

Decision No. 83517

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MARINO BROS. TRUCKING CO., a  
corporation, for a certificate of  
public convenience and necessity  
to extend its present operating  
authority to include San Jose,  
Sacramento, Fresno and inter-  
mediate points, for the trans-  
portation of general commodities.

Application No. 53785  
(Filed January 15, 1973;  
amended September 25, 1973)

Marquam C. George, Attorney at Law, for applicant.  
Marshall G. Berol, Attorney at Law, for Delta  
Lines, Inc., Pacific Motor Trucking, and  
Ted Peters Trucking Company; and Ray Greene and  
William D. Taylor, Attorneys at Law, for  
Arthur R. Altnow dba Lodi Truck Service,  
American Transfer Co., and Morris Drayage  
Company, protestants.

O P I N I O N

Marino Bros. Trucking Co. is presently certificated as  
a highway common carrier for the transportation of fresh fruits and  
vegetables between: (a) San Francisco, Richmond, Berkeley, Oakland,  
and Alameda, on the one hand, and Stockton, Linden, Escalon, and  
Modesto, on the other hand; (b) Stockton and Modesto; (c) Modesto  
and Marysville; canned goods between Modesto, Stockton, and  
Manteca, and between 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. It is also authorized to perform  
a corresponding service for canned goods moving in interstate or  
foreign commerce. By the instant application applicant requests  
authority to transport general commodities with certain exceptions,  
moving in intrastate, interstate, and foreign commerce between points

in an area from the San Francisco Bay area on the west, Sacramento on the north, and Fresno on the south. Copies of the application were served upon carriers with which the proposed service might compete and an appropriate notice was filed in the Federal Register.

Public hearings were held before Examiner Daly at San Francisco and Stockton and the matter was submitted on April 9, 1974, upon the receipt of concurrent briefs, which were filed on July 29, 1974.

Applicant and its predecessor have been engaged in the transportation of property since 1939. Its principal place of business is located in Stockton, where it maintains office and terminal facilities on 10 acres of property. Other terminals are maintained at Merced and Fresno. Applicant owns and operates 236 units of equipment and leases 17 units. It employs 60 individuals including drivers, dispatchers, and office help. As of December 31, 1971 applicant indicated a net worth in the amount of \$306,245.

Applicant proposes a daily, overnight service except Saturdays, Sundays, and holidays. The proposed rates would be comparable to those set forth in Minimum Rate Tariff 2.

Applicant alleges that with the growth of the towns and communities within the proposed area there has been an increasing demand from suppliers and consumers of various materials for its service to supply the needs of the communities; that the shippers presently served by applicant continuously request its service to the points applied for; that applicant has the necessary experience, equipment, facilities, and financial ability to perform the proposed service; and that because of the frequency of the movements performed pursuant to its permitted authority applicant believes that such service should be certificated.

During 1971 applicant had gross revenues in the amount of \$1,771,462. Of this amount \$473,195 was derived from its certificated service and \$1,088,823 from operations conducted pursuant to its permits. Applicant's operations are primarily truckload with 65 percent of its traffic moving from valley points to the Bay Area.

Seventeen public witnesses testified on behalf of applicant. Their testimony is summarized as follows:

1. Terry Guntert, Stockton; general manager, Guntert Sales. Makes truckload shipments of steel, nuts, bolts, and miscellaneous hardware to points in the Bay Area and valley points as well as from Marysville to Fresno. Operates several of his own trucks. Has used Delta and would like to use applicant, but not exclusively.
2. Charles Arthur Dick, Turlock; general manager, Sniders Lumber Products. Makes truckload shipments of lumber to Stockton, San Jose, Fresno, Merced, Sacramento, Vacaville, San Francisco, Alameda, Manteca, Ceres, Lodi, Yuba City, and Marysville. Has about 30 shipments a day during the summer. Has interstate shipments to the Port of Stockton and Bay Area ports. Operates eight proprietary units. Would use applicant for any shipments that he could not handle with own equipment. Applicant's service has been satisfactory.
3. John Russell Lyons, Modesto; production manager, Ed. J. Lying Company, Inc. Process farm commodities, i.e., oats, beans, and sunflower seeds. Ships primarily in truckload quantities to San Francisco, Oakland, Fairfield, Davis, Woodland, Sacramento, Yuba City, Marysville, Lodi, Stockton, Manteca, Modesto, Turlock, Merced, Madera, Fresno, Mountain View, and Redwood City. Uses applicant almost exclusively on shipments of sunflower seeds from the fields to the processing plant. Has never used applicant on outbound shipments from the plant, but would like to use its service. Has outbound shipments from the plant including interstate shipments to the docks in San Francisco and Oakland. Has been using R. Cali Brothers and Prouty Trucking for these shipments, but would also use applicant if authorized.

