

Decision No. 37575

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the
LOS ANGELES RAILWAY CORPORATION
and
PACIFIC ELECTRIC RAILWAY COMPANY for an
order preliminary to issuance of certifi-
cates of public convenience and necessity
for the exercise of rights and privileges
under franchises for street railway, rail
and motor coach operations to be secured
from the City of Los Angeles.

ORIGINAL

Application No. 26379

Gibson, Dunn & Crutcher, by Max Eddy Utt, for Los Angeles Railway Corporation; Frank Karr and C. W. Cornell, for Pacific Electric Railway Company and Los Angeles Motor Coach Lines; Bart F. Wade for Asbury Rapid Transit System; Richard C. Waltz for City of Beverly Hills; Clyde Woodworth for Cities of Inglewood, El Segundo, Southgate, and Manhattan Beach; Harold P. Huls and H. Burton Noble for City of Pasadena; Cosgrove O'Neill by Leonard A. Diether and J. L. Haugh for Pasadena City Lines, Inc., Glendale City Lines, Inc., and Inglewood City Lines, Inc.; Wallace L. Ware for South Los Angeles Transportation Company; Stanley M. Lanham, Board of Public Utilities and Transportation of Los Angeles; Ray L. Chesebro, Gilmore Tillman, and Wixon Stevens for City of Los Angeles; Herbert Cameron for Anthony Dunphy (Belvedere Gardens Bus Lines), M. M. Brockway (Belvedere Transit, Inc.), and Frank Rice (H & A Bus Lines); G. C. Lyons for Highland Transportation Company; Henry McClerman and Kenneth White for City of Glendale; P. H. Lester, J. A. Winans, Mrs. Clara McDonald and R. C. W. Friday for Transportation Committee of The Peoples Lobby of California, protestant; Raymond Mensur, for Transportation Committee of Municipal League of Los Angeles, protestant; Mrs. Margaret Clark; F. A. Southwick; and Arthur E. Briggs.

HAVENNER, Commissioner:

OPINION

Los Angeles Railway Corporation and Pacific Electric Railway Company provide passenger transportation service by rail and motor coach in Los Angeles and adjacent territory. These two car-

riers also operate jointly certain motor coach services known as Los Angeles Motor Coach Lines.

The present application seeks a declaration as to whether or not the Commission will hereafter issue certificates authorizing applicants to exercise rights and privileges under certain proposed franchises which may be obtained from the City of Los Angeles on applications therefor to be filed by applicants with the City. (1) Public hearings were had at Los Angeles on November 17 and December 7, 1944.

Should the Commission act affirmatively, each applicant intends to file a separate application with the City for a single combined rail and bus franchise covering all of that applicant's operations within the City, both rail and motor coach. A final tentative draft of a franchise for rail and bus operations is set forth as Exhibit "A" to the application. In addition, a joint application to the City would be made by both applicants covering the operations conducted by them jointly under the title of Los Angeles Motor Coach Lines. A final tentative draft of a bus franchise for such operations is set forth as Exhibit "B" to the application.

(1) Subdivision (c) of Section 50 of the Public Utilities Act provides in part as follows:

"* * * If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility, the commission shall thereupon issue such certificate."

At the second hearing in this matter certain protestants urged that the Commission should not be asked to "put its stamp of approval" on a particular franchise before an application therefor has been filed with the City, and before the public has had an opportunity to be heard thereon. These protestants assert that affirmative Commission action now would enable advocates for the issuance of such franchises to state to the Council and to the public that the matter had already been approved by the Commission. One of the protestants requested that no action be taken upon the present application until after the facts concerning the proposed franchises have been developed and discussed before the Board of Public Utilities and Transportation of the City of Los Angeles and before the City Council.

Applications for a declaration preliminary to the issuance of a certificate authorizing the exercise of privileges which may be granted in a franchise which a public utility contemplates securing from a political subdivision are proper under the terms of the Public Utilities Act. Many such preliminary orders have been issued in the past. However, whether such a preliminary order should be made involves the exercise of the Commission's discretion under all of the circumstances present in a particular proceeding. The proposed franchises here in question, now in draft form as a result of preliminary negotiations between the applicants and representatives of the City, involve three large urban and interurban transportation systems.

The Charter of the City of Los Angeles provides that the City shall have power to grant franchises, and may prescribe, by ordinance, approved by a vote of the people, the method of procedure for making such grants. Ordinance No. 58,200 prescribes the method of procedure for the granting of franchises. Under that procedure

ordinance applications for franchises shall be filed with the City Council. Before taking action, the Council shall refer such applications to the Board of Public Utilities and Transportation for its recommendation. The latter Board "shall proceed to inquire into such application", and within thirty days after such reference, or longer if allowed by the Council, shall report its recommendation to the Council. If the Council thereafter proposes to grant a franchise, the matter shall be advertised once in a newspaper of general circulation in the City. Such advertisement shall state that bids for such franchise will be opened at a stated time and place.

Should a franchise be awarded by the Council, the grantee thereof shall, within five days thereafter, file a bond in the penal sum set forth in the advertisement for bids. Within thirty days after the filing and approval of such bond, the franchise shall be granted by ordinance, subject to the referendary provisions of the Charter.

The tentative draft of the proposed franchise provides that the granting thereof is conditioned upon the grantee filing, at least ten days before the ordinance granting such franchise becomes effective, a written acceptance agreeing to perform and be bound by the terms thereof. The tentative franchises do not provide for the forfeiture of other existing franchises, but the understanding is that if applicants obtain such franchises, they will offer to abandon rights under and terminate existing franchises upon the effective date of the new franchises.

Under the procedure outlined above it appears that the public will have an opportunity to be heard before the Board of Public Utilities and Transportation, when the Board's recommendation is sought by the Council upon any application for a franchise filed with the Council. A second opportunity to be heard will be afforded

when the recommendation of the Board is considered by the City Council.

Whether or not a franchise should be granted is essentially a local question. No application for a franchise has yet been filed. If the proposed franchises here presented had the approval of the City Council we would be disposed to grant applicants' request, subject to an appropriate provision concerning the Commission's regulatory jurisdiction. Under the circumstances we deem it appropriate to refrain from taking any action at this time which might be construed as an expression of opinion upon the question of the granting of franchises. Applicants' request may be renewed as soon as the Council may approve the form of the proposed franchises and calls for bids thereon.

ORDER

Good cause appearing, IT IS ORDERED that applicants' request for an order preliminary to the issuance of a certificate of public convenience and necessity be and it is hereby denied. Such denial is without prejudice to the renewal of applicants' request as indicated in the above opinion.

The foregoing opinion and order are hereby adopted and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated, San Francisco, California, December 21, 1944.

Richard L. Backus
Justus F. Casner
Frank R. Haveman

W. S. Powell
Commissioners.