

ORIGINAL

Decision No. 86806

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MARINO EROS. TRUCKING CO., a)
 California corporation, for a cer-)
 tificate of public convenience and)
 necessity to extend its present)
 operating authority between Fresno)
 and Southern California, and points)
 intermediate thereto, for the trans-)
 portation of general commodities in)
 truckload quantities only.)

Application No. 55893
 (Filed August 26, 1975;
 amended October 8, 1976)

Carl Silverhart and Dean M. Spellman,
 Attorneys at Law, for applicant.
Marshall G. Berol and James O. Abrams,
 Attorneys at Law, for Delta Lines, Inc.
 and Ted Peters Trucking Co., Inc.;
Henry A. Dahn, for Milne Truck Lines, Inc;
and Russell & Schureman, by R. Y. Schureman,
 Attorney at Law, for Brake Delivery
 Service, Meier Transfer Service,
 City Freight Lines, Los Angeles City
 Express, Smith Transportation Co., and
 Victorville-Barstow Truck Line;
 protestants.

O P I N I O N

By its application, as amended, Marino Bros. Trucking Co., presently authorized by Decision No. 83517 dated October 1, 1974 in Application No. 53785 to provide service as a highway common carrier for the transportation of general commodities, with certain exceptions, moving in intrastate, interstate, and foreign commerce in shipments of 20,000 pounds or more, also with certain exceptions,

to, from, and between points in an area from Yuba City and Marysville, on the north, to San Jose, Kerman, and Fresno, on the south, requests authority to extend service to all points in the southern part of the State subject to the restrictions that no local service would be performed south of the northern boundary line of San Luis Obispo, Kern, and San Bernardino Counties, except for shipments having points of origin and destination solely within Kern County. In addition, applicant requests the removal of existing restrictions against the transportation of commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment and the transportation of commodities of abnormal size or weight which, because of their size or weight, require the use of low bed trailers.

Applicant also requests corresponding interstate authority. An appropriate notice was published in the Federal Register on October 1, 1975.

Public hearing was held before Examiner Daly at San Francisco with the matter being submitted on November 2, 1976.

By its application as originally filed, applicant sought authority to serve its presently certificated area and the proposed extended area without any weight restriction and without a restriction against local service in the southern portion of the State. The amendment, which provided for a 20,000 pound weight restriction and a local service restriction, was filed on October 8, 1976 following applicant's presentation of its case. Upon the filing of the amendment all protests were withdrawn, and no evidence was received on November 2, 1976, the date of submission.

Applicant maintains its place of business in Stockton, California. Terminals are operated at Stockton, Modesto, and Fresno. It owns and operates 189 units of equipment including trailers,

semitrailers, vans, low beds, and hoppers. As of December 31, 1975, applicant indicated a net worth in the amount of \$187,931.

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

Applicant and its predecessor have been operating within the State of California for the past 35 years, first as a permitted carrier and later as a certificated carrier.

According to applicant's president, shippers presently served by applicant continually request its service to points within the proposed extended area, which applicant presently provides pursuant to its permits. Because of the frequency of the movements and in the interest of proper regulation the instant application was filed requesting certification. With the exception of fresh or green fruit and vegetables, applicant's president testified that the shipments transported fall within the range of 20,000 and 50,000 pounds. Under its present certificate, shipments of fresh fruit and vegetables moving between specified valley and San Francisco Bay area points are exempt from the 20,000-pound weight restriction.

Applicant introduced the testimony of six public witnesses in support of its proposed extended service. It was stipulated that, if called, five additional witnesses would testify substantially the same as those who testified.

In brief the witnesses testified that they are presently using applicant's services; that they have occasion to make large shipments to the proposed area; and that they are satisfied with the services of applicant and would like to make use of its services as a certificated carrier on shipments moving in intrastate and interstate commerce.

After consideration the Commission finds that:

1. Applicant is presently providing service as a permitted carrier within the proposed extended area.
2. Applicant's permitted operations within the proposed area have naturally grown and developed over the years because of an ever-increasing demand for service by applicant's customers.
3. Applicant possesses the necessary equipment and financial ability to provide the proposed service.
4. Notice of the filing of this application appeared in the Federal Register of October 1, 1975.
5. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as proposed in the application, as amended, 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.
6. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The Commission concludes that the application, as amended, should be granted as set forth in the ensuing order. The territorial descriptions or routes of the authority granted reflect the names of redesignated highways and roads and do not in any way exceed the geographical scope of the proposed operation as published in the Federal Register. The order which follows will provide for the revocation of the certificate granted by Decision No. 83517 dated October 1, 1974 in Application No. 53785 and the issuance of an in lieu certificate in appendix form to Marino Bros. Trucking Co. ✓

Applicant is placed on notice that any transportation performed within the scope of the certificate granted herein shall be deemed to have been performed as a highway common carrier; and in case of any conflict between the minimum rate deviation granted by Decision No. 85883 dated June 2, 1976 in Application No. 56118 and tariffs filed pursuant to General Order No. 80-Series, the latter shall prevail.

