

ORIGINAL

Decision No. 32403

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC GREYHOUND LINES, a corporation, for a certificate of public convenience and necessity to operate a passenger bus service as a common carrier between points in Marin County.

Application
No. 21358

In the Matter of the Application of PACIFIC MOTOR TRUCKING COMPANY, for certificate for the transportation of property between the freight and passenger terminals of the Northwestern Pacific Railroad Company in San Francisco and Sausalito, respectively, upon the discontinuance of its passenger ferry operation.

Application
No. 22453

In the Matter of the Application of NORTHWESTERN PACIFIC RAILROAD COMPANY, for authority to discontinue all interurban electric passenger service on its electric suburban lines in Marin County, and to discontinue operation of its passenger ferries on San Francisco Bay.

Application
No. 22454

ADDITIONAL APPEARANCES:

SAMUEL W. GARDINER, EDWARD T. COMAN, RALPH CASTLE, GAIL D. APPERSON, and W. D. FUSSELLMAN, for Marvelous Marin, Inc.

PAUL A. HAMMER, for group of residents of Fairfax.

E. J. FOULDS and C. W. DURBROW, for applicant Northwestern Pacific Railroad Company.

BY THE COMMISSION:

SUPPLEMENTAL OPINION

The above-entitled matters deal with interurban operation between San Francisco and Marin County points, involving the transportation of both passengers and property.

The Commission has heretofore issued four orders in these proceedings, (1) in two of which (Decisions Nos. 32400 and 32632)

- (1) Decision No. 32400, Opinion and Order, dated October 3, 1939
Decision No. 32632, Supplemental Opinion and Order, dated December 12, 1939
Decision No. 32672, Second Supplemental Order, dated December 19, 1939
Decision No. 32764, Third Supplemental Order, dated January 23, 1940

the Commission set forth in considerable detail the proposed plan of operation of each of the carriers involved, and it would seem that no good purpose would be served by repeating the contents of these orders, except in so far as they are especially pertinent to the instant order.

In said Decision No. 32632 the Commission stated in effect that in view of certain proposals offered by a substantial portion of the patrons of the Northwestern Pacific Railroad, as set forth in a petition received as Exhibit No. 52, the Northwestern Pacific operation should be carried on for a trial period of ninety (90) days, beginning January 1, 1940. During this trial period the peak service was to be changed from a 30-minute headway to 45 minutes during the morning and evening commute hours, which would permit of the elimination of the operation of one of the three boats as well as a curtailment of interurban trains so as to meet the changed ferry schedules. Coincident therewith the monthly commute fares were to be increased \$2.00, with no change in the one-way and round-trip fares. (2)

Following the completion of the trial period provided for in said decision, further public hearings were conducted at San Rafael on April 15th and 22nd, 1940, and at San Francisco April 23rd, 1940. At the conclusion of the latter hearing the matters were taken under submission upon the filing of concurrent briefs by the parties on or before April 30th, 1940.

The primary issues for determination by this order pertain to the results which have obtained during the trial period from January 1st to March 31st, 1940, as they apply to the final

(2) In the Opinion of Decision No. 32632 it is stated:

"In view of these facts, the Commission feels compelled to hold that an abandonment of the electric rail-ferry service should not be permitted without a fair trial first being given to the proposed higher fare and reduced schedule plan. Such a trial demands the cooperation of all parties. Both commuters and occasional riders must continue to use the service of the trains and ferries to substantially the same, or even a greater, extent than they now are patronized. The Northwestern Pacific must use every effort to effect all possible savings."

disposition of the three above-entitled applications. For convenience hereinafter the operation during these three months will be referred to as the trial period.

Exhibits were filed by both the Northwestern Pacific Railroad Company and the Engineering Division of the Commission's Transportation Department showing the results of operation during the trial period.

