

Decision No. 27760

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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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.

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) Application No. 19578
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ORIGINAL

BY THE COMMISSION:

ORDER DENYING REHEARING

Petition for a rehearing of our Decision No. 27696 in the above entitled matter having been filed by Peerless Stages, Inc., S. E. Dunbar, Pacific Greyhound Lines, Inc., and Motor Carriers' Association of California; the Commission having carefully considered the said petition, and each and every allegation contained therein, and being of the opinion that no good cause for the granting of a rehearing is therein made to appear,

IT IS HEREBY ORDERED that the said petition for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 25th day of February, 1935.

Leon ...
M. A. ...
M. B. ...
Grant ...
Commissioners

I dissent in part. The Key System should be permitted to abandon its street car service between San Leandro and Hayward and to substitute buses therefor, but the Commission should give further consideration to the question of permitting applicant to operate buses west of San Leandro.

The granting to applicant of a certificate of public convenience and necessity to operate through buses between Oakland and Hayward is fundamentally unsound. It strikes at the very existence of a carrier which has provided a satisfactory bus service to the people of Hayward over a period of years. The record shows conclusively that the Peerless Stages is adequately serving the field and is handling about 90% of the traffic involved. The Key System is handling less than 10% of this traffic. The conclusion is inescapable that the Peerless Stages has developed this traffic because of the unsatisfactory and inadequate service of the applicant.

The majority opinion is largely based upon the theory that the certificate merely grants the right to an already existing competitor to improve its service. The reasoning behind this theory is specious only. Practically, the Key System is not a material competitor of the Peerless Stages and has not been for years. But it will be if it is allowed to operate through buses between Hayward and Oakland. Thus in effect the

majority is placing a new competitor in the field without a showing of the inadequacy of the existing carrier.

The majority recognizes, and it must be conceded, that there is not room for two competing carriers in this territory. Yet if this certificate is granted the Key System will probably haul in excess of 50% of the traffic because of its offer to give universal transfers. It must be conceded that the universal transfer privilege will be an improvement upon the existing service and that there has been a public demand for this privilege. However, in my opinion, Section 22 of the Public Utilities Act gives the Commission authority to require the Key System to enter into a transfer arrangement with the Peerless Stages.

The Commission owes a moral and paramount obligation to the public to preserve an adequate transportation system. Certainly this obligation is not being fulfilled by placing a new competitor in the field to compete with a carrier which is already adequately serving the public. The majority order in effect jeopardizes rights of the public south of Hayward, by imperiling the Peerless Stages. This company is now operating at a deficit and the loss of a substantial portion of the Hayward revenue would be a serious blow to it.

The best interests of the public transcend in the field of regulation any consideration of any private interest. I am not here advocating the protection of any carrier at the expense of public interest. Contrarily, I hold as patent that each of the involved carriers will and must survive or perish, measured by the single test of public interest. In this case it seems clear to me that the public will be better served by maintaining in full vigor the existing and adequate service of the Peerless Stages rather than allowing an unnecessary and unwarranted competition to sap its life

blood.

Hence I believe a rehearing should be granted to accomplish the purpose outlined in the foregoing dissenting opinion.


Commissioners.

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OFFICE OF THE ATTORNEY GENERAL
STATE OF MASSACHUSETTS