

ORIGINALDecision No. 53355

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 GOULD TRANSPORTATION CO., INC., for)
 authority under Section 3666 of the)
 Public Utilities Code to assess and)
 collect transportation charges based)
 on rates lower than the minimum rates)
 heretofore established by the)
 Commission.)

Application No. 37702

Donald Murchison and D. H. Marken, for applicant.
Glanz and Russell, by Theodore W. Russell, for
 Merrifield Trucking Company, protestant.
A. P. Davis, Jr., for Carnation Company; C. A. Millen,
 for Kings County Truck Lines; J. C. Kasper and
 A. D. Poe, for California Trucking Associations, Inc.;
 and J. M. Quintrall, for Western Motor Tariff Bureau,
 interested parties.
G. L. Malcuist and John F. Specht, for the Commission's
 staff.

O P I N I O N

Gould Transportation Co., Inc., operates as a highway contract carrier between points in this State.¹ By this application, as amended, it seeks authority under Section 3666 of the Public Utilities Code to transport frozen pies, frozen cakes, frozen cookie rolls, fresh frozen fruits and fresh frozen berries for Carnation Company at rates less than those established as minimum.

A public hearing of the matter was held before Examiner Carter R. Bishop at Los Angeles on May 1, 1956. Evidence in support of the proposal was introduced by applicant's president, by a transportation consultant, and by the assistant general traffic manager of Carnation Company.

¹ Applicant also has a permit to operate as a radial highway common carrier. By Application No. 36288, now pending before the Commission, applicant seeks a certificate of public convenience and necessity authorizing it to operate as a highway common carrier between numerous points, involving extensive areas of the State.

The application discloses that minimum rate relief is sought for the transportation of the above-mentioned frozen bakery goods from Los Angeles Territory to San Francisco Territory, Fresno, Sacramento, Chico, and intermediate points north and west of Fresno located on certain designated highways.² The movement of the fresh frozen fruits and fresh frozen berries involved herein is to Los Angeles Territory from the points generally which constitute the points of destination of the frozen bakery goods, and, in addition, from points within 10 miles of Watsonville, from points within 25 miles of Fresno, and from points south of that city on U. S. Highway No. 99.

It is proposed to transport both the northbound and southbound traffic at three rates, 39 cents, 51 cents and 65 cents per 100 pounds, depending upon the length of haul. The minimum weight would in all cases be 36,000 pounds. According to the record, the presently applicable minimum rates for the transportation in question range from 55 cents to 90 cents per 100 pounds. The sought rates would include refrigeration service, whereas under the provisions of Minimum Rate Tariff No. 2 the minimum rates are subject to additional charges for that service.³

2 San Francisco and Los Angeles Territories are defined in Minimum Rate Tariff No. 2.

3 The commodities, the sought rates and, with minor exceptions, the points of origin and of destination, embraced by the instant application are identical with those involved in Application No. 37675 of Ted Peters Trucking Company, Inc., which carrier shares with Gould the Carnation traffic here in issue. By Decision No. 53265, dated June 19, 1956, Application No. 37675 was granted, subject to certain modifications.

Applicant's president testified that it has been engaged in the transportation of frozen foods for Carnation Company continuously since June 1955, when the latter company acquired the Simple Simon frozen food plants at Los Angeles and Torrance. For approximately two years prior to that time applicant performed this same transportation for the prior owner of those plants. According to the witness, the carrier transports for Carnation between two and three loads per week of frozen bakery goods northbound and approximately the same amount of frozen fruits and berries southbound. About ten per cent of applicant's total revenues, he indicated, are derived from the Carnation traffic. Applicant also transports a substantial amount of other traffic requiring refrigeration. Assertedly, so-called dead freight comprises about 65 per cent of the carrier's business.

The average weight of the loads of frozen bakery goods, according to the record, is from 42,000 to 44,000 pounds, while that of the frozen fruits and berries is somewhat higher. A favorable load factor, the witness stated, is experienced on the traffic here in issue.

The application herein, the carrier's president further testified, was filed at the request of Carnation Company, which had informed applicant that if the sought relief should be denied the latter company would transport the frozen bakery products, fruits and berries in its own equipment and applicant would be deprived in the future of the Carnation business which it now enjoys. The loss of ten per cent of the carrier's revenues, the witness asserted, would have an adverse effect on its operations, which would, in such eventuality, of necessity be curtailed.

The transportation consultant testified concerning a study

which he had made of the cost of rendering the transportation services in question between the principal points of origin and destination. In the table below are shown these costs as adjusted at the hearing to include overtime wage expense on the Chico traffic and for clerical errors. The proposed rates and corresponding operating ratios, before provision for income taxes, are also shown.

Comparison of Estimated Full Costs and Proposed Rates, Per 100 Pounds; Also Operating Ratios.

