

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation,
upon the Commission's own motion,
into the construction of facilities
and the rendering of a vehicular
ferry service by the Southern Pacific
Company, a public utility, between
San Francisco and Alameda, in this
State, without first having obtained
from this Commission a certificate
that public convenience and necessity
require or will require such con-
struction or operation, or both.

ORIGINAL

Case No. 2275.

Henley C. Booth and E. J. Foulds,
for Southern Pacific Company,
Respondent.

Dudley Sales and Devlin & Brookman,
by Douglas Brookman, for
Golden Gate Ferry Company,
Intervenor.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted by an order dated September 3, 1926, instituting an investigation upon this Commission's own motion into the rendering of a vehicular ferry service by the Southern Pacific Company, a public utility, between San Francisco and Alameda, in this State, without first having obtained from this Commission a certificate declaring that public convenience and necessity required or would require such operation. The Southern Pacific Company, on said date, September 3, 1926, had begun the operation of a vehicular ferry service between its Alameda Pier and San Francisco without first having obtained such a certificate of public convenience and necessity. The service appeared to be a new service, and it appeared that probable cause existed

for this Commission to require the Southern Pacific either to obtain such a certificate or to cease and desist from rendering such ferry service. The Southern Pacific Company was directed to appear before the Commission and show cause, if any it had, why it should not be required to cease and desist from such service and operation unless and until it should have secured from the Commission a certificate, declaring that public convenience and necessity required, or would require, such service.

At the time and place set in the order to show cause the Southern Pacific Company appeared by its Attorneys and filed a formal return to the order, and requested that a day be set for the taking of testimony and a hearing on the merits of the issues raised by said Commission order and the return thereto. Golden Gate Ferry Company appeared at said hearing by its Attorneys, and requested to be permitted to intervene in said proceeding in as much as it then had pending before the Commission an application for a certificate of public convenience and necessity to operate a vehicular ferry service between Alameda and San Francisco-- Application No. 12,673. The Commission granted the request and permitted Golden Gate Ferry Company to intervene. Several subsequent hearings were held and testimony introduced by the two companies. Questions involved in this proceeding were argued at length by counsel for the parties on October 2, 1926, and the matter was then submitted for decision.

The question at issue herein resolves itself into an interpretation of a recent statute adding to this Commission's duties that of certificating the operations of vessels upon the inland waters of this state. In 1923, by an amendment to section 50(d) of the Public Utilities Act, it was provided, in part as follows:

"(d) No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall hereafter operate or cause to be operated, any vessel between points exclusively on the inland waters of this state, without first having obtained from the railroad commission a

certificate declaring that present or future public convenience and necessity require or will require, such operation, but no such certificate shall be required of any corporation or person which is actually operating vessels in good faith, at the time this act becomes effective, between points exclusively on the inland waters of this state under tariffs and schedules of such corporations or persons, lawfully on file with the railroad commission."

The effective date of this enactment was August 16, 1923. Whether or not the Southern Pacific Company may be permitted to continue its operations under investigation in this proceeding depends upon the construction to be given to the above quoted enactment.

It is contended by Counsel for the Southern Pacific Company that the company's operation is such as to bring it squarely within the exception contained in section 50(d). More specifically, it is contended that on August 16, 1923, the effective date of the act in question, it was operating vessels in good faith between points exclusively on the inland waters of this state, namely, from Alameda Pier to San Francisco, under tariffs and schedules lawfully on file with the Commission.

Counsel for the Golden Gate Ferry Company, on the other hand, contend that section 50(d), when properly construed, requires that the Southern Pacific Company first obtain a certificate from this Commission before inaugurating the service in question, and that the said operation does not fall within the terms of the exception contained therein. More particularly, it contends that the Southern Pacific Company, on the effective date of the act, was neither operating "vessels" or operating "between points exclusively upon the inland waters" or operating "under tariffs and schedules * * * lawfully on file with the Railroad Commission" within the meaning of those provisions of

the exception of section 50(d) of the Public Utilities Act above quoted. The Golden Gate Ferry Company therefore urges that the Southern Pacific Company be enjoined from operating the service in question unless and until it has obtained a certificate of public convenience and necessity.

The record in this matter shows that on August 16, 1923, the effective date of section 50(d) of the Public Utilities Act, Southern Pacific Company was a common carrier of freight and passengers, operating a railroad system and numerous boats, and was actually operating vessels, in good faith, between its Alameda Pier and San Francisco under tariffs and schedules lawfully on file with the Railroad Commission. The said schedules did not list tariffs covering vehicular ferry service between Alameda Pier and San Francisco, but covered passenger service exclusively.

The record further shows that on July 15, 1926, in compliance with the provisions of section 15 of the Public Utilities Act of 1911, as amended, the company filed with the Railroad Commission amended schedules and tariffs covering vehicular service on the boats operating between Alameda Pier and San Francisco (Local Freight Tariff No. 380-K and Local Passenger Tariff BM. No. 1 (General Freight Department C.R.C.No. 2612) (General Passenger Department CRC. 2979), effective on and after August 15, 1926), and thereafter, and after the lapse of more than thirty days, as provided by section 15, and on September 3, 1926, commenced the carriage of vehicles and their contents between the points above named. The operation called in question by the Commission in this proceeding is the operation of vessels between Alameda Pier and San Francisco under the said schedules and tariffs filed on July 15, 1926.

