

ORIGINAL

Decision No. 31272

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MARKET STREET RAILWAY COMPANY,
for an order of the Railroad
Commission of the State of Cali-
fornia authorizing emergency in-
creases in certain fares.

Application No. 21115
(Second Supplemental)

WILLIAM M. ABBOTT and MAX THELEN, for
Market Street Railway Company, Applicant.

JOHN J. O'TOOLE, City Attorney, and
DION R. HOLM, Deputy City Attorney,
for the City and County of San
Francisco, Protestant.

FRANK S. RICHARDS and THOMAS K. MCCARTHEY,
for East Bay Transit Company and Key
System, Interested Parties.

EDWARD P. E. TROY, in propria persona.

BY THE COMMISSION:

FOURTH SUPPLEMENTAL OPINION

In this supplemental application authority is sought to
establish a basic 7-cent fare to replace the existing 7-cent fare
with four tokens for 25 cents, on the lines of the Market Street

Railway thus eliminating the present token fare. (1)

Public hearings were conducted before the Commission en banc at San Francisco, on November 1st, 4th and 7th, 1938, and the matter is now under submission and ready for decision.

A general discussion of this carrier's operations from a physical, financial and operating standpoint appears in the former decisions in this proceeding. As no good cause would be served by repeating it herein this opinion and order will pick

(1)

<u>ITEM</u>	<u>Present Fare Structure</u>	<u>Proposed Fare Structure (2nd Suppl. App.)</u>
Fares in San Francisco, other than on interurban cars, with free transfers (Tokens shall sell at the rate of 4 for 25 cents)	7¢ cash or one token	
Cash fare in San Francisco, other than on interurban cars, with free transfers.		7¢
School children (S.F.) with free transfers to other lines of the company for continuous travel in the same general direction	16 rides for 50¢	16 rides for 50¢
Sunday and Holiday Pass, for use in San Francisco	25¢	25¢
South San Francisco Line	7¢ cash or one token	7¢
San Mateo Line	7¢ cash or one token where 5¢ is charged at present, and no change in bal- ance of present fare structure*	7¢ cash fare, eliminating sale of tokens at the rate of 4 for 25¢ fare to be in accordance with tariff filed with Railroad Commission May 23, 1938

* Present refers to May 9, 1938

up the record from the point it was left by the prior decisions. (2)

In Decisions Nos. 29889 and 30849, the foundation was laid to again review the entire matter if the respective fare structures authorized did not prove to be satisfactory. (3) This is the third time applicant has been before the Commission since April 1, 1937, seeking an increase in its fares. We now have the results of operation that obtained following the two fare changes

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- (2) By Decision No. 29889, dated June 21, 1937, applicant was authorized to charge 2¢ for transfers to be superimposed upon its basic 5¢ fare. This transfer charge became effective July 6, 1937.

By Decision No. 30849, dated May 9, 1938, applicant was authorized to change its basic 5¢ fare, with a charge of 2¢ for a transfer, to a level of 7¢ cash in combination with four tokens for 25 cents. This new fare structure became effective May 29, 1938.

- (3) In Decision No. 29889 the opinion states as follows:

"The Commission has concluded that the existing 5-cent fare, in combination with a 2-cent charge for a transfer, affords the greatest promise for the most favorable results to both the traveling public and the applicant carrier. Such a plan can be adopted upon an experimental basis and if it develops that this fare is not fulfilling the requirements, the entire matter can be reviewed and a record developed which will place the Commission in a better position to select a form of fare best suited to meet the needs of the public and provide a revenue sufficient to meet the cost of performing the service."

The following is taken from Decision No. 30849:

"A careful review of this record leads to the conclusion that applicant should be authorized to put into effect a basic fare of seven cents cash, with four tokens for 25 cents, with the understanding that the proceeding will be held open for further investigation and study, and if upon a more complete record it appears that this fare structure should be changed, such an order will be entered."

referred to above, after the company departed from its basic 5 cent fare; namely, a charge of 2 cents for a transfer from July 6, 1937, to May 29, 1938, and a 7 cent cash fare with four tokens for 25 cents from May 29th to the present time.

