

Decision No. 27719.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of Application of SAN JOSE RAILROADS, PENINSULAR RAILWAY COMPANY and VISALIA ELECTRIC RAILROAD COMPANY for certificate of public convenience and necessity for the exercise of resettlement franchise granted by Ordinance No. 2438 of the City of San Jose, for authority to abandon all franchises previously held by applicants, or any of them, and for the abandonment of all street railway lines which are not included in said resettlement franchise.

Application No. 19737.

ORIGINAL

E. J. Foulds, for Applicant.

Clarence Goodwin, City Manager,
Archer Bowden, City Attorney, City of San Jose.
In Support of the Application.

BY THE COMMISSION:

O P I N I O N

In this application San Jose Railroads, Peninsular Railway Company and Visalia Electric Railroad Company request authority to exercise a resettlement franchise granted by the City of San Jose in connection with a general rearrangement of their local transportation system in that city.

A public hearing was held at San Jose, January 30, 1935, by Examiner Hunter.

Under the provisions of Ordinance No. 2438 applicants would surrender all rights, privileges and franchises now held by them in the City of San Jose and in lieu thereof would receive renewal for a period of 15 years of certain street railway franchises and be given a 15-year right for bus operation over streets serving the districts now reached by rail lines which are to be abandoned.

The rail lines on which it is proposed to continue operation are as follows:

- (a) Along First Street from the northerly City Limits of San Jose to Reed Street.
- (b) Along Reed Street between First Street and Seventh Street.
- (c) Along Seventh Street between Reed Street and Keyes Street.
- (d) Along Santa Clara Street and The Alameda from the westerly to the easterly City Limits of San Jose.
- (e) Along North Seventeenth Street between E. Julian Street and the northerly City Limits of San Jose.
- (f) Along East Julian Street from North Seventeenth Street to North Eleventh Street.
- (g) Along North Eleventh Street between East Julian Street and East St. James Street.
- (h) Along East St. James Street between North Eleventh Street and North Sixth Street.
- (i) Along North Sixth Street between East St. James Street and St. John Street.
- (j) Along St. John Street between North Sixth Street and First Street.
- (k) Along Second Street between St. John Street and East San Fernando Street.
- (l) Along San Fernando Street from Second Street to Delmas Avenue.
- (m) Along Delmas Avenue between West San Fernando Street and San Carlos Street.
- (n) Along Bassett Street from First Street to Market Street.
- (o) Along Market Street (including Little Market Street) from Bassett Street to Park Avenue.
- (p) Along Park Avenue from Market Street to Meridian Road.
- (q) Along Josefa Street between Park Avenue and San Carlos Street.
- (r) Along San Carlos Street between Delmas Avenue and the Westerly City Limits of San Jose.
- (s) Along Bird Avenue and Coe Avenue from San Carlos Street to the southerly City Limits of San Jose.
- (t) Along Meridian Road between Park Avenue and San Carlos Street.

The franchise contains the provision, however, that bus operation will be substituted for the First Street rail line (described in items (a), (b) and (c) listed above) on or before December 31, 1937, and that upon the completion and opening of Southern Pacific Company's new main line passenger station, near Cahill Street, that portion of the Market Street line north of St. John Street (items (n) and (o)) shall terminate, this being the trackage which now serves the existing Southern Pacific station.

Street car service in the City of San Jose is at the present time provided by applicant, San Jose Railroads, and ap-

plicant, Peninsular Railway Company (and Visalia Electric Railroad Company, its assignee), maintains certain operations in connection with the movement of freight. The resettlement franchise grants these latter companies a continuance of this switching privilege.

The remainder of the existing trackage, including all materials with the exception of the overhead, becomes the property of the city. It is the intention to remove these tracks and repair the street without expense to the railroads. The track to be abandoned is described in the order of this decision.