The following tabulation, taken from Exhibit No. 67 (introduced by William R. Peters, an engineer on the Commission's staff), shows traffic statistics between San Francisco and Marin County:

PASSENGERS TRAVELING BETWEEN SAN FRANCISCO AND MARIN COUNTY

Month	N.W.P. Interurban (a)	Pacific Greyhound Interurban	Golden Gate Bridge Auto Commuter (c)	Golden Gate Bridge Cash Fare Auto (d)
December, 1938	263,525	22,859 (b)	118,554	385,918
January, 1939	252,086	20,965 (b)	114,681	364,142
February, 1939	235,536	21,167 (b)	110,128	334,608
March, 1939	271,778	24,296 (b)	109,848	369,296
December, 1939	244,798	31,628 (b)	114,316	385,930
January, 1940	211,290	38,615	115,613	322,934
February, 1940	191,341	39,456	111,769	333,296
March, 1940	213,918	47,494	127,559	415,067

- (a) From a passenger count on ferryboats, including free and Tiburon and Point Reyes bus passengers, but excluding main line and auto passengers.
- (b) Based on 90.9% of the total passengers carried as experienced in the first three months of 1940 by actual count.
- (c) Based on the average number of passengers per commuter car as obtained by test made on Wednesday, March 22, 1939.
- (d) Based on the average number of passengers per cash fare auto as obtained by test made on Wednesday, March 22, 1939.

This tabulation shows that the traffic carried by the Northwestern Pacific during the first three months of 1940 was

approximately 19 per cent less than the traffic carried during the corresponding period of 1939, whereas the total traffic between the points as shown above decreased 3 per cent. It should be pointed out, however, that the above records of bridge auto traffic include through as well as local passengers.

A comparison of operating data as shown in certain exhibits offered in the record is set forth in the following tabulation:

		N.W.P. INTERURBAN OPERATIONS	
		ANNUAL FINANCIAL RESULTS	
		N.W.P. Exhibits	C.R.C. Exhibits
		7 & 64, Witnesses	32 & 67, Witnesses
Item		Day & Herbert	Edwards and Peters

REVENUE:

Previous Operation 1938	\$ 588,569	\$ 591,000
Present Operation 1940	511,448	530,591

OUT-OF-POCKET COST:

Previous Operation 1938	\$ 922,861*	\$ 852,513**
Present Operation 1940	746,497*	620,976**

OUT-OF-POCKET LOSS:

Previous Operation 1938	\$ 334,315	\$ 261,513
Present Operation 1940	235,049	150,385

* Depreciation and rentals on additional new steel cars included.

** Depreciation and rentals on additional new steel cars excluded.

The operating results for the year 1938 were employed in the above tabulation due to the fact that they were the last full years operating results available at the time the study was prepared, and were considered more or less representative of this operation. The 1940 figures are estimates for the full year based upon the results obtained under the new plan of operation during the first three months of 1940. Attention is called to the fact

that the 1939 records of traffic and revenue are influenced by the Golden Gate International Exposition and therefore are not representative of normal operations.

It is apparent from the above figures that although the Northwestern Pacific Railroad Company has substantially reduced the operating losses on its interurban operations as a result of reduced service and increased fares yet under the revised plan its revenues still fail to meet the out-of-pocket cost of providing the service by a sum in excess of \$150,000 per year.

As the record now stands, there is nothing to indicate that even after excluding all fixed charges, interest, depreciation, and common overhead expenses the Northwestern Pacific can continue the operation of its interurban lines on any basis which will provide a revenue sufficient to defray the out-of-pocket cost of providing this service. However, two suggestions for an independent interurban operation were offered, one by Mr. P. B. Hackley, Jr., and the other by Mr. E. A. McMillan.

Mr. Hackley testified that he and certain associates had made a preliminary study of the Northwestern Pacific interurban operations, and had concluded that a plan could be developed whereby the system could be run on a profitable basis. However, he had nothing to offer in the way of a detailed operating plan or support for his contention that his plan could be properly financed, in fact his reply to questions on these subjects was to the effect that he was not in a position to divulge such information. Obviously, little consideration can be given to such a proposal.

