

ORIGINAL

Decision No. 26470

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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,)	Application No.18891
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.)	

BY THE COMMISSION -

ORDER AMENDING ORDER

WHEREAS, by our Decision No.26324 herein, dated September 11, 1933, applicant was granted a certificate of public convenience and necessity to establish a transportation service for property between San Jose and other Santa Clara county points, and San Francisco and Oakland, and

WHEREAS, communications filed by protestants Southern Pacific Company and The Western Pacific Railroad Company on September 19, 1933, point out certain errors in said Decision No.26324, which result in a grant of broader rights than the limited rights agreed to by applicant by stipulation at the hearing in said matter, as follows:

Mr. Bradshaw: If, then, it can be stipulated that the applicant, in addition to the transportation of the produce to San Francisco and East Bay cities, from the farms and ranches, and the transportation of produce from the commission houses, to the points on the route --

Mr. Encell: Southbound.

Mr. Bradshaw: Southbound, the only other hauling, that is, hauling of other commodities, will consist only of movements of feed, fertilizer, foodstuffs, farm implements and machinery, to ranches and farms along the route, then I withdraw my protest.

Mr. Encell: That will be stipulated.

Mr. Bradshaw: Then the protest of the Western Pacific, Southern Pacific and Pacific Motor Transport Company is withdrawn, with that understanding.

Examiner Johnson: Very well,"

and,

WHEREAS, the order issued does not consist with the stipulation aforesaid, through inadvertence, and said order is in excess of the rights stipulated by applicant as shown by the record,

IT IS HEREBY ORDERED, that the order issued in said Decision No.26324 herein be and the same is hereby amended to read as follows:

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 from farms, ranches or commission houses only 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 otherhand, points of origin northbound being those south of the north boundary of Santa Clara county and points of origin southbound those north of the north boundary of Santa Clara county, provided, however, that southbound transportation shall consist only of movements of feed, fertilizer, food stuffs, farm implements and machinery, to ranches and farms along the route, and produce from commission houses to points on the route, and no greater or different service, 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, Campbell 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, as herein amended, within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall withdraw and cancel all tariffs and time schedules and rules and regulations heretofore filed with this Commission under authority of Decision No.26324 and shall file in lieu thereof and consistent with the order as herein amended, 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, as herein amended, 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 23rd day of October, 1933.

CC Seavey
Tom Whittell
W. J. King
W. B. King
W. B. King
COMMISSIONERS.