

ORIGINAL

Decision No. 8571

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SIX-MINUTE FERRY COMPANY, a corporation,	}	Case No. 1388.
Complainant,		
VS		
RODEO-VALLEJO FERRY COMPANY, a corporation,	}	
Defendant.		

W. E. Morrissey for Six-Minute Ferry
tum Suden and tum Suden, for Rodeo-Vallejo Ferry Company.

LOVELAND, Commissioner.

O P I N I O N.

By Decision No. 6280, dated April 19, 1919, in Appli-
cation Number 4451, the Railroad Commission authorized Rodeo-
Vallejo Ferry Company to issue \$13,000. of serial notes and exe-
cute a mortgage to secure the payment of the notes to enable it
to acquire property described in the application as follows:-

" All the interest of the Vallejo Land and
Improvement Company and Agnes McK. Wilson in the Tide
Land Survey No. Twelve (12) and in that portion of Tide
Land Survey No. Seventeen (17) lying North of the South-
erly line of Winchester Street and South of the South
line of the Sheehy property in said Tide Land, together
with all of the wharf structure known as the Vallejo
Land and Improvement Company wharf lying in front of said
Tide Land Survey No. Seventeen (17) lying South of that
portion of said wharf sold to the City of Vallejo."

The mortgage which the Commission authorized Rodeo-Vallejo Ferry
Company to execute was to cover the above-described property. Both
in the application and in the testimony, the property was described

as immediately adjoining the wharf leased by applicants in Vallejo and as being necessary and useful in its public utility operations.

Complainant in this proceeding alleges that the order of the Commission was obtained by misrepresentations as to the location of the land purchased and calls the Commission's attention to the fact that a portion of the land in question is not at all contiguous to the present ferry location, but is situate more than a mile and a quarter away. It is also alleged that the real purpose of the Rodeo-Vallejo Ferry Company in securing this parcel was to prevent its acquisition by the Six-Minute Ferry in order to eliminate possible competition. There is no doubt in my mind that the petition of the Rodeo-Vallejo Ferry Company in Application Number 4431 was inaccurately drawn and that the inaccuracy was not called to the Commission's attention at the time of the hearing, at which time the company was represented by counsel and its president called as a witness. Certainly the Commission has a right to expect counsel and a company's president, who signed and verified the petition, to be familiar with its contents and the facts of the case. If an error is made in the statement of the facts, the party making the error, rather than the Commission, because of any subsequent action it may take to rectify such error, must be held responsible. No order of the Commission, whatever the consequence of the rescission may be, should be allowed to stand when it clearly appears, as it does in this case, that it is predicated upon error. There is nothing gained by conjecturing what action the Commission might have taken had the facts, as they appear now, been presented by the Rodeo-Vallejo Ferry Company in connection with Application Number 4431.

In making application to the Commission for permission to issue notes, the Ferry Company made no segregation as to what

notes applied to Tide Land No. 12 and which to No. 17, nor was there any segregation made of the purchase price of the properties. The order in this respect followed the application and the Commission has, therefore, no alternative but to rescind the order in toto.

In recommending that the order made in Application Number ~~2881~~ ⁴⁴³¹ *HK* be rescinded, I am in no way interested or influenced by the controversy between complainant and defendant, and base my recommendation entirely and solely upon the ground that pertinent facts were not presented to the Commission.

I herewith submit the following form of order:

O R D E R

A hearing having been held upon the above entitled proceeding and it appearing from the evidence that the Commission's order in Decision Number 6280, dated April 19, 1919, in Application Number 4431 is predicated upon an error and that, therefore, said order should be vacated and set aside;

IT IS HEREBY ORDERED that the order in Decision Number 6280, dated April 19, 1919, in Application Number 4431 be, and it is hereby vacated and set aside, likewise the authority granted in Decision Number 6760, dated October 18, 1919, in so far as it permits Rodeo-Vallejo Ferry Company to use proceeds from the sale of stock to pay the notes authorized by the order in Decision Number 6280, dated April 19, 1919;

IT IS HEREBY FURTHER ORDERED, that the notes issued by applicant pursuant to the authority granted in said order be cancelled within thirty days after the date hereof and a report of such can-

cellation filed with the Commission within ten days after the cancellation of the notes.

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 20th day of January, 1921.

H. D. Loveland

H. W. Brundage

Dwight Martin

Commissioners