

Decision No. 76731

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 FRANK SPINGOLO TRUCKING CO., INC.)
 for a certificate of public convenience)
 and necessity to extend the present)
 Highway Common Carrier operations to)
 include East Modesto.)

Application No. 50952

Marquam C. George, for applicant.
Boris H. Lakusta and David J. Marchant, for
 Pacific Motor Trucking Company, Delta Lines,
 Inc. and Walkup's Merchants Express; Ray
Greene, for Doudell Trucking and Guy Warren,
 dba Warren Trucking, protestants.

SUPPLEMENTAL OPINION AND ORDER

By Decision No. 76407 dated November 12, 1969, Frank Spingolo Trucking Co., Inc. was granted an extension of its certificated authority as a highway common carrier. On November 21, 1969, Pacific Motor Company, Delta Lines, Inc., Walkup's Merchants Express, Doudell Trucking and Guy Warren, dba Warren Trucking, protestants in said proceeding, filed a petition for rehearing or reconsideration. In order that there be no doubt as to what issues were considered as material by the Commission, in conformity with Section 1705 of the Public Utilities Code, Decision No. 76407 is hereby amended to read as follows:

Frank Spingolo Trucking Co., Inc., presently operating as a highway common carrier between various points within the State, requests authority to transport canned goods, animal feed, foodstuff for human consumption and empty containers between East Modesto, on the one hand, and Stockton, Sacramento, Oakland, San Francisco, Berkeley, Richmond, Alameda and San Jose, on the other hand. Applicant also requests a finding that public convenience and necessity require its services to the same extent on similar shipments moving in interstate and foreign commerce. Appropriate notice was published in the Federal Register.

Public hearing was held before Examiner Daly at San Francisco, with the matter being submitted on July 9, 1969, upon the receipt of concurrent briefs since filed and considered.

Applicant has terminal and warehouse facilities in Stockton, California. It owns and operates 27 tractors and 55 trailers and specializes in the transportation of truckload shipments of fruits, produce, and canned goods on an "on-call" basis.

The bulk of applicant's warehouse and transportation services are performed for Del Monte Corporation (hereinafter referred to as Del Monte), which is engaged in the growing, processing, canning and marketing of fruits and vegetables. The

transportation service essentially consists of the movement of truckload shipments of canned goods on flatbed equipment from Del Monte's Stockton plant to its plant facilities located at Sacramento and at points within the San Francisco Bay Area.

At the present time Del Monte is constructing a new cannery at East Modesto and it is applicant's desire to extend service to this point.

Applicant introduced the testimony of Herman H. Parsons, Division Traffic Manager for Del Monte. In brief, he testified that Del Monte is building a new cannery four miles from downtown Modesto; Del Monte has been using applicant for 21 years and desires applicant's services made available from the new Modesto plant; Del Monte requires an "on-call" service provided by flatbed equipment for truckload shipments; the Company is not interested in less than truckload carriers; it will have occasion to make shipments in both intrastate and interstate commerce from the new plant; as a matter of policy, Del Monte prefers to use two carriers for service in any particular area; would use applicant and Karlson Bros. from the new Modesto plant and Encinal Terminals and Morris Draying on inbound shipments.

The protesting carriers introduced oral and documentary evidence relating to their operations within the proposed area:

1. RICHARD S. WARREN

Assistant Manager for Warren Transportation Company, Hayward, California. Primarily a truckload carrier with both intrastate and interstate authority to serve the proposed points. Owns and operates 25 tractors and 85 trailers, the majority of which are flatbed. Has hauled for Del Monte in the past, but not within the last year. Would be interested in a backhaul operation out of Modesto.

2. JOHN MCSWEENEY

Traffic Manager for Delta Lines, Inc., Delta Lines is primarily an LTL carrier with authority to serve the proposed area on shipments of general commodities moving in both interstate and intrastate commerce. Owns and operates 1500 units of equipment including 25 flatbed trailers which are scattered throughout the system. Presently serves Del Monte between Sacramento and the San Francisco Bay Area. Has received no complaints from Del Monte and would be interested in a backhaul operation out of East Modesto to balance its operations. If it had the option would use van type equipment to provide the backhaul.

