

ORIGINAL

Decision No. 88731 APR 18 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Arvo A. Lyly, Alvin A. Lyly,)
and Arnold A. Lyly (sic) doing)
business as Arvo Lyly & Sons, for)
a certificate of public conve-)
nience and necessity authorizing)
the transportation of Forest)
Products and Related Commodities)
and Iron and Steel Products be-)
tween certain points in the State)
of California.)

Application No. 57752
(Filed December 20, 1977;
Amended January 19, 1978,
March 8, 1978 and March 16, 1978)

O P I N I O N

By this application, as amended, Arvo A. Lyly, Alvin A. Lyly and Arnold A. Lyly, (sic) a partnership doing business as ARVO LYLY & SONS, hereinafter designated as applicants, seek additional highway common carrier authority in the form of an "in-lieu" certificate of public convenience and necessity as specifically set forth in Exhibit "A" attached to the application, including the three amendments thereto filed subsequently.

Applicants now operate as a highway common carrier pursuant to a certificate granted to them by Decision 81993 dated October 16, 1973 in Application 54175. That certificate authorizes them to transport specified Lumber and Forest Products between points in San Francisco Territory and Fort Bragg and also Arcata, including a 25-mile radius of those two cities; also between Los Angeles Territory and Fort Bragg, plus the same 25-mile radius of said city.

Applicants also operate as a common carrier by motor vehicle in interstate or foreign commerce under a Certificate of Registration of their state certificate issued by the Interstate Commerce Commission in Docket No. MC-121734. In addition, applicants hold a radial and an agricultural carrier permit issued by this Commission in File T-64,251.

A finding that public convenience and necessity require such additional service in connection with applicants' coextensive

interstate and foreign commerce operations, pursuant to Section 206(a)(6) of the Interstate Commerce Act, is requested in addition to the intrastate authority sought herein.

The original application was protested by a competing highway common carrier, Boyd Trucking Co., which transports generally the same commodities but serves a much greater geographical area than that which applicants seek authority to serve. In view of the protest, applicants subsequently filed three amendments to their application for additional certificated authority, which amendments are identified herein as Ex Parte Exhibits 1, 2 and 3 (in filing date order). These amendments modified the certificated authority as originally proposed by applicants and, thus, served to remove the protesting carrier's objections thereto, both as to the commodities to be included therein and, geographically, as to the points originally proposed to be served by applicants thereunder, or both. Upon the filing of these amendments by applicants with the Commission, protestant withdrew its protest of the authority as initially proposed.

According to the amended proposal, applicants seek to add Iron or Steel Products, as well as Woodpulp, and also to include, under the heading of "Lumber and Forest Products," Boards or Sheets (consisting of sawdust or ground wood); Fibreboard, Hardboard or Pulpboard, solid; Plywood; also Woodpulp. They seek to transport all such commodities between the same territories (San Francisco and Los Angeles) and a broadened northern California area which would include the Counties of Del Norte, Humboldt, Mendocino and Sonoma, except that service to and from Shasta and Tehama Counties would be provided additionally in connection with Los Angeles Territory points only.

Applicants also propose to transport Woodpulp between San Francisco Territory, Humboldt and Del Norte Counties and the Counties of Shasta and Tehama. The amended authority, if granted, would continue to exclude the right to render service from, to or between intermediate points. Applicants intend to perform the proposed service, as amended, in intrastate as well as interstate or foreign commerce.

Applicants' balance sheet dated August 31, 1977, attached to their application, confirms the fact that they have the financial ability to render the proposed service. Their balance sheet shows total assets of \$499,354, total liabilities of \$387,996 and a net worth of \$111,358.

Applicants possess a large fleet of truck equipment consisting of 20 power units (tractors) and 61 trailers, all of which operating equipment is available for use in the proposed service. They consider all of this equipment fully adequate to conduct the expanded operations under the amended proposal.

It is alleged by applicants that the following circumstances justify the proposed service:

1. Applicants and their predecessor have engaged in for-hire trucking in California for many years, both as a permitted carrier and as a certificated carrier.

2. During the course of their operations, applicants have received an increasing number of requests to perform transportation services to and from points located outside of their existing certificated area, necessitating that such movements be transported under their permitted authority.

3. Applicants have, on numerous occasions, been unable to meet the needs of their customers for a unified service as to commodities transported as well as to points served, due to the limitations of their present certificate.

4. The volume of traffic as well as the regularity of service have both expanded, thus strongly suggesting that applicants currently need an expanded certificate or face the curtailment of their services to the public generally.

5. Applicants are aware of the effects of Senate Bill No. 860 with regard to the conversion requirements in mid-1978. They do not desire to wait until then, or to jeopardize their operating rights, but would rather seek and obtain, now, the additional authority sought herein.

According to the applicants, granting of the proposed certificate, as amended, will allow them to continue to offer the same quality of service required by their shippers as well as the

public generally. It will also enable applicants to continue to experience an orderly future growth in their trucking operations such as they have experienced in the past.

Applicants currently publish their own Local Freight Tariff No. 1. The partners declare that the necessary tariffs of rates and rules covering the expanded operations proposed herein will be filed with the Commission as soon as the additional certificated authority they seek is granted.

A copy of the application and the amendments thereto were served by applicants by mail on known competing carriers, including protestant carrier, and the California Trucking Association. Notice of the application appeared in the Commission's Daily Calendar of December 21, 1977. The only protest to the application has been withdrawn by protestant following applicants' amendments of their original proposal.

