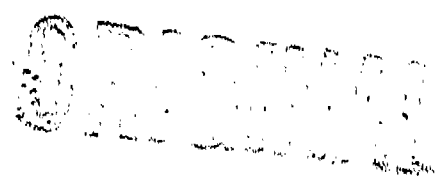


Decision No. 22029



BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
AUTOMOBILE FERRY COMPANY OF CORONADO,
a corporation, for certificate of pub-
lic convenience and necessity to op-
erate ferries for the transportation
of vehicles, etc., for compensation,
between points upon the inland waters
of the State of California, and for
order authorizing issue of stock for
construction, completion and mainte-
nance of its service.

Application No. 15303.

Sterns, Luce & Forward, by Chas. H. Forward
and E. J. Lee, for Applicant.

Morrison, Hohfeld, Foerster, Shuman & Clark,
by Herbert W. Clark, for San Diego and
Coronado Ferry Company, Protestant, and

San Diego Electric Railway Company,
Intervening Protestant.

WEITSELL, COMMISSIONER:

O P I N I O N

This refers to an application filed with the Commission by the Automobile Ferry Company of Coronado, seeking a certificate of public convenience and necessity to operate ferries for the transportation of vehicles on the San Diego Bay between San Diego and Coronado and an order authorizing the issuance of stock to cover the cost of the necessary equipment, facilities, property and organization expense to begin operation.

Public hearings on this application were held at San Diego on April 2nd, 3rd and 30th and May 1st and 2nd, 1929.

The San Diego and Coronado Ferry Company filed an appearance in this matter as protestant and the San Diego Electric Railway filed as an intervenor.

The ferry line proposed herein extends from the foot of Kettner Boulevard, in San Diego, to the foot of "B" Street, in Coronado, the distance between the proposed slips being approximately 3000 feet. This service, if placed in operation, would accommodate local vehicular traffic between the Cities of San Diego and Coronado, as well as through traffic between the border and points north of San Diego via the Coronado Strand. The necessary franchise from the County of San Diego and the Cities of San Diego and Coronado has been secured for the operation of the proposed ferry line.

The line of the proposed ferry operation runs parallel to and approximately 500 feet east of the route over which the San Diego and Coronado Ferry Company's boats are operated. It is therefore apparent that the two lines, if placed in operation, would be in competition with each other.

Applicant proposes to commence operation with one boat, having a capacity of about 50 cars, and maintain a headway of 15 minutes. The boat, to cost some \$325,000., is to be operated by Nelseco Diesel Engines, twin screw, with magnetic drive, and to have a deep water speed of over 13 knots. The deck design provides for four runways at both ends of the boat to permit of fast loading and unloading of vehicles.

The estimated cost of providing the service amounts to \$600,000., divided as follows:

Construction of first ferry boat	\$325,000.
Construction and completion of terminals or landings	175,000.
Expense of organization, including attorneys and engineering fees.	50,000.
Operating capital and maintenance of service	50,000.

The only public ferry service operated across the San Diego Bay between San Diego and Coronado at this time is that provided by the San Diego and Coronado Ferry Company, protestants herein. From October, 1920, to April, 1929, the company operated two ferry boats, viz: the "Ramona," having a carrying capacity of about 14 average automobiles, and the "Morena," which will accommodate about 38 average cars. A headway of 10 minutes is maintained for the major portion of the day. On April 21st, 1929, the company put into service a new boat, known as the "Coronado," which accommodates from 50 to 60 vehicles, and, at the same time, discontinued the regular operation of the steamship "Ramona," which is held as a standby boat to be used during times of heavy traffic or in case of an emergency. This company has a single operating slip on each side but is now constructing a second set of slips to permit of the operation of more than two boats.

San Diego Electric Railway Company, intervenor herein, operates a street railway system in the Cities of both San Diego and Coronado. Cars to the ferry on each side are operated on a 20 minute headway and thus meet every other ferry during the major portion of the day. The Electric Company and the San Diego and Coronado Ferry Company are owned by the J. D. & A. B. Spreckels Securities Company.

Considerable testimony was introduced in this record to show that previous to the time the San Diego and Coronado Ferry Company put into operation its new boat "Coronado," the service was inadequate, in that practically every day considerable delay was experienced with vehicular traffic on the Coronado side between the hours of 4:00 and 6:00 P.M. There was also considerable testimony to show that there were excessive delays during times when the traffic was unusually heavy, such as on Sundays and holidays, particularly when special events were being held at Tia Juana.