<u>Between</u>	<u>And</u>	<u>Proposed Rate (In Cents)</u>	<u>Estimated Cost (In Cents)</u>	<u>Operating Ratio (Per Cent)</u>
Los Angeles	Fresno	39	34.74	89.1
" "	Berkeley	51	47.00	92.2
" "	Sacramento	51	48.11	94.3
" "	Chico	65	55.33	85.1

The estimated costs were developed on a one-way basis. That is, they purport to reflect the full cost, including refrigeration expense,⁴ of transporting either the frozen bakery goods northbound or the frozen fruits and berries southbound between the designated points. The costs give recognition to increased labor expense reflected by new wage agreements which became effective on May 1, 1956.

The assistant general traffic manager of Carnation Company testified that his company had made a study of the costs of performing the transportation services involved herein. As a result of that study, he said, Carnation had concluded that it could perform those services with its own equipment at costs which would be even less than the sought rates, and that if the relief

⁴ According to the record, all of applicant's 16 vans, except two (which are equipped with mechanical refrigeration units), are refrigerated with dry ice and the costs as developed by the consultant are predicated upon that method of refrigeration.

sought herein should be denied it will no longer utilize the services of applicant for the transportation of the frozen foods, but will move those commodities in its own equipment.⁵

This witness explained that all of Carnation's frozen food traffic embraced by this application is handled by two carriers, Ted Peters Trucking Company and applicant. At the time of the hearing the shipments were divided about equally between these two operators.⁶ Carnation is entirely satisfied with the services rendered by applicant, he said, and it is Carnation's intention to continue shipping all of the frozen food traffic in question via Peters and Gould if the sought relief is authorized.

The granting of the application was opposed by Merrifield Trucking Company, a permit carrier engaged in the transportation of commodities requiring refrigeration. According to the record, Merrifield does not handle any of the traffic involved in this proceeding. Counsel for protestant cross-examined applicant's witnesses at length and argued that the sought relief, if granted, would undermine the Commission's minimum rate structure and would place the burden of all except direct costs upon the rest of applicant's traffic.

5 According to the traffic manager, Carnation now has a large fleet of highway vehicles, some of which are utilized in California. It also has its own maintenance facilities and dispatching personnel. He stated that it would be necessary to purchase some additional equipment if Carnation should undertake the transportation in question.

6 At the hearing on February 20, 1956, in Application No. 37675, supra, of Peters this witness estimated the division of traffic at that time as approximately one third to Gould and two thirds to Peters. According to the witness, Carnation's frozen food sales have increased and the division of traffic has shifted to the ratios indicated above.

The director of research of California Trucking Associations, Inc., appearing on behalf of that organization as an interested party cross-examined the transportation consultant extensively regarding the various elements of his cost study. The director criticized the study because of the degree to which system-wide data had been utilized in its development. He urged that the sought authority, if granted, be limited, with respect to the northbound traffic, to apply only from Torrance. ⁷

Conclusions

The record is convincing that, if the rates sought herein are not authorized, applicant will lose the substantial Carnation frozen foods traffic which it now enjoys and that such loss will have an adverse effect upon applicant's over-all operations, with a material reduction in revenues, probable curtailment of schedules and loss of operating efficiency. While there are some infirmities in the consultant's cost study, as brought out by cross-examination, the evidence is persuasive that applicant will be able to render service on a compensatory basis at the rates sought herein. It appears, however, that the rendition of split pickups or of split deliveries both at points on the coast route and at interior points on a single shipment would involve undue circuitry. It further appears that the average weight of the shipments of frozen fruits and frozen berries is sufficiently high to justify a minimum weight of 38,000 pounds on those commodities.

The Commission is of the opinion, and hereby finds, that

⁷ The traffic manager testified that the principal movement is from Torrance, and that the Los Angeles plant is for sale. He added, however, that sometimes it may be necessary to ship from warehouses located anywhere in Los Angeles Territory.

the proposed reduced rates, minimum weights and rules and regulations, to the extent provided in the order which follows, are reasonable.⁸ In all other respects the application will be denied. Because the conditions under which service is performed may change at any time the authority will be made to expire at the end of one year, unless sooner canceled, changed or extended by order of the Commission.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that Gould Transportation Company, Inc., operating as a highway contract carrier, be and it is authorized to transport frozen pies, frozen cakes, frozen cookie rolls (in straight or mixed shipments), fresh frozen fruits and fresh frozen berries, as described in Appendix "A" hereof, which, by this reference is incorporated in and made a part of this order, from the points of origin to the points of destination shown in connection with each such commodity in said Appendix "A", for Carnation Company, at rates less than the minimum rates but not less than those shown in connection with said respective points of origin and of destination in said Appendix "A", subject to the provisions of Notes 1 to 5, inclusive, of said Appendix "A".