Mr. E. A. McMillan, representing seven labor organizations that would be affected by the abandonment of the Northwestern Pacific service, contended that through certain economies the present system

could be operated so as to reduce the out-of-pocket loss to \$38,500 on an annual basis; furthermore, that through the installation of new diesel equipment the system could be operated on an independent basis at an annual profit of \$20,081. This plan provides for an allowance of \$133,828 for the annual rent of road, equipment, and other facilities. Included in this item is rental on 24 new articulated cars propelled by diesel engines at a capital investment of some \$200,000. Although Mr. McMillan testified that he thought his proposed plan could be financed, there is nothing in this record to indicate any definite offer along this line other than a communication to the effect that certain unnamed parties could be interested in the proposition who could be prevailed upon to finance the new equipment. (3)

The Commission cannot conclude from this record that Mr. McMillan's plan can be financed, and in the face of the past experience of this operation we would not be justified in assuming, in the absence of a definite showing, that capital can be attracted to carry on this operation. Therefore, there seems to be little justification in a detailed analysis of Mr. McMillan's operating results.

(3) The following is a copy of a letter, under date of April 20, 1940, received by Mr. McMillan from M. W. Dobrzensky, an Oakland attorney, and was read into the record in these proceedings:

"Supplemental to my previous letter on the subject of the lease of the above mentioned facilities, I have clients able to provide the necessary financing who are interested in this operation, provided that a lease satisfactory to them could be obtained. You are at liberty to disclose the contents of this letter to the Railroad Commission. I am not at liberty to disclose the names of my clients unless and until a satisfactory lease can be obtained, following which the entire plan can be submitted to the Railroad Commission and to the Interstate Commerce Commission."

"M. W. Dobrzensky."

It should be pointed out, however, that Mr. McMillan's conclusion that an independent operation could be carried on successfully if finances were available requires certain assumptions adopted by him in his testimony as to increased patronage and revenue and possible economies which, like the availability of capital, are based upon hopes rather than evidence of sufficient weight to be given serious consideration in this matter.

The application of Northwestern Pacific Railroad Company to abandon this service (No. 22454) was filed with the Commission December 22, 1938. The matters here involved were ready for submission on August 14, 1939, as to the major issues involved. Delay in submission was first granted to permit a group of Marin County residents who had recently theretofore appeared in the matter to review the record and determine whether they would have any evidence to present. Thereafter further continuance was granted in order that the Commission might know the results of an election called to determine whether a publicly operated transportation system should be established. This election was held on November 7, 1939, and the result was adverse to the formation of a district to provide such a service. The Commission had previously stated in Decision 32400 that it would decide the matters as soon as the results of said election were known. However, the commuters petition hereinbefore mentioned was then filed, pledging support to a rail-ferry operation notwithstanding the fact that it involved reduced service and increased fares. In what appears now to have been an excess of caution that every possibility be exhausted to save the rail-ferry service, desired by Marin County residents, a further continuance was granted for the purpose of carrying on the three-months trial period experiment. All of these continuances were

vigorously opposed by the applicants. Though none of them has resulted in materially changing the showing theretofore made which amply justified the abandonment of the Northwestern Pacific service, the Commission believes these continuances were fully warranted.

Fair treatment of the applicants and the best interest of Marin County in getting its transportation system as soon as possible on an enduring basis now indicate that further delay would only be justified by the strongest kind of showing. Not even a prima facie case is made for either of the proposed independent operations that they could be successful. Only by further months of delay for the purpose of working out details of leasing and details of financing and for the engineering studies which would undoubtedly be required by the persons who are "interested in" (but in no way committed to) advancing capital, could these matters be finally disposed of one way or the other. Such delay is not justified. If granted and these proposals proved infeasible, others could be made at that time and the matter drawn out interminably.

