

ORIGINAL

Decision No. 5144.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of )  
 SAN FRANCISCO-RICHMOND FERRY COMPANY, )  
 a corporation, for an order authori- ) Application No. 5097.  
 zing the issue of stock of the par )  
 value or \$800,000.00. )

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I.M. Golden for applicant;  
 Pillsbury, Madison & Sutro, by E.S. Pillsbury, for East  
 Shore Company, protestant.

EDGERTON, Commissioner.

O P I N I O N.

SAN FRANCISCO-RICHMOND FERRY COMPANY asks permission to issue \$800,000.00 of stock and sell such stock for not less than 85% of its par value, for the purpose of establishing an automobile ferry service between Richmond and San Francisco.

Applicant was organized in October, 1919, with an authorized capital stock issue of \$1,000,000.00, divided into 10,000 shares of the par value of \$100.00 each. It has filed a statement in this proceeding showing that it intends to issue \$800,000.00 of its stock for the following purposes:-

For steel and fireproof boat, . . . . .	.5000	shares
In exchange for necessary water frontland (out of which will be paid the architect and engineering fees amounting to 300 shares), . . . . .	900	"
Cost of lower and upper apron, including supports and operating machinery, ferry slips, elevated approach for upper apron, wharf and bulkheading, . . . . .	500	"
Cost of 2-story concrete depot, about . . . . .	500	"
Selling stock, printing, advertising, corporation expenses, . . . . .	1000	"
Working capital (for purchase of oil and supplies for boat, salaries and wages of crew, etc., . . . . .	100	"
TOTAL, . . . . .	<u>8000</u>	shares

This statement indicates that applicant intends to issue \$130,000.00 of its stock to cover cost of organization, selling stock and engineering fees. The request is made that M. Emanuel, president of the company, be permitted to act as the agent of applicant in charge of the sale and distribution of the stock. He testified at the hearing that applicant intended to sell part of its stock at par, to net the corporation at least 85, and that 15% of the proceeds, the difference between par and 85, will be used to pay engineering fees, defray cost of selling stock and pay all organization expenses. Either M. Emanuel should enter into a firm contract to purchase the stock at 85 or the company should pay the actual cost of selling the stock, pay actual engineering fees and organization expenses, it being of course assumed that such fees and costs will be reasonable. I am unable to concede the propriety of the appointment of the president of a company as its fiscal agent and permit him to absorb 15% of the proceeds from the sale of the stock without the company in return being given definite assurance by way of an underwriting agreement or otherwise covering the sale of the stock. The order herein will provide that all moneys obtained from the sale of stock shall be deposited with a bank or banks and expended only for such purposes as the Railroad Commission may hereafter authorize.

BOAT:

The record shows that it is applicant's intention to acquire a new steel fireproof double-deck ferry boat 230' long and 64' wide, having a draft of 12' with propellers fore and aft. The testimony shows that the boat is to be of about the same size as the Western Pacific Railroad Company's ferry steamer -"Edward T. Jeffrey"- but to be so constructed that automobiles may be carried on the lower and upper decks and have <sup>carrying</sup> a capacity of 110 machines. It is to have a maximum speed of 15 knots per hour. It is of record that the "Edward T. Jeffrey" was built in 1912 at a cost of \$275,000.00, and that in

January, 1920, it would have cost \$686,000.00 to build the boat.

Mr. H.C. Holmes, consulting civil engineer, witness for protestant, is very positive that a boat, such as proposed by applicant, will cost more than twice the cost of the "Edward T. Jeffrey", and may even run as high as \$800,000, -due, first, to the increase in construction costs since 1912, and second, -to the fact that it will have to be built stronger than the ordinary ferry steamer in order that automobiles may be carried on the upper deck. Applicant offered no competent testimony showing that it can acquire or construct its boat through the use of the proceeds from \$500,000.00 of stock. While a plan of the boat has been filed, if for any reason, such plan is changed, a revised plan shall be filed with the Commission, as well as a copy of the specifications which applicant may furnish contractors when asking them to file bids for the construction of the boat.

