

Decision No. 11566

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of :
CALIFORNIA TRANSIT COMPANY, a corpora-)
tion, for a certificate of public convenience :Application No.
and necessity to extend its service to the : 7982
City and County of San Francisco, California.)

Nutter, Hancock & Rutherford, by John Hancock
for the Applicant.

Albert L. Whittle for the San Francisco-Oakland
Terminal Railways.

Jesse H. Steinhart and John J. Goldberg for the
San Francisco-Sacramento Railroad Co.

Devlin & Brookman for H. T. Hempstead and N. F.
Rawlings, doing business under the
fictitious name of Oakland-San
Francisco-Los Angeles Transportation
Company.

H. H. Cogarty and F. B. Austin, for the Southern
Pacific Company.

Platt Kent for The Atchison Topeka & Santa Fe Rail-
way System.

L. V. Degan, for the City Engineer's Office of the
City and County of San Francisco.

Seth Mann for the San Francisco Chamber of Commerce.

C. W. Dooling, for the Western Pacific Railroad Com-
pany.

MARTIN, Commissioner.

OPINION

The California Transit Company, a corporation, operates
automobile stages as a common carrier of passengers between
Oakland, Sacramento, Stockton, Merced and various intermediate

points, all within this State.

By its present application, it seeks authority to operate its auto stages from the City of Oakland to the City of San Francisco and from the City of San Francisco to the City of Oakland. It alleges, however, that it does not intend to transport local passengers between Oakland and San Francisco, but desires only to transport thru passengers, which it carries from interior points to the City of Oakland and who desire to travel to San Francisco and likewise only thru passengers which it carries from San Francisco thru Oakland, destined for interior points. It does not propose to charge any additional fare for the extra service rendered or to accept for transportation across the Bay, passengers originating at or destined to points west of Livermore. In effect, therefore, the application is one to extend the operation of existing lines from the present terminus in Oakland to a terminus in San Francisco. Public hearings were held upon this application on August 17, 24, 25 and 26, 1922 at San Francisco, briefs have been filed and the matter is now ready for decision.

The protestants, Southern Pacific Company and the San Francisco-Oakland Terminal Railways have raised certain objections to the jurisdiction of the Railroad Commission to grant the relief herein prayed for. The first of these objections is that it will be necessary for the applicant, in order to operate into San Francisco, to travel on protestants' ferry boats across San Francisco Bay and that these ferries do not constitute "public highways" within the meaning of Section 1, Subsection (d), Chapter 213, Statutes of 1917 as amended.

We do not believe that the question whether ferries operating back and forth across the Bay constitute public highways or not, has any bearing upon this application. In order

to transport its passengers from interior points of California to San Francisco, applicant must provide some method for crossing San Francisco Bay. What that method will be it is not necessary in the present case to determine. This is not an application for permission to use Protestants' ferries, but is an application to extend certain operative rights from Oakland to San Francisco. In order to extend its operative rights in the manner sought, applicant must of necessity use certain public streets both in Oakland and San Francisco in addition to crossing San Francisco Bay, which is also a public highway in legal contemplation. A certificate of public convenience and necessity must therefore be obtained. The fact, if it be a fact, that applicant must use protestants' ferry boats, does not deprive the Railroad Commission of jurisdiction to hear and determine this application.

It was also contended by protestants that the Commission was without jurisdiction to grant the application because the proposed extensions of applicant's operations involves a service exclusively within the limits of an incorporated city and that under the provisions of Section 1 (c) of the above mentioned Statute, the Commission has no jurisdiction over such operations. Under the facts as above set out it is clear that this objection is not well taken. The proposed service will not in any sense be a local service. It will be a thru service between San Francisco and Merced and certain intermediate points. This is expressly what the applicant asks for. A certificate authorizing applicant to operate merely between Oakland and San Francisco would not authorize the thru service here sought. The Commission has held in Decision No. 9892, In re Western Motor Transport Company, that no stage line can operate a thru service by linking up two authorized connecting routes without first

securing a certificate of public convenience and necessity authorizing such thru operation. It is necessary, therefore, in this case that applicant obtain a certificate from the Commission before operating a thru line from San Francisco to Merced and intermediate points. Operations extending from San Francisco to Merced are certainly not exclusively within the limits of any incorporated city. There can be no doubt that the Commission has jurisdiction to grant a certificate which will authorize auto stage operations over the streets of a municipality where such operations are carried on as a portion of a longer route which is not wholly within such municipality.

The third objection to the Commission's jurisdiction is that a certificate authorizing the proposed operations would, in effect, require one public utility to permit the use of its facilities by another. This contention is based upon the claim that applicant, in the exercise of its rights under the desired certificate, would necessarily use the automobile ferry of the Southern Pacific Company in taking its stages and passengers across San Francisco Bay. We are unable to agree with this contention. The certificate of public convenience and necessity which the Commission grants is permissive. Any right of applicant to use the ferry facilities of the Southern Pacific Company, is derived from the duty which that company, as a common carrier, owes to the general public seeking to use such facilities. It is not necessary nor would it be proper in this proceeding to determine the extent of the Southern Pacific obligation to carry vehicles upon its automobile ferry. It may be observed, however, that evidence was submitted indicating that the Southern Pacific Company has filed tariffs, quoting fares, rates, rules and regulations governing operations of vehicular ferries from both its Oakland pier and its so-called harbor route pier, and that

these tariffs contain no prohibition respecting the transportation of motor equipment of auto stages.

