

ORIGINAL

Decision No. 29483

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
FRANK CARLI for certificate of public)	
convenience and necessity to)	
operate Fruit and Produce Transfer)	Application No. 20803
service as a common carrier between)	
Mountain View and Oakland.)	

Frank Lee Crist for Applicant
 Frank De Marco in propria persona,
 Protestant.
 M. F. Costa for Produce Transfer Company,
 Protestant.

BY THE COMMISSION:-

O P I N I O N

Applicant seeks a certificate of public convenience and necessity authorizing him to conduct automotive transportation as a highway common carrier of fresh field and orchard products between Mountain View, Santa Clara County, and Oakland.

Public hearings herein were conducted at Mountain View by Examiner W. R. Williams, the matter was duly submitted and now is ready for decision.

Applicant now operates over a rather large area, with Mountain View as operative base, as a carrier of field and orchard products to Oakland and elsewhere, under permits as a radial highway common carrier and as a highway contract carrier. He now alleges that the frequency of such movements between Mountain View and Oakland under contract has produced a demand from small growers in and about Mountain View for similar service.

To meet this demand applicant is willing to establish unrestricted common carrier service, absorbing into it his present contract operations.

Three of his principal contract patrons, F. W. Bracker, a grower, operating 155 acres for field crops and 25 acres for berries, 6.5 miles west of Mountain View; Henry Kiyomura, Superintendent of the Central California Berry Growers Association precooling plant at Mountain View and who ships about 15,000 cases to Oakland each season; and, L. W. Datsee, field buyer for Modern Food Company, a grocery syndicate subsidiary, who ships from three to eight tons of perishables daily during the season to Oakland, testified as to the need of a public carrier, not only for their traffic but for small growers. Also, G. Pastorino and Feliz Farravelli, each operating 5-acre tracts near Mountain View, testified they now have no truck service available to the Oakland market. All spoke highly of the dependability and efficiency of applicant's present service. They also pointed out that speed in reaching the daily market at Oakland frequently determines whether or not their products are sold at a profit.

Applicant estimates that, if he is unrestricted, the movement will average 7.5 tons or more daily over the whole area sought. He has included territory, however, which is served by other highway common carriers under certificate, De Marco, Yasunagi and Maynards, and there is no showing, except in one instance (that of witness Bracker) that this service has proven inadequate. For this reason applicant appears entitled on the record only to a certificate for the area east of Palo Alto to Lawrence Road, and west of this road to the Bracker area, and south from San Francisco Bay to one mile south of Highway

No. 101, as set out in detail in the order. Applicant must understand that acceptance of the certificate granted herein precludes his operation as both a contract carrier and a common carrier of the same commodities between the same points. (Section 4, Chapter 223, Statutes 1935)

Applicant stipulated in writing, with Southern Pacific Company and Pacific Motor Transport Company, certain restrictions by which applicant will not serve canneries, state refrigeration terminals or packing houses nor within one mile of Southern Pacific rail service, etc. As the restrictions appear not to impair applicant's ability to render the service proposed, they will be incorporated in the order.

Frank Carli is hereby placed on 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.

O R D E R

Frank Carli having made application for certificate of public convenience and necessity, as above entitled, a public hearing having been held and the Commission being fully advised;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA
HEREBY DECLARES that public convenience and necessity require the establishment of an automotive highway common carrier service for the transportation of fresh fruits and vegetables between Mountain View and the adjacent area bounded as follows:

Beginning at the intersection of Lawrence Road and Highway No. 101 (Camino Real), thence westerly along Highway No. 101, and with lateral right one mile south thereof, to Arastradero Road, thence northerly and easterly along Arastradero Road and Charleston Road to Stierlin Road and the prolongation thereof to San Francisco Bay, thence easterly along said bay shore to Guadalupe Slough, thence following Guadalupe Slough to Santa Clara and Alviso Road, thence via Mountain View-Alviso Road to Coffin Road, thence via Coffin Road to Kifer Road, thence via Lawrence Road to the place of beginning,

and serving all the area inside said boundary, except where exterior lateral right is herein provided, and the City of Oakland, over and along the following routes:

Via any County or State Highway to Highway No. 101-E or via any County or State Highway to Dumbarton Bridge and Highway No. 101-E, and thereover to Oakland, without any intermediate service between termini; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Frank Carli, subject to the following conditions:

- (1) Applicant shall have the right to transport from the producing territory fresh fruits and fresh vegetables, other than potatoes and onions in sacks, to the commission and brokerage markets of Oakland only.
- (2) Applicant shall not transport as a common carrier potatoes in sacks or onions in sacks, but may transport potatoes or onions in boxes.
- (3) Applicant shall not transport fresh fruits or fresh vegetables to canneries or packing houses or to any shipping terminal or state refrigeration terminal.
- (4) Applicant will not pick up from packing houses, nor within one mile of the present location of the rails of Southern Pacific Company.
- (5) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.

- (6) Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof and shall file, in triplicate, and concurrently make effective, on not less than ten days' notice to the Railroad 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 application in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
- (7) Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
- (8) 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 obtained.
- (9) No vehicle may be operated by applicant herein, unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (10) Applicant shall, prior to the commencement of service authorized herein and continuously thereafter comply with all of the provisions of this Commission's General Order No. 91.

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 25th day of January, 1937.

W. H. [Signature]
Leon [Signature]
Joseph [Signature]
Ray [Signature]
Ray & [Signature]
COMMISSIONERS.