The evidence adduced at the hearings on this second supplemental application may be summarized as follows:

FINANCIAL POSITION

The record shows that the Market Street Railway Company, as of August 31, 1938, had outstanding \$31,926,450.00 par value of capital stock segregated as follows:

Prior preference stock, 6% cumulative dividends from April 1, 1920	\$11,618,500.00
Preferred stock, 6% dividends cumulative from April 1, 1921	4,986,800.00
Second preferred stock, 6% non-cumulative dividends	4,673,700.00
Common Stock	10,647,400.00

No dividends have been paid on the prior preference stock since January 1, 1924. No dividends have ever been paid on the preferred, second preferred or common stock.

As of September 30, 1938, Market Street Railway Company reports \$4,725,000 of its first mortgage 7 per cent bonds outstanding in the hands of the public. In addition, \$2,361,500 of its first mortgage 7 per cent bonds were alive in the sinking fund. The bonds are dated April 1, 1924, and are due April 1, 1940. The interest is payable quarterly. The payment of the bonds is secured by a trust indenture which is a lien on all the property owned by the company. The indenture obligates the company to pay into the regular sinking fund \$75,000 quarterly, and the

interest accruing on the bonds held alive in the sinking fund. The company has not made sinking fund payments due July 1, and October 1, of the current year. The trust indenture also obligates the company to pay into a special sinking fund, the proceeds realized from the sale of property released from the lien of the indenture. Such proceeds must be used to acquire bonds, which are cancelled.

The record shows that the company has not been able to redeem its 7 per cent bonds through the issue of bonds carrying a lesser interest rate. Its bond issue in relation to the investment in its property is not excessive.

Because of the purchase of equipment, the company is indebted to The J. G. Brill Company in the sum of \$32,724.00 and to Twin Coach Company of Kent, Ohio, in the sum of \$20,965.00.

Its current liabilities as of August 31, 1938, are reported at \$2,359,261.39 segregated as follows:

Loans and notes payable	\$1,375,626.90
Audited accounts and wages payable	901,752.20
Matured interest and rents unpaid	17,429.25
Accrued interest and rents payable	<u>64,453.04</u>
Total	<u>\$2,359,261.39</u>

The loans and notes payable include a \$75,000.00 three per cent note payable to Wells Fargo Bank & Union Trust Co.; \$400,000.00 of four per cent notes payable to Anglo California National Bank; \$24,480.00 of 6% notes payable to Johnson Fare Box Company and \$876,146.90, six per cent open account indebtedness, due Standard Gas and Electric Company.

The audited accounts and wages payable reported at \$901,752.20 include \$660,341.90 due Pacific Gas and Electric Company. On the latter amount, Market Street Railway Company is paying interest at the rate of 6 per cent per annum.

RESULTS OF OPERATION

Financial

The following tabulation is taken from Exhibits Nos. 27 and 28:

<u>ITEM</u>	<u>EXHIBIT 27</u> <u>12 Mos.Period</u> <u>Ended</u> <u>Sept. 30, '38</u>	<u>EXHIBIT 28</u> <u>9 Mos.Period</u> <u>Ended</u> <u>Sept.30, '38</u>
Operating Income		
Railway Operating Revenue	\$6,693,858	\$4,877,808
Railway Operating Expenses	5,828,628	4,284,502
Net Revenue Railway Operation	865,230	593,305
Taxes Assignable to Railway Operation	443,266	342,522
Operating Income	421,963	250,783
Total Non-Operating Income	7,932	5,996
Deductions from Gross Income		
Interest on Funded Debt	343,387	254,898
Interest on Unfunded Debt	98,866	76,341
Total Deductions from Gross Income	468,559	350,460
Net Income	38,664*	93,681*
Depreciation not in the above	500,000	375,000

*Denotes Red Figure.

The above tabulation shows that applicant has failed to earn its interest charges and depreciation by (a) \$538,664 for the 12 month period ended September 30, 1938, which is an average of \$44,889 per month, and (b) \$468,681 for the 9 month period ended September 30, 1938, which is an average of \$52,076 per month.

For the year ended September 30, 1938, the company's payments to the city other than property taxes amounted to \$196,501.61⁽⁴⁾.

