

Decision No. 18291**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 KEY SYSTEM TRANSIT COMPANY, a corporation,  
 for a certificate of public convenience  
 and necessity to operate a motor bus ser-  
 vice between the City of Oakland, County  
 of Alameda, and Hayward, County of Alameda,  
 State of California, and intermediate  
 points. )  
 )  
 ) Application  
 ) No.12568  
 )  
 )

In the Matter of the Application of  
 PEERLESS STAGES, INCORPORATED, a corpor-  
 ation, for permission to reroute a portion  
 of its operations between Oakland and  
 Hayward and intermediate points. )  
 )  
 ) Application  
 ) No.13178  
 )

Brobeck, Phleger & Harrison, by W. D. Brobeck,  
 for Key System Transit Company, Applicant  
 in Application No.12568 and Protestant in  
 Application No.13178.

Harry A. Encell and James A. Miller, by  
 Harry A. Encell, for Peerless Stages, Incorporated,  
 Applicant in Application No.13178 and Protestant  
 in Application No.12568.

Leon Gray, City Attorney, for City of Oakland,

Arthur M. Carden, City Attorney, for City of  
 San Leandro.

BY THE COMMISSION -

O P I N I O N

In Application No.12568, as amended, Key System Transit  
 Company, a corporation, has petitioned the Railroad Commission  
 for an order declaring that public convenience and necessity  
 require the operation by it of a motor bus service as a common  
 carrier of passengers between Oakland and Hayward via Foothill  
 Boulevard.

In Application No.13178, as amended, Peerless Stages,  
 Incorporated, a corporation, has petitioned the Railroad  
 Commission for an order declaring that public convenience and  
 necessity require the establishment by it of an alternate  
 route for the transportation of passengers, express and baggage  
 between Oakland and Hayward, via Foothill Boulevard, said  
 proposed alternate route to be operated in addition to the

operative route between said Oakland and Hayward as now operated by applicant via East Fourteenth Street; and to operate auto stage service for the carriage of passengers, baggage and express from the intersection of "A" and Castro Streets, Hayward, to the intersection of "A" Street and Mt. Eden Highway, Hayward.

Public hearings on the above entitled applications were conducted by Examiner Handford at Oakland, the matters were duly consolidated for the receiving of evidence, were duly submitted following the filing of briefs and are now ready for decision.

Applicant Key System Transit Company proposes to charge rates of twenty-one cents for a one-way continuous trip and for intermediate trips to provide three fare zones; one between the business section of Oakland and Estudillo Avenue, San Leandro, one between Estudillo Avenue, San Leandro to the County Hospital, and one between the County Hospital and the terminus of the line in Hayward, the fare proposed in each of these zones being seven cents. Applicant proposes to operate on a schedule commencing at the Oakland Terminal at 6:00 A.M. and continuing on a twenty minute headway until 8:00 P.M., thereafter on a twenty minute headway between the Oakland terminal and 96th Avenue, Oakland, until 11:00 P.M. and on an hourly headway between Oakland and Hayward from 8:00 P.M. until 11:00 P.M.

The equipment proposed to be used will be five motor busses of a modern street car type each with seating capacity of 25 or 29 passengers.

The route proposed by this applicant is as follows:

"Beginning at 13th and Clay Streets and running thence northerly on Clay Street to 14th Street; thence easterly on 14th Street to 12th Street Dam; thence easterly across 12th Street Dam and along East 12th Street to High Street; thence northeasterly on High Street to Foothill Boulevard; thence southeasterly along Foothill Boulevard and 1st Street, Hayward, to "D" Street; thence southwestorly along "D" Street to Castro Street; thence returning northwestorly along Castro Street to "B" Street; thence northeasterly along "B" Street to 1st Street and Foothill Boulevard; thence northwestorly along Foothill Boulevard to High Street; thence southwestorly along High Street to East 12th Street; thence northwestorly along East 12th Street across 12th Street Dam and on 14th Street to 13th Street; thence westerly along 13th Street to Clay Street and point of beginning."