Applicants have filed with the Interstate Commerce Commission an application under Section 206(a)(6) of the Interstate Commerce Act and notice thereof was published in the Federal Register on January 26, 1978.

After consideration, the Commission finds that:

1. Applicants presently operate as a highway common carrier transporting Lumber and Forest Products between certain points in California under appropriate intrastate and interstate authority.
2. Applicants also conduct trucking operations under a statewide radial highway common carrier permit (except San Francisco) and a newly-issued agricultural carrier permit.
3. Applicants currently operate 20 power units and 61 trailers in conducting all of their trucking operations.
4. Based on the evidence presented herein, applicants have demonstrated their financial and operational ability to perform the proposed transportation service.
5. Public convenience and necessity require that applicants be authorized to engage in operations in intrastate commerce, as proposed in the amended application, and also require that applicants be authorized to engage in operations in interstate and

foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

6. Inasmuch as protestant has withdrawn its protest, and there being no other protest of record, a public hearing on the application, as amended, is not necessary.

The Commission concludes that the application, as amended, should be granted as set forth in the ensuing order and that applicants' existing certificated operating authority should be restated as an in-lieu certificate in appendix form.

Arvo A. Lyly, Arnold A. Lyly and Alvin A. Lyly, partners, are each 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. 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

IT IS ORDERED that:

1. An in-lieu certificate of public convenience and necessity is granted to Arvo A. Lyly, Arnold A. Lyly and Alvin A. Lyly, a partnership doing business as ARVO LYLY & SONS, authorizing them to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points specifically set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicants shall comply with the following service regulations. Failure to do so may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicants shall file a written acceptance of the certificate granted. Applicants are placed on notice that if they accept the certificate they will be required, among other things, to comply with the safety

rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

- (b) Within one hundred twenty days after the effective date of this order, applicants shall establish the authorized service and amend or file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicants shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

3. The in-lieu certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision 81993 dated October 16, 1973 in Application 54175, which certificate is hereby revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 18th day of APRIL, 1978.

Robert Bateman
President
William Aguas, Jr.
Vernon L. Sturgeon
Alvin T. Deitch
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Arvo A. Lyly, Arnold A. Lyly and
Alvin A. Lyly, a partnership
doing business as
ARVO LYLY & SONS

Arvo A. Lyly, Arnold A. Lyly and Alvin A. Lyly, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to conduct operations as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of Lumber and Forest Products, Iron or Steel Products and Woodpulp, viz.:

A. LUMBER and FOREST PRODUCTS and Related Articles, whether or not creosoted or otherwise chemically treated, viz.:

Atmospheric Water Cooling Towers, knocked down, and Iron or Steel Fixtures for same, consisting of Castings, Tie Rods not exceeding 30 feet in length, and Turnbuckles, weight of such fixtures not to exceed 10% of the total weight of shipments,

Bark,
Bee Hives, knocked down,
Blocks, wooden paving, creosoted or uncreosoted,
Boards or Sheets consisting of sawdust or ground wood with added resin binder,
Boards, particle,
Bolts, wooden,
Brackets, insulator (wooden),
Cants, wheel, wooden, in the rough,
Covers, guy wire,
Cross Arms, wooden, with or without riveted ends, and with or without wooden pins attached,
Fibreboard, Hardboard or Pulpboard, NOI, solid,
Heading,
Honey Box Lumber,
Lath,
Lumber,
Pencil Slats,
Pickets,
Piles,
Pins, insulator,
Pipe Material, wooden,
Pipe, wooden,
Plywood, NOI,

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Poles, plant, plain, creosoted or stained,
Poles, telegraph and telephone,
Posts,
Sawdust,
Shakes,
Shavings,
Shingles,
Ship Knees,
Shook, box and crate,
Silo Material, wooden, and Fixtures,
Stakes, Plain, creosoted or stained,
Staves,
Steps, pole (wooden),
Stock, battery separator, machined, viz.: grooved, furrowed
or corrugated, not treated with caustic soda, asphaltum
or other solution,
Tank Material, wooden, and Fixtures,
Ties, railroad,
Timbers, mining,
Timbers, rough,
Wedges, mine,
Woodpulp.

- A-1. IRON OR STEEL PRODUCTS as described under the heading
"IRON OR STEEL" in the Governing Classification, NMF 100-D
(Items 104000 through 107520).
- (1) Between the San Francisco Territory, as described in Note A,
on the one hand, and all points and places in the Counties
of Del Norte, Humboldt, Mendocino, Sonoma, on the other hand.
 - (2) Between the Los Angeles Territory, as described in Note B,
on the one hand, and all points and places in the Counties
of Del Norte, Humboldt, Mendocino, Shasta, Sonoma and
Tehama, on the other hand.
- B. WOODPULP
- (1) Between the San Francisco Territory and the Counties of
Humboldt and Del Norte, on the one hand, and all points
and places in the Counties of Shasta and Tehama, on the
other hand.

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The foregoing authorities do not include the right to render service from, to or between intermediate points.

NOTE A

SAN FRANCISCO TERRITORY

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 Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 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 two 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 Division Street; easterly along Division Street 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 South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along 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; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly

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along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including 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 shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

NOTE B

LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michilinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street; south on Buena Vista Street and due south on a prolongation thereof to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to point of beginning.

(END OF APPENDIX A)

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