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 of this decision.

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 April 30 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 Decision No. 83517 in

Application No. 53785, 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 5th day of JANUARY, 1977.

Robert Behrman

President

William S. Brown Jr.

Simon L. Sturgen

Leonard Ross

Commissioners

Marino Bros. Trucking Co., a California corporation, 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 to which a rate of 20,000 pounds would be applicable as follows:

1. Interstate Highway 80 between San Francisco and Sacramento, serving all points and places within 15 statute miles laterally of said highway.
2. State Highway 99 between Yuba City and Fresno, serving all points and places within 30 statute 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 statute miles laterally of said highway.
4. State Highway 180 between Mendota and Fresno, serving all points and places within 10 statute miles laterally of said highway.
5. U. S. Highway 101 between San Francisco and San Jose, serving all points and places within 10 statute 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 10 statute 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 statute 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 statute 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 statute 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 statute miles laterally of said highway.
11. Between and including San Jose and Los Angeles and all points and places on and within 15 statute miles laterally of U. S. Highway 101.
12. Between and including Oakland and Santa Cruz and all points and places on and within 10 statute miles laterally of State Highway 17.
13. Between and including Santa Cruz and Monterey and all points and places on and within 10 statute miles laterally of State Highway 1.
14. Between and including Monterey and Salinas and all points and places on and within 10 statute miles laterally of State Highway 68.
15. Between Gilroy and the intersection of State Highway 152 and Interstate Highway 5 and all points and places within 10 statute miles laterally of State Highway 152.
16. Between and including Fresno and San Diego and all points and places on and within 30 statute miles laterally of State Highway 99 and Interstate Highway 5.

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17. Between the intersection of Interstate Highway 5 and County Road J-1 west of Mendota via Interstate Highway 5 to the California-Mexican border and all points and places on and within 10 statute miles laterally of Interstate Highway 5.
18. Between and including Los Angeles and Blythe and all points and places on and within 15 statute miles laterally of Interstate Highway 10 and U. S. Highway 60.
19. Between and including Bakersfield and Barstow and all points and places on and within 15 statute miles laterally of State Highway 58.
20. Between and including Barstow and the California-Nevada State Line and all points and places on and within 15 statute miles laterally of Interstate Highway 15.
21. Between and including Barstow and Needles and all points and places on and within 15 statute miles laterally of U. S. Highway 66.
22. Between Barstow and all points and places on and within 15 statute miles laterally of Interstate Highway 15 and U. S. Highway 66 and its intersection with Interstate Highway 10.
23. Between Mojave and all points and places on and within 15 statute miles laterally of State Highway 14 and its intersection with Interstate Highway 5.
24. Between and including San Bernardino and San Diego and all points and places on and within 15 statute miles laterally of U. S. Highway 395.
25. Between and including Indio and El Centro and all points and places on and within 15 statute miles laterally of State Highway 86.
26. Between the intersection of Interstate Highway 5 and Interstate Highway 8 and the California-Arizona State Line via Interstate Highway 8

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and U. S. Highway 80, together with all points and places on and within 15 statute miles laterally of the said highways.

27. Between any and all routes and points set forth in paragraphs 1 through 26 hereof.
28. Restricted against local service between any points lying south of the northern boundary line of San Luis Obispo, Kern and San Bernardino Counties, except that carrier may transport shipments beginning and ending at points within Kern county only.

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

A. Except that 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, brief cases, 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, bulls, 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 motor vehicles equipped for mechanical mixing in transit.
6. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
7. Logs.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
9. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
10. Glass, flat, not bent, as described in Item 86730 of the National Motor Freight Classification from Lathrop, on the one hand, and Alhambra, Alameda, City of Industry, Colton, Compton, Culver City, El Segundo, Fresno, Fullerton, Hayward, Hollywood, Long Beach, Los Angeles, North Hollywood, Oakland, Palo Alto, Richmond, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Clara, Santa Fe Springs, Santa Rosa, Stockton, Union City, and Visalia, on the other hand.

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- 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:
 - 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.
 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