RICHMOND TERMINAL:

Ellis Landing and Dock Company, which has caused, or whose stockholders have caused, applicant corporation to be organized, has agreed to transfer free and clear of all encumbrances, the following terminal properties in Richmond:-

"Lots Nos. 18, 19, 20, 21, 22 and 23, Block No. 6, Ellis Landing Subdivision", Richmond, California, as delineated and designated upon that certain map entitled "Map of Ellis Landing Subdivision, City of Richmond, Contra Costa County, California", filed on the eighth day of August, 1913, and "Amendment to Map of Ellis Landing Subdivision, filed August 8th, 1913, City of Richmond, Contra Costa County, California" also filed in the office of the County Recorder of said County and State aforesaid on the 28th day of October, 1913."

In exchange for these properties, applicant asks permission to issue \$90,000.00 of its stock. It appears that \$30,000.00 of this stock will be delivered by Ellis Landing and Dock Company to applicant's engineers, to cover their compensation. Applicant has also agreed at its own cost and expense, to bulkhead Block 6, so as to retain the dredged material and to fill in the land embraced by Block 6, in

a good and workmanlike manner. The cost of bulkheading is estimated by one of applicant's engineers at approximately \$17,061.00. The order herein will not authorize the issue of any stock at this time in payment for terminal properties. What amount of stock may be issued for these properties will be considered in a supplemental order if applicant can finance this enterprise.

CHANNEL:

The record shows that the proposed harbor development of Richmond calls for, among other things, the dredging of a channel 600' wide x 24' deep, extending from a point about one-quarter mile beyond the Santa Fe wharves southerly around Pt. Potrero, thence northeasterly to the inner harbor project, a distance of about  $3\frac{1}{4}$  miles. The federal government is to bear one-half the cost of dredging this channel and the City of Richmond the other half. To date, a channel 200' wide and 24' deep at mean low water on May 19, 1919, the date of completing the work, has been constructed. The channel is in an incomplete state. From the Santa Fe wharves to Pt. Potrero, it is entirely unprotected, while on its easterly side from Pt. Potrero to its terminus near Ellis Landing, there is a rip-rap wall, and on the opposite side for a certain distance there is a mud wall 400' away from the channel. Some soundings taken under the direction of H.C. Holmes indicate that the channel has filled in somewhat since its completion, but of course, not to such an extent that it would interfere with the operation of a ferry boat drawing 12' of water. Until the channel is completed, or at least widened out to 500', W.H. Healy of Healy-Tibbetts Company, believes that it is impractical to successfully operate a ferry boat such as proposed by applicant through the channel on account of storms and the difficulty of passing dredgers which will have to operate continuously to keep the channel open. The speed at which the boat may be safely permitted to pass through the channel in its present condition

is uncertain. Witnesses for protestant take the position that the speed should not exceed six miles an hour, -- E.E. Winslow, Colonel Corps United States Army Engineers, advises that the boat may be operated at about 5 knots or nearly 6 miles an hour, while George S. Hill, one of the Commission's engineers, suggests a speed of 10 miles an hour. Colonel Winslow reports that the government usually prescribed rules for the navigation of vessels in a channel such as this. If the boat is restricted to a speed of six miles an hour, it would be impossible for it to make the trip to San Francisco in 45 minutes, -the time estimated by applicant, for it would take practically 30 minutes to pass through the channel, -a distance of 3-1/4 miles out of the total distance of 9 miles from Ellis Landing to the Ferry Building, San Francisco,

#### TERMINAL FACILITIES:

At present there are no terminal facilities whatsoever at Ellis Landing. The channel dredged by the federal government and the City of Richmond extends to within 900' of Ellis Landing. From the terminus of the channel to Ellis Landing, the depth of the water varies from 15' to 4' at low tide. This 900' section must be dredged, the ferry slip, aprons, necessary supports and operating machinery built and acquired. Fred E. Tibbets, one of applicant's engineers, estimates the cost of dredging the channel, building the ferry slip, aprons, &c., at \$32,270, while H.C. Holmes is of the opinion that the cost of dredging the channel and providing for a satisfactory terminal will range from \$60,000 to \$100,000.

