

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 the City of Berkeley.

) Application No. 11692.

- Dudley Sales and Devlin & Brookman, for the 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. E. Delap, for Richmond Chamber of Commerce.
- George 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 Avenue Development Association.
- Fred S. Stripp, for Berkeley Lions Club and North Brae Improvement Club.
- Donald Parce, 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 & Company.
- Reed J. Bekins, for Bekins Van and Storage Company.
- George W. Gerhard, for Civic League of Improvement Clubs and Associations of San Francisco.
- Campbell Hardy, for Sausalito Chamber of Commerce.
- John J. O'Toole, City and County Attorney, and John J. Daily for City and County of San Francisco.

BY THE COMMISSION:

OPINION AND ORDER ON PETITION FOR REHEARING.

This is an application for a certificate of public con-

venience and necessity to operate a public ferry for the transportation of (1) foot passengers, (2) automobiles and their occupants and (3) trucks and freight, between the City and County of San Francisco and the City of Berkeley.

On January 25, 1926, the Commission filed its opinion and order denying the application. On February 2, 1926, the applicant filed its petition for rehearing. The petition for rehearing was set for argument on February 18, 1926, and was heard by the Commission en banc.

In order to entitle an applicant to a certificate of public convenience and necessity under Section 50 (d) of the Public Utilities Act, the applicant must prove, by competent and reliable evidence, that public convenience and necessity exist for the transportation of each and all of the classes of traffic mentioned in its application. A failure to establish this as to any one of these classes of traffic makes it impossible for the Commission to grant the certificate, since this provision of the Statute does not confer upon the Commission power to grant a certificate imposing conditions not contained in the application. The certificate must be granted or denied "as prayed for", with the single exception that the Commission "may issue it for operations between certain points only". In other words, this applicant might limit the extent of its application and undertaking to the transportation of automobiles and their occupants and trucks and freight, and upon presenting proper proof, might receive such a certificate. This, however, the applicant has so far refused to do, contending that if it can produce substantial evidence showing public convenience and necessity for any single operation among the several proposed by it, it would be entitled to a certificate

covering all such proposed operations. With this contention we cannot agree.

One of the grounds upon which this application was originally denied was that applicant had produced no evidence to support its application to carry foot passengers between Berkeley or the East Bay Cities and San Francisco. In its application for rehearing applicant does not claim that this Commission erred in so deciding and finds no fault with that portion of the decision finding that no such evidence had been produced.

The original hearing occupied several days and every opportunity was afforded the applicant to prove its case. Many witnesses were called on its behalf, and not one testified that there was any necessity for additional facilities for the transportation of foot passengers from Berkeley or the East Bay District to San Francisco. In fact, A. O. Stewart, the President of the applicant, testified that there was no necessity for additional facilities for such transportation of foot passengers. Harry E. Speas, the Vice-President and General Manager of the applicant, also testified that there was no necessity for additional facilities for the transportation of such foot passengers. Testimony to the same effect was given by H. G. Butler, the Engineering expert of the applicant. John E. Eddy, City Manager of Berkeley and Charles Keeler, Executive Secretary of the Berkeley Chamber of Commerce, were called as witnesses on behalf of the applicant and both testified that no additional facilities for such transportation of foot passengers were necessary or required and Mr. Keeler testified that the present facilities were excellent.

These officers and experts of the applicant and the City

Manager of Berkeley and the Executive Secretary of the Chamber of Commerce undoubtedly testified correctly in this regard, and their testimony should have weight with this Commission.

At the close of the argument on the application for rehearing, and in answer to a question from the Commission, the attorney for the applicant, after consultation with A. O. Stewart, the President of the Company, and with his approval, stated that the applicant, under the application now before us, would not accept a certificate of public convenience and necessity for the transportation of automobiles with their occupants and trucks and freight, unless it also was granted the right to carry foot passengers. This attitude, on the part of the applicant, has made it impossible for the Commission to grant the rehearing. If the applicant had shown a willingness to amend its application so as to cover automobiles and their occupants and trucks and freight, excluding foot passengers, the Commission would have been inclined to grant the rehearing. However, should the applicant change its attitude and desire a certificate to carry automobiles and their occupants and trucks and freight, excluding foot passengers, the way is still open to it to file a new application for such a limited certificate, which application would receive due and careful hearing by this Commission.

An application for a certificate of public convenience and necessity must have some evidence to support it before it can be granted by the Commission.

No evidence having been produced to show any necessity for additional facilities for the transportation of foot passengers between Berkeley or other East Bay Cities and San Francisco, and all the evidence, including that of the officers