4. Vernon Powers, San Jose; transportation manager for California Cannery and Growers. Operates canneries in Merced, Stockton, Thornton, Sunnyvale, San Jose, and Gilroy; also is part owner of a can manufacturing business with plants at Fremont and Modesto. Receives shipments of fresh fruits and vegetables at the plants and makes outbound shipments of the processed commodities to wholesalers and distributors. Uses own trucks in the Stockton and San Jose areas. Has need for 500 trucks a day during the summer. Has interstate shipments moving to the docks at Stockton, Oakland, and San Francisco. Almost 99 percent of his shipments are in truckload lots.
5. H. J. Dobrovolsky, Modesto; assistant traffic manager, FMC Corporation, Inorganic Chemicals Division. Manufactures barium, strontium, and sodium sulphide compound. Has truckload shipments to San Francisco, Sacramento, Fresno, Oakland, and interstate shipments to the docks at Stockton, San Francisco, and Oakland. Has used applicant and finds the service very satisfactory.
6. Anthony Mattioli, Jr., Stockton; manager, Wilson Way Tire Company. Receives shipments of tires ranging from 1,000 pounds to truckload from Berkeley, San Francisco, and San Mateo. Uses Delta Lines, Moore Truck Lines, ICX, and Associated. The transit time takes from two to four days. Has never used applicant, but would do so if certificated.
7. Richard F. Martin, Davis; partner, Martin Brothers Seed Company. Distributes seed to valley points north of Fresno to Redding. Ships almost 500 tons a day from August to November. Also president of Martin Fertilizer Company, Incorporated, which ships fertilizer from Davis to Richmond. The partnership also is engaged in raising tomatoes, sunflower, barley, corn, wheat, and beans. Has used applicant primarily on the farm operation.

8. Charles A. Trammell, Modesto; plant superintendent, Calpine Containers. Manufactures shook, bins, and boxes. Boxes are shipped seasonally and repair parts for bins are shipped year-round. Requires flatbed equipment with forklift loading. Primarily uses applicant on truckload shipments. Would use proposed service particularly during the peak period May through October.
9. David Marquez, Woodland; owner, Marquez Welding Repairs. Repairs for farm equipment. Receives shipments of steel and parts, including wheels and suspensions, from Sacramento, San Francisco, Emeryville, and San Leandro. Has used applicant once or twice in the past year. Would like to use the proposed service because its existing service from the San Francisco Bay area is not overnight.
10. Leon Marvin West, Yuba City; president of Yuba City Steel Products Company. Steel fabricators. Receives shipments of steel varying from 30 feet to 60 feet in length from Sacramento, San Francisco, and Oakland. Most of the shipments are being transported by the steel companies which use their own trucks. Had never used applicant prior to 1973. Not sure whether the steel companies would use applicant at his request.
11. William Obernesser, Sacramento; controller, Seven-Up Bottling Company. Distributes from Sacramento to Marysville, San Jose, Stockton, Modesto, Fresno, San Francisco, and Oakland. Ships in truckload quantities. Has occasion to make containerized cargo shipments to the docks for oversea destinations. Used applicant on these shipments up to 1973 when the military commenced the use of cargo containers and applicant is not authorized to handle containers. If certificated would use applicant on containerized shipments from Sacramento to the San Francisco and Oakland docks.
12. Kirk Kerkochian, Fresno; owner, United Carpet Company. Receives rolls of carpet in 12 foot lengths ranging in weight from 700 to 1,000 pounds. Receives from San Francisco, Oakland, San Mateo, San Jose. Presently using Associated Freight Lines, CME, and applicant. Receives

interstate shipments from San Francisco. Some shipments are collect, but most of them are prepaid and the consignor would designate the carrier. When he designates the carrier it is usually Associated, but he has used applicant about 12 times during the past year on truckload shipments.

