

Decision No. 27595.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of EAST BAY STREET RAILWAYS, LTD., a corporation, for a Certificate of Public Convenience and Necessity to operate motor coach service in the County of Alameda, and for an order authorizing it to abandon certain street railway service in said County of Alameda, State of California.

ORIGINAL

Application No. 19578.

Frank S. Richards, for Applicant.
Harry A. Encell, for Peerless Stages, Protestant.
Orla St. Clair, for S. H. Dunbar, Protestant.
H. C. Lucas, for Pacific Greyhound Lines, Protestant.
F. D. Howell, for Motor Carriers' Association of California, Protestant.
Frank B. Durkee, for Department of Public Works of the State of California.
Albert L. Poe, City Attorney, for the City of San Leandro, in behalf of application.
Don Leidig and C. W. White, for the City of Hayward, in favor of the application.

HARRIS, COMMISSIONER:

O P I N I O N

In this application East Bay Street Railways, Ltd., seeks authority to abandon that portion of its Oakland-Hayward street car line, designated as Route No. 1, between Begler Avenue, in San Leandro, and the southeastern terminal in Hayward, and coincident therewith to establish bus service along the entire route with no change in the fare structure.

Public hearings having been conducted in this matter at San Francisco, Oakland and Hayward, and briefs having been filed, it is now ready for decision.

Applicant's local transportation system serving the East Bay cities extends from Hayward on the south to Richmond on the north, an over-all distance of approximately 28 miles. The coordinated service is provided through the operation of both street cars and busses. The system serves a population of approximately 500,000 with lines embracing ten municipalities, the largest of which is Oakland, in addition to traversing unincorporated portions of Alameda and Contra Costa Counties. The record shows that in 1933 applicant carried nearly 40-million revenue passengers in its 12-million miles of operation of both street cars and coaches.

The rail operations sought to be abandoned involve the southeasterly portion of the Oakland-Hayward Line between Begier Avenue in San Leandro and the end of the line at the south city limits of Hayward, a distance of 6.2 miles. The plan provides that rail service will be maintained on that portion of the line between Begier Avenue and the northwesterly terminal in the business district of the City of Oakland, a distance of 8.2 miles.

The plan of revised operation contemplates that local bus service will be provided between Hayward and San Leandro with through or express service along the line where the rail operation is maintained between Begier Avenue in San Leandro and downtown Oakland, with a further provision that the bus service on this line will be restricted to shuttle operation between the end of the car line in San Leandro and the south city limits of Hayward during Sundays, holidays and other times of light travel. Applicant's proposal herein to reduce rail operation between Oakland and Hayward, and provide motor coach service, is similar to a plan which it has effected in providing service between Oakland and Richmond where the company was authorized to abandon rail operation between Ashby and San Pablo Avenues, in Berkeley, and the Richmond Terminal of the

Richmond San Rafael Ferries, in Contra Costa County, by the Commission's Decision No. 26438, dated October 13, 1933, in Application No. 19129, and to establish motor coach service between Oakland and Richmond, as authorized in Decision No. 26425, dated October 16, 1933, in Application No. 18684. There is, however, a difference in the two plans of operation in that no stops are made between the end of the car line and downtown Oakland in the case of the Oakland-Richmond coach operation, which requires any local passengers along the rail line to transfer at the Ashby Terminal, whereas in the case of the Oakland-Hayward proposed service, passengers originating at or destined to points beyond the end of the car line will be picked up and discharged at points along the line where the rails and bus parallel each other. Under the revised method of street car and bus operation, as proposed herein, the headway of operation between Oakland and Hayward will be practically the same as that now offered on the street car line, viz., 10-minute service to San Leandro and 20-minute service to Hayward.

In both San Leandro and Hayward the tracks are located in the paved portion of 14th Street, which was formerly known as Castro Street in Hayward. In the unincorporated section of Alameda County between these two municipalities, the company operates over an exclusive right of way for a distance of 3.9 miles. The rail line sought to be abandoned was constructed in 1891 and is for the greater portion in a rundown condition and must be rebuilt in the near future if rail service is to be continued thereover. Applicant estimates it will cost \$560,000 to reconstruct this line with a single track, including paving obligations, and to reconstruct with a double track would cost over \$900,000. On the other hand, to carry out applicant's plan would require an expenditure of about \$84,000 in the following items:

8 new 30-passenger coaches (Twin Coaches) ...	\$66,000
Terminal facilities at Begier Avenue	15,000
Removal of rail, less salvage	3,000

Applicant urged that the following benefits would obtain if the proposed plan of substituting bus for rail operation were effected:

1. Large capital expenditure could be avoided.
2. Operating costs per mile could be reduced through the substitution of busses for street cars.
3. Obsolete street car equipment could be retired.

