Decision No. 19822

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of KEY SYSTEM TRANSIT COMPANY, a corporation, for an order readjusting its rates and establishing just and reasonable rates for the transportation of persons and property between points on the Company's lines in the State of California.	Application No. 11329 (Rehearing)
In the Matter of the Investigation upon the Commission's own motion into the rates, fares, charges, classifications, practices, rules, regulations and service of the KEY SYSTEM TRANSIT COMPANY, a public utility corporation.	Case No. 2467.

Dunne, Brobeck, Phleger & Harrison, for the Key System Transit Company.
Guy V. Shoup and C. W. Durbrow, for the Southern Pacific Company.
W. J. Locke, City Attorney, for the City of Alameda.
Preston Higgins and J. W. Collier, for the City of Oakland.
E. J. Sinclair, City Attorney, and John N. Edy, City Manager, for the City of Berkeley.
Thos. M. Carlson, City Attorney, for the City of Richmond.
C. W. White, for the Town of Hayward.
G. N. Richardson, for the City of Piedmont.
Thomas W. Girby, for the Town of Emeryville.

SEAVEY, COMMISSIONER:

OPINION

The above application was filed by the Key System Transit Company on June 27, 1925. Because of the needs of the Company on December 31, 1925 increased interim fares were granted by Decision No. 15817. Following that interim order a further study was made of the situation resulting in certain findings of facts and recommendations and an order directing the establishment of certain purely experimental fares, Decision No. 19027, dated November 9, 1927.

The Company did not elect to try these experimental fares and petitioned for rehearing, which was granted on December 22, 1927. On the same date the Commission instituted an investigation on its own motion, Case No. 2467, broadening the issues to be considered. Further hearings were held on January 24 and 25, March 6, 7, 8, 27, 28 and 31, 1928, on which last date the matters were submitted.

Outside of those features which will be hereafter discussed, there seems no reason to alter the findings of facts set forth in Decision No. 19027, to which decision attention is hereby directed.

The experimental form of fares set out in Decision No. 19027 will no longer be considered. It is obvious, as indicated by the Commission in that decision, that there was little hope for success with such fares unless the Company tried them out wholeheartedly. The municipalities, the business interests and the people generally in the East Bay District evidenced a desire and willingness to aid the Company in every way in this experiment, but the Company did not wish to take the step, believing that it was too much of a risk in light of its financial condition.

In Decision No. 19027 this Commission estimated that the current financial results of the applicant's operations on an annual basis indicated a net income available for return of \$1,195,079. On a comparable basis, using 1927 actual revenue and taxes, this figure of net income for 1927 is \$1,014,425. The decrease in revenue according to the record is continuing for 1928 and therefore the net income for 1928 on the present fares undoubtedly will be reduced to a substantially lower figure. The fixed charges for 1927 totaled \$1,078,250.63 and for 1928 will be approximately the same. It is therefore apparent that with the present basis of fares this applicant will not be in a position to meet its fixed charges for 1928.

The Company in order to continue to give service to the public is entitled to and must have increased net income and to have that increase permanently. This must be accomplished by both increasing revenue and decreasing expense. This Commission has previously pointed out how expenses may be decreased. Only the possibility of further increase of revenue will be discussed in this opinion.

TRANSBAY LINES

The Company asks as base fares 25 cents one-way and $6.50 commutation. The one-way fare is now 21 cents. The service here performed, compared with the service performed under the local present fare of 7 cents and the maximum proposed fare of 10 cents, indicates that the fare of 21 cents should not be increased. Checking the relationship between the one-way fare and the commutation against the average cost of service on the transbay lines further confirms this conclusion. The estimated total average cost per transbay passenger trip, as derived from the figures in this record, is approximately 17.3 cents, of which 13.1 cents reflects the cost of operation and 4.2 cents reflects return on the facilities used. Under the present commutation fare of $5.20 per month the trip rate each way is 8-2/3 cents on a thirty day basis and

11.2 cents on the average usage basis. In my opinion, under the circumstances and conditions in this territory, the commutation rate should be sufficient to cover the average unit operating cost of the present transbay service, together with some margin for return upon the facilities used. The $6.50 commutation rate proposed by the Company is equivalent to 14.1 cents per trip on the average usage basis. This rate meets the above condition.

I therefore recommend that the regular one-way fare remain as it is at 21 cents and that the commutation fare between San Francisco and Richmond be increased to $7.00, and the fare between San Francisco and all other east bay communities now served at $5.20 be increased to $6.50.