3. GEORGE E. SLOAT

Vice President of Walkup's Merchants Express. An LTL carrier with authority to serve the proposed points. Would serve Del Monte on canned goods through the use of van type equipment, but would use flatbed equipment on palletized shipments. Is interested in a backhaul operation out of Modesto.

4. WILLIAM J. SCHILLING

Sales Manager for Pacific Motor Trucking Company. Possesses intrastate and interstate authority to serve the proposed points. Desires a backhaul operation out of Modesto. Most of the equipment going into Modesto consists of vans. Has 250 flatbed trailers and would use them out of Modesto if necessary.

Protestants contend that there is an ample number of certificated carriers serving between the proposed points and that the preference of a single shipper for a particular carrier fails to demonstrate a public need for common carrier service. Protestants also contend that the granting of the application would result in a diversion of traffic from the existing carriers, thereby further aggravating the imbalance of their operations and conceivably resulting in higher rates.

Applicant argues that it has been operating for many years as a highway common carrier, both in interstate and intrastate commerce, and the proposed extension is not an attempt to enlarge its activities but is intended only as a means of allowing applicant to continue service to a customer of long standing. Applicant further argues that being located in Stockton it is in a better position to offer a primary service between East Modesto and the other proposed points, rather than a backhaul service as indicated by the protestants.

Proposed Service and Need Therefor

Applicant proposes an "on-call" service designed by way of accommodation and equipment to meet the transportation needs and requirements of Del Monte Corporation. Said company requires flat bed trailers which must be made available on short notice particularly during the canning seasons. Because of its close proximity applicant is capable of providing flatbed equipment upon request.

Adequacy of Existing Service

The record demonstrates that protestants are providing service between the proposed points, but the type of service that would be made available to Del Monte Corporation by said carriers

would, for the most part, be in the nature of a backhaul operation. All too often such service depends upon the availability of equipment coming into the area to make deliveries. Although most of the protestants would have equipment coming into Modesto, there is nothing in the record to give assurance that said equipment would be available when required by Del Monte Corporation, nor that it would consist of flatbed trailers. To the extent that a backhaul would have to be performed by van type equipment as indicated by some protestants and to the extent that shipments would have to await the availability of flatbed equipment being brought in from other areas of operations, the shipping needs and requirements of Del Monte Corporation would not be met.

Diversion of Traffic

- There can be no question of diversion of traffic from the existing carriers because the new cannery will constitute new business. Although there was some question as to whether applicant proposed to make a general dedication of the proposed service, its president indicated that service would be available to the public upon request; however, there would be no solicitation of new business by applicant within the Modesto area.

Single Shipper Witness

Although the application was supported by only one shipper witness this does not in itself constitute a failure to establish public convenience and necessity. When faced with a similar situation the Commission, on rehearing of an application by Don D'Onofrio, dāa Donofrio Drayage-Record Express (Decision No. 74155 dated May 21, 1968, in Application No. 48416), held as follows:

"Although applicant did not establish an impressive case of public convenience and necessity by a parade of public witnesses, the Commission realizes that a small carrier faces an extremely difficult and expensive problem in meeting the organized resistance of the existing certificated carriers who, because of their size and financial ability, can economically frustrate and discourage most of the smaller carriers from filing and processing a certificate application.

"It appears that strict interpretation of public convenience and necessity has worked an undue hardship upon applicant, whose proposed limited operations can hardly constitute a threat to the large protestant carriers herein. As has been demonstrated, a denial of this application did not divert the Lewis-Wester & Co. traffic to the existing carriers. The only purpose has been to deprive applicant of 50 percent of his gross revenue, which is an exceedingly high price for a small carrier to pay."