The average total operating cost of street cars on applicant's system was shown to be \$0.3073 per mile, whereas the operating cost for the new 30-passenger coaches was estimated at \$0.1804 per mile.

It was pointed out that the street cars operated on the No. 1 line are of the oldest type in applicant's fleet. These cars were assigned to this line because they have high wheels which make them suitable for long runs and it was contended that the per mile cost of operating these older cars exceeds the average for the system.

Mr. Lundberg, President of applicant company, testified it was his opinion that the over-all operating cost would be about the same if the proposed modified plan was put into effect as the present-day cost, pointing out that the operating cost of the added bus miles would be offset by reductions accruing through the abandonment of the older type of street cars which would be replaced by coaches with low operating cost.

Accompanying the application, and marked Exhibit "A," is a copy of an agreement entered into July 31, 1934, between applicant, City of San Leandro, City of Hayward, and County of Alameda, providing for the removal of the rails and resurfacing the street along the line sought to be abandoned. With respect to that portion of the rail line located in exclusive right of way between San Leandro and Hayward, applicant proposes to surrender the

right of way for highway purposes. This right of way is paralleled by a highway on each side of approximately 38 feet in width. The rail right of way, consolidated with the two existing highways, will provide a major highway with a right of way of 100 feet in width.

East 14th Street occupied by applicant's tracks is a main highway artery between Oakland, San Leandro and Hayward, and has been made a part of the State highway system. The record shows that the State Highway Commission has a plan to improve 14th Street along the section where it is proposed to abandon rail operations as soon as the tracks are removed.

The granting of this application was opposed by the Peerless Stages, Inc., S. H. Dunbar, interested in Peerless Stages, Inc., Pacific Greyhound Lines and Motor Carriers' Association of California. The evidence introduced in opposition to the application was presented almost entirely by the interests of the Peerless Stages, Inc., which carrier will hereinafter be referred to as the Peerless. This carrier operates a competing local bus line between Oakland and Hayward which, for the greater part, follows along the same streets as does applicant's line involved herein. The local service of the Peerless is coordinated with its through service between Oakland and both San Jose and Mt. Eden. Between San Leandro and Hayward the Peerless operation is divided between four routes, viz., 14th Street line, a line to the west of 14th Street via San Lorenzo, and two routes to the east of 14th Street, one via Foothill Boulevard and the other via Castro Valley. At this time the Peerless is providing a 10-minute service between Oakland and Hayward during a substantial portion of the day; between San Leandro and Hayward the operation is divided between the said four routes.

With respect to the fare structure on applicant's Oakland-

Hayward line as compared with the Peerless, both carriers operate their lines on a two-zone basis. Applicant's zone line is at the south boundary of San Leandro, while that of the Peerless is at the north boundary. Each has a 10¢ cash zone fare and 7-1/7¢ token or ticket rate. The inner zone on applicant's line is part of the major inner zone of the system, which extends north to the Alameda-Contra Costa County line, and free transfers are issued between all rail and bus lines in the inner zone which afford a distribution service in practically all the East Bay cities, except Hayward and Richmond, for passengers on the line involved herein originating at or destined to points between Oakland and San Leandro. This transfer privilege was urged by applicant as one of the primary reasons why it is in a better position to serve the San Leandro and Hayward district than the Peerless, as no transfers are issued between applicant and Peerless although the management of the latter signified its willingness to enter into such an agreement. This plan, however, was not acceptable to applicant.

A traffic estimate shows that of the total 135,500 passengers carried on applicant's line in the outer zone during a year, 67 per cent of the northbound passengers availed themselves of transfers to other lines; no record was made of the transfers honored on the southbound cars. The system average of transfer use is about 25 per cent. It would seem natural that the transfer use would be high on this line since the public is offered a faster service between Oakland and Hayward by the Peerless but without transfer privilege and in general at the same fare.