Under the franchise San Jose Railroads is also granted the right and franchise, for a period of fifteen (15) years, for furnishing service by motor coach along two routes, which in general serve the territory now reached by the rail lines, which it is proposed to abandon. A description of these routes is as follows:

- (a) Commencing at a loop consisting of Delmas and Spencer Avenues, Willow Street and Atlanta Avenue; thence along Atlanta Avenue easterly to Prevost Street; thence along Prevost Street to Home Street; thence along Home Street to Spencer Avenue; thence along Spencer Avenue to San Fernando; thence along San Fernando Street to Market Street; thence along Market Street (east of the City Hall Park) to San Carlos Street; thence along San Carlos Street to Fourteenth Street; thence along Fourteenth Street to William Street; thence along William Street to Tenth Street; thence along Tenth Street to a loop consisting of Tenth, Keyes, Ninth and Bestor Streets.
- (b) Commencing at a loop near the Southern Pacific Company's present main line station, said loop being bounded by Bassett Street, Market Street, Julian Street and First Street; thence along First Street to Alma Avenue; thence forming a loop westerly along Alma Avenue to Sherman Street, along Sherman Street to Floyd Street; thence along Floyd Street to Almaden Avenue; thence along Almaden Avenue to Willow Street; thence along Willow Street to First Street.

It is provided, however, that upon the removal of Southern Pacific passenger station to its new west side location,

that portion of route (b) described above, north of Santa Clara Street, shall terminate and in lieu thereof there is granted the right to operate along Santa Clara Street westerly from First Street to a terminus at the new station.

It further provides that upon the abandonment of the rail lines on First, Reed and Seventh Streets, on or before December 31, 1937, San Jose Railroads shall have the right to operate a motor coach service over these streets.

The only objection to the granting of this application, which has been presented to the Commission, is that of a number of property owners and residents in and in the vicinity of Delmas Avenue, south of San Carlos Street. At the present time San Jose Railroads maintains a rail line on this street which it proposes to abandon, substituting a bus service on adjacent parallel streets one block to the east. Protestants request that applicant be required to retain its street car service on Delmas Avenue, or if such rail service is abandoned that the busses follow the route now taken by the cars. Applicant, San Jose Railroads, states that the physical condition of the pavement in Delmas Avenue is such that it is impracticable to maintain a satisfactory bus service along this street, but that it is agreeable to provide such service if and when such operation is feasible. The Commission has given consideration to the protest of these residents and property owners and while granting the certificate along the route applied for, it will be with the provision that service on Delmas Avenue be restored as soon as the pavement on that street is in condition for safe and satisfactory operation of motor coaches.

We are advised that the San Jose Railroads acquired, prior to the effective date of the Public Utilities Act, the properties of San Jose and Santa Clara County Railroad Company, subject

to that company's outstanding bonded indebtedness. From 1912 to 1933 the bonds of San Jose and Santa Clara County Railroad Company were reported as a liability of San Jose Railroads. During 1933 the outstanding bonds of San Jose and Santa Clara County Railroad Company were transferred back to the books of that company, on the theory that the San Jose Railroads did not assume the payment of such bonds.

The resettlement franchise (Ordinance No. 2438), filed in this proceeding, provides that as of the effective date of such franchise all existing franchises, rights and privileges now held by the San Jose Railroads and Peninsular Railway Company (and/or Visalia Electric Railroad Company, its assignee) shall be taken and deemed to be surrendered to the City of San Jose and shall thereupon become and be terminated, cancelled and annulled. The City of San Jose accepts the surrender of such existing franchises, rights and privileges, in lieu of which the resettlement franchise is granted, in consideration of the services to be rendered by the holders of the resettlement franchise upon the routes described therein, in accordance with the terms of the resettlement franchise. The San Jose and Santa Clara County Railroad Company is not a party to the resettlement franchise, though its outstanding bonds are a lien on some of the properties now owned and operated by San Jose Railroads. It seems to us that the holders of the bonds of San Jose and Santa Clara County Railroad Company should be accorded certain rights and privileges under the resettlement franchise, so that if they are obliged to take over the properties on which they have a lien, they will also acquire the rights and privileges necessary to operate the same.

After giving full consideration to this matter the Commission is of the opinion that public convenience and necessity

require that applicant accept this resettlement franchise and a certificate will be granted accordingly. In so far as the bus operation is concerned, however, applicant, San Jose Railroads, 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

A public hearing having been held in the above entitled proceeding and the matter having been submitted,

The Railroad Commission of the State of California hereby finds that public convenience and necessity require that San Jose Railroads, Peninsular Railway Company and Visalia Electric Railroad Company surrender and abandon to the City of San Jose all franchises held by them in said City and to accept and exercise the rights, privileges and franchises granted to them by the City of San Jose in Ordinance No. 2438, dated November 13, 1934.

