

ORIGINAL

Decision No. 44517

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK SPINGOLO, an individual, doing)
business as FRANK SPINGOLO TRUCKING)
COMPANY, for a certificate of public)
convenience and necessity to operate)
a truck service for the transportation))
of fresh fruits and vegetables, and)
nuts, in boxes, crates and sacks,)
between Sacramento, Stockton, San)
Francisco, Oakland, San Jose and)
all points intermediate thereto.)

Application No. 30729

Marquam C. George, for applicant.
Louittit, Marceau, Louittit & Wilson, by Tom H. Louittit,
for V. Antonini, doing business as Antonini
Fruit Express; Frederick W. Mielke, for Delta
Lines, Inc., Valley Motor Lines, Inc. and
Valley Express Co.; Robert W. Walker and Frederic
A. Jacobus, by Frederic A. Jacobus, for The
Atchison, Topeka & Santa Fe Railway Company and
Santa Fe Transportation Company; and Bertram S.
Silver and Edward M. Berol, for J. J. Leonardini,
Jr., doing business as O. M. Trucking Company,
protestants or interested parties.

O P I N I O N

By this application, as amended, Frank Spingolo, doing business as Frank Spingolo Trucking Company, seeks a certificate of public convenience and necessity authorizing the establishment of service as a highway common carrier for the transportation of fresh fruits and vegetables and empty containers returning within and between the Stockton area hereinafter described, and San Francisco, Oakland, Derkeley, Alameda, Emeryville and Albany, including all intermediate points along U. S. Highway 50. Applicant does not propose to transport any shipments locally between Oakland and San Francisco or conduct any transportation in refrigerated equipment.

The Stockton area which applicant proposes to serve includes all points and places located within an airline distance of 25 miles from the corporate limits of Stockton, with the exception of territory more than three miles from the corporate limits and located north of State Highway 4 and U. S. Highway 99. In general, the territory proposed to be served, other than a portion located not more than three miles from the Stockton city limits, comprises a somewhat crescent shaped area, the approximate boundaries of which extend from the vicinity of Galt through or near Clements, Jenny Lind, Milton, Eugene, Riverbank and Vernalis to Brentwood; and thence along State Highway 4 to Stockton and U. S. Highway 99 to the point of beginning near Galt.

Public hearings were held before Examiner Bradshaw at Stockton.

Applicant testified that he has been engaged in hauling fruit and produce for approximately 15 years, mostly from the Stockton area to the Bay area and San Jose. His equipment was described as consisting of five tractors, seven trailers, nine semi-trailers, two so-called "bob-tail" trucks and one pick-up truck. An office and terminal facilities, at which a portion of the shipments are received, are located in Stockton.

According to the record, applicant transports fruits and vegetables to both Bay area produce markets and canneries. An exhibit of record indicates that during 1949 the market traffic aggregated 370,635 packages. The volume transported during the same year to Bay canneries, applicant testified, amounted to approximately 23,000 tons. He declared that about 50 or 60 shippers use his service and that others have requested that he

serve them. It was stated that the business is seasonal in nature, the heaviest shipping months being June, July, August and September.

Applicant also testified that with respect to the transportation of market produce the departure time of trucks from the Stockton area is governed by the time it is necessary to arrive at destination; that the commission markets open at 5 a.m. during the winter and at 4 a.m. during the summer months; that it is necessary to effect delivery of fruits and vegetables before the markets open; and that careful handling is required in the transportation of this traffic. Applicant's proposed rates are claimed to be upon the same level as those which have been established by the Commission as minima.

Eleven shippers of fruits and vegetables testified on behalf of applicant. They asserted that his service has been satisfactory and that, if certificated as a highway common carrier, they will continue to use it. The necessity for early deliveries at the markets and careful handling en route to prevent spoilage was stressed. Some of the witnesses indicated that they deliver their produce at applicant's terminal in Stockton; others stated that shipments are picked up by applicant at their farms. It appears that none have had any experience within recent years with the service rendered by V. Antonini, who is protesting the granting of the application.

The chief deputy agricultural commissioner of San Joaquin County testified concerning various sections of the County in which certain fruit and vegetable crops are produced. A copy of a crop report for 1949, containing statistical and other data, was received in evidence.

A number of carriers protested the granting of the application or appeared as interested parties at the initial hearing. The application having thereafter been amended in a number of respects, none of these carriers, with the exception of V. Antonini, doing business as Antonini Fruit Express, offered any evidence or participated further in the proceedings.

Antonini is engaged in transporting fruits and vegetables between Stockton, including certain surrounding territory, and San Francisco and Oakland, pursuant to Decisions Nos. 25944, 26212, 26798, 26836 and 29289, in Application No. 18720. The first of these decisions is dated May 15, 1933, while the most recent one is dated November 23, 1936. This authority was originally confined to transportation between Stockton and San Francisco and Oakland. It was subsequently amended to permit the pick-up and delivery of (1) shipments of 300 packages or more in certain territory located north, east and southeast of Stockton and (2) any-quantity shipments at roadside locations along U. S. Highway 50 between Stockton and the San Joaquin River. Later on, the authority was extended to include the transportation of asparagus from four districts located west and southwest of Stockton.

