

Decision No. 46032

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
LOUIS MARINO, LAWRENCE MARINO, and )  
EARNEST MARINO, a partnership doing )  
business as MARINO BROTHERS TRUCKING )  
COMPANY, for a certificate of pub- ) Application No. 31983  
lic convenience and necessity to )  
operate as a highway common carrier )  
for the transportation of canned )  
goods between Stockton, Modesto, )  
San Francisco, Oakland, etc. )

Marquam C. George for Applicants  
N. R. Moon for Merchants Express  
Corporation, and Frederick W. Meilke  
for Delta Lines, Inc., protestants

O P I N I O N

Louis Marino, Lawrence Marino and Earnest Marino, co-partners doing business as Marino Brothers Trucking Company, herein request a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of canned goods between Stockton, Modesto, San Francisco, Richmond, Berkeley, Oakland and Alameda and all intermediate points.

Public hearings were held in Stockton and San Francisco before Examiner Gillard and the matter submitted after oral argument on July 11, 1951.

Applicants have been operating since 1940 under permits issued by this Commission. In 1950 their gross revenues were \$188,260, of which 60 per cent is attributable to the transportation of fresh fruits and vegetables to canneries in Modesto and Stockton. This feature of applicants' business is not embraced in this application. The balance of the revenue was derived from hauling canned goods between Stockton, Modesto, San Francisco, Richmond, Berkeley,

Oakland and Alameda. An undisclosed portion of this revenue was for hauling "fresh pack" canned goods from the cannery to warehouses in Stockton and Modesto and from the warehouses back to the cannery for labelling. The balance was for transporting labelled canned goods from Stockton and Modesto to San Francisco, Richmond, Berkeley, Oakland and Alameda. The net profit for the 1950 operations was \$21,082.

Applicants' equipment consists of nine tractors, eleven trailers, fourteen semi-trailers, three trucks and one pickup. Almost all of applicants' business during the peak canning season consists of truckload shipments, the bulk of the less-truckload movements occurring in the off season.

Applicants lease an office, shops, and storage area in Stockton, and propose to buy an eleven-acre site to be devoted to the same functions.

The rates contemplated are at the level of Highway Carriers' Tariff No. 2, and the service proposed is "on call" and limited to canned goods either originating at or destined to a cannery, packing plant or processing plant. The evidence herein discloses that a scheduled service would not be consistent with the needs of the canneries, which operate on a 24-hour a day basis during the peak season. No service is proposed locally between San Francisco, Richmond, Berkeley, Oakland, and Alameda.

Within the area proposed to be served, the record discloses there are fourteen canneries; eight in Stockton, four in Modesto, and one each in Manteca and Tracy. Representatives of five of these canneries, located in Modesto, Stockton and Manteca, testified on behalf of applicants. They have daily, or almost daily, movements from the three cities named to San Francisco, Oakland,

Alameda, Richmond and Berkeley, and multiple shipments each day between Modesto and Stockton. There is also a regular movement from Manteca to Stockton, with some going to Modesto.

Merchants Express Corporation and Delta Lines, Inc., protestants herein, each serve the San Francisco Bay area points named, and Stockton. Neither serves Manteca or Modesto. Neither produced any public witnesses. Each presented operating testimony as to equipment, terminals, schedules, and ability to carry more freight. Delta has occasionally served all the canneries in Stockton, and has had heavy movements from two of them, but almost all of this business has been interstate. Merchants has likewise handled canned goods from Stockton, but the volume was not indicated.

Applicants introduced no evidence relative to either past service or future needs of the cannery in Tracy. With that exception, the record establishes, and we so find, that public convenience and necessity require the establishment and operation of the proposed service.

Louis Marino, Lawrence Marino and Earnest Marino, are 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 held in the above-entitled proceeding, 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 Louis Marino, Lawrence and Earnest Marino, 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 canned goods, between Modesto, Stockton and Manteca, and between each of said points, on the one hand, and San Francisco, Richmond, Berkeley, Oakland and Alameda on the other hand, only when said canned goods originate at or are destined to a cannery, packing or processing plant.

(2) That in providing service pursuant to the certificate herein granted, there shall be compliance with the following service regulations:

- (a) Applicants shall file a written acceptance of the certificate herein granted, within a period of not to exceed 30 days from the effective date hereof.
- (b) Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicants 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, appropriate tariffs and timetables.
- (c) Subject to the authority of this 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:

Within San Francisco, Richmond, Berkeley,  
Oakland and Alameda: all available streets  
and highways. Between Oakland and Stockton:  
U. S. Highway 50. Between Stockton and  
Modesto: U. S. Highway 99. Between Manteca  
and U. S. Highway 50: California Highway 120.

(3) That in all other respects the application is hereby  
denied.

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

Dated at San Francisco, California, this 31st day  
of July, 1951.

R. J. [Signature]  
James F. [Signature]  
Harold P. [Signature]  
Francis W. [Signature]  
John E. [Signature]  
Commissioners