The record shows that this inadequate service resulted in considerable inconvenience to the travelling public and on many occasions people desiring to travel between San Diego and Coronado, or vice versa, would drive around the strand, a distance of some 23 miles, rather than wait for the ferry. It appears, however, that subsequent to the time the new boat "Coronado" has been in operation, the ferry capacity was adequate to accommodate all the traffic offered for transportation without delay. Exhibit No. 45, introduced by the San Diego and Coronado Ferry Company, shows the traffic situation on Sunday, September 2nd, 1928, this being the day before Labor Day and the one on which the company carried the daily maximum number of vehicles for the year 1928. This chart shows that with the two old boats ("Ramona" and "Morena") in service, the delay to vehicles amounted to as much as two hours. The chart also shows that with the new boat ("Coronado") in service, this traffic could have been accommodated with practically no delay.

The San Diego and Coronado Ferry Company takes the position that it delayed the placing of an order for a new boat, due to the fact that it had, since 1926, an application before the War Department, seeking permission to construct a bridge over the Bay, and it was hopeful that authority would be granted for this bridge, in which event work would be commenced immediately and, with the bridge completed, there would be little need for ferry service; furthermore, the floating equipment in use here is not interchangeable with that in operation at other locations, due to a different freeboard. Any money spent on such a new boat, therefore, would largely be lost, as it would have little resale value. It appears that no action has as yet been taken on the company's application before the War Department for permission to construct the bridge; however, the file shows that a letter was written to General Joseph E. Kuhn by E. L. Daley, Major, Corps of Engineers,

War Department at Washington, D.C., advising that action on this application was suspended, in order to allow the applicant to develop revised plans, and that to date (March 8th, 1929), revised plans had not been submitted.

The San Diego and Coronado Ferry Company further contends that during the past two years it has attempted to purchase a suitable ferryboat to put in this service but, after a thorough search at various places in the United States where ferryboats are operated, it was finally concluded that no suitable boat was available and that the company would have to build one to meet its needs.

Reference was also made to the construction of a tube under the Bay as having somewhat discouraged the investment in a new boat. This project, however, has not been commenced nor is there any evidence to show that such work is to begin in the near future.

Both applicant and protestant presented estimates on the probable future traffic that would offer itself for transportation across the San Diego Bay. Col. W. W. Crosby, Consulting Engineer and one of the Directors of applicant company, testified that in his opinion, with adequate ferry transportation facilities, the traffic would increase 50 per cent the first year and continue to increase at the rate of $33\frac{1}{3}$ per cent for the third and fifth succeeding years.

H. G. Butler, Consulting Engineer for San Diego and Coronado Ferry Company, testified that after a careful study of this situation, he had reached the conclusion that with ample

ferry service, the volume of traffic might be expected to increase annually without competition, beginning with the year of 1929, 20 per cent over 1928, and each succeeding year as follows: 10 per cent, 9 per cent 8 per cent and 7 per cent.

Both of these engineers have had considerable experience in traffic studies and while their estimates vary considerably in this instance, it is apparent that with adequate ferry transportation across the San Diego Bay, the volume of traffic will show a substantial increase over that which has been carried in the past with the two small boats operated by the San Diego and Coronado Ferry Company.

With respect to the through traffic between the border and points north of San Diego, consideration must be given to the fact that substantial improvements are being effected in the highways to the east of San Diego Bay, which will continue to attract a large portion of this through traffic when compared with the highway along the Coronado Strand and over the San Diego-Coronado Ferry.

While the question of service is perhaps the most important feature under consideration in this proceeding, the study would not be complete without giving some thought to the operating revenues and expenses, as well as travel statistics. Data along this line is shown in the following tabulations:

ESTIMATED FUTURE GROWTH
OF BUSINESS WITH COMPETITION AS SHOWN
EXHIBIT NO. 17, PRESENTED BY APPLICANT

Item	1928		First Year			Third Year		Fifth Year	
	S. D. & O.	S. D. & O.	S. D. & O.		S. D. & O.		S. D. & O.		
	F. Co.	F. Co.	Applicant	F. Co.	Applicant	F. Co.	Applicant		
Total Revenue,	\$261,245.78	\$203,000.00	\$180,000.00	\$263,500.00	\$243,500.00	\$340,500.00	\$320,500.00		
Operating Expenses,	204,656.93	174,500.00	115,000.00	201,000.00	131,000.00	228,500.00	213,000.00		
Taxes,	10,533.76	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00		
Total Operating Expenses,	\$215,190.69	\$184,500.00	\$125,000.00	\$211,000.00	\$141,000.00	\$238,500.00	\$223,000.00		
Net Earnings Available for									
Dividends or Surplus,	\$46,055.09	\$18,500.00	\$55,000.00	\$52,500.00	\$102,500.00	\$102,000.00	\$97,500.00		