The immediate question presented in this proceeding is whether the Southern Pacific Company, by virtue of its operations between its Alameda Pier and San Francisco on the effective date of the act in question, August 16, 1923, is now possessed of a right to operate vessels for the transportation of vehicles between said points, or is only free to operate as to the class of service covered by its tariffs and schedules lawfully on file with the Commission on said effective date--namely, passenger service.

We are of the opinion that the operative right possessed by the Southern Pacific Company, by virtue of the exemption contained in section 50(d) of the Public Utilities Act is not limited to the class of service covered by the tariffs lawfully on file with the Commission on the effective date thereof, and that the said company may properly amend its tariffs to include therein rates for vehicular service, as has been done in this case. Since the enactment of the Public Utilities Act of 1911 it has always been possible for a carrier to thus amend its tariffs. (Section 15, Public Utilities Act, as amended.) The Southern Pacific Company in this matter, in amending its tariffs to cover vehicular service, observed the requirements of section 15, supra.

We are of the opinion that a corporation possessed of a right to operate vessels between given points under the exemption of section 50(d) may properly amend its tariffs to cover commodities not theretofore transported.

In view of the foregoing opinion, it follows that this proceeding should be dismissed.

ORDER

The Railroad Commission, upon its own motion, having instituted an investigation into the rendering of a vehicular ferry service by the Southern Pacific Company, a public utility, between San Francisco and Alameda, in this state, without first having obtained from this Commission a certificate declaring that public convenience and necessity require, or will require, such operation, and the Southern Pacific Company having been ordered to appear and show cause, if any it had, why it should not be ordered to cease and desist such operation unless and until it should obtain from this Commission such a certificate declaring that public convenience and necessity require, or will require, such service; public hearings having been held, evidence having been submitted, the Commission being apprised of the facts and being of the opinion that under section 50(d) of the Public Utilities Act no certificate of public convenience and necessity for such service is necessary, and that this proceeding, therefore, should be dismissed,--

IT IS HEREBY ORDERED that the above-entitled matter, being Case No. 2275, be, and the same is hereby dismissed.

That the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17th day of December 1926.

Edward East
John C. White
John C. White
Commissioners.

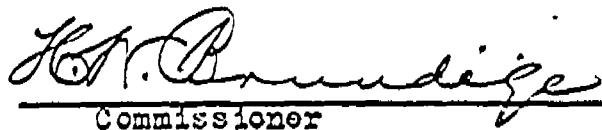
DISSENTING OPINION OF COMMISSIONER BRUNDIGE.

In my opinion the legislature clearly intended in adopting section 50 (d) to give equal rights to all operators of vessels upon the inland waterways regardless of whether they were operating at the time the act became effective, or whether they later secured a certificate in conformity with the provisions of the act. To hold that the legislature intended to discriminate between old and new operators and to confer advantages and privileges upon the former that it denied to the latter seems to me to be an unreasonable assumption.

If section 50 (d) be read in the light of what I believe to be the legislative intent, then we may reasonably conclude that "the tariffs and schedules * * * * lawfully on file with the railroad commission" define the scope and extent of the operations that may be engaged in under the exemption. With proper tariff filing rates may be altered; the time of arrival and departure of vessels may be changed; if the operation be for the carriage of freight commodities may be dropped from or added to the list; but the operator may not engage in a different type or character of business from that specified in his tariffs and schedules.

At the time the act became effective the tariffs and schedules on file by the Southern Pacific Company contained no rate whatever for the transportation of vehicles between San Francisco and Alameda.

In my opinion the Southern Pacific Company is engaged in the business of carrying vehicles between San Francisco and Alameda without authority in law, and should be required to cease and desist unless and until it secures such authority.


Commissioner

DISSENTING OPINION OF COMMISSIONER SEAVEY.

I cannot agree with the majority opinion as above expressed for the following reasons:

Subdivision "d" of Section 50 of the Public Utilities Act has brought under full regulation the operation of vessels in the inland waters of the State and has preserved to the owners of existing lines the rights which they were exercising on the effective date of the law. The rights are defined as the operation of any vessel between points exclusively on the inland waters of this State under tariffs and schedules lawfully on file with the Railroad Commission. If no tariffs and schedules were on file there were no legal operations. It follows that within reason the tariffs and schedules measure the undertaking to serve the public - that is to say, if only freight tariffs and schedules were on file the undertaking was limited to freight and there was no passenger obligation, and vice versa.

In the instant case, Southern Pacific Company had on file the proper tariffs and schedules and transported passengers only between the points involved. In addition to passengers, it now seeks to maintain a right to carry freight and automobiles between such points without obtaining a certificate from this Commission.

From the standpoint of effective regulation, it seems to me the duty of this Commission to insist on Southern Pacific Company obtaining a certificate unless otherwise ordered by the Court.


Commissioner