

Decision No. 54348

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK SPINGOLO WAREHOUSE COMPANY,)
INC., a California corporation to)
sell and transfer and FRANK SPINGOLO)
TRUCKING CO., INC., a California)
corporation to purchase and acquire)
the operative rights, equipment and)
other assets of Seller and to assume)
certain liabilities of Seller; also)
for authority to issue shares of its)
capital stock.)
-----:)

Application No. 38556

Marquon C. George, for applicants.

O P I N I O N

This is an application for an order of the Commission authorizing Frank Spingolo Warehouse Company, Inc., (1) to sell and transfer highway common carrier operative rights and equipment to Frank Spingolo Trucking Co., Inc., and (2) authorizing Frank Spingolo Trucking Co., Inc., to assume the payment of indebtedness of \$40,348.94 and to issue \$1,000 par value of its common stock.

The application was filed on November 5, 1956. A public hearing was held before Commissioner Fox and Examiner Coleman in San Francisco on December 17, 1956, at which time the matter was taken under submission. The Commission has received no protests in this proceeding.

The application shows that Frank Spingolo Warehouse Company, Inc., owns a certificate of public convenience and necessity acquired by it under authorization granted by Decision No. 50312, dated July 27, 1954, permitting operations as a highway common carrier of fresh fruits and vegetables generally between Stockton and the

surrounding area, on the one hand, and points in the San Francisco Bay Area; on the other hand, together with operative equipment necessary to perform the highway common carrier functions. In addition, it owns certain real properties and improvements located in Stockton which, for the most part, are leased to others for nonutility purposes.

In Exhibit D filed in this proceeding, Frank Spingolo Warehouse Company, Inc., reports, for 1955, revenues from its highway operations in the amount of \$303,959 and net operating income at \$11,424, after making provision of \$45,498 for depreciation. It further reports net rental and miscellaneous income in the amount of \$30,373. The combined net income from all sources amounts to \$41,797, before income taxes.

All of the outstanding stock of Frank Spingolo Warehouse Company, Inc., is owned by Frank Spingolo. It appears that in order to realize tax savings, he has concluded to separate the carrier operations from the nonutility leasing activities and that he has caused Frank Spingolo Trucking Co., Inc., to be organized as a separate corporation to take over the highway common carrier operative rights at no cost and the highway equipment, along with certain current assets, at book values, subject to outstanding equipment contracts, in exchange for \$1,000 par value of common stock. A pro forma balance sheet of the new corporation, as of March 31, 1956, giving effect to the transaction, is as follows:

<u>Assets</u>		
Current assets -		
Cash and deposits	\$ 2,202	
Prepayments	4,978	
Supplies	<u>6,613</u>	
Total current assets		\$13,793
Tangible assets, less reserve		<u>27,555</u>
Total		<u>\$41,348</u>
<u>Liabilities and Capital</u>		
Equipment contracts -		
Current portion	\$27,377	
Noncurrent portion	<u>12,971</u>	
Total equipment contracts		\$40,348
Common stock		<u>1,000</u>
Total		<u>\$41,348</u>

Frank Spingolo Trucking Co., Inc., will adopt the rates of Frank Spingolo Warehouse Company, Inc., and will utilize the same personnel and equipment now employed by the present operator. It is true that the new corporation will embark upon its operations with a relatively small amount of equity capital in its financial structure, but the evidence shows that the carrier operations have been, and are, profitable and that it is likely the equipment obligations will be liquidated from earnings from operations, thereby increasing the equity capital through the retention of such earnings in the business.

On the basis of information of record, we are of the opinion, and so find, that the proposed transfer will not be adverse to the public interest. Accordingly, we will enter an order granting the application.

Applicants are 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, 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 as to the number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the rights and equipment herein authorized to be transferred.

ORDER

A public hearing having been held on the above-entitled matter, and the Commission having considered the evidence and being of the opinion that the application should be granted, as herein

provided, that the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Frank Spingolo Warehouse Company, Inc., may transfer its highway common carrier operative rights and equipment to Frank Spingolo Trucking Co., Inc., on or before April 30, 1957, under the terms set forth in this application.

2. Frank Spingolo Trucking Co., Inc., in acquiring such rights and equipment, may assume the payment of the outstanding indebtedness and may issue not to exceed \$1,000 par value of its common stock.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Frank Spingolo Warehouse Company, Inc., has withdrawn or cancelled and Frank Spingolo Trucking Co., Inc., a corporation, has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

4. Frank Spingolo Trucking Co., Inc., a corporation, shall file with the Commission a report, or reports, as required by

General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. This order will become effective on the date hereof.

Dated at San Francisco, California, this 8th day of January, 1952.

[Signature]
President
[Signature]
[Signature]
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Commissioners