Decision No. 25827

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of GOLDEN GATE FERRY COMPANY, (a corporation) for a certificate of public convenience and necessity to operate a public ferry for the transportation of persons and property across the inland waters of the State between the City and County of San Francisco and Berkeley.

Application No. 11692.

Dudley Sales and Devlin and Brookman for Applicant;
E. J. Sinclair, City Attorney, and Frank B. Stringham, Mayor for the City of Berkeley;
H. C. Booth, for Protestant, Southern Pacific Company;
Dunne, Brobeck, Phleger and Harrison, by H. H. Phleger, for Protestant, Key System Transit Company;
Charles Keeler, for Berkeley Chamber of Commerce;
T. H. DeLap for Richmond Chamber of Commerce;
Geo. W. Hickman, for Albany Improvement Association;
J. J. Rahill, for Berkeley Manufacturers Association;
Herbert L. Hatch for Park-Presidio Association and Geary Street Merchants Association;
Walter M. King, for Golden Gate Merchants Association;
J. H. Janson, for University Avenue Development Association, Berkeley;
W. C. Aylsworth, for North Berkeley Business Men's Association;
W. H. McLaughlin, for Post-Van Ness-Larkin District Association;
James S. Greene, for National Automobile Club;
Edward F. Schulz, for San Pablo Development Association;
Fred S. Stripp, for Berkeley Lions Club and North Brae Improvement Club;
Donald Parco, for Kensington Improvement Club;
C. A. Squire for Sausalito Chamber of Commerce;
John A. O'Connell for San Francisco Labor Council;
Frank E. Bates for Sherman, Clay and Company;
R. J. Bekins, for Bekins Van and Storage Company;
W. McCarthy, for Ashby Community;
R. V. McPherson, for Vallejo Chamber of Commerce;
Mrs. A. W. Erskine, for Buena-Peralta Improvement Association;
E. R. Morris, Alameda Chamber of Commerce;

DECOTO, Commissioner.

O P I N I O N.

This is an application of the Golden Gate Ferry Company for a certificate of public convenience and necessity to operate a public

410

ferry for the transportation of persons and property across the inland waters of the State between the City and County of San Francisco and the City of Berkeley, in the County of Alameda. The applicant now operates a ferry for the transportation of persons and property between the foot of Hyde Street in San Francisco and Sausalito in the County of Marin. It is proposed to operate a similar ferry service from its present slips at the foot of Hyde Street to a slip at the end of a pier, projecting Westerly and Southerly from the foot of University Avenue, Berkeley, to the pier head line, which is about three and one-half miles from the foot of University Avenue. Applicant has already entered into a fifty year lease with the City of Berkeley for the necessary property on the Berkeley side of the Bay at the foot of University Avenue and has obtained a franchise from the City and County of San Francisco to operate this ferry for the transportation of persons and property upon the terms and conditions set forth in the franchise. (Ordinance of City and County of San Francisco, No. 6762 New Series).

It is estimated that the proposed service will require three new boats, costing approximately $375,000. each and that the entire capital cost of facilities for the new service, including these new boats, will be in the neighborhood of $2,500,000.

The Key System Company opposed the granting of the application on the ground that public convenience and necessity do not require the establishment of such ferry; that it would be in competition with the passenger service which, as at present operated by the existing transportation companies, is fully

411

adequate to supply the demands of the public; that the establishment of such competitive system would also result in a duplication of facilities beyond the public need and would bring about an increase in capital investment upon which a return must be paid by the public in increased fares.

The Southern Pacific Company filed a protest against the granting of a certificate of public convenience and necessity to applicant on the ground that both the Key System Transit Company and the Southern Pacific Company had many millions invested in ferry steamers, tracks, rights-of-way and electric railway equipment in transbay service and that each operates service at frequent intervals and at rates of fare, which do not result in adequate returns upon the capital so invested; that in so far as the Southern Pacific Company was concerned the revenues from this service do not defray the expense of operation; that the cost of such transportation to the public can be kept at a minimum only by permitting the present carriers to operate to their maximum efficiency and to carry such number of passengers as will render the service remunerative; that if the number of patrons, handled by them, should be materially reduced the cost of transportation of each passenger will be increased accordingly and greater individual passenger fares will be justified; that the Southern Pacific Company is conducting a vehicular ferry service between San Francisco and the foot of Broadway, Oakland, Oakland Pier and Richmond respectively; that this service is excellent and adequate and the Southern Pacific Company is financially able to provide for the present and future needs for passenger and automobile transportation between San Francisco and the East side of San Francisco Bay and stands ready to increase its existing service as business offered may require.

In dealing with this application, I shall divide it into two divisions, the first having to do with foot passengers and

412

the second with vehicular traffic.

FOOT PASSENGERS.