As part of its terminal, applicant intends to build a 2-story concrete warehouse 90' square. The cost of this it estimates at \$50,000, an amount which George S. Hill, one of the Commission's assistant engineers, finds will not be sufficient to build an elaborate reinforced concrete warehouse, but may be adequate to construct a satisfactory shelter.

Applicant has not yet made any definite arrangements for

the use of any dock or ferry slip in San Francisco, but hopes to be able to land its boat at or near the Ferry Building.

OPERATING REVENUES AND EXPENSES:

Various estimates of operating revenues and expenses have been submitted. While the expenses may be more or less accurately forecasted and range from \$275,000. to \$300,000. a year, the operating revenues are entirely problematical. In the Railroad Commission's Exhibit No. 1, prepared by George S. Hill, it is reported that M. Emanuel, President of San Francisco-Richmond Ferry Company, estimates the operating revenues at \$500,425. per annum, and that Mr. Ransome, one of applicant's engineers, believes that the revenue will be in the neighborhood of \$300,000. the first year.

It is obvious that the operating revenues are dependent upon a number of factors which are more or less uncertain at this time, among others being the frequency of trips and the nature and size of the boat which applicant will finally put into service. In this connection, we might call attention to the fact that the operating revenues of the Martinez-Benicia Ferry Company for 1919 are reported at \$114,948.25; of the Richmond-San Rafael Ferry at \$83,697.87; and of the Rodeo-Vallejo Ferry at \$127,841.02.

PROSPECTUS:

There has been filed with the Commission a copy of applicant's proposed prospectus which it intends to use in connection

with its stock sales campaign. This prospectus contains a number of erroneous and misleading statements and should be entirely revised so as to set forth more clearly facts as they exist today and not refer to conditions of years ago or to conditions that will exist when Richmond Harbor improvements are finally completed.

Throughout the prospectus there is constant reference to the City of Richmond having a population of 30,000 whereas the 1920 census report shows a population of 16,843. There is also a reference to the overcrowding of present ferry boats, though it is a matter of common knowledge that such overcrowding exists only during the rush hours in the mornings and afternoons and, as far as automobile transportation is concerned on Saturdays, Sundays and holidays. Passengers to the number of 40,000,000 are said to be carried annually by ferries operating between Oakland and San Francisco, but no mention made of the population of Oakland, Berkeley, Alameda, Emeryville, Piedmont and other communities, as compared with the population of Richmond, or that the 40,000,000 includes Southern Pacific and Western Pacific steam train passengers destined to and from San Francisco. The fact that there may be a heavy ferry traffic between Oakland and San Francisco does not warrant any one to draw the conclusion that a profitable ferry business can be developed in the immediate future between Richmond and San Francisco. The entire prospectus is in need of revision.

In this connection it may be well to call attention to Section 52-G of the Public Utilities Act, which reads:-

"No provision of this Act, and no deed or act done or performed under or in connection therewith shall be held or construed to obligate the State of California to pay or guarantee, in any manner whatsoever, any stock or stock certificate or bond, note or other evidence of indebtedness authorized, issued or executed under the provisions of this Act."

The Commission has repeatedly called the attention of those who intend to invest in public utility stocks and bonds that the investors in such stocks and bonds must continue to take the risk of success of the venture just as they have always done prior to the enactment of the Public Utilities Act, and that the Public Utilities Act cannot insure public utilities against failure, in case good judgment is not exercised in the financing and construction thereof.