According to the testimony of his supervisor, Antonini has eight trucks, together with a depot, office and garage at Stockton, including lift, hand and clamp trucks for use in receiving shipments. This witness testified that operations are conducted on five days a week and when the Bay markets are open on the sixth day service is rendered on that day if traffic is available. He asserted that trips to the Bay area are not made when no produce is offered, but that trips have been operated for as few as 25

packages. Reference was made to a trip to the Bay area with lading consisting of only two packages of onions. It was stated that no complaints against the service have been received in 13 years and that trucking equipment is available at all times.

It appears that Antonini served between 350 and 400 customers during 1949. According to the testimony, the number of persons served has remained more or less constant for a number of years. The following data were submitted to show the volume of traffic handled during the years 1937, 1938, 1939, 1947, 1948 and 1949:

<u>Year</u>	<u>No. of Packages</u>	<u>Year</u>	<u>No. of Packages</u>
1937	447,994	1947	297,263
1938	385,939	1948	283,122
1939	436,106	1949	239,818

The decline in traffic during the last few years was believed to be attributable to market conditions. The number of packages transported during 1949 was also given by months for the purpose of demonstrating the seasonal nature of the business. The figures appear in the following tabulation:

<u>Month</u>	<u>No. of Packages</u>	<u>Month</u>	<u>No. of Packages</u>
January	377	July	47,771
February	3,411	August	75,175
March	9,905	September	15,126
April	19,196	October	2,862
May	21,598	November	1,465
June	42,771	December	886

An exhibit of record indicates that, of the shipments handled in 1949, 184,527 packages were received at Antonini's terminal in Stockton and 55,291 packages were picked up at ranches or fields. It was testified that Antonini does not engage in

the transportation of fruits and vegetables when consigned to canneries.

Three shippers testified that they use Antonini's service for the movement of their produce to the Bay area markets and that his service has been very satisfactory.

Except for the fact that applicant proposes to serve certain territory which is included in protestant's operative right, the record does not show that active competition really exists between these two carriers or that, by granting the application, the competition which protestant may be required to meet would be increased. Moreover, applicant's offer of service embraces a number of features which extend beyond the scope of protestant's operations. First: Applicant's proposed service area embraces considerable territory which is not included in protestant's operative right. Secondly: Applicant offers to pick up shipments of any quantity at the farms or fields, whereas, with the exception of certain areas devoted to the growing of asparagus and along the main highway between Stockton and the San Joaquin River, protestant's authority to make pick-ups is restricted to shipments of at least 300 packages. Third: Applicant proposes to transport as a highway common carrier fruits and vegetables when destined to canneries and other processing plants. Protestant does not undertake to participate in the movement of such traffic.

Upon the facts presented, the Commission is of the opinion and finds that public convenience and necessity require the establishment and operation of service by applicant as a highway common carrier for the transportation of fresh fruits and vegetables and empty containers returning, as proposed in the application, as

amended, in this proceeding.

Frank Spingolo is hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearings having been had and the Commission, upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is hereby granted to Frank Spingolo, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of fresh fruits and vegetables (in boxes, crates and sacks) and empty containers returning (1) between Stockton and all points and places within an airline distance of twenty-five (25) miles of the corporate limits of Stockton, including Clements, Jenny Lind, Milton, Eugene, Riverbank, Vernalis and Brentwood, but excluding points and places north of California Highway 4

and west of U. S. Highway 99 which are located more than three (3) miles from the corporate limits of Stockton; and (2) between said points and places, on the one hand, and San Francisco, Oakland, Berkeley, Alameda, Emeryville and Albany, including all intermediate points, on the other hand.

(2) That the certificate herein granted is subject to the following conditions and limitations:

- a. No shipments shall be transported locally between Oakland and San Francisco.
- b. No shipments shall be transported in refrigerator equipment.

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

- a. Within thirty (30) days after the effective date of this order, applicant shall file a written acceptance of the certificate herein granted.
- b. Within sixty (60) days after the effective date hereof, applicant shall 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, appropriate tariffs and time schedules on not less than five (5) days' notice to the Commission and the public.
- c. Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following routes:

Between Stockton and surrounding territory and Oakland, Berkeley, Alameda, Emeryville and Albany:

U. S. Highway 50 and connecting streets, roads and highways.

Between Oakland and San Francisco:

San Francisco-Oakland Bay Bridge.

Between other points and places:

Such streets, roads and highways as may be necessary to serve consignors and consignees.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 11th day of July, 1950.

R. E. Anderson
James J. Calver
Grant T. Sewell
Harold A. Niles
Kenneth F. Potter
COMMISSIONERS