Samuel W. Gardiner, President of Marvelous Marin, Inc. (the Marin County Chamber of Commerce), testified at the hearing at San Rafael on April 15th in part as follows:

"We therefore do not want to see a continuation of this interurban service in unwilling hands any longer if it can be avoided. But if the rail service can be carried on in willing hands with reasonable frequency and with reasonable rates, we believe it would be preferable to any other means of transportation. If it can not be so carried on we are tremendously concerned that the final decision

of this matter be not longer deferred, but that our means of transportation be made a monopoly in the hands of some bus system. We are greatly concerned that this matter be not continued for any long period of time and that the matter be brought to a definite conclusion as soon as possible."

In his letter of April 25, 1940, filed herein in lieu of a brief, Mr. Gardiner states it is now the opinion of Marvelous Marin that:

"** this Commission should force the Southern Pacific and its Northwestern Pacific subsidiary, to show good faith and a desire to promote public welfare by negotiating until it is shown that other competent operators cannot be found, and this, they think, should be done by denying the application to abandon until they do negotiate in good faith, or by fixing the terms of a reasonable lease and entering an interim order that McMillan show within five or ten days his ability to accept and perform the lease and give the service desired *****."

"Once more complying with the desires of the majority of the people of the county, I ask that short periods of time be fixed on the proposed interim order; that McMillan be ordered to substantiate his position rapidly and that NWP and SP be given a very short time thereafter to choose between signing the lease and continuing service on last year's schedules."

It is inconceivable to the Commission that this proposal

can be established as feasible within any short period of time for the reasons hereinbefore stated. While the Commission does not condone the refusal of the railroads involved to negotiate with any proposed lessee, such refusal does not of itself prove such proposal a feasible one; nor can any order of the Commission make it feasible. Hard economic and engineering facts govern the feasibility of the present indefinite proposals and the Commission is convinced that only further months of negotiation and study requiring further delay could make them more definite, or could establish their feasibility if it could be done at all.

Over three weeks have passed and three days of hearing have been conducted since these suggestions of possible independent operations were made to the Commission. Anyone with adequate capital backed by a real interest in investing it in this operation and a tangible plan for doing so could have brought it to the Commission's attention at any time by appearing at the hearings or presenting a request to reopen the proceeding, setting forth, particularly, the evidence which would be offered. No such appearance or request has been made, and we conclude that if such interest and plans exist they are in an intangible and embryonic form at this time.

The request for further continuance will be denied.

With respect to the San Francisco-Mill Valley interurban operations, it appears that at an election held on May 6, 1940, the electorate of the city of Mill Valley voted in favor of a plan to provide municipal operation. Under this plan the city authorized a bond issue in the amount of \$190,000 to purchase 14 buses and other equipment.

The record shows that the city, through its attorney, urges that in the event this bond issue carried the Commission deny that portion of the application of Pacific Greyhound Lines seeking a

certificate of public convenience and necessity to operate automotive passenger stage service from and to Mill Valley, the city taking the position that the successful operation of the municipal system, from an earning standpoint, is dependent upon enjoying all the for-hire traffic between San Francisco and Mill Valley. Furthermore, the City Attorney stated that the municipal operation will not become effective until the Northwestern Pacific has abandoned its interurban service.

On the other hand, the Pacific Greyhound Lines takes the position that if it is denied the right to serve the Mill Valley section it necessarily will require a change in the operating estimate of its entire interurban operations. The record shows that the Mill Valley business amounts to from 22 to 26 per cent of the total interurban traffic between San Francisco and Marin County points. It is apparent, therefore, that the elimination of this large percentage of the total traffic would substantially reduce the gross earnings without a corresponding reduction in many of the expense accounts including overhead and terminal facilities. In fact, the Pacific Greyhound Lines stated in its letter, dated April 30, 1940, filed in lieu of a formal brief:

"The denial of the right of Pacific Greyhound Lines to serve Mill Valley, resulting in a loss of approximately 25% of its expected traffic without a corresponding reduction in the expenses, will very definitely result in a withdrawal of Greyhound's present offer to furnish commutation service and a re-survey of the entire situation. The result will be further uncertainty and delay with a probable additional burden upon the remainder of Marin County."