After consideration the Commission finds that:

1. Applicant is a highway common carrier domiciled in Stockton, California and is presently providing a certificated service between various points within the State of California on shipments moving in both interstate and intrastate commerce.
2. Applicant is engaged in an "on-call" service that is primarily designed for the transportation of truckload shipments of fruit, vegetables and canned goods moving on flatbed trailers.
3. The major portion of applicant's carrier operations are conducted for Del Monte, which is engaged in the processing and distribution of canned goods.
4. Del Monte Corporation has recently constructed a new cannery at East Modesto and desires the services of applicant be made available at its new facility for shipments moving in intrastate, interstate and foreign commerce.

5. Applicant possesses the necessary facilities, equipment, experience and financial ability to conduct the proposed service.

6. Protestants are presently certificated both as interstate and intrastate carriers between the proposed points.

7. Protestants own, maintain and operate extensive terminal facilities and fleets of equipment throughout their respective service areas.

8. Each protestant is providing an inbound service to the Modesto area and each is interested in serving Del Monte from its East Modesto Cannery in order to provide a better balance to their respective operations by means of a backhaul.

9. The backhaul service which is presently available by protestants would not meet the needs and requirements of Del Monte Corporation because it would not assure the immediate availability of flatbed equipment particularly during the canning seasons.

10. The proposed service will not result in a diversion of traffic from the existing carriers because the traffic of Del Monte Corporation will constitute new business.

After consideration the Commission finds and concludes that public convenience and necessity require applicant's proposed service in both intrastate, interstate and foreign commerce. The application should be granted.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Frank Spingolo Trucking Co., Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in

Section 213 of the Public Utilities Code, between the points particularly set forth in Appendices A and B attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-E.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and 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 service herein authorized.
- (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-A.
- (e) Applicant shall maintain its 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 March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

3. The petition for rehearing, as filed on November 21, 1969, is hereby denied.

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

Dated at San Diego, California, this 3rd
day of FEBRUARY, 1970.

William J. Squire
President

J. P. [Signature]
[Signature]
[Signature]
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Frank Spingolo Trucking Co., Inc., is authorized to transport canned goods, animal feed, foodstuffs for human consumption, and empty containers (carriers) as specifically described on pages 2, 3, 4 and 5 of this Appendix between the following points:

Between East Modesto (as set forth in Appendix B), on the one hand, and Alameda, Berkeley, Oakland, Richmond, Sacramento, San Francisco, San Jose and Stockton, on the other hand.

- a. No service is authorized from, to, or between intermediate points.
- b. For convenience only, carrier may use any and all available streets and roads between points named.

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For the Transportation of:

1. Canned or Preserved Foodstuffs (not cold packed nor frozen); viz.:

Canned Goods and other articles, in earthenware, glass or metal cans, boxed or in metal cans, pails or tubs, crated, or in bulk in barrels or kegs, except as otherwise provided, viz.:

Aspic, fruit or vegetable, consisting of fruit or vegetable pulp or juice and pectin, with or without seasoning, in glass, earthenware or metal cans, in boxes,

Beans-and-Pork,

Breads,

Brine,

Broths,

Butter, fruit, in packages named, or in fibre cans, boxed, or in bulk in kits, pails or tubs,

Butter, peanut (Peanut Paste), in packages named, or in cans completely jacketed, or in bulk in pails,

Buttermilk (not Casein), NOS.

Chili, ground, in boxes,

Chowders

Cocoanut, prepared, in packages named, or in bulk in boxes, or in double bags, or in multiple wall paper bags,

Corn,

Egg Yolk, cooked,

Feed, animal or poultry, viz.:

Meat or Fish, or Milk, or a mixture containing meat or fish or milk,

Other than Dehydrated, in hermetically sealed glass or metal containers, in barrels or boxes, or in containers not hermetically sealed in barrels, boxes or packages,

Dehydrated, in containers in barrels or boxes,

Fish, cooked, pickled or preserved, with or without fruit or vegetable ingredients,

Fish Roe, cooked, pickled or preserved,

Foods, baby, canned or preserved, consisting only of strained or chopped foods, in hermetically sealed containers in boxes,