Applicant relies as justification for the granting of the application on the following alleged facts: (1) that applicant is now operating a bus line known as the Foothill Boulevard Line from the intersection of Ygnacio and Trask Street, thence along said Trask Street to Foothill Boulevard, thence along Foothill Boulevard to 96th Avenue, thence along 96th Avenue to East 14th Street, and returning over the same route; and that the proposed bus service will be operated in lieu of the last described service, except for continued operation of the portion operated on 96th Avenue, between East 14th Street and Foothill Boulevard; (2) that the proposed bus line will serve Foothill Boulevard and the adjacent territory between Trask Street and Hayward, giving through service to and from the business section of Oakland and to and from the business section of Hayward, in connection with applicant's East 14th Street car line which car line serves the territory adjacent to East 14th Street between the business district of Oakland and Hayward and intermediate points, said car line having been operated by applicant and its predecessors for many years and being the first regular transportation between such points; (3) that the proposed bus line will be operated as an express line west of Trask Street, only making stops east bound to take on passengers between the business section of Oakland and Trask Street when such passengers are destined to points east of Trask Street, and stopping westbound between Trask Street and the business section of Oakland only to discharge passengers who may have boarded busses at said Trask Street or at points east thereof; (4) that the proposed motor bus line will connect with cars now operated by applicant and transfer will be issued and accepted to and from all connecting bus and street car lines now operated by applicant; (5) and that the residents of the territory to be served by the proposed motor bus line will, under the proposed operation, be given a more rapid and expeditious means of transportation than is at present available.

Applicant Peerless Stages, Incorporated, proposes to charge rates in accordance with a schedule marked "Exhibit A" as filed with the amended application herein, to operate on a schedule leaving terminals at Oakland and Hayward at 7:00 A.M. and continuing on a thirty minute headway until the last schedule leaving terminals at 7:00 P.M.; using as equipment modern passenger busses of sufficient capacity to meet the requirements of the public using the proposed service. The route proposed to be established by applicant is as follows:

"Leaving Eleventh and Clay Streets, Oakland, north bound to Twelfth Street, Oakland; thence easterly over and along East Twelfth Street to Fiftieth Avenue; thence northerly along Fiftieth Avenue to Foothill Boulevard; thence in an easterly direction over and along Foothill Boulevard to Durant Avenue, which last named marks the boundary line of Oakland; thence southerly along Durant Avenue to Hollywood Boulevard, as the same is delineated and so designated as a public street in the City of San Leandro; thence easterly on Hollywood Boulevard; thence in an easterly direction over and along Foothill Boulevard to "A" Street, Hayward; thence along "A" Street, Hayward, southerly to Castro Street; and thence in an easterly direction to the southeasterly city limits of Hayward. Also departing from "A" and Castro Street, Hayward, running thence over and along Dublin Road in a northerly direction to Castro Valley Junction; thence in a southerly and Southwesterly direction over and along Castro Valley Road in and to East Fourteenth Street, as said street is delineated and designated in the cities of Oakland and San Leandro, and the continuation thereof known as Castro Street in the city of Hayward, to "A" Street; thence in a southerly direction to Mt. Eden Highway, the terminal, and returning over and along the foregoing route in a reverse direction from "A" and Castro Streets, Hayward."

Applicant relies as justification for the granting of the desired certificate upon the fact that it has received requests from various public bodies for the establishment of the proposed service.

Mr. Earl S. Beatie, general sales manager for C. P. Murdock, real estate subdivider, testified his concern had a subdivision located on the proposed route west of Castro Valley Road and extending from East 14th Street over and north of Foothill Boulevard; that there was a necessity for a transportation system on Foothill Boulevard by reason of property being developed and to be developed north of the Boulevard at a quite substantial distance from existing transportation on East 14th Street.

Mr. T. H. Burke, Mr. J. E. Corkner and Mr. H. C. Colterjohn, real estate operators, confirmed the testimony of the previous witness.

Mr. Richard E. Dennis, subdivision sales manager for Fred T. Wood & Company, testified his concern was now engaged in the sale of three subdivisions, all within a half-mile of Foothill Boulevard, one located on Dutton Avenue at the end of Bancroft Avenue, one on Dutton Avenue between Bancroft Avenue and Foothill Boulevard, and one at the intersection of Foothill Boulevard and Estudillo Avenue. Witness was of the opinion that service as proposed on Foothill Boulevard should be established, as due to the absence of transportation people do not care to establish homes and 70 percent of the prospective lot purchasers objecting to the lack of transportation.