STATEMENT SHOWING ESTIMATED RESULTS
OF OPERATION WITH AND WITHOUT COMPETITION
PRESENTED BY SAN DIEGO AND CORONADO FERRY COMPANY

		WITHOUT COMPETITION				
Exhibit No.	Item	1929	1930	1931	1932	1933
47	Total Revenue,	\$305,440.00	\$331,060.00	\$356,680.00	\$391,080.00	\$404,260.00
47	Taxes,	14,000.00	14,900.00	17,150.00	17,150.00	17,150.00
47	Operating Expenses,	227,090.00	244,000.00	270,000.00	275,000.00	280,000.00
	Net Return,	\$64,350.00	\$72,160.00	\$69,630.00	\$88,930.00	\$107,110.00
47	Rate Base,	\$1,132,047.00	\$1,132,047.00	\$1,432,047.00	\$1,432,047.00	\$1,432,047.00
47	Rate of Return,	5.7	6.4	4.8	6.2	7.5

		WITH COMPETITION					
Exhibit No.	Item	Year 1930			Year 1931		
		S.D.& C.F.Co.	A.F.Co.	Total	S.D.& C.F.Co.	A.F.Co.	Total
48	Total Revenue,	\$242,482.00	\$88,678.00	\$331,060.00	\$260,416.00	\$96,264.00	\$356,680.00
48	Taxes,	4,000.00	2,000.00	6,000.00	6,800.00	2,000.00	7,800.00
48	Operating Expenses,	241,523.00	125,000.00	366,523.00	241,523.00	125,000.00	366,523.00
	Net Return,	\$3,041.00*	\$38,422.00*	\$41,463.00*	\$13,093.00	\$30,736.00*	\$17,643.00*
48	Rate Base,	\$1,132,047.00	\$ 600,000.00	\$1,732,047.00	\$1,132,047.00	\$ 600,000.00	\$1,732,047.00
48	Per cent increase in rates necessary to provide 8% return,			54%			44%

* Red Ink Figures.

If we are to take the estimates of the San Diego and Coronado Ferry Company's engineers, as shown above, as reasonable, the conclusion logically follows that it would be unprofitable for applicant to invest its money in this enterprise as well as work an undue hardship on the existing operating company. On the other hand, if applicant's estimates are proper, the reverse situation will obtain. From an analysis of the estimates on probable future business, presented in this case, there arises some question as to whether or not sufficient additional traffic can be developed, with the two companies operating, so that each will enjoy a profitable business. It is apparent, however, that the existing utility has had the opportunity of enjoying a fertile business had it elected to take advantage of the same. The question now to be determined is whether or not it is in the public interest to divide the business between two companies or permit the existing utility to carry on with a definite assurance that it will do its full duty to the public in the future, in the way of providing sufficient ferries to accommodate the traffic needs.

In the briefs filed in this proceeding, reference is made to former decisions of this Commission, dealing with applications for a certificate to begin service in competition with an existing utility. It is true that in some cases the Commission has applied the test of what the utility in the field was doing to take care of the service as of the date on which an application was filed for a competitive service. While this appears to be an important factor in the determination of such a matter, the Commission reasonably must take into consideration all other factors which affect this situation. In analyzing the chronological records, with respect to this proceeding, we find the following:

1. On February 3rd, 1928, applicant herein filed with the Secretary of State Articles of Incorporation and Corporate Charter.

2. On April 17th, 1928, applicant herein filed application with the City Clerk of San Diego for tide land lease for a ferry landing at the foot of Kettner Boulevard, San Diego. Granted March 29th, 1929 (Ex. 1).

3. On May 7th, 1928, applicant herein filed with the Board of Trustees of the City of Coronado an application for tide land lease for ferry landing at the foot of "B" Street, Coronado, which was granted.