The most that the investor may expect from the Commission is that the utility will be permitted to collect fair rates and that such rates under normal conditions will be sufficient to yield a fair return on the money wisely and sanely expended in serving the public.

Applicant asks permission that it be permitted to accept in payment for its stock, cash or promissory notes or other good and merchantable paper. I do not believe that applicant's request in this respect should be granted. I am of the opinion that its stock should be sold for cash only and that all moneys obtained from the sale of the stock be deposited in a bank or banks and expended only for such purposes as the Commission may from time to time authorize. No stock shall be issued until fully paid for. In the event that the company is not able to sell sufficient stock to carry out its project, the moneys collected should be returned to the stock subscribers or purchasers, less such an amount as the Commission may deem to be proper to cover organization expenses and expenses incident to the sale of stock. If the promoters have confidence in this enterprise, they should be willing to temporarily, at least, pay engineering and organization, stock sale and other expenses.



I do not believe that applicant should be permitted to undertake the construction of a boat or any other necessary improvements until it is fairly certain that it will be able to obtain enough funds to assure the completion and successful operation of the entire project and place its boat in service.

Applicant intends to operate its ferry boat between San Francisco and Richmond under a franchise granted by the Board of Supervisors of Contra Costa County to Ellis Landing and Dock Company, its successors and assigns. This franchise was assigned by Ellis Landing and Dock Company to applicant.

I herewith submit the following form of order:

O R D E R

SAN FRANCISCO-RICHMOND FERRY COMPANY, having applied to the Railroad Commission for permission to issue \$800,000. of stock, a public hearing having been held, and the Commission being of the opinion that the money, property or labor is reasonably required for the purposes indicated in the foregoing opinion, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED that SAN FRANCISCO-RICHMOND FERRY COMPANY be, and it is hereby, authorized to issue \$800,000. par value of its common capital stock.

The authority herein granted is subject to the following conditions:-

1. The stock herein authorized to be issued shall be sold by applicant for cash at not less than 85% of its par value. No stock or stock certificates shall be issued or delivered until fully paid in cash by the subscriber therefor. No stock shall be issued in payment for terminal lands or properties, except as authorized by a supplemental order herein.

2. All proceeds obtained from the sale of the stock shall be deposited in a bank or banks and expended only for such purposes as the Railroad Commission may hereafter authorize.

3. Applicant shall file with the Commission the name and Post Office address of each stock subscriber, with the amount of stock subscribed and payments made by such subscriber.

4. Prior to the asking for bids from contractors, or the beginning of construction, applicant shall file with the Commission its final plans and specifications of its proposed ferry boat, slip, terminal and other construction.

5. Prior to accepting a stock subscription, applicant shall furnish each prospective stock subscriber with a copy of this decision. Each application for stock shall be accompanied by a statement from the subscriber that he or she has read the Commission's decision. If any prospectus is issued and distributed, a copy of such prospectus shall be filed with the Commission.

6. The authority herein granted will not become effective until San Francisco-Richmond Ferry Company has filed with the Railroad Commission a stipulation duly authorized by its Board of Directors, declaring that San Francisco-Richmond Ferry Company, its successors and assigns, will never claim before the Railroad Commission or any court or other public body any value for the rights and privileges granted under the franchise assigned to it by Ellis Landing and Dock Company in excess of the amount actually paid to the County of Contra Costa as consideration for the grant of such franchise, which amount shall be stated in the stipulation, and shall have received from the Railroad Commission a supplemental order declaring that such stipulation has been filed in form satisfactory to the Railroad Commission.

7. San Francisco-Richmond Ferry Company shall keep such record of the issue and sale of the stock herein authorized, and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

8. The authority herein granted shall apply only to such stock as may be issued, sold or delivered on or before December 30, 1920.

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 24<sup>th</sup> day of September, 1920.

Edwin O. Edgerton

H. J. Loveland

H. K. Brundage

Commissioners.