Dr. A. C. Jensen, located at the Alameda County Hospital on the Foothill Boulevard, testified the hospital had a population of about 900 persons, of whom about 670 were patients. The residents of the hospital and visitors, the latter averaging between 75 and 100 per day, use transportation to and from Oakland and other points in Alameda County, and at the present time there is no public transportation service available excepting the street car service operated on East 14th Street.

Mr. Jacob Harder, Jr., Secretary of the Hayward Chamber of Commerce and Justice of the Peace at Hayward, testified regarding the development of territory in the districts along the Foothill Boulevard from Hayward to Estudillo Avenue as consisting of from 800 to 1000 homes, and for the need of residents of the Castro Valley

territory for transportation to and from Hayward.

Mr. R. J. Larkey, in the real estate and insurance business near Hayward, testified he was president of the Sunset Improvement Club and a delegate to the Federated Improvement Club, said club representing a membership of about 1200 people; that the ~~Federal~~<sup>of</sup> Improvement Club had endorsed the establishment of an automobile stage between Oakland and Hayward, provided such line would furnish a feeder service into the Castro Valley and Lower A. Street districts.

Mr. G. W. Appleby, a resident of Castro Valley and president of the Castro Valley Improvement Club, an organization of over 100 members, testified that his organization had endorsed the application of Peerless Stages, Incorporated, the service proposed offering transportation to an estimated population of 2500 people in Castro Valley.

Mrs. George Walker, president of the Associated Parent-Teachers Association, in the Hayward District, testified in behalf of the Peerless application as regards service proposed to be rendered in the Castro Valley section and the convenience to school children and residents in the elimination of long distances now required to be traversed to utilize existing transportation.

Mr. John Dengel, Mr. J. Jorgenson, Mrs. J. H. Rowell, G.C. Vinton, Mrs. N. J. Wright, Mr. W. H. Rich, Mr. J. L. Davidson and Mr. C.N. Pickens testified as to the service to be available by the proposed stage line, all these witnesses now being located a considerable distance from existing public transportation.

The application of Key System Transit Company is endorsed by Sequoyah District Improvement Club, and that of Peerless Stages, Incorporated, by the San Leandro Chamber of Commerce, the Hayward International Lions Club, the Board of Directors of the Hayward Chamber of Commerce, and as regards the Castro Valley and Lower A Street Extension by a petition bearing 137 signatures of residents of the Sunset School District. The endorsement of the San Leandro Chamber of Commerce as originally given to applicant

Peerless Stages, Incorporated, was modified by resolution to the effect that if but one certificate be granted for the service sought by both applicants, such certificate should be issued to the applicant offering the most complete and efficient service to the residents of the City of San Leandro.

The proposed service to be rendered by applicant Key System Transit Company as set forth in an exhibit filed (Key System Exhibit No.6), will require the operation of 1561 bus miles daily. According to the record, the actual cost of bus operation by the Key System Transit Company is 25 cents per bus mile. On the basis of the daily bus mileage the annual mileage would amount to 569,765 miles which, at a cost of 25 cents per mile, would result in an operating cost of \$142,441.25. The proposed service of the Peerless Stages, Incorporated, would require, according to the testimony of this applicant's president and general manager, a daily operation of 180 miles on the "stub line" and between 600 and 700 miles on the Foothill Boulevard Line. Testimony was also of record that the operating cost per bus mile would be between 15 and 16 cents. Assuming a daily total mileage of 830 and a cost per bus mile of 15½ cents the annual operation cost would be \$46,957.25. This estimate of operating cost per bus mile is evidently intended to cover only the actual "out-of-pocket" costs, with no allowance for overhead, supervision or depreciation, the actual operating costs per bus mile on the Peerless System having been 24.59 cents in 1925 and 20.2 cents in 1926, as shown by compilations made from the annual reports of such company as filed with this Commission.