Peerless Exhibit No. 29 shows that it carries about 90 per cent of the inter-zone local passengers between Oakland and Hayward, and applicant the remaining 10 per cent.

The Peerless contends that applicant should not be per-

mitted to establish the motor coach operation as applied for herein, primarily on the ground that the district will not support two local bus lines and that the Peerless is now providing adequate bus service to the area affected by the proposed operation, which is conducted at an out-of-pocket loss, and with the establishment of bus operation by applicant the revenues will be further reduced by diversion of traffic from the Peerless to applicant, notwithstanding the fact that it is planned to discontinue rail operation between San Leandro and Hayward. The Peerless takes exception to Mr. Lundberg's statement that the total operating expenses of applicant will not be increased by carrying out the proposed plan of operation and contends that this change will result in increasing the total operating expense over \$100,000 per year due to increased bus operation in competition with rail along 14th Street between San Leandro and Oakland. It is the further position of Peerless that the proposed operation cannot be conducted at a profit.

Both applicant and the Peerless introduced many resolutions and petitions from various civic bodies, improvement clubs and other organizations throughout the district affected. Also each called many witnesses to testify in support of their respective positions. The Cities of San Leandro and Hayward, as well as the County of Alameda, signified, through official action, their approval of the plan to abandon rail operation between San Leandro and Hayward and coincident therewith to establish a substitute bus service which would permit of the improvement of East 14th Street as a wide thoroughfare. There is an abundance of testimony in the record to the effect that the present bus service of the Peerless is satisfactory and, on the other hand, the record shows there is a popular demand for a bus service by applicant with its transfer privilege and the removal of the rails on 14th Street between San Leandro and Hayward.

The record shows that the Highway Commission stands ready to proceed with the improvement of East 14th Street as soon as the tracks are removed and has funds available to complete the work in accordance with the proposed plan of improvement.

The Pacific Greyhound Lines, Inc., pointed out that it is the holder of a Certificate of Public Convenience and Necessity entitling it to transport passengers, their baggage and express, between Oakland and Hayward via East 14th Street and Foothill Boulevard as an optional route. Although this carrier has been operating schedules between the points in question, it has not thus far exercised the right to operate purely local schedules. It signified that its appearance in this matter was two-fold, first, to protect its existing right, and second, to urge the application of Section 50½ of the Public Utilities Act should it become a determining factor in the case.

Applicant and Peerless have been operating in competition between Oakland and Hayward along East 14th Street for many years, applicant employing street cars and Peerless employing motor coaches. Applicant in this proceeding seeks authority to discontinue its street car service and substitute motor coach service, over which route Peerless has the right to operate motor coaches. Applicant is seeking to continue this competition and not to inaugurate a new service. Furthermore, Section 50½ of the Public Utilities Act applies particularly to "passenger stage corporations," which are defined in Section 2½(b) of the Public Utilities Act, while applicant is a "street railroad corporation," as defined in Section 1(h) of said Act, although it operates motor coaches as well as street cars. It is clear that Section 50½ of the Public Utilities Act does not apply in the instant case. Reference is hereby made to the case of In re Fialer's Inc., 38 C.R.C. 895.

Turning now to a summary of the evidence, here we find the district between Oakland and Hayward provided with local street transportation by two carriers, one the applicant and the other the Peerless. Applicant or its predecessor was first in the field with its rails in 1891 and for many years enjoyed an exclusive business until the Peerless, in 1916, began the operation of a competing public transportation system through the operation of busses. When this bus operation was commenced it was not necessary for the management to secure a Certificate of Public Convenience and Necessity as is the case today. Applicant now finds itself in a position where it must decide to follow one of three courses, viz.,

1. Rebuild its line between San Leandro and Hayward at a substantial cost.
2. Abandon operations beyond San Leandro.
3. Substitute bus for rail operation.

