

ORIGINAL

Decision No. 969

LONG BEACH CHAMBER OF COMMERCE,  
 Complainant,  
 vs.  
 PACIFIC ELECTRIC RAILWAY COMPANY,  
 Defendant.

Case No. 281

Louis N. Whealton, for complainant.

Frank Kerr, D. C. DeHo and Allen Ashburn, Jr.  
for defendant.

EDGERTON, Commissioner.

O P I N I O N

This is a complaint by the Long Beach Chamber of Commerce vs. the Pacific Electric Railway Company, alleging that said company violates franchises under which it operates in the City of Long Beach, in the following particulars:

1. That it charges 10 cent fare for a continuous ride in the same general direction on its Huntington Beach line between Zaforia and Temple streets, and between other points, all in the City of Long Beach.

2. That it refuses to give transfers from certain of its lines operated in Long Beach to other of its lines in the same place.

3. That it refuses to pave or macadamize the space in the street over which it operates between its tracks and between the rails and for a distance of two feet on each side thereof.

. That defendant violates the Public Utilities Act in the following particulars:

a. That it charges more than 5 cents for a continuous ride in the same general direction within the corporate limits of the City of Long Beach.

b. That it refuses transfers on portions of its lines in Long Beach not reached by the originating car.

c. That it charges greater compensation for a shorter than a longer distance on the same line or route in the same direction.

d. That it fails to provide proper facilities, instrumentalities, equipment, etc., for the proper operation of its system in the City of Long Beach. Under this head it is prayed that defendant be compelled to lay grooved girder rails in place of "T" rails.

It will first be necessary to determine whether this Commission has jurisdiction over the matters complained of.

The Pacific Electric Company operates an interurban service between the City of Los Angeles and other points through and into the City of Long Beach. This company also operates a distinct local street car system, covering a large portion of said city of Long Beach.

The matter first to be considered is whether this Commission has any jurisdiction over matters of service, facilities, equipment, trackage, and fares of the purely local street car system in said city.

The constitution provides, section 23 of Article XII, for the regulation by the Railroad Commission of interurban and street railroads as shall be provided by the Legislature, and the Legislature has provided in the Public Utilities Act for complete regulation of interurban and street railroads by the

Railroad Commission as to service, fares, facilities, etc., but there is a very important proviso in said section 23 of Article XII of the Constitution to the effect that the cities shall retain such control as they had over public utilities unless by a certain procedure they surrender such control to the Railroad Commission. The period for determining what control was vested in the cities has been fixed as of March 23, 1912.

Subsequent to the hearing in this matter, the City of Long Beach adopted a charter amendment by which it was attempted to take from the City of Long Beach and confer upon this Commission jurisdiction over the matters herein complained of, but on the 29th day of March, 1913, this Commission made and entered its order in this case wherein it was held that the method provided for divesting a city of its powers of control over public utilities in the so-called "Hewitt Act" was exclusive, and that such powers could not be divested by charter amendment. Therefore, we must look to the charter of the City of Long Beach as of March 23, 1912, and the Constitution, to determine what powers over public utilities are vested in the said city.

The charter of the City of Long Beach provided on March 23, 1912, under the head "General Powers", subdivision 17 of section 3:

"To require every railroad corporation or company to pave and keep in repair between the tracks and for two feet on each side of the tracks, all streets occupied or used by such corporation or company."

Subdivision 18:

"To fix and determine annually the rates of compensation to be collected by any person, firm, company or corporation in the city for the use of water, gas, electricity or any public service supplied to the city or the inhabitants thereof; also to fix and regulate annually the tolls and wharfage to be charged for the use of any wharf within the city limits, and to prescribe penalties for the violation of any and all ordinances passed in reference to matters contained in this subdivision."

Subdivision 10 of Article VI gives the council power

"to regulate street railroads, their tracks and cars ....."

It is doubtful whether this Commission has been given power to regulate paving in any portion of the State but the matter is free from doubt here because under section 17 of the charter the power is vested in the city to compel the railroad company to pave between its tracks and for a distance of two feet on each side thereof. Therefore, under the constitutional proviso above mentioned, this Commission has no jurisdiction as the city has not by the means provided therefor surrendered such jurisdiction to it. The same may be said of the matter of tracks and rails as under subdivision 10 of Article VI, the city council in terms is given power to regulate tracks, and this surely would include rails.

It appears equally clear that under subdivision 18 the city has the power to regulate the rates for any public service supplied to the city or the inhabitants thereof, and the transportation of passengers on street railroads within the city is undoubtedly a public service furnished the inhabitants of the city.

The allegation that the railway company is violating its franchises in the particulars above specified, does not give this Commission jurisdiction, because the City of Long Beach may by way of forfeiture of the franchises, or other appropriate procedure, enforce the terms thereof.

Therefore, the city and not this Commission has jurisdiction over the fares charged on the city street car system.

Complaint is made of a rate of more than 5 cents charged on a line which is part of the street/<sup>car</sup>system but cars operated on which, after running over the streets of the city for a considerable distance, turn on to one of its interurban lines and run thence for a short distance in the city, then through territory outside of the city and into the city again to a terminal in the city. This rate, in my judgment, is within the

jurisdiction of the city. Both terminals of this line are in the city. It operates largely over city streets and the fact that to provide service from one part of the city to the other, it traverses for a comparatively short distance, territory outside of the city, is not sufficient to rob it of its character as a street car line.

This Commission has power to fix the interurban rates on the interurban service, but this would not carry with it the power to compel a transfer given an interurban passenger to be accepted by the street car service, because manifestly to compel the street car service to accept a transfer, in effect, fixes a rate on the city system for the transportation of that passenger, and this would be an invasion by the Commission of the city's jurisdiction.

The conclusion is inevitable, therefore, that as to rates, including transfers for transportation on the local service, the City of Long Beach, and not this Commission, has control and jurisdiction, and the allegation in this complaint that the city authorities have failed or refused to exercise such control in no wise divests them of power, nor gives such control to this Commission.

Therefore, I hold that the Railroad Commission has no jurisdiction over the matters complained of, and I recommend that an order be made dismissing said complaint.

#### ORDER

Long Beach Chamber of Commerce having filed a complaint with this Commission against the Pacific Electric Railway Company, and a hearing having been had thereon and it appearing to the Commission that the matters complained

of are not within the jurisdiction of this Commission.

IT IS HEREBY ORDERED that the complaint of the Long Beach Chamber of Commerce vs. the Pacific Electric Railway Company be and the same is hereby dismissed.

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 25th day of September, 1913.

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*W. G. Gordon*  
*Mar. Thelen*  
*Edwin O. Edgerton*  
Commissioners.