The Key System now operates into the territory proposed to be served three lines of electric railway, the main line being on Shattuck Avenue and parallel to the line of the Southern Pacific for some distance, one of the others operating East of Shattuck Avenue on Bancroft Way, College Avenue and Alcatraz Avenue, to a junction with the Shattuck Avenue line at Alcatraz Avenue and Adeline Street, the other being West of Shattuck Avenue on Sacramento Street and approximately midway between that avenue and San Pablo Avenue. Trains and cars for the transportation of foot passengers operate over these lines on a twenty minute headway during the day until seven P. M. and thereafter on a forty minute headway.

The Southern Pacific Company now operates into the territory proposed to be served four lines of electric railroad, the main one being on Shattuck Avenue, the heart of the business district of Berkeley and running into North Berkeley. Supplementing this main line is the Ellsworth Street line a few blocks East of Shattuck Avenue, the California Street line running midway between Shattuck and San Pablo Avenues and the Ninth Street line running parallel to and West of San Pablo Avenue. Trains are operated over these lines at intervals of twenty minutes during the day until seven o'clock in the evening, when they operate on a forty minute headway.

Throughout the hearing applicant has repeatedly refused to abandon that portion of its application seekingpermission to carry foot passengers and has insisted that the application must stand or fall in its entirety. Applicant admits that it intends to handle all foot passengers applying for transportation.

45

The testimony of all witnesses, whether called for the applicant or for the protestants, was to the effect that there was ample service now maintained and operated by the Key System Transit and Southern Pacific Companies for the transportation of foot-passengers between Berkeley and San Francisco, and all witnesses testified that the service was satisfactory and many of them that it was excellent.

All the witnesses called were unanimously of the opinion that no new service or facilities for the transportation of foot-passengers were required or desired.

From all these facts it is self-evident that there is neither public necessity nor even public convenience for the establishment of additional facilities for the transportation of foot passengers and that the establishment of the service as requested by applicant would not only be an unnecessary and wasteful duplication of facilities but would also lead to the investment of additional capital upon which the travelling public must pay the return.

It would only be adding to the burden which must be borne by the travelling public in the cities of Oakland and Berkeley, which already have ample facilities for transportation of foot passengers across the bay.

VEHICULAR TRAFFIC.

The applicant proposes to put into this service three new Diesel electric boats, each having a capacity of 80 cars and 800 foot passengers and a speed of 13½ or 14 knots, capable when loaded of making the trip from San Francisco to Berkeley in 20 minutes, including time required for loading and unloading, and operating from 5:00 A. M. to 6:30 A. M. on a thirty minute headway and thereafter on a

4/14

twenty minute headway to 7:00 P. M., then every thirty minutes to 10:00 P. M. and then every hour to 1:00 A. M.

The Southern Pacific Company, on all days except Saturday, Sunday and holidays, now operates from Oakland Pier on a 20 minute headway from 6:20 A. M. to 7:40 P. M., then on a forty minute headway to 12:20 A. M., the next boat leaving at 1:15 A. M. On Saturdays, it commences operation at 6:20 A. M., the boats leaving Oakland Pier on a 20 minute headway to 11:30 A. M., then on a 15 minute headway to 6:15 P. M., then on a 20 minute headway to 8:20 P. M. and then on a forty minute headway to 12:20 A. M., the last boat leaving at 1:15 A. M. On Sundays and holidays, it operates on a 20 minute headway from Oaklandpier, beginning at 6:20 A. M. and continuing to 9:00 A. M., then on a 15 minute headway to 3:45 P. M., then on a 10 minute headway to 4:15 P. M., then on a 15 minute headway to 4:45 P. M., then again on a 10 minute headway to 5:15 P. M., then again on a 15 minute headway to 5:45 P. M., then back to the 10 minute headway to 9:30 P. M., then on a 15 and 20 minute headway to 12:00 M., then to 12:30 P. M. and 1:00 P. M.

An analysis of the evidence shows that the maximum saving in distance from any part of Berkeley and from points in North and Central California will be 2.6 miles, that being the difference between the distance from the junction of University and San Pablo Avenues to the proposed new slip, which is 4 miles, and the distance from the same point to Oakland pier, which is 6.6 miles, it being necessary for practically all of this traffic, except that West of San Pablo, to come to this junction before turning West to the proposed ferry. An automobile or truck running at 20 miles per hour, the legal speed, along this route, will travel 2.6 miles in 7.8 minutes.