In reaching a conclusion in these matters, the Commission, in the exercise of its administrative duties, must determine a sound course to follow in providing Marin County, without further delay, a transportation service in lieu of that now rendered by the Northwestern Pacific Railroad, but which the Commission unanimously believes should be permitted to be abandoned.

In lieu of the abandoned service, the Pacific Greyhound Lines has offered to provide substantially the same service. In substance, the offer of the Greyhound contemplates a new and different type of service from that heretofore rendered in Marin County, i.e., commutation ser-

vice. Insofar as the offer contemplates a commutation service, the application should be viewed as one for a de novo certificate.

The record, as it now stands, shows conclusively that the Greyhound is the only carrier which is able financially and otherwise to provide Marin County with a service to take the place of that to be abandoned. It has made a firm offer to substitute its proposed service for that of the Northwestern Pacific in event it is granted authority to serve the entire territory to be abandoned by the rail carrier.

The record shows that the Pacific Greyhound Lines made its proposal not with the thought that it would return the full cost of operation, but that it would realize something over and above the out-of-pocket cost of operation. The inference may be fairly drawn that the decision to embark upon this undertaking was made with some hesitation and only after a long and complete study of its feasibility. It may be that the Pacific Greyhound Lines was influenced to some extent by the fact that if its application were granted and the Northwestern Pacific Railroad authorized to abandon service, the Northwestern Pacific Railroad, a wholly owned subsidiary of the Southern Pacific Company, ⁽⁴⁾ would be relieved of a substantial continuing out-of-pocket loss.

Whatever may have been the underlying reasons which influenced the Greyhound to make this offer is relatively unimportant, as the record leaves no doubt that it was made in good faith and with the avowed purpose of providing Marin County with a satisfactory, adequate, and enduring transportation service. These underlying reasons only become important in evaluating the statement of the Greyhound, heretofore quoted, to the effect that a denial of the right to serve Mill Valley would necessitate a withdrawal of its offer and a resurvey of the entire proposal.

In view of the above, the conclusion must be reached that, as a prudent operator of a large transportation system, the safe and logical course for the Greyhound to follow would be to make a further study of the

(4) The Southern Pacific Company owns approximately 39% of the common stock of the Pacific Greyhound Lines.

entire problem, inasmuch as the denial to serve Mill Valley would be tantamount to denying it to compete for approximately 22% to 26% of the Marin traffic. At best, this would entail a further delay in solving the Marin County transportation problem. The record here before us shows that Marin County has already suffered over a long period of time, which has elapsed since these proceedings were commenced, because of the uncertainty of its transportation service. Added to this is the possibility that upon a re-survey Greyhound may find it infeasible to inaugurate a partial service.

Thus the Commission, on the facts before it, must here determine what is in the public interest as it affects the welfare of Marin County as a whole. We realize that it is the right of a municipality to determine whether it wishes to engage in the transportation business. The great majority of the people of Mill Valley have expressed their wishes to do so. We respect their desires and it is only with reluctance that we reach the conclusion that the Greyhound application should be granted in toto. And, in reaching that conclusion, we have obviously viewed this matter from the standpoint of Marin County as a whole, realizing that a substantial majority of the people of the county who will not benefit by any transportation service which Mill Valley may undertake, may be made to suffer if we denied the right of the Greyhound to serve Mill Valley. We should not permit the right of a minority to adversely affect the welfare of a substantial majority. Any other course may result in irreparable injury to the whole of Marin County.

With respect to providing transportation to the various public schools in Marin County, it is clear from this record that, with the abandonment of the Northwestern Pacific Railroad Company's interurban service, the Pacific Greyhound Lines is in the best position to provide such a service. While the Pacific Greyhound Lines is not committed to a definite plan of providing such school transportation, it has indicated in this record its willingness to work out a suitable service with the public bodies having jurisdiction over this matter.

The Commission has given careful consideration to the entire record in these proceedings, with particular attention devoted to the results of operation which have obtained during the 3-months trial

period, and has come to the conclusion that the findings as set forth in said Decision No. 32400 should not be changed in so far as they now apply as is borne out by the result of the operations during the 3-month trial period. The Commission now finds as follows:

1. Northwestern Pacific interurban system cannot be operated on any fare or service basis which will return sufficient revenue to pay the out-of-pocket cost of providing the service.