(4) Exhibit No. 43 shows the following payments to the city for the year ended September 30, 1938:

PAVING:		\$ 92,938.61
System Maintenance	\$ 77,766.97	
Equipment Costs	6,639.61	
Paving Costs - Reconstruction Work	8,532.03	
CITY'S W.P.A. AND P.W.A. PROJECTS:		36,003.00
Pole Moving	\$ 25,000.44	
Track Work	11,002.56	
STREET LIGHTING		12,672.00
CITY FRANCHISE TAX		42,788.00
GOLDEN GATE PARK RIGHT OF WAY		100.00
FERRY LOOP RENTAL (STATE)		12,000.00
		<u>\$196,501.61</u>

Traffic

The following tabulation is taken from Exhibit No. 34:

PASSENGERS CARRIED

(Including Transfer Passengers)

	<u>Market St. Ry. Co.</u>	<u>Municipal Ry.</u>	<u>Combined</u>
12 mos. ended June 30, 1937	210,547,524	80,754,084	291,301,608
12 mos. ended June 30, 1938	163,265,466	90,290,519	253,555,985
Increase	47,282,058*	9,536,435	37,745,623*
Percentage	22%*	12%	13%*

* = Denotes Red Figure

It is apparent from this table that the increase in fares on the Market Street Railway has resulted in a substantial diversion from applicant's lines to those of the Municipal Railway. It should be pointed out, however, that beginning July 6, 1937, there was placed in effect a charge of 2 cents for a transfer on applicant's lines. This charge materially reduced transfer riding on the lines of the Market Street Railway.

It is apparent, from the above figures, that the amount of the diversion from the lines of the Market Street Railway to those of the Municipal Railway was in excess of 9,536,435 passengers, as shown above, due to the fact that on the combined operation there was a diminution of travel amounting to 13%. It is only reasonable to conclude that had the two systems been operating on the same fare structure, the loss to each would have been substantially the same on a percentage basis. Therefore, the diversion from the lines of the Market Street Railway to those of the Municipal Railway was

substantially in excess of 10,000,000 passengers.

ESTIMATED REVENUE WITH 7-CENT FARE

With respect to the probable change in gross revenue that would obtain if applicant's plan of eliminating the tokens were placed in effect, this is a speculative matter as is evidenced by the various estimates presented in this record on the subject. The following tabulation shows a summary of these estimates of the probable increase in revenue that would have obtained had the token fare of 6½ cents been replaced by a 7-cent cash fare for the four-month period of June to September, inclusive, 1938:

<u>Witness and Exhibit Number</u>	<u>Estimated Increase in Gross Revenue (4-month Period)</u>
Kahn, Exhibit No. 36 (Applicant)	\$ 110,392
Hall, Exhibits Nos. 45 and 46 (Commission Transportation Engineer)	55,610 60,512
Beck, Oral Testimony, Transcript P. 418 (Valuation & Rate Engineer) (City Attorney's Office, S.F.)	9,931

Exhibit No. 36 is based upon the assumption that the only curtailment in revenue traffic which the company would have suffered with the proposed increase in fare would have consisted of a decrease of 5 per cent of the present token riders on the competitive lines; or in other words, it was assumed that there would have been no decrease or diminution of the token riders on the non-competitive lines.

Exhibits Nos. 45 and 46 are based upon the assumption that there would have been a decrease of 5 per cent in the token rides on non-competitive lines and 8 per cent on competitive lines.

Mr. Beck assumes in his estimate that there would have been a decrease of 10 per cent of all token riders on the system. In each case it is assumed that this fare change would not have affected the 7-cent cash fare riders.

The record shows that on the average the normal volume of traffic carried on applicant's lines during the four-month period (June to September) is somewhat less than the yearly average. Although the above estimates were made by engineers thoroughly familiar with the local public transportation problem in San Francisco, there is a wide difference of opinion between these estimates.

ABANDONMENT OF LINES

Mr. Kahn testified that the company had made an unsuccessful effort to reduce operating expenses through the abandonment of what was considered unprofitable and unnecessary operations from a public convenience and necessity standpoint, by filing petitions with the Board of Supervisors of the City and County of San Francisco seeking authority to abandon certain lines. The company's petition to abandon the operation of the Castro Street cable line has recently been denied by the Board, and no action has been taken on applicant's petition to abandon operations on a portion of the Guerrero Street line. (Tr. pp. 302-303).