On the question of public convenience and necessity the applicant in addition to the filing of numerous exhibits, also called some 28 witnesses in support of its petition. The exhibits in the main consisted of a letter from the Commercial Travelers Association endorsing and recommending the proposed service, another of the same nature from the Pacific Coast Commercial Travelers Association, resolutions from the Public Utility Committee of the Board of Supervisors of the City and County of San Francisco, the Livermore Chamber of Commerce and the Fresno Advertising Club endorsing and recommending the service as proposed by applicant.

Seth Mann, head of the Traffic Department of the Chamber of Commerce of San Francisco, testified that in his opinion the establishment of service as proposed would be a material benefit not only to the traveling public of San Francisco, who use the stage service of applicant, but also all patrons of this stage line who desire transportation to and from San Francisco.

In addition to certain employees of applicant, who testified to complaints which they received due to the fact that they were obliged to find their way to and from San Francisco to the stage depot of applicant situated in the City of Oakland, applicant produced a number of witnesses, patrons of their stages who testified that it would be very convenient for them if the stages would operate into the City of San Francisco. There was considerable evidence that passengers particularly women with babies or with grips or baggage were put to considerable inconvenience when reaching the stage terminal at Oakland through being obliged to change to the electric train and then to the ferry boat and from the ferry to their destination.

The Southern Pacific Company called its General Passenger Agent who stated in his opinion the establishment of service

as proposed would merely take away from the Southern Pacific patronage which was now enjoyed by the Railroad Company and that there is no actual need of operation into the City of San Francisco; that the Southern Pacific Company rendered a frequent and efficient interurban service between the Ferry Building and its 14th and Franklin Street depot, which is directly opposite the stage depot of applicant herein.

The Southern Pacific official in charge of floating equipment also testified as to conditions regarding the operation of ferry boats transporting vehicular traffic between Oakland and San Francisco and the difficulty arising during the rush hour in caring for all of this class of traffic offered them for transportation, quoting occasions on which a number of machines and trucks were obliged to wait due to the fact that the ferry boat was loaded to capacity.

The San Francisco-Oakland Terminal Railways presented testimony as to the service rendered by their company between San Francisco and 12th and Broadway and 12th and Franklin Streets, Oakland, the latter point being two blocks distant from the depot of applicant herein.

The Southern Pacific Company operates five trains per hour during the day time, two by way of Alameda pier and three by way of Oakland pier. During the evening hours, however, this service is somewhat reduced. The San Francisco-Oakland Terminal Railways operate three trains per hour along 12th St. during the day time with the exception of the rush hour in the evening when a fifteen minute headway is maintained. This service also is reduced during the evening.

Unquestionably there is frequent interurban service from points near the stage depot of applicant and the Ferry

Building, San Francisco and there can be no doubt that no necessity has been shown for additional service merely between Oakland and San Francisco. In this case, however, we are considering the convenience of passengers traveling on stages from the interior of California and desiring to go to San Francisco. Obviously it would be a convenience to such passengers to remain on the stage until they reach their destination and to be relieved of the inconvenience of leaving the stage at Oakland and taking the electric car and then changing again to the ferry to reach San Francisco. It would be equally convenient for passengers from San Francisco destined to interior points. Such passengers would find it a material advantage to be able to board the stage in San Francisco and travel to their destination without having first to take the ferry boat and then an electric train to reach the present Oakland terminal. Strangers not familiar with the numerous interurban trains which leave the ferry slip immediately after the arrival of the boats would find the proposed service of special assistance to them. We are satisfied that there is ample evidence to justify a finding that public convenience and necessity requires the operations of applicant's stage lines from Oakland to San Francisco.

We are of the opinion, however, that the certificate in this case should be limited to such stages as will be operated to and from the City and County of San Francisco and are destined to or originate at Merced and that no passenger traffic whatsoever should be handled by such stages between San Francisco and Oakland, except passengers originating at or destined to Livermore or points south thereof.

In view of the fact that there is little or no evidence with reference to the traffic movement to or from Stockton or

intermediate points, we are of the opinion that this portion of the application should be denied.

We have one other point for consideration in this proceeding. The Board of Public Works of the City and County of San Francisco appeared at the hearing and protested the establishment of a terminal at 672 Market Street as proposed by the applicant herein. We are of the opinion that local regulations of automobile stage traffic should not be fixed by decisions of this Commission, but should be left open to regulation by proper police authorities of the particular municipality affected as unquestionably they are far more familiar with local traffic conditions in their respective cities. The order in this proceeding will neither prohibit nor authorize applicant to use the street frontage at 672 Market Street as its San Francisco terminal, but will leave this matter entirely to the proper city officials of the City and County of San Francisco.

ORDER

A public hearing having been held in the above entitled proceeding, evidence submitted and the Commission being fully advised,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the operation by California Transit Company of an automobile stage line as a common carrier of passengers and baggage between San Francisco, California, and Merced, California via Oakland as the route now followed by the same applicant in the operation of its present Oakland-Merced stages and,

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

1. The certificate herein granted shall authorize the operation into San Francisco of stages destined to or originating at Merced only and no passengers or baggage whatsoever shall be transported between San Francisco and Oakland or Oakland and San Francisco upon such stages unless such passengers and baggage are destined to or originate at Livermore or points south thereof.

2. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, within a period of thirty (30) days from date hereof time schedules covering service over the route herein authorized to be served; and shall commence operation of the service herein authorized within a period of not to exceed ninety (90) days from date hereof.

3. 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.

4. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that the above application in all other respects be, and the same hereby is denied.

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 26th day of January, 1923.

C. L. Shamy

Living Master
Golden Shore

Commissioners