8 In order to avoid possible violation of the provisions of Section 3542 of the Public Utilities Code a limitation will be placed upon applicant's service as a radial highway common carrier during the existence of the authority herein granted. Also, the granting of the relief herein sought will be made subject to the condition that, in the event that applicant shall be granted a highway common carrier certificate pursuant to Application No. 36288, supra, the authority herein granted, in so far as it shall apply on the same commodities from the same points of origin to the same points of destination as provided by said certificate, shall expire effective with the effective date of tariffs filed pursuant to the acceptance of said certificate.

IT IS HEREBY FURTHER ORDERED that during the period that the authority herein granted is in effect the aforesaid applicant shall not engage in the transportation of the same commodities between the points involved in this authority as a radial highway common carrier, and that any such transportation which applicant may perform in violation of these provisions shall be cause for revocation of the authority herein granted.

IT IS HEREBY FURTHER ORDERED that, if, during the period that the authority herein granted is in effect, the aforesaid applicant should be granted a certificate of public convenience and necessity the authority herein granted, in so far as it shall apply on the same commodities from the same points of origin to the same points of destination as provided by said certificate, shall be canceled, said cancellation to be effective as of the effective date of the rates on the commodities, and applicable between the points, involved herein, filed pursuant to the acceptance of said certificate.

IT IS HEREBY FURTHER ORDERED that, subject to the provisions of the immediately preceding ordering paragraph herein, the authority granted herein shall expire one year after the effective date of this order unless sooner canceled, changed or extended by order of the Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects Application No. 37702, as amended, be and it is hereby denied.

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

Dated at San Francisco, California, this 10th day of July, 1956.

W. E. Mitchell
President

Justin J. Casner

Raymond W. Green

W. H. H. H. H. H.

R. H. H. H. H.

Commissioners

APPENDIX "A"
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(Rates are in cents per 100 pounds)

1. Fruit pies, frozen, as described in Item No. 18708, Meat pies, frozen as described in Item No. 18707, and cream pies, cakes, cookie rolls, frozen, as described in Item No. 18422, of Western Classification No. 75, Cal. P.U.C. No. 8 of George H. Dumas, Agent, in straight or mixed shipments, minimum weight 36,000 pounds.

From Los Angeles Territory, as defined in Minimum Rate Tariff No. 2, to:

	<u>Rate</u>
(a) Fresno and intermediate points on U.S. Highway 99	39
(b) San Francisco Territory, as defined in Minimum Rate Tariff No. 2, and intermediate points between Fresno and San Francisco on U.S. Highways 99 and 50, and on U.S. Highway 101 and State Highway 152	51
(c) Sacramento and intermediate points between Fresno and Sacramento on U.S. Highway 99	51
(d) Chico and intermediate points between Sacramento and Chico on U.S. Highways 40, 99-E and 40 Alternate	65

2. Fresh Frozen Fruit and Fresh Frozen Berries, minimum weight 38,000 pounds.

To Los Angeles Territory, from:

(a) Fresno and points and places within 25 miles thereof except points north of Fresno, and intermediate points between Fresno and Bakersfield, on U.S. Highway 99	39
(b) San Francisco Territory, and intermediate points on U.S. Highway 99 north of Fresno, on U.S. Highway 101 and State Highway 152, and off-route points within 10 miles of Watsonville	51
(c) Sacramento and intermediate points between Sacramento and Fresno on U.S. Highway 99	51
(d) Chico and intermediate points between Chico and Sacramento on U.S. Highways 40, 99-E and 40 Alternate	65

NOTES:

1. All of the foregoing rates are intended to include refrigeration service without additional charge.

APPENDIX "A"
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NOTES (Continued)

2. All of the foregoing rates are intended to include an allowance for loading at points of origin of one man for 4 hours per shipment of 36,000 pounds or more. When additional loading time is required, additional charges on the basis of those provided in Minimum Rate Tariff No. 2 will be assessed.
3. All of the foregoing rates are intended to include split pickup or split delivery service, subject to the additional split pickup or split delivery charges provided in Minimum Rate Tariff No. 2.
4. No shipment of fresh frozen fruits or of fresh frozen berries, transported under any of the rates authorized herein, shall be accorded split pickup service both at a point or points specified in Note A and at a point or points specified in Note B, below.
5. No shipment of frozen pies, frozen cakes or frozen cookie rolls transported under any of the rates authorized herein shall be accorded split delivery service both at a point or points specified in Note A and at a point or points specified in Note B, below.

Note A

San Francisco Territory as defined in Minimum Rate Tariff No. 2; points on U.S. Highway 101, Gilroy to, but not including, said San Francisco Territory; points within 10 miles of Watsonville.

Note B

Points on U.S. Highway 99 north of State Highway 152.