I further recommend that the Company, in order to increase its traffic and its revenue, seriously consider putting in special round-trip fares on off peak periods, such as Sundays, holidays and evenings.

STREET CAR LINES

The condition of the street car industry throughout the nation is very unsatisfactory. In the east bay district this is true in an aggravated form. It has the general condition of destructive competition with the private automobile in a territory where the automobile can be used to advantage throughout the year. The region is a difficult one to serve, being a narrow strip thirty miles long, with a large proportion of unprofitable territory. The history of the financial structure of the Company has been one of considerable misfortune. Also, its public relations generally have been unsatisfactory.

In this record there are several fare structures under consideration for the street car lines which either the engineers of the Company or the engineers of the Commission estimate will bring additional revenue. They will be designated and discussed from the standpoint of their basic fares.

1. <u>5-Cent Zone Fares</u>: The Commission's engineer estimated that this plan would increase the gross annual revenue of the Company in the amount of $440,000. No estimate was presented by the Company. The estimate was based generally upon the zoning outlined in Decision No. 19027 where the present sixteen mile zone of Oakland and Berkeley was divided into three zones. If a zone system of fares was put into effect some such division would be necessary, but no basic study has been made to determine the most equitable fare breaking lines. If such fares were to be attempted at this time they would be experimental and the zones would probably need soon to be revised. Under the straight zone fares the revenue would be increased immediately with a probable downward trend, finally seeking a level considerably above where the present 7 cent fare is settling.

I am inclined to believe that in this territory a basic zone system of 5 cent fares, with some concession to the regular long distance riders, will become necessary in the quest for equitable fares and a more adequate return and that this should be attempted before driving riders away with higher base fares. It would be wise for the Company at least to collect data that may be used in making a determination along this line.

2. 5-Cent Zone Fare with $1.00 Weekly Pass: The Commission engineer estimated on this modification of the straight 5 cent zone fare an increase in gross annual revenue ranging from a maximum of $834,000 to a minimum of $134,200. The Company engineer estimated a loss of approximately $400,000 for the year 1928. These figures of maximum gain and loss are undoubtedly far beyond the mark. I am convinced that not only would this form of fare bring in as much if not more revenue but it would have a tendency to a future increase rather than a decrease, as is being experienced under the present 7 cent fare.

3. 10-Cent Fare with $1.00 Weekly Pass: This is the fare proposed by the applicant. The Company's engineer estimated a net increase in annual revenue of $424,300 for the year 1928. The Commission's engineer estimated a reduction in gross annual revenue, after a period of adjustment of from two to three years, to the extent of $375,000. Under cross-examination, however, certain errors in calculation were pointed out whereby an estimate prepared on the premises used showed the reduction in gross revenue increased to $755,000. The Commission's engineer testified to another estimate of what this form of fare would produce based upon different premises which resulted in a decrease in revenue of $365,000. The wide variation in the amounts which these different estimates show would be earned under this form of fare suggests a very serious uncertainty as

to the actual effect of establishing this fare.

The Company's estimate it would seem is all that could be expected under the most ideal conditions. Such conditions do not obtain in this region, as has been indicated to some extent heretofore and as will be referred to later in this opinion. The 10 cent fare is generally recognized as the maximum amount that can be charged for a single territorial street car ride, it being generally admitted that any higher fare would permanently drive away both the long and short distance rider to other means of transportation. In fact, as the result of the present downward trend of traffic under the existing 7 cent fare, the Company's engineer modified his estimate, showing that the net increase in gross revenue for the year 1928 would probably be only $171,300. With the continuation of this downward trend, the revenue of the Company in the third year would be found to closely approximate the estimate of the Commission's engineer.

4. <u>10-Cent Fare, 3 Tokens for 25 Cents, $1.00 Weekly Pass:</u> This form of fare is a concession to 10 cent riders under basis No. 3 who ride rather frequently and will also take away some of the pass riders who are in the twilight zone. The Commission engineer estimates an annual gross loss of $88,000. The Company engineer estimates a net gain to revenue of about $165,000. This proposal is subject otherwise to some of the same strictures as basis No. 3 and altogether does not give much hope.