4. On September 20th, 1928, San Diego and Coronado Ferry Company entered into a contract with the Moore Drydock Company for the construction of a new ferryboat to cost some \$300,000.

5. On October 22nd, 1928, the Board of Supervisors of San Diego County adopted an ordinance, granting applicant authority to operate ferries between San Diego and Coronado.

6. On January 3rd, 1929, applicant filed with this Commission an application for a certificate to operate the ferry line proposed herein and to issue the necessary stock to cover the operation.

It is apparent from this record that applicant herein had made definite progress along the line of getting the necessary authority to begin the operation of a competitive ferry line before the San Diego and Coronado Ferry Company placed its order for a new boat and the record is clear that the service rendered by the San Diego and Coronado Ferry Company previous to the time it put into service its new boat "Coronado," on April 21st, 1929, was inadequate and, therefore, this utility was not doing its full duty to the public. While I appreciate the fact that in this case there were extenuating circumstances which apparently caused the existing utility to await the determination of before increasing its investment in additional ferry facilities, nevertheless, the utility has not fully complied with its obligation to provide reasonable service to its patrons at all times and, therefore, must not expect protection from this Commission when competition arises.

For this Commission to protect a utility which has allowed its service to run down, as the record shows has been the case here, until competition knocks at the door, is not conducive to good service and to public interest. It is incumbent upon every utility in this state to be abreast with public needs, regardless of whether there is competition facing it or not. A utility must assume the obligation of providing reasonably good service to its patrons if it expects to hold the field; to hold otherwise is not conducive to the growth and welfare of the community.

The Automobile Ferry Company of Coronado has an authorized stock issue of \$750,000., divided into \$200,000. of preferred and \$550,000. of common stock. The company's articles of incorporation provide that the holders of preferred stock shall be entitled to receive and be paid as and when declared out of the surplus or net profits of the corporation's cumulative dividends at the rate of seven per cent per annum, and no more, upon the par value of said stock, such dividends to be cumulative from and after January 1st, 1930, and payable quarter-annually upon such days and dates as may be fixed and determined by the board of directors. The dividends on the preferred stock and all accumulations must be paid before any dividends may be paid upon the company's common stock. The company reserves the right to redeem all, or any part, of its outstanding preferred stock at the price of \$110. per share and the amount of dividends accumulated, accruing and unpaid thereon at the rate of seven per cent per annum at the date of redemption. In the case of liquidation, dissolution or winding up of the corporation, the holders of preferred stock are entitled to receive an amount equivalent to the par value of their stock, plus accumulated and accrued dividends. The holders of neither common

nor preferred stock have any preemptive right to subscribe for any additional common or preferred stock.

Applicant reports that it has issued none of its stock except five shares necessary to qualify its directors. As stated, it asks authority to issue 3,995 shares (\$399,500.) of its common capital stock and 2,000 shares (\$200,000.) of its seven per cent cumulative preferred stock. Of the common stock, 2,495 shares would be issued to W. A. Gunn and 1,500 shares, together with 2,000 shares of the preferred stock, to F. M. Buzzell. It is of record that W. A. Gunn owns about 90 per cent of the outstanding stock of the Gunn Furniture Company and that F. M. Buzzell is secretary of that company. It further appears from the record that the stock which F. M. Buzzell agrees to purchase will be acquired for and on behalf of the Gunn Furniture Company. The record further shows that neither Mr. Gunn nor the Gunn Furniture Company has, at present, intention of disposing of the stock which the Automobile Ferry Company of Coronado asks permission to issue. It appears that W. A. Gunn and F. M. Buzzell are ready to take and pay for, at par for cash, the stock applicant asks permission to issue and to acquire such stock from time to time as applicant needs funds to carry on its construction work.

We have considered the record in this proceeding and find therein no justification for the issue of \$100,000. of stock for organization, operating capital and miscellaneous purposes. Neither are we convinced that it is in the public interest to permit applicant to issue seven per cent cumulative preferred stock. We believe that this enterprise, as outlined in this application, should be financed through the issue of common stock and that such common stock issue should be limited to \$550,000; however, applicant, in this proceeding, asks permission to issue only \$399,500. par value

of common stock. The order herein will authorize the issue of that amount of stock. Upon the filing of an appropriate supplemental application for permission to issue additional common stock in the amount of \$150,500., the Commission will consider such supplemental application.