2. That applicant Northwestern Pacific Railroad Company should not be required to continue this operation with its attendant out-of-pocket losses.

3. That in the event of abandonment of the Northwestern Pacific Railroad Company's rail and ferry service, a substitute public transportation service is necessary.

4. That the only applicants before this Commission at this time to provide such substitute service are the Pacific Greyhound Lines and the Pacific Motor Trucking Company, both of which the records show are financially able to provide the required service.

5. That the application of Pacific Greyhound Lines for a certificate of public convenience and necessity for the routes as proposed in its application, and at substantially the same schedules of service as proposed in Time Table Exhibit No. 19 introduced herein, and at the proposed schedules of fares as shown in Tariff Exhibits Nos. 21 and 22 introduced herein, should be granted.

6. That the application of the Pacific Motor Trucking Company for a certificate of public convenience and necessity over the routes and under the tariff provisions as proposed, should be granted.

Pacific Greyhound Lines and Pacific Motor Trucking Company are hereby placed on 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.

FOURTE SUPPLEMENTAL ORDER
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Public hearings having been held in the above-entitled proceedings and the matters having been submitted,

The Railroad Commission of the State of California Hereby
Declares

I. That public convenience and necessity require the establishment and operation by applicant Pacific Greyhound Lines as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$ of the Public Utilities Act, for the transportation of passengers, baggage, and express between and serving the following named termini and all intermediate points, and to consolidate the same with the remainder of its operating rights:

- a. Between Tamalpais Union High School and Mill Valley, via Miller Avenue.
- b. Between Alto and Mill Valley, via Blithedale Avenue.
- c. Between Greenbrae and Kentfield, via Sir Francis Drake Boulevard.
- d. Between San Anselmo and Fairfax, via Sir Francis Drake Boulevard.
- e. Between Tiburon Wye and Alto, via Alto Highway.

II. That public convenience and necessity require the establishment and operation by applicant Pacific Motor Trucking Company as a highway common carrier, as defined in Section 2-3/4 of the public Utilities Act, for the transportation of property over the following named route:

Between the freight and passenger terminals of the Northwestern Pacific Railroad Company in San Francisco and Sausalito, respectively, via the Golden Gate Bridge, and operating between the north bridge head and Sausalito, via either the Sausalito approach or the Waldo approach.

IT IS HEREBY ORDERED:

I. That a certificate of public convenience and necessity therefor be and the same is hereby granted to the Pacific Greyhound Lines, as hereinabove set forth, subject to the following conditions:

- (1) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the effective date of this order.
- (2) Applicant shall commence the service herein authorized within a period of not to exceed six (6) months from the effective date hereof, and shall file, in triplicate, and concurrently make effective on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules as shown in Exhibits Nos. 21 and 22, introduced in these proceedings, in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
- (3) Applicant shall file, in triplicate, and make effective within a period of not to exceed six months from the effective date of this order, and on not less than five (5) days' notice to the Railroad Commission and the public, time schedules covering the certificates herein authorized, in a form satisfactory to the Railroad Commission.
- (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 obtained.
- (5) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (6) Applicant is authorized to turn its motor vehicles at termini or intermediate points, either in the intersection of the streets or by operating around two blocks contiguous to such intersection in either direction, and to carry passengers as traffic regulations of the political subdivisions affected may require.
- (7) No single package of express may be accepted for transportation which exceeds one hundred (100) pounds in weight, and all express is to be transported on passenger vehicles only, except that the limitations as to package weight and vehicle of transportation shall not apply to:
 - (a) Shipments transported for or through the agency of Railway Express Agency, Inc.

