

Decision No. 21725

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

J. G. ROBERTS,

Complainant,

vs.

MARKET STREET RAILWAY COMPANY,  
a corporation,

Defendant.

Case No. 2744

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In the Matter of the abandonment of  
street car service on Pacific Avenue  
from the west side of Polk Street to  
the west side of Divisadero Street, in  
the City and County of San Francisco.

APPLICATION NO. 15905

E. W. Hutton, for Complainant in Case 2744  
and for Protestants in Application 15905.  
Wm. M. Abbott and Ivores R. Dains, for  
Defendant in Case 2744 and Applicant in  
Application 15905.  
Reginald L. Vaughan, for Junior Chamber of  
Commerce, Intervenor in both proceedings.  
Edmond Bergerot, Assistant City Attorney, for  
City of San Francisco, Intervenor in both  
proceedings.

BY THE COMMISSION:

O P I N I O N

The above-entitled proceedings involve the discontinuance of street railway service by Market Street Railway Company in the City and County of San Francisco between Polk Street and Divisadero Street along Pacific Avenue for a distance of 2.7 miles. In the complaint, J. G. Roberts seeks an order from the Commission "denying the discontinuance of the street railway." In the application the street railway company seeks authority to abandon

service. As the two actions involve the same subject matter, by stipulation of all parties, they were consolidated for hearing before Examiner Williams at San Francisco on September 25, 1929, were duly submitted and now are ready for decision.

The essential facts are not disputed. It appears that on August 21, 1929, applicant herein proposed to surrender its franchise right to maintain tracks and operate cable-car service on Pacific Avenue, between Polk and Divisadero Streets, granted April 14, 1887 and to pay to the City and County of San Francisco \$10,000 to aid in paving that portion of the street heretofore occupied by the tracks. The Board of Supervisors of San Francisco ordered public hearings through its Committee on Public Utilities, which were held and at which residents and property owners of Pacific Avenue and others were heard. The committee reported unanimously in favor of authorizing the abandonment of service and an ordinance (Bill 9014) was unanimously passed by the Board of Supervisors on August 21, 1929, consenting to the "abandonment of said portion of said franchise."

This action is the result of plans sponsored by the San Francisco Junior Chamber of Commerce and certain residents of Pacific Avenue, to make Pacific Avenue an arterial highway extending from the ferry region to the Presidio. A prerequisite of this plan is the elimination of street car tracks. The tracks involved in these proceedings are the only ones on Pacific Avenue. Especially is this elimination regarded as necessary, as the tracks and road-bed are old, in bad condition and require rebuilding at a cost of approximately \$30,000.

The franchise under which the service was established in 1887 expires April 14, 1930. Applicant has not sought an extension of this franchise, and by its proposal to the City and County

of San Francisco expressed no desire to continue the service.

Complainant herein seeks an order by the Commission denying "the right of discontinuing the said street railroad." It is alleged that the Supervisors are without legal power to permit the abandonment of such a franchise right; and further, that public convenience and necessity require the continuation of service to the end of the franchise period. In this connection complainant maintains that this Commission, under the Public Utilities Act alone has jurisdiction over the proposed abandonment. Applicant, Market Street Railway Company, alleges that as the transaction "relates solely to service affecting only one of the routes over which Market Street Railway Company operates under its franchises, Railway Company does not believe it is such a regulation over which your Honorable Commission has or will care to assume jurisdiction." Without prejudice to "rights of the Commission or the company," applicant seeks the approval of the transaction by the Commission. City and County of San Francisco, by its petition in intervention, concurred in applicant's recital and urged that the application be granted. Under these pleadings, various sections of the Public Utilities Act and our General Orders thereunder, we believe the Commission possesses jurisdiction in the premises to pass upon the abandonment of service over the line named and all parties have submitted to such jurisdiction.

The sole question therefore is: Do the facts presented herein justify the approval of the abandonment as proposed? Complainant introduced records and presented witnesses to show that residents and users of the service will be inconvenienced; that the parallel lines on Jackson Street (one block south of Pacific Avenue) and on Union Avenue (four blocks north) are available only by traversing on foot steep grades, some as much

as 15 to 18 per cent; that property values will be injured; that seven schools are served via Pacific Avenue; that it makes transfer from and to the Pacific Avenue line of defendant and all lines of applicant company, which facility will be terminated, and that no substitute service is proposed. The record shows that testimony as to these same allegations was presented to the Board of Supervisors before its unanimous action in authorizing the abandonment, at which time a petition signed by 192 persons, alleged to be residents of Pacific Avenue, was filed in protest. This testimony was countered by testimony introduced by defendant and Junior Chamber of Commerce, intervenor herein, to show that the plan to make Pacific Avenue a new arterial highway is a public need; that a prerequisite is the elimination of street car service; that 126 out of 136 property owners replying to a questionnaire of Junior Chamber of Commerce in writing favored the change; that it is planned immediately to pave the street between Polk and Divisadero Streets; that the street is developing as a high-class residence and apartment house district; that other transportation is available, though of lesser convenience; that only one school--Grant School--is affected by the elimination of service.

The record herein shows that the average loss per month upon this service for the 12 months ending July 31, 1929, was \$2,101.00, and that the revenue for many years past has been declining. It further shows that the number of revenue passengers using the service during the first six months of 1929 averaged 12,500 approximately, and that in addition passengers transferred

from other lines averages about 5,800 per month. The revenue for the same period amounted to about 70 cents per car hour except in July, when it dropped to 52 cents. In the months, January to May, inclusive, approximately 1,800 school children, at half rates, were carried.

Careful consideration of the entire record herein is convincing that the abandonment of this service will be in the public interest, although it will involve some inconvenience to a few. The grantor of the franchise and the grantee are agreed upon such abandonment and the testimony as a whole justifies approval of the transaction so far as this Commission, under its jurisdiction, is concerned.

An order dismissing the complaint and granting the application herein, accordingly, will be entered.

O R D E R

J. G. ROBERTS having filed complaint before the Railroad Commission asking that Market Street Railway Company and the City and County of San Francisco be denied the right to consummate the agreement for the abandonment of cable-car service on Pacific Avenue between Polk and Divisadero Streets in the City and County of San Francisco, a public hearing having been held and the matter having been fully submitted,

IT IS HEREBY ORDERED that the complaint herein be, and the same is hereby dismissed.

MARKET STREET RAILWAY COMPANY, a corporation, having made application to the Railroad Commission for authority to

abandon its street car service between Polk Street and Divisadero Street on Pacific Avenue in the City and County of San Francisco; a public hearing having been held herein, and the matter having been duly submitted,

IT IS HEREBY ORDERED that Market Street Railway Company be, and it is hereby authorized to discontinue and abandon all service upon said Pacific Avenue between Polk Street and Divisadero Street in the City and County of San Francisco provided the public is given not less than ten (10) days' notice by posting notices in all cars operated on this line.

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 28<sup>th</sup> day of October, 1929.

Thomas S. Latta  
Chas. S. Latta  
James C. Latta  
Leon O. Latta  
W. L. Latta  
 Commissioners.