The subject matter of this application deals with the last-mentioned plan of operation which the record shows to be practical in every way from an operating standpoint. It would seem, as a fundamental principal, that a utility in the field should be permitted to operate and serve its patrons in the most efficient and attractive manner. Where new devices or equipment have been perfected or methods of serving the public developed that are superior to the older ones, it is in public interest to permit a utility to keep pace with such improvements within the limits of the district it serves. In this case it is clear that if applicant is to be permitted to continue to serve the district between San Leandro and Hayward in the most practical and efficient manner under present-day conditions, it should be allowed to substitute bus for rail service. This will not only be less costly to the carrier but will afford the public faster and better service. To deny this right

to applicant would be the equivalent of telling it to incur unnecessary heavy expenses or surrender its business to its competitor. In reaching this conclusion I am mindful of the fact that applicant will offer great competition to the Peerless in serving this district with a population which cannot be expected to support two competing carriers operating on frequent headways, but this cannot be grounds for denying applicant the right to substitute bus for street car operation when, as a matter of fact, applicant was the pioneer in this field in the way of providing public transportation.

After carefully considering the record in this proceeding it is concluded that this application should be granted and the following form of order is recommended.

East Bay Street Railways, Ltd., is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearings having been held, briefs having been filed and the matter having been submitted,

IT IS HEREBY ORDERED that the East Bay Street Railways, Ltd., is authorized to abandon street car service and thereafter

remove the facilities upon that portion of its No. 1 (Oakland-Hayward) Line, described as follows:

Commencing at the intersection of East 14th Street and Begier Avenue, City of San Leandro, thence easterly along East 14th Street and Castro Street through the City of San Leandro, unincorporated territory, and the City of Hayward, to a point in Castro Street near the easterly boundary of the City of Hayward,

subject, however, to the following conditions:

- (1) Applicant shall give the public not less than ten (10) days' notice of the discontinuance of the operation over the line involved herein by posting notices in all cars operated over said line.
- (2) Rail service shall not be abandoned until a substitute bus service is provided by applicant, as hereinafter authorized.
- (3) The abandonment of the facilities shall be made substantially in accordance with the terms of the agreement entered into between applicant and the Cities of San Leandro and Hayward and the County of Alameda.
- (4) Applicant shall within thirty (30) days thereafter notify this Commission of the abandonment of the rail service herein authorized and of the compliance with the conditions of this order.
- (5) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof, unless further time is granted by subsequent order.

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY
DECLARES that with the abandonment of rail service as hereinbefore authorized, public convenience and necessity require the operation by East Bay Street Railways, Ltd., of an automotive passenger bus service for the transportation of passengers in the County of Alameda and between termini as shown on Exhibit "C" attached to the application, described as follows:

Beginning at a point in Castro Street near the easterly boundary of the City of Hayward, thence along Castro Street and East 14th Street through the City of Hayward, unincorporated territory, the Cities of San Leandro and

Oakland to 1st Avenue in the City of Oakland, thence along 1st Avenue to 12th Street; along 12th Street to Jefferson Street; along Jefferson Street to 13th Street; along 13th Street to Oak Street; along Oak Street to 12th Street and thence along 12th Street, 1st Avenue, East 14th Street and Castro Street to the point of beginning.

IT IS HEREBY FURTHER ORDERED that a Certificate of Public Convenience and Necessity for said service be and the same is hereby granted to East Bay Street Railways, Ltd., to operate as a unified and consolidated portion of its system, subject, however, to the following conditions:

- (1) Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
- (2) Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the date hereof, a tariff or tariffs constructed in accordance with the requirements of this Commission's General Orders and containing rates and rules which, in volume and effect, shall be identical with the rates and rules now in force on its street car line hereinbefore authorized to be abandoned.
- (3) Applicant shall file, in duplicate, and make effective within a period of not exceeding thirty (30) days from the date hereof, time schedules covering the service herein authorized, in a form satisfactory to the Railroad Commission.
- (4) Applicant shall commence operation of said service concurrently with the abandonment of street car service by it as hereinbefore authorized.
- (5) Applicant is authorized to turn its motor vehicles around at the termini route herein authorized, or at points where schedules may terminate along said route, by operating such motor vehicles in either direction around the block at the termini of said route, or at points where schedules may be terminated along said route, and to carry passengers thereon and thereover, provided, however, that such turnaround route shall not encompass more than one square city block at such termini as traffic regulations of political subdivisions may require.

- (6) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been received.
- (7) No vehicle may be operated by applicant herein unless said vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Commission.

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.

The effective date of this Order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 28th day of January, 1935.

Leon Whitely

W. J. Linn

M. B. Lewis

W. H. ...

Frederic R. ...

Commissioners.