

Decision No. 14509

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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ORIGINAL

In the Matter of the Application of HOWARD TERMINAL RAILWAY, a corporation, for an order authorizing the discontinuance of service.

) :Application No. 10670
)

McCutchen., Olney, Mannon & Greene, by Allen P. Mathew, for Applicant.

E.W.Hollingsworth and Bishop & Bahler, for Traffic Bureau, Oakland Chamber of Commerce, Protestant.

BY THE COMMISSION:

O P I N I O N

Howard Terminal Railway, a corporation, has petitioned the Railroad Commission for an order authorizing the discontinuance of switching service as heretofore performed over certain trackage belonging to the City of Oakland and located adjacent to the railroad line of applicant.

A public hearing on this application was conducted by Examiner Handford at San Francisco, the matter was duly submitted and is now ready for decision.

Applicant alleges that on July 1, 1924, at the request of the Commissioner of Public Works of the City of Oakland, switching service was begun over the following trackage owned by the City of Oakland:

1.

That certain railroad trackage, upon and adjacent to the Quay Wall of Oakland, Inner Harbor, County of Alameda, State of California, consisting of the following:

1. Trackage upon the Quay Wall of Oakland Inner Harbor, commencing with the tracks of the Southern Pacific Company on First Street in the City of Oakland, at a point 105 feet, more or less, westerly from the west line of Broadway, and extending thence in a general westerly direction, along said Quay Wall, to a connection with the tracks of Howard Terminal Railway, at a point on said Quay Wall opposite the westerly line of Market Street extended.

2. A spur track, designated as "Clay Street Wharf Spur", connected with said trackage first above described at a point near and immediately southerly from the plant of Strable Hardwood Company, and extending thence in a southwesterly direction to and upon the Clay Street Wharf of the City of Oakland.

3. Two spur tracks, designated as "Market Street Municipal Pier Spurs," one of which is connected with said trackage first above described at a point near the intersection of Grove Street with the Quay Wall, and extends from said connection in a southwesterly direction to and upon the Market Street Municipal Pier of the City of Oakland, and the other of which is connected with said trackage first above described, at a point upon said Quay Wall opposite said Market Street Municipal Pier, and extends from said connection in a southwesterly direction to and upon said Market Street Municipal Pier.

All the foregoing trackage is more definitely shown in red color on a blue print map entitled "Inner Harbor" as approved by the Harbor Engineer of the City of Oakland, as filed herein as a part of the application in this proceeding.

It appears from the record herein that applicant on July 1, 1924 began switching service to the above described trackage, which is the property of the City of Oakland, service over such trackage having formerly been rendered by the Southern Pacific Company. On October 31, 1924, applicant discontinued

service by verbal arrangement with the Commissioner of Public Works of the City of Oakland and the Southern Pacific Company immediately resumed its switching service to the above described tracks and is continuing to care for such switching at the present time.

The switching service performed by the applicant produced a revenue of \$1281.00 during the period of its operation, such amount covering the movement of 840 cars. Applicant kept no record as to the expense of operation as regards the specific movement over the trackage for which its service is herein sought to be discontinued, but has presented statements as exhibits herein which compare the expense for the period in which operation was given over the Oakland Municipal tracks with the average for a six months' period prior to the commencement of such operation. From these exhibits the net loss to applicant arising from the operation of this trackage for the four months' period ending October 31, 1924 is estimated at \$987.43. The figures as presented in the exhibit are prepared on an approximate and comparative basis, but appear the best data available without an extensive audit of the accounts of applicant, the expense of which would serve no useful purpose as an approximation of the expense would be necessary to arrive at the loss which from the data herein presented has been reasonably established.

The granting of the application is protested by the Traffic Bureau of the Oakland Chamber of Commerce. The basis of the protest is not due to the unauthorized abandonment of service by the applicant, the actual service having been taken over and now being performed, as formerly, by the Southern Pacific Company. The objection of this protestant runs to the fact

that applicant, by the filing of tariffs covering the switching service it has elected to perform as a public utility, and by the inclusion therein of the trackage for which it now desires to be relieved from operating has created a discriminatory condition against certain industries in Oakland in that extra switching costs are required on carload movements to and from the Howard Terminal, the Clay Street and the Market Street Municipal wharves. There appears merit in this protest insofar as excess switching charges have been imposed on industries and others who have used the terminal facilities since the applicant discontinued its service without securing the requisite permission from this Commission.

Applicant herein undertook to perform additional service over the tracks of the City of Oakland, such service automatically coming under the provisions of tariffs lawfully filed with this Commission. After four months' operation, all at a substantial loss, applicant discontinued service without the necessary authorization therefor by this Commission, although with consent of the Commissioner of Public Works of the City of Oakland, such municipality owning the trackage over which switching service was rendered by applicant. The matter of adjustment with shippers and consignees of excess amounts required to be paid for service by reason of the changed conditions and during the period between the unauthorized suspension of service by the applicant and the receiving of authority therefor from this Commission is not at issue in this proceeding but should be made the basis of an application by applicant to amend its tariff provisions or the subject of complaint by interested shippers or consignees.

After full consideration of all the evidence herein we are of the opinion and hereby find as a fact that the operation of the trackage as hereinabove described by the applicant as a portion of the switching service rendered in the City of Oakland under its tariff provisions is not required by the public convenience and necessity, such switching service now being performed by the Southern Pacific Company, and the record herein is conclusive that the operation, suspension of which is herein requested, has been conducted at a material loss.

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted, the Commission being now fully advised and basing its order on the findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that applicant, Howard Terminal Railway, a corporation, be and it hereby is authorized to discontinue switching service and operation over the trackage in the City of Oakland as hereinabove fully specified in the foregoing opinion.

Dated at San Francisco, California, this 30th day of

January, 1925.

H. H. P. S. S. S.
C. S. S. S.
E. S. S. S.
G. S. S. S.
Commissioners