5. <u>10-Cent Fare, 3 Tokens for 25 Cents, $1.25 Weekly Pass:</u> The Company offered this form of fare for consideration with the statement that it was not acceptable and its engineer estimated that the net increase in revenue would be $583,300 for

1928. The Commission engineer made no estimate. This again is a form of concession to the 10 cent riders. It will throw more percentage into the token class and will have a much greater tendency to decrease the total number of riders. Temporarily it will give some added revenue but permanently, under normal conditions, it will reduce the total riders much below No. 3 and No. 4 and produce a total revenue somewhat higher. It also is subject to some of the same strictures as No. 3.

During the hearings on rehearing the Company called as witnesses the general managers of the street car lines in Salt Lake City, Seattle and Tacoma, and the managing director of the American Electric Railway Association. These were all men of considerable experience with street railways in operation and rate matters and in general study. Three of these witnesses are in active street car management and have for a large portion of the last ten years been experimenting with different forms of fares and, as I read their testimony, are still experimenting. They testified specifically and strongly against the experimental fares proposed in the last order of this Commission and generally in favor of the fares proposed by the Company. Their experience has been confined principally to service in territory that may be termed one unit of population and one municipal control. I question if their experience can be used to solve the east bay problem except in a very general way.

We have here a utility operating a unified street car system in ten separate municipalities. At least five of these cities have developed individually and largely within themselves until the phenomenal growth of this section has brought their outskirts together. They still retain their individuality, even though one of them is now metropolitan in size. Some of them still retain their constitutional control over certain features of this utility's operations. All of them have legal control over automotive transportation within their bounds. Testimony in this record indicates action in different parts of this territory adverse to the interests of applicant in the event that increased revenue is sought to be obtained through ill-advised fare structures.

Urban transportation is in a serious period of transition. It is nothing strange or unexpected. The new form is making inroad into or transplanting the old, as has happened in the past. In many instances the change has entirely taken place, either by a total abandonment or by transplanting. This record is replete with testimony direct and indirect to the effect that this Company is now in serious financial difficulties and that the future does not hold out hope for any continued adequate return upon the investment in street car property from revenue from that operation.

I am frank to say this record seems to indicate that the wolf has been kept from the door longer in those cities where there has been the direct assumption of municipal responsibility for operation or full and open public cooperative arrangements between local authorities and utilities, concessions made on both sides and experimental rates tried with joint approval.

Under this record and the conditions stated I cannot recommend to the Commission that it order into effect for the street car service any of the forms of fares hereinabove considered. Any such action would be in the nature of questionable experimenting with a situation extremely hazardous both to the applicant and to the public. The Company itself should, if possible with the aid of local authorities, prepare the way for some form of fare experimentation and other means of lessening the stress on this system that appears to have more reasonable chance of success.

I therefore recommend that the matter as to street car fares be left open for further order to such time as after due consideration the Company by resolution of its Board of Directors may petition this Commission to file fares which it believes will most nearly meet the exigencies of the situation.

The following form of order is recommended:

ORDER

The application of the Key System Transit Company for an adjustment of its fares being before this Commission on rehearing, the previous order, Decision No. 19027, having been suspended, public hearings having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision;

IT IS HEREBY ORDERED that applicant be and it is hereby authorized to establish within thirty (30) days from the date of this order upon not less than three (3) days' notice to the Commission and to the general public by filing and posting tariffs in the manner prescribed in Section 14 of the Public Utilities Act, and thereafter maintain and apply a monthly commutation fare of $6.50 between San Francisco and Berkeley, Northbrae, Albany, Claremont, Piedmont, Underhills, Trestle Glen, Oakland and points intermediate thereto as shown in Item 163 of Key System Transit Company Tariff C.R.C. No. 18, and a monthly commutation fare of $7.00 between San Francisco and Pullman, Richmond, Point Richmond and San Pablo, subject to the following conditions:

1. The applicant shall file with the Commission monthly reports of such operating and traffic statistics as the Commission may prescribe from time to time, on forms approved by the Commission. Further, upon request, applicant shall furnish copies of said operating and traffic statistics to the duly accredited representative of each community in which the applicant's lines are operated.

2. The Commission reserves the right to abolish or to modify or change from time to time, by supplemental order herein, the rates and fares herein prescribed and to make such further orders in this proceeding as may be deemed right and proper.

IT IS HEREBY FURTHER ORDERED that these proceedings remain open in accordance with the recommendations in the opinion in so far as they apply to the street car fares on this system.

For all purposes the effective date of this order shall be twenty (20) days from the date hereof.

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 29th day of May, 1928.

Leon Whitsell

C. L. Seavey

Thos. S. Louttit

Commissioners.