4/15

In order to provide for the traffic from Northern and Central California points, coming into the Bay Section over the highway near Richmond, a certificate of public convenience and necessity was granted to the San Francisco Richmond Ferry Company. The franchise and certificate of that Company was subsequently acquired by the Southern Pacific Company and the ferry has since been operated for the accommodation of this traffic by that Company. However, to those coming in from Northern and Central California points, not desiring to use the Richmond Ferry, this slight saving in time above set forth is practically negligible. Neither does it seem to be of very considerable advantage on a run from the points in Berkeley upon which the saving in distance would be possible. From all points east of Shattuck Avenue it is questionable whether there will be any saving of time on account of the added distance from the junction of San Pablo and University Avenue and the shortened distance down Shattuck Avenue along Adeline Street and over Peralta Street to the Oakland Pier, neither will there be any saving in time from most points in Berkeley South of University Avenue outside the circumference of a circle, having a radius of 1.3 miles from the junction of San Pablo and University Avenues.

The evidence offered shows that the facilities and schedule of the Southern Pacific vehicular ferries were sufficient to handle all the traffic offered in an expeditious and satisfactory manner. The evidence further shows that this Company used six (6) boats in the traffic and has two (2) more boats suitable to handle the traffic, which would enable it to handle an increase of one-third in the present vehicular traffic and operate on a 7½ minute headway. It also appeared

4/16

that by the addition of another slip at the Oakland Pier it could operate twelve (12) boats on a five minute headway, which would care for double the present traffic. This company expressed not only the willingness but the intention to increase its facilities as traffic was offered and the evidence showed that since the establishment of the vehicular ferry at Oakland Pier this company has steadily added facilities when warranted by the traffic and has at all times given expeditious and satisfactory service.

The position of the Commission on applications of new utilities to enter the field of public utilities already established has been so well expressed by former Commissioners Eshleman and Thelen in Pacific Gas and Electric Company vs. Great Western Power Company, 1 C. R. C. 209, that I believe it should be reiterated here:

> "....It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in. It has been urged in this proceeding that where a utility occupying a field has generally served such field so that the advent of a second utility would merely serve to divide the business, then if the existing utility has the ability, if it chooses to do so, to furnish such territory efficiently and at as reasonable rates as can be legitimately accorded by the utility desiring to enter the field, even though it had theretofore charged excessive rates or given inefficient service, yet sound economy would require the authority, which has the power to regulate the rates and service of such utility, to require the existing utility to furnish such territory adequately and cheaply, and to keep the second utility out. Theoretically, much can be said in favor of this contention, but to attempt to apply it would, in practice, defeat the very intent of the Public Utilities Act in all cases where utilities did not voluntarily accord to their patrons those things which are their due, or, at least, would impose upon the public authorities the burden of forcing such utilities into a realization of what their proper relationship to the public is.

"In times past in this State efforts on the part of the public authorities to force utilities to give reasonable rates and adequate service have been met with long-continued litigation, and if the public authorities have at hand an efficient and summary method of forcing public utilities to accord to their patrons such reasonable rates and adequate service, then, in our opinion, it is their duty to use it. If any territory served by an existing utility is afflicted by such utility with excessive rates of inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission should say to the existing utility 'although when you had matters your own way, you lost sight of your duty to the public, yet we will still preserve for you this territory in consideration of your future good behavior,' in how many instances does anyone suppose a new utility would apply to enter a territory served by an existing utility when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility? And hence if we should in the very first important contested application for a certificate of public convenience and necessity announce the rule that where the major portion of a territory is served, though inefficiently and at high rates, the result of such application will be merely to put the existing utility upon its good behavior, then we would, in effect, be saying to all the offending utilities of this State, if there be any, 'you may proceed with your present methods until competition knocks at the door of your territory and only then will you be compelled to do justice,' and we would be saying to every new public utility, 'you will knock in vain at the door of any field now served by a utility.' The result would be that old utilities would keep their territory unspurred by the fear of competition, knowing always that only when it was imminent need they prepare to do justice to their patrons, and the new utilities, having no incentive to apply for permission to go into territory more or less completely, but inefficiently served, would limit themselves to new fields within which they would soon, in turn, assume the same attitude as would be assumed by the old utilities now doing business within the State. Rather, do we announce the rule that only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons, that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission, or other governmental authorities, to accord to the communities of this State those rates and that service to which they are in justice entitled, and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory. We understand the certificate of public convenience and necessity to be in this State largely a precautionary measure. We have already dealt somewhat at length with

4/15

> the cases wherein we believe competition should be allowed, even though such competition will mainly serve to take patrons from the existing utility. If, however, a territory is completely served and the utility has, to the best of its ability, given fair treatment to its patrons, as already intimated, this Commission will be slow to permit a competitor to come into its territory. One of the few cases where, under such circumstances, the competitor will be permitted to enter the field, will be where the competitor can adequately furnish the commodity at a rate so much less than the rate which can be accorded by the existing utility, that the interests of the public demand the commodity at the lower rate. We are aware that this may work hardships upon small companies, and we are likewise aware that the State owes a duty to the small utility which has gone into a field and furnished the inhabitants thereof with a service which would otherwise have been denied them. When the advent of the new utility, under such circumstances, will serve, through legitimate competition, to impair the investment of the existing utility, the difference in rates which may be legitimately accorded by the new utility must be so considerable that the public interest clearly demands the rendition of the service at the lower rate before this Commission will be moved to permit the competitor to enter such field, provided, always, as we have already said that the existing utility, be it small or great, has been doing its best to treat its patrons fairly."