Applicant's Exhibit No. 42 shows the financial results of operation of the system by lines for the month of September, 1938. This exhibit shows that the revenue received on many of the lines is less than the average cost of providing the service. This exhibit, when considered in connection with Exhibit No. 22, which is a map showing all the lines of the three local transportation systems serving the city of San Francisco, affords the Commission a basis to study the matter of duplication of service with consideration directed to the question of profitable operation on the various lines of the Market Street Railway.

"JITNEY" COMPETITION

Reference has heretofore been made in said Decisions Nos. 29889 and 30849 in this proceeding to the matter of "jitney" competition. It appears that there are now 136 "jitneys" operating under permits issued by the Police Commission of the City and County of San Francisco. These permits are issued on an annual basis and must be renewed on or about January 1st of each year. The record shows that if this "jitney" competition were eliminated the Market Street Railway's net operating revenue would be substantially increased. The estimates of this increase vary from \$100,000 to \$200,000 a year. The "jitneys" operate in direct competition with certain lines of the Market Street Railway. The Police Commission has never authorized the operation of "jitneys" which would compete with any of the lines of the Municipal Railway. It appears that a very small section of San Francisco, if any, would be deprived of reasonable and adequate transportation service if the "jitney" bus operation were eliminated as practically all their business is picked up along the lines of the Market Street Railway.

ONE MAN CAR OPERATION

At this time approximately one-third of applicant's operations are conducted with one-man street cars assisted by ground loaders at the heavy loading points.

Exhibit No. 30 contains an estimate of increased labor costs of \$303,924 per year that would have obtained if two men had been employed on the one-man car lines. Ordinances of the City and County of San Francisco prohibit one-man car operation. In July of 1938 the Federal Circuit Court of Appeals reversed a decree of the District Court which enjoined enforcement of these ordinances. (San Francisco v Market Street Railway Co., 98 Fed. (2d) (Adv. Ops.) 628.) Rehearing was denied in September of 1938. Affirmance of the decision of the Circuit Court by the United States Supreme Court, followed by enforcement of these ordinances, would result in adding substantial operating expenses in labor costs.

SUMMARY

The problem here before the Commission is a serious one. It directly affects not only the Market Street Railway and that portion of the public using its line, but it affects the welfare of San Francisco as a whole. San Francisco should have an adequate transportation system at the lowest possible cost. The problem is complex because two major street railway systems serve the city. The Municipal line can continue to operate at a 5-cent fare because of inherent advantages in taxes; interest charges; its ability to absorb losses, eliminate unprofitable lines at will, and prevent "jitney" competition; and because of the fact that it has enjoyed a substantial increase in traffic diverted from the Market Street Railway as a result of the differential in fare. The Market Street Railway, operated as a private company, is not so fortunately situated. Its income has not been sufficient to pay currently all of its operating expenses and taxes. It has, as stated, recently failed to pay the amounts due the sinking fund. On August 31, 1938, the company's cash on hand amounted only to \$141,617.58, a sum wholly inadequate to pay any substantial part of its unfunded debt. We do not wish to imply from any statement contained herein that payment of interest on indebtedness, or the payment of the debt is a charge to operating expenses. Both payments are a burden upon the amount realized as a "return" on the value of the company's properties. Attention is called to the interest payments and the indebtedness only to indicate the financial condition of the Market Street Railway Company.

The record shows conclusively that under existing conditions, as a private concern, it cannot operate on a 5-cent

fare, nor can it continue to operate under present conditions at existing fares. The Market Street Railway, we must assume, will continue to be privately operated, as the San Francisco public has twice emphatically rejected a plan for municipal operation. (5)

Thus, we must decide what relief may be afforded the Market Street Railway to prevent a collapse or partial collapse of its service. That this be prevented is particularly important to San Francisco on the eve of the inauguration of the Golden Gate International Exposition.