OPINION CONCURRING IN PART AND DISSENTING IN PART

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I am in general agreement with my associates that some substantial relief must be given the Company but I am not in entire accord with them as to nature of the relief or the kind of order which should be made.

The condition of this Company is probably even worse than indicated in the majority opinion. The operative property represents a cost of approximately $29,000,000. To reproduce it new it would cost more than this. The fair value of the property under all the circumstances is probably much less. The Company has a bonded indebtedness of $17,445,000, amounting to about 60 per cent of the cost of its property. Its annual interest charges on this are, in round figures, $1,078,000. In 1927 with depreciation calculated on the sinking fund basis its actual operative earnings were only $834,000, or $244,000 less than enough to meet its fixed interest charges.[1] The rate of return on the cost of the property is less than 3 per cent.

Questions usually important in rate proceedings are here unimportant, for here the question insistently forces itself to the front - "can any system of fares having some semblance of fairness between classes of riders be devised which will make it possible for this Company to exist and to continue to serve the great populations tributary to its lines?"

On December 31, 1925 the Commission as an emergency measure authorized the Company to establish a 7 cent street car fare, a 21 cent single trip transbay fare and a $5.20 monthly

(1) The engineers of the Commission estimated reasonable operating expenses for 1927 at a somewhat less figure than the actual experience of the Company showed they were. The majority opinion uses the former, which explains the difference between the results there and here indicated. For the purposes of this decision it is not important which figures are used.

commutation transbay fare, estimating that these emergency increases in fares would yield the Company an increased annual revenue of $846,000. (Re Key System Transit Co., 27 C.R.C. 381.) Notwithstanding this confident prediction the increased fares in 1926 yielded an increase in gross revenue of but $280,000 and in 1927 of but $135,000.

This Company is in competition with privately owned automobiles, both in its traction and its transbay service. It is subject to a potential bus competition in its traction service in each of the various cities it serves because each of these may authorize such a bus service. It is likewise, although in perhaps a lesser degree, subject to such a potential competition in respect to its transbay service. The various communities the Company serves and other communities about San Francisco Bay are in a state of competition in respect to their development and upbuilding. Transportation facilities and charges have their effect upon the rate of development of these and the attraction and movement of population.

While, as strikingly illustrated by the actual experience of this Company, authorizing this fare or that may find ample justification on paper and in theory, any such fare is futile if the public will not ride. In short with this, as with many similar companies, competitive and economic conditions have become far more potent than the order of any regulatory body such as this. To a very large extent the riding public fixes and determines the rate of fare.

In considering what should be done under the situation pointed out, it should be borne in mind that the Company's property and operations are divided into two divisions - the Key or transbay division and the traction division which serves the various local communities. Of these the traction division is in very much the worse condition. It is enough here to point out that the Key division is earning about 5 per cent return and the traction about 2 per cent.

I am in agreement with my associates that increased transbay fares should be authorized. Also I am in agreement with them that there is a limit upon the fares which may reasonably be imposed upon this class of riders. They should not be required to carry the entire burden of the unprofitable traction system. It is not easy to lay down any general rule as to how much of the burden they should carry. As far as the record is concerned there is no dispute that the transbay fare increases asked by the Company will augment its revenue by between $400,000 and $450,000 a year nor that a little over one-half of this would come from the increase of the one-way fares from 21 cents to 25 cents. My associates favor authorizing the increased commutation fares, leaving the one-way fare as it is. The reverse of this seems to me the proper course. Historically the relationship between the commutation fares and one-way fares has been kept almost constant. If any change is to be made now it seems to me more logical to apply to these fares the theory which the Company would apply to its traction division, namely, to leave the charge as against regular riders substantially unchanged and to seek increased revenue from the casual or occasional riders. There is nothing unfair or unreasonable in this general theory and I think it should here be applied to the transbay riders.(2)

(2) Here the Commission is in effect rendering a judgment against one class of riders, namely the commutation riders, and in favor of the casual or occasional transbay rider. The issue as to which of these two classes should be required to bear an increased burden really has not been tried out in the course of the proceedings, the record being surprisingly barren of testimony or discussion to aid in reaching a correct conclusion. This situation illustrates concretely what I sense is a serious defect in regulation of rates by the Commission. A rate case is fully presented and the Commission reaches a sound and well supported conclusion that revenue should be decreased or increased as the case may be. The question then arises as to the class or persons to secure the benefit or suffer the detriment. As to this, while the patrons of the utility theoretically have a hearing practically they do not.