13. William Thomas Broderick, Lathrop; manager, Libbey-OwensFord Company. Makes truckload shipments of glass on flatbed equipment to Sacramento, San Francisco, San Mateo, San Jose, and Fresno. Presently using applicant's service, which is very good.
14. Harold Cassel, Davis; assistant traffic manager, American Modoc Inc. Landscaping nursery products. Has shipping facilities in Stockton. Makes palletized and bulk shipments. Uses own trucks and common carriers. Ships to wholesalers, distributors, stores, and to job sites. Ships daily March through August. Shipments range from 20,000 to 40,000 pounds, but primarily in truckload quantities. Requires flatbed equipment with power loading and unloading. Has used Rogers Motor Express and applicant. Applicant will pickup when requested.
15. Robert F. Lyons, Stockton; director of trucking operations, Tillie Lewis Foods, Inc. Has plants in Modesto, Antioch, and a distribution center in Pittsburg. Also has a can manufacturing plant in Stockton. Engaged in the processing and distribution of soups, salad dressings, and puddings. Uses own equipment and for-hire carriers. Has shipments to the valley area from Yuba City on the north, to Fresno on the south. Also has interstate shipments moving to the docks at Richmond, San Francisco, and Oakland. Ships primarily in truckload lots. Has used applicant since 1957. Also uses Red Fern Trucking, American Transfer, Rogers Motor Express, DiSalvo Truck Lines, and Delta Lines. Other services are satisfactory, but applicant is the primary for-hire carrier. Operates 37 proprietary power units and 140 trailers.

16. Acton Norman, Stockton; freight manager, Friedman Bag Company. Manufactures and distributes flexible package cartons, paper bags, and assorted supplies. Has daily truckload shipments to such points as San Jose, Madera, Turlock, Modesto, Oakland, and Fresno. Occasionally has need for emergency service. Has been using Delta, Alltrans, PMT, and applicant. Would use the proposed service.
17. John Dentoni, San Francisco; president, John Dentoni Contract Warehouse. Arranges for the transportation of his customers' products. Supporting applicant on shipments of carpet for the Bervin Carpet Company from Fresno to his warehouse in San Francisco.

Applicant was prepared to call four additional witnesses, but declined to do so, claiming that they would testify substantially the same as the other witnesses and their testimony would therefore be cumulative in nature.

#### PROTESTANTS' CASE

Each of the protestants, through operating witnesses, introduced evidence, both oral and documentary setting forth their present operations and the reasons for their respective protests.

1. John McSweeney, general traffic manager, Delta Lines. Operates extensively throughout the State pursuant to both intrastate and interstate authorities. Operates 2,150 units of equipment and operates terminals within the proposed area at Emeryville, Fresno, Merced, Modesto, Pittsburg, Sacramento, San Francisco, Santa Clara, Stockton, and Yuba City. Is primarily engaged in the transportation of less-than-truckload shipments. Average shipment is approximately 933 pounds. Has an imbalance in operations with more freight moving from the San Francisco Bay area to valley points. The imbalance increases operating costs. If certificated, applicant would divert traffic and further increase operating costs by contributing to the imbalance of traffic. Believes that there are a sufficient number of certificated carriers serving the area. Presently providing service for interstate containerized shipments.

2. Phil Boffert, district sales manager, Pacific Motor Trucking. Has statewide intrastate authority, but has no interstate authority between Sacramento and Fresno. Maintains terminals within the proposed area at Fresno, Merced, Modesto, Oakland, Sacramento, San Francisco, San Jose, Stockton, Yuba City, and Redwood City. Operates an extensive list of equipment. Operations are basically the same as Delta's in that it is a less-than-truckload service with traffic being moved between terminals by line haul equipment and each terminal area being served by pickup and delivery trucks. Also has an imbalance in its operations with the heavier movement from the San Francisco Bay area. Despite an active program of advertising and solicitation, believes that applicant would divert traffic if certificated.
3. John D. Shire, representing Ted Peters Trucking. Provides a certificated intrastate and interstate service within the proposed area. Maintains terminals at Stockton, Gustine, and Montebello. Approximately 40 percent of its business consists of interstate shipments moving in cargo containers, 40 percent consists of refrigerated shipments, and 40 percent consists of dry freight. Has served some of the witnesses who testified for applicant. Believes that applicant would divert traffic if certificated.
4. Donald Peterson, Stockton traffic manager, American Transfer Co. Operates a certificated service within the proposed area. Maintains terminals at Richmond, Stockton, Fresno, Bakersfield, and Los Angeles. Provides an "on-call" service. Operates 40 to 50 schedules a day to the San Francisco Bay area, includes a large number of interstate shipments moving in cargo containers. Believes that the proposed area is adequately served by the existing carriers and that the certification of applicant would result in a diversion of traffic particularly of the interstate containerized movements. Has served six of the companies that supported applicant.