After carefully considering the record in this proceeding, I arrive at the conclusion that this application should be granted, with the understanding that applicant will, in accordance with its pledge in the record, add additional boats as fast as the service warrants, both to provide for peak load requirements and as standby equipment.

The following form of order is recommended:

O R D E R

The Automobile Ferry Company of Coronado, a corporation, having applied for permission to operate vessels across the inland waters of the State of California between the Cities of San Diego and Coronado, San Diego County, and the transportation of automobiles and other vehicles and their passengers, freight and animals, and the issue of \$399,500. of common and \$200,000. of seven per cent cumulative preferred stock, public hearings having been held, evidence having been submitted and the Commission being of the opinion that the Automobile Ferry Company of Coronado should be authorized to issue \$399,500. par value of its common capital stock for the purpose of financing the acquisition of the boat, the construction of the ferry terminals and the installation of the ferry service, referred to in this application, that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required by applicant, that the expenditures herein are not in whole or in part reasonably chargeable to operating expense or to income, that this application, in so far as

it involves the issue of the \$200,000. of seven per cent cumulative preferred stock, should be denied without prejudice, and the Commission being fully advised;

The Railroad Commission of the State of California hereby finds, upon the record, that present public convenience and necessity justify the operation by the Automobile Ferry Company of Coronado, a corporation, of vessels across the inland waters of the State of California, between the Cities of San Diego and Coronado, San Diego County, the operation of said vessels to be for the transportation of automobiles and other vehicles and their passengers, freight and animals; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and the same is hereby granted, subject to the following conditions:

(1) Applicant shall commence the operation of said vessels within one (1) year from the date of this order.

(2) Applicant shall file with the Commission, until otherwise ordered, monthly reports of the progress during the period of construction, such reports to contain such information and data as may be required from time to time by the Commission.

(3) Applicant shall submit to the Commission, for its approval, a plan of providing additional boat or boats and other equipment necessary to insure good and adequate service, to be available within such time as the Commission may direct.

IT IS HEREBY FURTHER ORDERED that the Automobile Ferry Company of Coronado be and it is hereby authorized to issue and sell for cash, at not less than par, on or before June 30th, 1930, \$399,500. par value of its common capital stock and use the proceeds to pay, in part, the cost of acquiring the boat, the construction of the terminals and the installation of the ferry service referred to in this application.

IT IS HEREBY FURTHER ORDERED that this application, in so far as it involves the issue of \$200,000. of seven per cent cumulative preferred stock is hereby denied without prejudice.

IT IS HEREBY FURTHER ORDERED that the Automobile Ferry Company of Coronado shall file with the Commission such monthly reports as are required by the Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

The Commission reserves the right to make such further orders, relative to the construction, operation and maintenance of said vessels, as it may hereafter deem right and proper.

This order shall become effective ten (10) days from 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 15th day of January, 1930.

Chas. Deane

Tom Whiskey

W. A. Orr

Commissioners.

I dissent from the foregoing opinion and order for the following reasons:

1. The evidence in this case clearly shows that the existing utility, the San Diego and Coronado Ferry Company, long prior to the filing of this application, had taken all necessary steps to improve its service. It had endeavored to buy an additional boat and not being able to buy had built one. On September 20, 1928, four months before the filing of this application, it had contracted for a new and larger boat and put this new boat into service on April 21, 1929.

2. The evidence at the hearing showed that the existing company with the additional boat "Coronado" was adequately meeting the public demand and that there was no necessity for further or additional service.

3. Better results can be obtained by the regulation and supervision of the rates and service of the existing utility than by permitting a competitive service that can be extremely hurtful and particularly discouraging to the investing public. "The protection to the investment of a utility, which is doing its full duty to the public is demanded, not merely as a matter of fairness, but also as a matter of common sense." (Re Ora Electric Corporation, 2 C. R. C. 755-7.)

4. The order does not specify the number of boats to be operated by the applicant. It should have provided that two boats at least be used. The use of any lesser number will not give adequate service to the public and will serve only to lessen the earnings of the existing utility without improving the service to the public.

5. Neither of the companies competing for traffic will make an adequate return upon their invested capital. The granting of this application means the impairment of earnings and a lessening of the value of the existing utility not justified by the circumstances.

6. The granting of this application is an excessive and unwarranted punishment of the existing utility and its shareholders not justified by the facts and is an extreme departure from the practice established through many years by the Commission.



Commissioner.

I concur in the dissenting opinion of Commissioner Decoto.



Commissioner.