

Thereupon the Commission directed that the application of Pacific Greyhound Lines, Inc. be reopened and set for hearing on December 4, 1936, for the purpose of determining whether the order first made should be rescinded or amended in any particular. Hearing having been held, and all interested parties appearing, the matter again was submitted for such further action as the Commission might deem proper.

We are convinced that we were in error in granting to Pacific Greyhound Lines, Inc. an unqualified right to the use of the bridge. Because, however, of the slight harm resulting from the error, or likely soon to result, we do not feel that an immediate rescission of the order is appropriate. But in view of the seriousness of the questions involved it is incumbent upon us to promptly express our opinion concerning the extent of the authority which we should exercise in similar matters and the procedure to be followed in the future.

We shall not here consider at length the powers granted to the California Toll Bridge Authority to control the use and operation of the bridge, or the terms of those agreements which it has made with Key System and Interurban Electric Railway Company for the furnishing of passenger transportation service thereon, those matters having been extensively presented in our Decision 28671. However, by adverting briefly to those agreements, we may more readily grasp the significance of the protest of the Key System, now joined in fully by Interurban Electric Railway Company, to the Commission's order permitting the Greyhound Lines to route its buses over the bridge.

It should first be stated that these protests are not directed to the use of the bridge by the Greyhound Lines for the conveyance of passengers to or from points beyond the East Bay cities, but only to its operation of buses in such competitive local transportation as is prohibited by the terms of the agreements which they have made with the Toll Bridge Authority.

The statute creating the California Toll Bridge Authority empowers it "to grant permits to and to enter into agreements with, steam, electric, bus, railroad and other transportation companies, public or private, * * * for the use of any such toll bridges * * * upon such terms and conditions as may be mutually agreed upon; provided * * * the California Toll Bridge Authority shall first determine that such permit or contract is advisable or necessary for the financing of such bridge * * * or for the proper or necessary or safe use of such bridge * * * and for the best interests of the state". (Statutes 1929, p. 1489, Sec. 16, as amended.)

In accordance with the powers thus conferred, the Toll Bridge Authority entered into elaborate written agreements with Key System and Interurban Electric Railway Company to the effect, in substance, that conditioned upon the complete abandonment of ferry passenger service by these electric railway and ferry carriers, they alone shall be granted the right to conduct a local transportation service by means of the special bridge railway and terminal facilities planned to be constructed by the Toll Bridge Authority through a loan from the Federal Reconstruction Finance Corporation, and these grantees "shall have the exclusive right to carry local passengers for hire," over the bridge. The agreements then proceed to define the term "local passengers" as those who have both origin and destination within a described area, including, in general, the City of San Francisco and each of the East Bay cities.

There are certain exceptions, however, to the exclusive grant thus made to the two electric rail carriers. One exception relates to service over the bridge by any carrier "In equipment at the time being used primarily for the transportation of passengers other than local passengers." It is upon this proviso that Pacific Greyhound Lines, Inc. relies in justification of the passenger bus service it has rendered over the bridge between San Francisco and East Bay points since receiving the Commission's authorization of November 2, 1936, to so route its equipment. It seemingly asserts the right to employ in

this local service any of its automotive equipment purchased for and used primarily in its extensive transportation service to points beyond, whether or not that equipment when carrying local passengers over the bridge is actually coming from or destined to a more distant point.

On the other hand, the Key System and the Interurban Electric Railway place a very different construction upon the agreements made with the Toll Bridge Authority. They announce their intention to resist the intrusion of any competitive local carrier over the bridge, and, although now addressing their arguments only to this Commission, they declare their purpose to call upon the Toll Bridge Authority to take proper steps to enforce the provisions of their respective agreements.

It thus becomes apparent that the real issue developed in this proceeding arises out of the interpretation of contracts to which the Commission is not a party and over which it cannot directly assert any control. We have heretofore carefully considered and approved those agreements, and believe that there exists little doubt as to their meaning and intent. But we do entertain grave doubt whether this Commission is the proper body to declare the construction of these agreements, or to enter into any understanding with the signatory parties as to their application in this or other cases. A more appropriate procedure, we believe, will be to await the judgment of the Toll Bridge Authority, and when the Pacific Greyhound Lines, Inc. obtains from that body either a full or restricted grant for the use of the bridge, we may then exercise our jurisdiction to determine whether such a use of its transportation facilities is in the public interest.

It is unfortunate that this Commission has inadvertently proceeded to entertain this application of the Greyhound Lines, and of other transportation companies, for the use of the bridge without demanding evidence that the applicant had obtained the requisite

authority to so operate its facilities. We believe that comity requires, if not the law itself, that we reserve our judgment in all such cases until approval is obtained from the state body possessing coordinate jurisdiction over the use of the bridge, either formal or informal approval, as its rules appropriately may provide.

As already suggested, however, there is no urgency in connection with the instant proceeding which would demand fully rescinding the authority which has been granted to Pacific Greyhound Lines, Inc. Such action would foreclose it completely from the use of the bridge for the transportation of all passengers, regardless of their destination, a result which the Toll Bridge Authority doubtless does not contemplate and which the protestants here do not urge.

Therefore, we may fittingly order merely that the submission of this matter be set aside, and the within application be held open for the Commission's further action when the Pacific Greyhound Lines, Inc., by timely supplemental petition, shall furnish evidence that it has obtained the requisite authority to use the bridge to the extent requested in its application.

Good cause appearing, IT IS SO ORDERED.

The foregoing Opinion and Order on Rehearing is hereby approved and ordered filed as the Opinion and Order on Rehearing of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10 day of December, 1936.

W. B. Shaw
Leon A. White
Malcolm
Stanley D. White
Commissioners.