Fruit (not fresh), crushed,

Fruit (not dried, evaporated or fresh), in liquid other than alcoholic liquor, in packages named, or in bulk in kits, pails or tubs,

Fruit, drained, in packages named, or in cartons packed in fibreboard boxes,

Fruit Juice Drinks, consisting of natural fruit juices or concentrates with water added, with or without sweeteners, flavoring and/or coloring, non-carbonated, in metal cans,

Gravy, in metal cans in boxes,

Hominy

Jam or Jelly, in packages named, or in fibre cans, boxed, or in metal cans, crated (one can per crate), or in bulk in kits, pails or tubs,

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Canned or Preserved Foodstuffs (not cold packed nor frozen), viz.: - Cont'd

Canned Goods and other articles, in earthenware, glass or metal cans, boxed or in metal cans, pails or tubs, crated, or in bulk in barrels or kegs, except as otherwise provided, viz.: - Cont'd

Juice, clam,

Juice (not syrup), fruit, unfermented, in packages named, or in bulk in kits, pails or tubs,

Juice, sauerkraut, other than frozen, in glass, earthenware or metal cans boxed, or in bulk in barrels or kits,

Juice, tomato, other than frozen, in glass, earthenware or metal cans, boxed or crated, or in bulk in barrels,

Juice (or Juices), vegetable, NOS, other than frozen, in glass, earthenware or metal cans, boxed or crated, or in bulk in barrels,

Macaroni (prepared), with or without cheese, meat, fish or vegetable ingredients,

Macaroni, Noodles, Rice, Spaghetti or Vermicelli, dry, not cooked, with cheese, fish, meat, poultry, vegetables or other ingredients, in combined packages in boxes,

Meats, cooked, cured or preserved, with or without cereal or vegetable ingredients,

Milk (not malted), Buttermilk (not casein), or Dry Milk Solids, powdered or flaked, flavored or unflavored, in containers in bags, barrels, boxes or crates, or in bulk in barrels, boxes, double bags or multiwall paper bags,

Milk, condensed or evaporated, liquid, in packages named, or in bulk in kits, pails or tubs,

Milk or Cream Substitutes, processed from vegetables, soybean or grain products, with or without other ingredients,

Milk Food (other than Malted Milk), liquid, in packages named or in bulk in kits, pails, tubs or half-barrels,

Milk, sterilized, liquid, flavored or not flavored, in hermetically sealed metal cans in barrels or boxes, or in glass in boxes,

Mince Meat, in packages named, or in cartons, boxed or in bulk in half-barrels, kits, pails or tubs,

Mixes, food sauce, dry, in packages,

Molasses or Syrups,

Mushrooms, preserved in liquid,

Noodles, prepared, with or without cheese, meat, fish or vegetable ingredients,

Oil, cooking,

Oil, olive or salad,

Olives, in packages named, or in bulk in kits, pails or tubs,

Paste, tomato,

Pectin, fruit or vegetable,

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Canned or Preserved Foodstuffs (not cold packed nor frozen), viz.: - Cont'd

Canned Goods and other articles, in earthenware, glass or metal cans, boxed or in metal cans, pails or tubs, crated, or in bulk in barrels or kegs, except as otherwise provided, viz.: - Cont'd

