

Decision No. 25570.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of F.H. HOLLOWAY, for certificate
of public convenience and necessity
to operate trucking service as a
common carrier between San Francisco,
California, City of Vallejo, County
of Solano, California, and a zone of
three miles beyond the corporate
limits of said City of Vallejo, and
Mare Island Navy Yard.

Application
No. 18526

ORIGINAL

Athearn, Chandler & Farmer and Frank R. Devlin,
by Frank R. Devlin, for Applicant.

Edward Stern for Railway Express Agency, Inc.,
Interested Party.

R.S. Myers for Southern Pacific Company,
Southern Pacific Golden Gate Ferries and
Pacific Motor Transport, Interested Parties.

WARE COMMISSIONER:

O P I N I O N

F.H. Holloway, doing business under the name and style of Vallejo Express Company, has made application for a certificate of public convenience and necessity to conduct automotive transportation of property between San Francisco and Vallejo and Mare Island.

A public hearing thereon was conducted at San Francisco January 12, 1933 at which time the matter was submitted for decision.

Applicant is a successor of predecessors in the transportation of property between termini, having acquired the operation through purchase in 1923. The service itself, according to a witness at the hearing, has existed since 1872 in one form or another. At the time of purchase by Mr. Holloway, cargoes were collected at either terminus and transported to the boats of the Monticello Steamship Line (now Southern Pacific Golden Gate Ferries) and

piled on the deck of the boat for transportation across the waters, a distance of approximately 28 miles. This method of transportation continued until 1929 when the applicant received instructions from the boat company (which by this time had become the property of the Golden Gate Ferries Company), that such practice must be discontinued and that the property transported should be transported on the vehicles of applicant. Applicant immediately began this practice gathering cargoes in San Francisco and Vallejo and shipping in his loaded trucks across the Bay.

Recently, Regulated Carriers instituted a complaint (Case No. 3382) against applicant herein for the purpose of requiring him to cease and desist all transportation until he had procured a certificate therefor from this Commission. In answer to this complaint the instant application was filed and it contains the same statement of facts that were made in defense to the cease and desist action (Case No. 3382).

When the matters were called for hearing complainant submitted written request for dismissal of the complaint (Case No. 3382) and the matter now rests entirely on the action to be taken on the application in the instant case. At the outset of the hearing protestants representing Railway Express Agency, Inc., Southern Pacific Company, Southern Pacific Golden Gate Ferries Company and the Pacific Motor Transport Company withdrew all protests on the application upon the stipulation of applicant that the order that might be issued by the Commission should contain limitation of routing between termini solely by the boats of the Ferry Company. With the withdrawal of these protests the application remains unopposed.

Applicant testified that he now serves approximately 125 patrons in Vallejo and approximately four times that number in

San Francisco. He testified further that he had no intimation that the service required a certificate from this Commission because of its long existence and that had he known so he would have promptly applied for the proper authority. Applicant uses six trucks in the conduct of his business.

Support of applicant was given by the City Council of Vallejo, the Vallejo Chamber of Commerce, the Vallejo Merchants Association and other trans-bay interests. Fred Birchmore, a Supervisor of Solano County and a resident of Vallejo for 28 years and also Secretary of the Chamber of Commerce, testified to his personal knowledge of the continuous service of applicant and his predecessors for many years and the necessity for the continuance of such service because of the peculiar geographical location of Vallejo which somewhat isolates it from the direct avenues of land traffic. He expressed the opinion that the service was necessary for the people of Vallejo.

Applicant seeks the corporate limits of the City of Vallejo and also such area adjoining Vallejo and lying within a radius of three miles distant from and parallel with the boundary lines of said City of Vallejo as terminus. Applicant stipulated that he would define the exterior boundaries of his service by roads and permission so to do was granted. Such description, as filed, has been incorporated in the order (Exhibit No. 6). This is the service that has been given by applicant for many years and is regarded as absolutely necessary from the fact that at least 25% of the urban population lives beyond the present city boundaries. Applicant also gives service to Mare Island Navy Yard, which would be included within the limit of service proposed. In view of the fact that this service area would, in part, include a certain portion of the Bay and otherwise might be

indefinite, applicant was asked to reduce the boundaries to definite lines which has been done in a map filed herein by permission granted at the hearing. Applicant also asked to amend the rates presented in Exhibit "A" attached to the application by amending Items 20, 30 and 95 by increasing the zone 1 rates in each from 20 to 22 cents and Item 115 by increasing the terminal and zone rates from 15 to 20 cents and from 20 to 25 cents. The amendments were permitted.

Under the record it appears that the service involved in this application has existed for more than 40 years in various forms and that in continuing it after purchase applicant failed to conform to the law in the conduct of his operations. Before he adopted the practice of using his vehicles between termini he was probably in duty bound to file express tariffs. Subsequently his operation should have been conducted under certificate granted under Chapter 213, Acts of 1917, as amended. That he did not conform to either of these duties is clearly due to his ignorance of the legal necessities and he has shown his good faith by promptly seeking to conform to and submit to the proper regulation, when his attention was directed to the error. The palpable need for the service which has been rendered for so long, as shown in the record, together with the recognition of that need by the withdrawal of all opposition by competing carriers, justifies in my opinion the granting of the proper certificate as outlined above to the applicant.

F.H. Holloway, doing business under the fictitious name and style of Vallejo Express Company, is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining

reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

Therefore, I recommend the following form of order:

O R D E R

F.H. Holloway, doing business under the fictitious name and style of Vallejo Express Company, having made application for a certificate of public convenience and necessity authorizing the transportation of freight and merchandise of all kinds between San Francisco and Vallejo and a zone three miles beyond the corporate limits of the City of Vallejo and Mare Island Navy Yard, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of automotive transportation service for the transportation of freight and merchandise of all kinds between termini as proposed herein over and along the following route:

Via steamships of the Southern Pacific Golden Gate Ferries Company between termini.

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be and the same hereby is granted, provided that in serving the terminus of Vallejo, applicant shall serve not only the corporate limits of the City of Vallejo but the additional territory of approximately three miles distant from said municipal boundaries and identified by the following description:

Starting from the Solano County bridgehead of Carquinez Bridge, thence northeasterly over County Road No. 267 to its junction with County Road No. 78, thence easterly to its junction with County Road No. 158, thence over County Road No. 91 through Sulphur Springs Tract and along County Road No. 233 to its junction with County Road No. 224, thence to Sears Point Road to Sears Point Toll Bridge bridgehead and continuing along the City of Vallejo waterfront to the starting point first above mentioned,

and subject to the following conditions:

1. Applicant shall file his written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from date hereof.
2. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five days' notice to the Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules shown in the exhibit attached to the application insofar as they conform to the certificate herein granted.
3. Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days from date hereof, on not less than five days' notice to the Commission and the public, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.
4. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.
5. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by him under a contract or agreement on a basis satisfactory to the Railroad Commission.

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 23^d day of January, 1933.

C. J. Lacey
Leon Schubert
W. A. Linn
M. B. Harris
Arthur Mason
COMMISSIONERS.