An important factor in considering a fare structure for a public street transportation system is the matter of a single coin fare for at least the majority of the riders. Applicant's present fare offers this advantage. If, on the other hand, the proposed plan is adopted to establish a 7-cent fare, it will involve a three-coin fare, which would have the disadvantage of slowing up the service as well as other attendant disadvantages.

(5) "Q. (Commissioner Riley) This may not be a question that you care to answer in detail, but you must have made a study of the Market Street line inasmuch as it was coming in, possibly, to your management. Is it your opinion that it could be profitably operated on a 5-cent fare?

A. (Mr. Cahill) No, sir.

Q. Upon what fare structure do you think it could be operated?

A. Inasmuch as I am firmly of the conviction, Mr. Commissioner, that San Francisco is committed to a 5-cent fare, I have never tried to go into any fare structure higher than that, any more than my old friend Mr. O'Shaughnessy did, and Mr. O'Shaughnessy and I are both of the opinion that if the City and County of San Francisco ever took over the Market Street Railway Company it would operate and we both recommended that it operate on a 5-cent fare and that the inevitable deficit be taken up in the tax rate." (Tr. p. 456)

Past experience lends doubt as to the wisdom of further increasing fares. Neither the 2-cent transfer charge nor the token fare improved the financial position of the company. However, there is evidence in this record to show that the company may improve its earning position with a 7-cent fare. How extensive this improvement would be is largely a matter of opinion. The company estimates that it would obtain \$331,176 increased revenue. The Commission's Transportation Engineer estimates the increased revenue would be, at the maximum, about \$180,000 per year, while the Rate Engineer for the city estimates the increased revenue would be about \$60,000 per year.

While the record shows that some financial improvement may be experienced by the company under a straight 7-cent fare, the public should be spared this additional burden if other avenues are open to afford the company the relief to which it is entitled and which under the regulatory laws the Commission must give it.

As we view the evidence before us, the present financial plight of the Market Street Railway is caused by three major factors. First, the Municipal Railway fare of 5 cents, which has resulted in a substantial diversion of traffic from the lines of the Market Street Railway; secondly, the jitney bus competition; and thirdly, the inability of the Market Street Railway to abandon its non-profitable lines. (6)

(6) "A. (Mr. Cahill) In my opinion there is no question that there are a number of lines the same as those that Mr. Kahn has named which should be deleted from the Market Street Railway Company's system." Transcript, P. 459.

"COMMISSIONER RILEY: I failed to take into account the fact that the Market Street Railway has jitney competition. You have no jitney competition? A. (Mr. Cahill) No, that is one of the reasons why we have been more successful.

Q. Do you feel that jitney service is required in the city? A. I believe that the paramount interests of the city require mass transportation to be taken into consideration, and before any other type of mass transportation is transportation by street cars under our present system. I think that the Market Street Railway could provide service enough to carry all the people along Mission Street, for example, but they won't if they are not offered the passengers, and I would not blame them, neither would I. However, that is another thing which I believe lies entirely in the jurisdiction of the Board of Supervisors of San Francisco - - I am not so sure. Is that right, Mr. Holm?" Transcript, P. 460.

If the Municipal Railway were competing upon equal terms with the Market Street Railway, at a 5-cent fare, its financial condition would be at least equally precarious. Probably the best solution of the problem would be a universal 6-cent fare in San Francisco but, as the Commission has no jurisdiction over the Municipal Railway, it would be an idle act for this Commission to recommend this fare.

However, we believe the earning position of the Market Street Railway may be materially improved without resorting to a further increase in fares. The two remaining factors which have caused the distressed financial condition of the Market Street Railway are "jitney" bus competition and the failure to abandon non-profitable lines.

Elimination of "jitney" bus competition, which has never been permitted on streets paralleling the Municipal Railway, will result in a gain in revenue of approximately \$250,000 per year, excluding increased operating costs. The failure of the Market Street Railway to obtain authority of the Board of Supervisors to abandon its non-profitable lines has also deprived applicant of the opportunity to better its financial position. In this connection, however, it may be said fairly that the efforts of the company along these lines has been perfunctory. Rather than presenting before the Board of Supervisors a comprehensive plan, they have approached the problem in a piece meal fashion. If all, or the major part of their non-profitable lines were abandoned, the savings resulting therefrom, plus the additional revenue obtained from the elimination of "jitney" bus competition, would place the company in a better financial condition than if the Commission authorized the straight 7-cent fare. And if the cooperation of the city is obtained to effectuate these recommendations, the riders of the Market Street Railway would be saved thousands of dollars annually. In reaching this conclusion, however, we must point out that a great portion, if not all, of the benefits derived from this plan would be obliterated if the city finally prevails in its program of eliminating one-man car operation.