5. Elmer J. Altnow, assistant general manager, Lodi Truck Service. Operates as a certificated carrier between valley points. Operates 345 units of equipment and maintains terminals at Lodi, San Leandro, and Modesto. Approximately 95 percent of the shipments handled are in truckload quantities, a large portion of which are containerized movements from the San Francisco docks destined to valley points. From July to October operates at capacity 24-hours a day during the harvesting of agricultural products. During the remainder of the year has space available. Has hauled for and has solicited many of the witnesses who testified for applicant.
6. Herbert P. Morse, vice president, Morris Draying. Operates intrastate and interstate from Redding, on the north, south to Kingston, San Francisco, Monterey, and Salinas. Maintains terminals at Davis and Oakland. Provides a direct "on-call" service. Actively solicits new business. A large portion of the operation consists of the transportation of containerized shipments between valley points and the docks at San Francisco, Oakland, and Stockton. Protesting the application because of the possible diversion of interstate traffic. Believes that protesting the intrastate aspect of the proposed service is futile because that traffic is also subject to diversion by permitted carriers. Has hauled for two of the companies that supported the applicant.

After consideration the Commission finds that:

1. Applicant is presently engaged in the transportation of property both as a certificated and as a permitted carrier. Said operations are conducted on an "on-call" basis and are primarily designed to meet the shipping needs and requirements of agricultural growers and processors of agricultural products located throughout the San Joaquin and Sacramento Valleys. Characteristic of such transportation is the ability to provide a direct truckload service during peak harvesting and canning periods on a 24-hour basis.

2. Although applicant's certificated authority has covered the limited scope of this type of operation since it was first granted in 1951 to its predecessor in interest, the record demonstrates that over the years applicant's service has expanded to meet the transportation needs and requirements of those companies which are engaged in supplying agricultural growers and processors of agricultural products with such commodities as lumber products (boxes and shooks), chemical fertilizers, parts for farm equipment, steel products, glass products, nursery products, and packaging products (bags and cartons). Applicant has been providing service for these suppliers pursuant to its permitted authority.

3. Two of the protestants (Delta and PMT) are engaged as less-than-truckload carriers and generally speaking are not able to meet the transportation needs and requirements of those truckload shippers who appeared in support of applicant because the services of these protestants are designed and structured for the handling of small shipments, which characteristically requires the use of terminals along with the use of pickup and delivery equipment. By the same token applicant has demonstrated neither the ability to provide a less-than-truckload service nor a need therefore.

4. With respect to the other four protestants only Lodi Truck Service and American Transfer Co., as valley-based carriers, are substantially engaged, as is applicant, in providing an "on-call" truckload service to agricultural growers, food processors, and related businesses. The greatest competitive threat to these protestants comes from permitted carriers and applicant, as a long established certificated and permitted carrier will continue as a competitor for such intrastate traffic regardless of whether this application is granted or denied.

5. Each of the protestants is authorized to transport interstate shipments in cargo containers. This traffic moves to and from the docks at San Francisco, Oakland, Richmond, and Stockton. This movement

is of rather recent origin, but one that is fast expanding. With its wider use, an ever-increasing number of commodities that applicant is presently authorized to transport under its existing interstate authority are being diverted to carriers that are authorized to handle cargo containers. Certification of applicant in the field will not only help applicant to regain some of the traffic that it has lost, but will permit applicant to provide a more complete service to its customers.