The establishment of motor bus service by either of the applicants in accordance with their respective proposals will, as regards operation over the Foothill Boulevard between Oakland and Hayward, duplicate the service now rendered by each of such applicants between such terminals, one by its rail line and the

other by its motor stage line, both operating on East 14th Street. It is therefore apparent that a diversion of a considerable amount of through traffic would be cared for by each applicant, such through traffic being diverted from their existing lines and the new business to be cared for being that originating or terminating at points along the Foothill Boulevard and the Castro Valley extension which are not now served by public transportation facilities. While the record shows no reliable estimate of the volume of such new business, it does indicate that such business would not at this time provide a revenue which would meet or approximate the necessary operating expense and the testimony of Mr. Jos. B. Held, president of applicant Peerless Stages, Incorporated, and <sup>a</sup> motor stage operator of many years experience, shows that as regards his company he anticipated that the operation "could break even in a year on Foothill Boulevard" and was uncertain as to when the Castro Valley extension could be made to pay its expense of operation.

In this proceeding the Commission finds a situation where the proposed service will meet the public convenience and necessity of a number of prospective patrons who now reside at points not within a reasonable distance from existing public transportation. The establishment of the proposed service, however, does not indicate, nor can it be reasonably anticipated from the record herein, that the revenue to be derived from operation will meet the necessary "out-of-pocket" cost of operation for some time, possibly two or more years. The proposed service will divert a considerable amount of business from already existing lines of both applicants, leaving the new business from the territory now served as the source of revenue from which the cost of operation must be secured. The cost of pioneering or development must, therefore, be borne by the patrons of already existing service of applicants herein and neither applicant is conducting its present operation with a



return of revenue which would justify the Commission in authorizing additional service into new territory when it is shown that for some time an operating loss will require to be assumed. Both applicants have been before the Commission for increased rates, the application of Key System Transit Company for an increase of rates being now pending.

The Commission has heretofore held that public necessity for the operation of auto stage lines must be determined by the needs of the public at large, and that it cannot be predicated on an applicant's belief that business may be developed.

(Applications - Motor Transit Co., et al., C.R.C. 21, p.509. Application De Luxe Stage Co., C.R.C. 21, p.76). Under the state of facts as herein presented, the general public, as now served by the lines of the respective applicants, would be required to meet the deficits arising from the operation of the proposed service, and in the case of one applicant herein the Commission now has before it a petition for increased rates to enable such applicant to meet its operating costs and to realize an adequate return upon its investment.

The record shows a public convenience and necessity to be served by the granting of the authority sought by both applicants, such public convenience and necessity, however, is not sufficient in extent to enable either applicant to meet the necessary operating expenses required in the performance of the service and there is no evidence justifying the conclusion that the revenue to be secured will meet such operating costs within an extended period. Neither applicant being in a financial condition, as regards net revenue sufficient to justify the assumption of unknown deficits which would follow, the establishment of the proposed development or pioneering service, the deficits would require to be absorbed by the revenue now received from patrons of existing authorized lines. The situation here presented is one in which a possible solution

would be for applicants, or either of them, to negotiate with interested parties for whom the establishment of the proposed service would be desirable to arrange to finance the deficit between operating cost and revenue for some representative period.

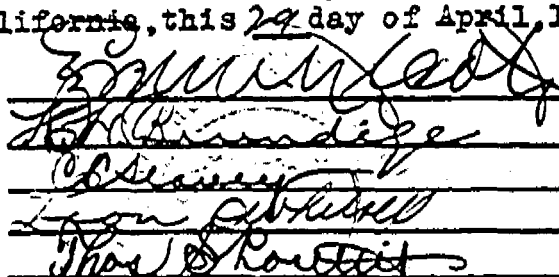
After full consideration of the record herein, we are of the opinion and hereby find as facts: (1) that the public convenience and necessity require the establishment of service over the routes herein proposed by applicants; (2) that the volume of traffic reasonably to be anticipated over the routes herein proposed will not return at this time the out-of-pocket cost of operation; and (3) that the probable revenue to be derived from the operation herein proposed does not justify the establishment of the service at this time by either of the applicants, one of whom is now before the Commission in a proceeding seeking an increase in rates, the other having recently received a rate increase and now showing, by its annual report to this Commission, a low rate of return on its investment.

O R D E R

Public hearings having been held on the above entitled applications, which were consolidated for the purpose of receiving evidence and decision, the matter having been duly submitted following the filing of briefs, the Commission being now fully advised and basing its order on the findings of fact as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that the application of Key System Transit Company, a corporation, (Application No.12568), and of Peerless Stages, Incorporated, a corporation, (Application No.13178), be and the same hereby are dismissed without prejudice.

Dated at San Francisco, California, this 29<sup>th</sup> day of April, 1927.

  
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