The lines to be abandoned may inconvenience a portion of the public, but their abandonment will not leave this part of the public without any transportation facilities, as the abandoned lines will be in close proximity to other street car or bus lines.

FINDINGS

A careful review of the record herein impels the following conclusions:

First - Applicant Market Street Railway Company cannot, under existing conditions, maintain an adequate transportation service at a 5 cent fare, nor under its present fare structure.

Second - Under the circumstances disclosed by the record the elimination of "jitney" competition together with the abandonment of operation, in whole or in part, of the lines hereinafter specified in the order, will place applicant in a better earning position than will the establishment of a straight seven cent fare.

Third - Applicant should immediately petition the Board of Supervisors of the City and County of San Francisco for such authority or permission as it may be necessary to obtain from the municipality in order to abandon operation, in whole or in part, of those lines hereinafter specified in the order.

Fourth - Applicant should immediately petition the appropriate officers or boards of the City and County of San Francisco for such form of relief as may be necessary in order to eliminate "jitney" competition.

Fifth - Should the authority and relief mentioned in the two preceding paragraphs not be accorded and made effective on or prior to January 1, 1939, the only alternative is to permit an increase of fare to 7 cents, such increase to become effective on January 1, 1939.

S U P P L E M E N T A L O R D E R

Good cause appearing, IT IS ORDERED as follows:

I - Subject to the conditions hereinafter set forth in Paragraphs II and III of this order, Market Street Railway Company is hereby authorized to file the following schedule of fares with the Commission, said schedule to become effective on January 1, 1939, it being found that the increases therein contained are justified in the event that the authority and relief hereinafter mentioned in Paragraphs II and III of this order are not accorded applicant by the City and County of San Francisco as of January 1, 1939:

"Cash fares in San Francisco other than on interurban cars, with free transfers -----	7 cents
School children (San Francisco), with free transfers to other lines of the company for continuous travel in the same general direction ----- 16 rides for	50 cents
Sunday and Holiday pass, for use in San Francisco -----	25 cents
South San Francisco line -----	7 cents
San Mateo line -----	7 cents cash fare, eliminating sales of tokens at the rate of 4 for 25 cents, fare to be in accordance with tariff filed with Railroad Commission on May 23, 1938."

II - Market Street Railway Company is hereby directed to petition forthwith the appropriate boards or officers of the City and County of San Francisco for such authority or permission as may be necessary in order to abandon operation, in whole or in part, of the lines hereinafter specified in Paragraph III of this order, and is also directed to petition forthwith said boards or officers for such form of relief as may be necessary in order to eliminate "jitney" competition. Should such authority and relief be accorded applicant and made effective on or prior to January 1, 1939, the present application for authority to increase fares is hereby denied.

III - In so far as this Commission may have jurisdiction, Market Street Railway Company is hereby authorized to abandon operation, in whole or in part, on such of the following lines as to which abandonment may be sought by applicant and authorized or permitted, on or prior to January 1, 1939, by the appropriate boards or officers of the City and County of San Francisco:

<u>Number</u>	<u>Name</u>
23	Richland Avenue
8	Market Street
24	Divisadero Street
30	Army Street
35	Howard Street
--	South San Francisco
--	Sacramento Cable
--	Castro Cable
54	Sunset Coach
10 and 26	Guerrero Street (Rearrangement of service on Nos. 10 and 26 lines).

IV - The Commission reserves the right to alter, amend or revoke the authority herein granted and to make such further orders as to it may seem right and proper.

V - Except as otherwise specified above, the effective date of this order shall be the twentieth day after the date hereof.

Dated, San Francisco, California, this 23rd day of November, 1938.

Robert W. [Signature]
Seon [Signature]

Ray & [Signature]