6. Applicant possesses the necessary equipment and financial ability to provide the service as hereinafter authorized.

7. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as hereinafter authorized and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by the order herein.

The Commission concludes that the application should be granted subject to a 20,000 pound weight restriction, except on shipments of those commodities covered by applicants existing authority and the transportation of certain commodities more specifically set forth in the Appendix.

We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Applicant is 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, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Marino Bros. Trucking Co., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and amend or 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 authorized service.
- (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-Series.
- (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

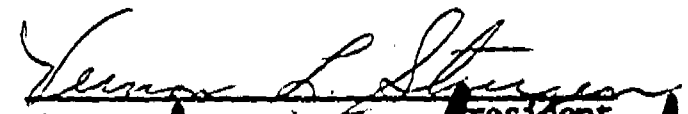

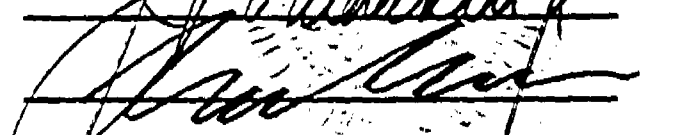
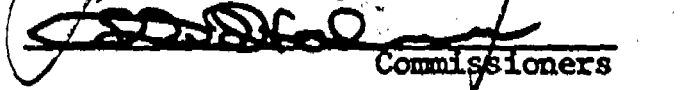
this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

- (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 certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decisions Nos. 46032 and 53165, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

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

Dated at San Francisco, California, this 16<sup>th</sup> day of OCTOBER, 1974.

  
President  
  
  
  
Commissioners

Marino Bros. Trucking Co., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities, in shipments of 20,000 pounds or more or to which a rate of 20,000 pounds would be applicable, between all points and places inclusive on:

1. Interstate Highway 80 between San Francisco and Sacramento, serving all points and places within 15 miles laterally of said highway.
2. State Highway 99 between Yuba City and Fresno, serving all points and places within 30 miles laterally of said highway.
3. Interstate Highway 5 between Sacramento and its junction with Fresno County Road J-1 (Shields Avenue), serving all points and places within 10 miles laterally of said highway.
4. State Highway 180 between Mendota and Fresno; serving all points and places within 10 miles laterally of said highway.
5. U.S. Highway 101 between San Francisco and San Jose, serving all points and places within 10 miles laterally of said highway.
6. Interstate Highway 680 between Walnut Creek and its junction with Calaveras Road, near Milpitas, serving all points and places within 10 miles laterally of said highway.
7. Interstate Highway 580 between Oakland and its junction with Interstate Highway 205, serving all points and places within 15 miles laterally of said highway.

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8. Interstate Highway 205 between its junction with Interstate Highway 580 and its junction with Interstate Highway 5, serving all points and places within 15 miles laterally of said highway.
9. State Highway 120 between its junction with Interstate Highway 5 and Manteca, serving all points and places within 15 miles laterally of said highway.
10. State Highway 4 between its junction with Interstate Highway 80 and Stockton, serving all points and places within 10 miles laterally of said highway.

For operating convenience only, carrier may use all roads, streets and highways connecting the above points, places and routes.

Exceptions:

- A. Pursuant to the authority herein granted carrier shall not transport any shipments of:
  1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
  2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.

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3. Livestock, viz.: barrows, boars, bull, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
  4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
  5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
  6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
  7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
  8. Logs.
  9. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
  10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
  11. Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low bed trailers.
  12. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
- B. The weight restriction of 20,000 pounds shall not apply to shipments of:
1. Fresh or green fruits and vegetables (including mushrooms), not cold pack or frozen, between:

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Appendix A

MARINO BROS. TRUCKING CO.  
(a California corporation)

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- a. San Francisco, Richmond, Berkeley, Oakland and Alameda, on the one hand, and Stockton, Linden, Escalon and Modesto, on the other hand.
  - b. Stockton, on the one hand, and Modesto, on the other hand.
  - c. Modesto, on the one hand, and Marysville, on the other hand.
2. Canned goods when originating at or destined to a cannery, packing or processing plant between Modesto, Stockton and Manteca, on the one hand, and San Francisco, Richmond, Berkeley, and Oakland and Alameda, on the other hand.

(END OF APPENDIX A)

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