corporation by diverting to officers substantial portions of cash borrowings. The amounts thus advanced to officers amounted to \$31,968 as of December 31, 1960.

The Commission having considered the matter is of the opinion, and finds and concludes, that public convenience and necessity require that applicant be authorized to establish and operate a highway common carrier service as hereinafter set forth. A restated certificate will be granted for the purpose of clarification in place of applicant's present operating authority which will be canceled.

Culy Transportation Co., Inc., is 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Application having been filed, a public hearing having been held thereon, the Commission having found that public convenience and necessity require that applicant be granted the authority it has requested, and based on said finding,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be granted to Culy Transportation Co., Inc., a corporation, authorizing it to operate as a highway common carrier as defined in Section 213

of the Public Utilities Code for the transportation of property between the points as more particularly set forth in Appendices A, B, C and D, attached hereto and made a part hereof.

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. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-B. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-B, may result in a cancellation of the operating authority granted by this decision.
- (b) Within one hundred twenty days after the effective date hereof, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

3. That the certificate of public convenience and necessity granted in paragraph (1) of this order replaces and supersedes the certificate of public convenience and necessity granted by Decision No. 54695, dated March 19, 1957, in Application No. 36010, which certificate is hereby revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 2(b) hereof.

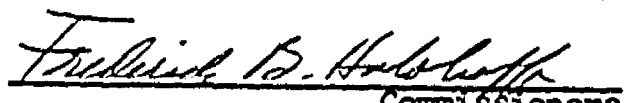
4. The authority herein granted will become effective when applicant has collected, in cash, the advances it has made to its officers, which advances amounted to \$31,968, as of December 31,

1960, and when it has filed with the Commission a stipulation duly passed by its board of directors in which it agrees that it will not, in the future, advance funds to its officers or shareholders without first seeking and receiving authorization of the Commission.

Dated at San Francisco, California, this 30th day of JUNE, 1961.



President



Commissioners

Culy Transportation Co., Inc., a corporation, by the certificate of public convenience and necessity, granted by the decision noted in the margin, is authorized to transport general commodities:

1. To, from and between all points and places located in the Los Angeles Basin Territory as described in Appendix B.
2. Between the San Francisco Territory, as described in Appendix C, on the one hand, and the Los Angeles Basin Territory, on the other hand.
3. Between the Los Angeles Basin Territory, on the one hand, and the San Diego Territory, as described in Appendix D, on the other hand, via U. S. Highways 101, 101-A, 101 By-pass, and 395, serving all intermediate points and places located within twenty miles laterally of the named highways;

PROVIDED, that Culy Transportation Co., Inc., shall not transport any explosives, ammunition and/or component parts thereof, to or from the Naval Ammunition Depot at Fallbrook, California.

4. Between the San Francisco Territory, on the one hand, and the San Diego Territory, on the other hand.
5. Between all points and places located on U. S. Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway.

Issued by California Public Utilities Commission.

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6. Between all points and places located on U. S. Highway 99 between Sacramento and Bakersfield, inclusive, and all points located within twenty miles laterally of said highway, on the one hand, and the Los Angeles Basin Territory and the San Diego Territory, on the other hand, via U. S. Highways 99, 101, 101-A, 101 By-pass, and 395, with service to all intermediate points located on and along said highways and serving all points within twenty miles laterally of said highways mentioned.

Applicant shall not establish through routes and joint rates, charges and classifications for service between the San Francisco Territory, on the one hand, and, on the other hand, any points and places along U. S. Highway 99 between Sacramento and Bakersfield, inclusive, and/or any points located within twenty miles laterally of said highway.

Applicant shall not transport shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A;
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis;

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3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles;
5. Commodities when transported in bulk, in dump trucks or in hopper-type trucks;
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 6222¹, Application No. 42743.

LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately two miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U. S. Highway No. 99; northwesterly along U. S. Highway No. 99 to the corporate boundary of the City of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U. S. Highway No. 60; southwesterly along U. S. Highways Nos. 60 and 395 to the county road approximately one mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the City of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to the right of way of The Atchison, Topeka & Santa Fe Railway Company; southwesterly along said right of way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the County road intersecting U. S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U. S. Highway No. 395; southeasterly along U. S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.

APPENDIX C TO DECISION NO. 62221

SAN FRANCISCO TERRITORY includes all the City of San Jose and 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 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 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 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwestwesterly 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 waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

APPENDIX D TO DECISION NO. 62224

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 U. S. Highway 395; thence southeasterly to Lakeside on the El Cajon-Ramona Highway (State Highway 67); thence southerly to Bostonia on U. S. Highway 80; thence southeasterly to Jamul on State Highway 94; thence due south to the International Boundary Line, west to the Pacific Ocean and north along the coast to point of beginning.