IT IS HEREBY ORDERED that authority is hereby granted to San Jose Railroads, Peninsular Railway Company and Visalia Electric Railroad Company, under Section 51(a) of the Public Utilities Act, to surrender and abandon all of their respective existing street railway franchises in the City of San Jose, County of Santa Clara, to the City of San Jose and to abandon all street railway operations and surrender to said City all rails, fastenings and track materials on the following streets:

- (1) Along W. San Fernando Street, from Delmas Avenue to a point 50 feet west of Montgomery Street.
- (2) Along W. San Carlos Street, from First Street to Market Street.

- (3) Along Second Street, from San Fernando Street to San Antonio Street.
- (4) Along San Antonio Street, from Second Street to Third Street.
- (5) Along Third Street, from San Antonio Street to Reed Street.
- (6) Along E. San Carlos Street, from Fourth Street to Seventh Street.
- (7) Along Seventeenth Street, from Santa Clara Street to Julian Street.
- (8) Along Julian Street, from Seventeenth Street to Twenty-first Street.
- (9) Along Delmas Avenue, from Willow Street to San Carlos Street.
- (10) Along San Carlos Street, from Delmas Avenue to Market Street.
- (11) Along Market Street, from San Carlos Street to Park Avenue.
- (12) Along E. San Fernando Street, from Second Street to Fifteenth Street.
- (13) Along Fifteenth Street, from San Fernando Street to San Carlos Street.
- (14) Along Tenth Street, from Santa Clara Street to Keyes Street.
- (15) Along S. First Street, from Reed Street to Alma Street.
- (16) Along Willow Street, from First Street to McLellan Avenue.

Together with any and all other railway tracks or appurtenances of the applicants in or upon public streets of the City of San Jose other than those described in Section 1 of said franchise Ordinance.

This authority is granted subject to the following condition:

- (1) The authority herein granted shall become effective when applicants have filed with the Commission an indenture subjecting to the lien of the indenture securing the payment of the bonds of San Jose and Santa Clara County Railroad Company such rights and privileges under said resettlement franchise as may be necessary to operate the properties on which said bonds are a lien.

IT IS HEREBY FURTHER ORDERED that a certificate of public convenience and necessity is hereby granted to San Jose Railroads,

Peninsular Railway Company and Visalia Electric Railroad Company to exercise the rights, privileges and franchises granted to it by Ordinance No. 2438 of the City of San Jose, subject to the following conditions:

- (1) Applicants shall file their written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.
- (2) Applicants shall, within a period of not to exceed ninety (90) days from the date hereof on not less than ten (10) days' notice to the Commission and the public, amend or reissue its tariff in accordance with the requirements of the Commission's general orders and the authority herein granted. The volume of the rates and the effect of the rules to be established shall be identical with those now maintained for the rail service for which the proposed operation is to be substituted.
- (3) Applicants shall file, in triplicate, and make effective within a period not to exceed ninety (90) days from the date hereof, on not less than five (5) days' notice to the Commission and the public, time schedules according to form provided in General Order No. 83, covering the service herein authorized.
- (4) 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 secured.
- (5) No vehicle may be operated by applicants herein

(5) continued

unless such vehicle is owned by said applicants or is leased by them under a contract or agreement on a basis satisfactory to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that if and when the pavement of Delmas Avenue, south of San Fernando Street, is in such condition as to be safe and satisfactory for the operation of motor coach service, applicants shall abandon service on Spencer Avenue, Home Street and Prevost Street, north of Atlanta Avenue, and shall in lieu thereof operate motor coach service on Delmas Avenue, between said San Fernando Street and Atlanta Avenue.

IT IS HEREBY FURTHER ORDERED that the authority granted in this decision is subject to the following conditions:

- (1) The abandonment of any rail service herein authorized shall be coincident with the establishment of the corresponding service by motor coach.
- (2) Notice of the abandonment of any rail service shall be given the public by posting suitable notice in all cars of applicant for at least ten (10) days prior to the effective date of said abandonment. Said notice shall also describe the route of the motor coach service to be substituted for said rail service.
- (3) 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.
- (4) The Commission reserves the right to make such further orders relative to this matter as to it

(4) cont'd.

may seem right and proper and to revoke its permission if, in its judgment, public convenience and necessity demand such action.

For all other purposes the effective date of this Order shall be the date hereof.

Dated at San Francisco, California, this 4th day of February, 1935.

Leon Whitney

M. J. Carr

M. B. Harris

Walter Brown

Bruce D. White

Commissioners.