

Decision No. 26824

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of  
FRANK DE MARCO for a certificate of  
public convenience and necessity to  
operate automobile truck service as  
a common carrier between points in  
Santa Clara and/or Alameda County, on  
the one hand, and the City and County  
of San Francisco and/or the County  
of Alameda, on the other hand, and  
points intermediate thereto.

) ORIGINAL

) Application No. 18891

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Harry A. Encell for applicant  
L. N. Bradshaw for The Western Pacific  
Railroad Company, interested party  
H. W. Hobbs for Southern Pacific Company  
and Pacific Motor Transport Company, Pro-  
testants  
Douglas Brookman, amicus curiae

BY THE COMMISSION:

This application came on regularly for hearing on June  
24, 1933, at San Jose, California, before Examiner Johnson.

The applicant requests permission to establish service  
as a common carrier for the transportation of field and orchard  
produce and empty crates, boxes and farm necessities between  
points in the County of Santa Clara and the County of Alameda,  
on the one hand, and the City and County of San Francisco and/or  
points in the County of Alameda, on the other hand. The ap-  
plicant defines farm necessities as including feed, fertilizer,  
food stuffs, implements and machinery.

The proposed rates, rules and regulations, the time  
schedules and routes are set forth in Exhibits "A" and "B"  
of the said application. The equipment to be used is specified

in Exhibit "C".

From the testimony of the applicant and various public witnesses, it appeared that the applicant had been engaged in this line of business for the past ten years furnishing a service to farms in Santa Clara and Alameda Counties from the commission houses in San Francisco, Oakland and other Bay cities. In the past, said service was not on schedule but seasonally was regular.

Previously the Commission has found that the service rendered by the applicant herein was not such as to require a certificate of public convenience and necessity. (Decision No. 12594 dated September 13, 1923, and Decision No. 17271 dated August 26, 1926.) Thereafter, on the 1st day of November, 1932, Regulated Carriers, Inc. filed a complaint against this applicant alleging common carrier operations, and on April 17, 1933, the defendant in that case (applicant herein) was ordered to cease and desist, unless within thirty days from April 17, 1933, defendant filed an application for a certificate of public convenience and necessity (Decision No. 25841.) The instant application complies with this condition.

There being ample proof of public necessity and there being no protests now entered in this proceeding and the Commission being fully advised in the premises, the application herein should be granted.

#### ORDER

The Railroad Commission of the State of California hereby declares that public convenience and necessity require the establishment of a transportation service by Frank De Marco by automobile truck for the transportation of field and/or orchard products, empty crates, boxes and farm necessities including feed, fertilizer, food stuffs, implements and machinery over the public highways

of the State of California between Gilroy, Los Gatos, Saratoga, Cupertino, Gilroy Hot Springs, San Jose, Milpitas, Alviso, Santa Clara, Sunnyvale and points intermediate on the one hand, and San Francisco, Palo Alto, San Mateo, and Oakland, Alameda, Berkeley, San Leandro, San Lorenzo and Hayward, and points intermediate to each, on the other hand, points of origin northbound being those south of the north boundary of Santa Clara County and points of origin southbound of those north of the north boundary of Santa Clara County over and along the following main and connecting routes and seven (7) miles laterally from each:

Between Gilroy and San Jose and intermediate points via Federal Highway No.101.

Between San Jose and San Francisco and intermediate points via Federal Highway No.101-W, and/or Bayshore highway.

Between San Jose and Berkeley and intermediate points via Federal Highway No.101-E or County Highway, via Mission San Jose and Decoto.

Between Federal Highway No.101-E and Federal Highway No.101-W via connecting county highway or via Dumbarton Bridge.

Between Gilroy Hot Springs and Federal Highway No.101 via main County Highway.

Between Cupertino, Saratoga, Los Gatos, Cambell and New Almaden and Federal Highways Nos.101 or 101-W via main county highways,

and subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, on not less than ten days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted.

3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Applicant Frank De Marco is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. 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 to the number of rights which may be given.

For all other purposes, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup> day of September, 1933.

CC J. J. J.  
Leon J. J.  
W. J. J.  
Commissioners.