Pickles, NOS, (Includes nuts or vegetables, NOS, pickled in brine or vinegar, and Fruits, NOS, pickled in vinegar), Dill Weed, pickled,
Sandwich Spreads, NOS, including Cheese Spreads, in packages named, in metal cans in crates, or in barrels, boxes, kits or pails,
Pie Preparations (fruit in syrup, or in paste form compounded with flour or sugar and flavored),
Pimentos (Canned Peppers),
Pizza Pie Mix, consisting of Flour, Yeast and Sauce, with or without Cheese, in combined packages, in boxes,
Potatoes, cooked and diced, flaked, powdered or shredded, other than frozen, NOI, also cooked and sliced with or without other ingredients, in containers in barrels or boxes or in bulk in bags, barrels or boxes,
Poultry, cooked, cured or preserved, with or without cereal, vegetable, milk, egg or fruit ingredients, NOI, in glass or metal cans, in barrels or boxes,
Prunes, canned or preserved in juice or in syrup or liquid other than alcoholic,
Puddings,
Pulp, fruit (not dried fruit, crushed or ground), in packages named, or in bulk in kits, pails or tubs,
Pulp, vegetable, in packages name or in bulk in kits, pails or tubs,
Puree, tomato,
Ravioli (prepared), with or without cheese, meat or vegetable ingredients,
Sauces or Toppings, ice cream or desert,
Sausage,
Soups,
Soup Ingredients (Soup Mix), consisting of dry vegetables and other ingredients, mixed, in packages,
Spaghetti and Cheese, with sauce, in combined packages, in boxes,
Spaghetti (prepared), with or without cheese, meat, fish or vegetable ingredients,
Spread, peanut, in packages named or in cans completely jacketed, or in bulk in pails,
Table Sauces, NOS, including Catsup, Prepared Horseradish, Prepared Mustard, Pepper Sauce or Salad Dressing, in packages named; in metal cans in crates, or in barrels, boxes, kits or pails,
Vegetables (not dehydrated, dried, evaporated, not fresh), including Pickled Vegetables, in packages named, or in bulk in kts, pails or tubs,
Vermicelli (prepared), with or without cheese, meat, fish or vegetable ingredients,
Vinegar, in packages named, or in bulk in kits, pails or tubs,
Welsh Rarebit,
Whey, condensed or powdered,

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2. FEED, animal, in metal cans in boxes, or in metal cans in metal strapped bundles or in crates, viz.:

Feed, animal, frozen, containing meat or fish or a mixture of meat or fish and cereals or vegetables,

Meat or Fish, or a mixture of meat or fish and cereals or vegetables, with or without other ingredients not frozen, other than dehydrated or dry, in metal cans in boxes, or in metal cans in metal strapped bundles or in crates.

3. FOODSTUFFS FOR HUMAN CONSUMPTION, viz.:

Fish, cooked, pickled or preserved, with or without fruit or vegetable ingredients, in bulk in boxes,

Macaroni, noodles, rice, spaghetti or vermicelli, dry, not cooked, with cheese, fish, meat or poultry, vegetables or other ingredients, in combined packages in boxes (not less than 55 per cent of the gross weight of the combined packages shall be that of the ingredients named, in metal cans),

Meats, cooked, cured or preserved, with or without cereal or vegetable ingredients, in bulk, in crates or boxes, or in inner containers or packages, other than those specified in List 1 of this item, in crates or boxes,

Milk (not malted), Buttermilk (not casein), Dry Milk Solids, or whey, in inner containers of earthenware, glass, metal cans or packages, in outer containers of boxes, or in bulk in barrels, fibre cans, boxes, double bags or multiplewall paper bags,

Milk or Cream, Sterilized or Pasteurized, or Milk or Cream Substitutes, processed from vegetable, soybean or grain products, with or without other ingredients, in hermetically sealed glass or metal containers in boxes, or in gas-charged dispensing cylinders or cans,

Pizza Pie Mix, consisting of flour, yeast and sauce with or without cheese, in combined packages in boxes (not less than 50 per cent of the gross weight of the combined packages shall be that of the ingredients named, in metal cans),

Sandwich Spreads, in paper cartons in boxes,

Spaghetti and Cheese or Noodles and Cheese, with sauce, in combined packages in boxes (not less than 55 per cent of the gross weight of the combined packages shall be that of the ingredients named, in metal cans).

4. CARRIERS (Used Packages), Secondhand, empty, returning or when shipped for return paying load.

END OF APPENDIX A

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Appendix B

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East Modesto Area

East Modesto Area consists of that area bounded on the north by Yosemite Avenue, on the south by the Tuolumne River, on the east by Codoni Avenue and on the west by Santa Rosa Avenue. ✓

END OF APPENDIX B

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