What to do with the traction division and fares presents a far more difficult question. It is not fair to require the transbay riders to keep this division going if there is any way by which its own patrons can do this. The present fare structure is an unreasonable one in the sense that the fare does not yield any substantial return on the property. The Company insists that its proposed 10 cent fare with a $1.00 weekly pass will increase its revenue by some $400,000 over its revenue from the present 7 cent fare. None of the various other forms of fares suggested either in the former opinion or in the course of the hearings since hold any reasonable certainty of yielding additional revenue, and much as this Commission might prefer to direct some fare other than that proposed by the Company it is not justified in so doing under the present record.(3)

I am in entire accord with my associates in the premise that competitive and economic conditions will largely determine the level and kind of fares. But I feel that the logical conclusion from this premise is that where a Company admittedly is not earning a reasonable return on existing fares it should be given some latitude in establishing new fares which it believes will, under such competitive conditions, yield it something in the way of a return. This of course is subject to the qualification that the general scheme of fares is not an unreasonable

(3) I agree with Mr. Commissioner Seavey that any fare structure of a trial nature to which the Company is opposed would be almost certain to fail. It would never receive a fair trial. In a prior order this Commission authorized fares of an experimental nature, going upon the theory that the Company by its fares should seek to attract more patronage. The Company was bitterly opposed to trying such a fare structure. In view of the uncertainty of the results of such a structure the Commission would not be justified in making a mandatory order requiring it to be tried out.

one. It cannot be said that the Company's proposal is unreasonable. In its essence it does not substantially affect regular riders who may make use of the $1.00 weekly pass. There is nothing unfair or unreasonable in the casual or occasional rider paying more than the regular rider.

Whether this fare structure will work is a different question. The Company claims it will. I think this Commission must give the Company a chance to try it out. Its success or failure will depend largely upon the way in which it is received by the travelling public, which after all here holds the final veto power.

M. J. Cain
Commissioner.

I concur in the foregoing opinion, with one exception:

From the study of the record in this case, it seems clear to me that there is no street car fare proposed or that can be devised at this time that will yield a greater gross revenue than the fare now in force. In my opinion the applicant would now be in better position from the point of view of gross earnings if it had left in force the six cent fare. The increase in fare of one cent caused four million less rides in the first seven months. These four million rides did not vanish into thin air. They represent the people who took to the automobile or to walking. This Company cannot compete with the privately owned automobile, or with busses, or with the tendency of the people to leave street cars by raising the cost of street car travel.

In addition to the increased use of the automobile, to which the territory served by the applicant readily lends itself, there has grown up in all the applicant's territory, at intervals of approximately ten blocks, small business communities. These small business communities vary in size from a few stores to several blocks of stores and each one has its own moving picture house, many of which seat over a thousand people. In these small business communities every kind of merchandise is carried. This new business development has now reached the stage where there are very few sections of the territory served by the applicant that are not within easy walking distance of one of these business centers. This has created a tendency to buy in the immediate vicinity of a residence and thus eliminate the cost of street car fare. A raise of street car fare would certainly tend to accentuate this tendency.

This Commission has pointed out many times that the solution of this applicant's difficulties lies in rigid economy, in the reduction of its operating expenses, and in the abandonment of duplication of service by this applicant and the Southern Pacific Company. The territory served by applicant could readily be served by complete one-man car operation. This complete operation, in my judgment, would save to the applicant $350,000.00 per year. It is to reductions of this kind and to abandonment of duplication of service by the applicant and the Southern Pacific Company that this applicant must look for increased net earnings rather than to increased fares, which experience has shown only tends to drive business from the applicant.

In this particular instance the regulation of street car fares seems to have passed from the realm of regulation by this Commission into the realm of regulation by competition, that competition now being furnished by the privately owned automobiles and will be furnished by busses as soon as street car fares approach ten cents.

For the next several years, or until the community served becomes most densely populated, the applicant cannot hope to obtain from any combination of street car fares the rate of return usually allowed to public utilities. It must, in the mean time, be satisfied with a much smaller return.

I do not concur in that portion of the opinion that leaves the street car fares open for further consideration. This case has been before the Commission for two years and a constant study of various fares has been made in this district as well as in other cities of the State. I believe little additional can be learned from further study by either our own engineers or those of the applicant. For this reason the fares should now be definitely fixed at seven cents and the case closed.

Commissioner.