(7) cont'd

- (b) Milk and cream and empty containers of such commodities when being transported to or from a rail junction point in connection with rail transportation thereof.
- (8) Applicant shall commence operations coincident with the abandonment of service by the applicant Northwestern Pacific Railroad Company, as hereinafter authorized, provided, however, that these carriers will be allowed sufficient time to coordinate the abandonment of the rail service and the establishment of the passenger stage service so as to provide adequate public transportation during this transitional period.

II. A certificate of public convenience and necessity therefor be and the same is hereby granted to the Pacific Motor Trucking Company as hereinabove set forth, subject to the following conditions:

- (1) Applicant shall file a written acceptance of the certificate herein granted, within a period of not to exceed fifteen (15) days from the effective date of this order.
- (2) Applicant shall commence the service herein authorized within a period of not to exceed six (6) months from the effective date of this order, and shall file, in triplicate, and concurrently made effective on not less than ten (10) days' notice to the Railroad Commission and the public a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders, and satisfactory to the Railroad Commission.
- (3) Applicant shall file, in triplicate, and make effective within a period of not to exceed six (6) months after the effective date of this order, and on not less than five (5) days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
- (4) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred, nor assigned unless the written consent to the Railroad Commission to such discontinuance, sale, lease, transfer, or assignment has first been obtained.
- (5) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant, or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (6) Applicant shall commence operation coincident with the abandonment of service by Northwestern Pacific Railroad Company, as hereinafter authorized.

(7) Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

III. Applicant Northwestern Pacific Railroad Company is authorized to discontinue all interurban electric passenger service on its electric lines in Marin County, and to discontinue the operation of passenger ferries on San Francisco Bay, coincident with the commencement of the substitute operation by Pacific Greyhound Lines and Pacific Motor Trucking Company, as hereinbefore authorized, and to cancel, in conformity with the rules of this Commission, all passenger rate tariffs and time schedules between said points, upon not less than ten (10) days' notice to the Railroad Commission and the public.

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

Dated at San Francisco, California, this 21st day of May, 1940.

Ray & Riley

[Signature]
[Signature]
Justus J. Craemer
COMMISSIONERS

We dissent from that portion of the foregoing order which grants Pacific Greyhound Lines a certificate to operate in the area which will be served by the proposed Mill Valley municipal operation. We do this for two reasons:

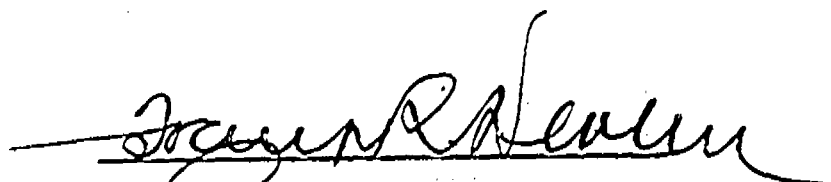

First, under existing law the City of Mill Valley, a municipality of nearly 7000 population, has the unquestioned legal right to institute such a service. Since it has such right and apparently has decided by an overwhelming vote (something over three to one) to exercise it, we believe it should be protected from competition to the same extent that a private operator would be protected. Since there is no evidence to indicate that there is sufficient traffic for two operations to be carried on successfully and without loss in this area as would be required of an applicant who sought to compete with an existing private operator, we believe that what is equivalent to an application for a second certificate in this territory should be denied.

Second, Greyhound operation in this territory in competition with the proposed municipal operation will be distinctly different in the matter of probable return than such operation would be in the absence of such competition. Such competitive operation may well be carried on at a loss and therefore become a burden on the other operations of the Company rather than assisting in supporting those other operations (by absorbing some of the costs) as the majority of the Commissioners think it will.

If the Railroad Commission had authority to grant or withhold certificates for municipal operations (the wisdom of which policy may be debatable), a different question would then be presented; namely, whether the City of Mill Valley or Pacific Greyhound Lines should be granted a certificate in the disputed

area. Since the Commission does not have that authority and the effect of the foregoing order is to authorize competition by a private operator with a municipal operation about to be lawfully established in an area where so far as the evidence shows there is room for only one operation, we cannot approve that part of such order.

We fully concur in all other portions of the majority opinion and order.



Commissioners.