From this language it is apparent that no new utility should be permitted to enter the field already served by another if all the following conditions applicable to this case are present.

1. If the territory is served by a utility that pioneered in the field.

2. If the utility is rendering efficient service.

3. If the utility is rendering cheap service.

4. If the utility is fulfilling adequately the duty which, as a public utility, it owes to the public.

5. If the territory is so generally served that it may be said that the field of service is fully occupied.

The Southern Pacific Company, for over forty years, has carried upon its ferries vehicular traffic. First there were the horse-drawn vehicles, which were carried on the passenger

4/19

boats at Oakland Pier and later also upon the ferry at the foot of Broadway. Then as automobile traffic developed it was carried on the ferry from the foot of Broadway and as it grew in volume the new slip at the Oakland pier was constructed and new vehicular boats put into operation. This company has further expressed its willingness and its intention to put on additional boats as the business is offered. This evidence shows that "the territory is served by a utility that has pioneered in the field."

From the evidence in this case it is also apparent that the "service rendered by the Southern Pacific Company is efficient". This matter has already been gone into at some length in the preceding portion of this opinion and it is not necessary to reiterate it here, but it certainly cannot be said that a company that operates most of the time on a twenty minute schedule and operates on Saturdays, Sundays and holidays on a fifteen and ten minute schedule and has on hand sufficient boats to accommodate one-third additional traffic on a 7½ minute headway and stands ready to put in a five minute headway which would enable it to accommodate double the amount of the present business offered is not "rendering efficient service". In this connection it might be well to point out that the applicant only offers to the public a twenty minute service.

There can be no question raised as to the "Cheapness of the service" as it now appears that the Southern Pacific Company was, at the time of the filing of this application, operating under the rates fixed by this Commission in Decision No. 15119, Case No. 2041, June 25, 1925, after a careful investigation on the part of the Commission. These

4/20

rates are much lower than those proposed by the applicant and set forth in its franchise being in most cases twenty per cent. lower. An analysis of the rates charged by the present company and the rates proposed to be charged by the applicant demonstrates there is no saving to the travelling public in the rates proposed, and, in fact, that these rates are an increase rather than a decrease.

Rates Proposed by Applicant.		Rates of Southern Pacific Company.	
Automobile	$.75	Automobile	$.60
Ambulance	1.00	Ambulance	.75
Light Truck	1.00	Light Truck	.75
Heavy Truck	1.75	Heavy Truck	1.50
Passenger	.15	Passenger	.05

From an inspection of this table it will be readily seen that the rates of the applicant are considerably higher than those now in force. For instance, an automobile with five passengers can cross on the present ferry for eighty-five cents, while an automobile with five passengers, traveling over the proposed ferry of the applicant, would pay one dollar and fifty cents. In other words, applicant will charge sixty-five cents more than the present company, or an increased charge of 76½%.

The same reasons and facts that show the Southern Pacific Company is rendering efficient service hereinabove set forth also show that the Company is "fulfilling adequately the duty which, as a public utility it owes to the public" and that the territory is so generally served that it may be said that the field of service is fully occupied.

If the reasoning of applicant that the application must be granted in its entirety or not at all is correct, then the

4/21/

application must be denied for the reason that there has been absolutely no showing of public convenience and necessity for the transportation of foot passengers. If, on the other hand, it is within the power of the Commission to grant the application in part, it must be denied because the applicant has also failed to show public convenience and necessity for the transportation of vehicular traffic.

Neither is it necessary to pass upon the question of the jurisdiction of the Commission as its jurisdiction has already been practically affirmed by the Supreme Court of this State in Rodeo-Vallejo Ferry Company vs. Railroad Commission of the State of California, by its refusal to grant the petition for a rehearing, which was denied May 28, 1925.

It appears from the evidence there is neither public convenience nor necessity for the operation of ferry proposed by applicant.

O R D E R -

Golden Gate Ferry Company, a corporation, having made application for a certificate of public convenience and necessity to operate a public ferry between the City and County of San Francisco, State of California, and the City of Berkeley, Alameda County, California, across the San Francisco Bay, this Commission finds as a fact that public convenience and necessity do not require the operation of said ferry.

IT IS HEREBY ORDERED that the said application be and the same is hereby denied.

For all other purposes the effective date of this order

422

shall be ten (10) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of January, 1926.

H. M. Bridges
C. L. Seavey
George D. Squires
Edward Hyatt
Leon O. Whitsell
Commissioners.

423