

ORIGINAL

Decision No. 40174

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
RUSSELL L. BENINGER and FRANK BENINGER,)
co-partners, for a certificate of public)
convenience and necessity to operate a)
passenger stage service, as a common)
carrier, between Richmond and East)
Richmond Heights as an extension and)
enlargement of its existing service.)

Application No. 27303

In the Matter of the Application of)
KEY SYSTEM, a corporation, for a)
certificate of public convenience)
and necessity to operate certain)
street railway and motor coach)
routes in the counties of Alameda)
and Contra Costa, State of California.)

Application No. 19502
90th Supplemental

- AARON H. GLICKMAN, for Russell L. and Frank Beninger, applicants in Application No. 27303 and protestants in Application No. 19502 (90th Sup) of Key System.
- DONAHUE, RICHARDS & HAMLIN, by FRANK S. RICHARDS and JAMES E. GALLAGHER, for Key System, applicant in 90th Supplemental Application No. 19502 and protestant in Application No. 27303.
- JOHN I. PIERCE, Assistant City Attorney for the City of Richmond, interested party.

O P I N I O N

Russell L. and Frank Beninger, co-partners, doing business as El Sobrante-Richmond Bus Service, by the above entitled application request a certificate for the transportation of passengers between Richmond and East Richmond Heights as an extension and enlargement of their present operative right between El Sobrante, Rollingwood and Richmond.

Key System, by its 90th Supplemental Application No. 19502, as amended, requests a certificate authorizing an extension of its No. 68 Barrett-Garvin Avenue Line from the Barrett Avenue-Tulare Avenue terminus to the intersection of Crest and Bernhard

Avenues in East Richmond Heights, and an extension of the other end of the same line from its Garvin-Humboldt Street terminus to Alvarado Park. It also seeks authority to extend its No. 48 Rheem Avenue Line from its present terminus at the intersection of Rheem Avenue and San Pablo Avenue to the intersection of San Pablo and McDonald Avenues in Richmond.

A public hearing on these matters was held on a consolidated record before Examiner Paul at Richmond and San Francisco on September 18 and 19, and November 12, 1946, and were submitted subject to the filing of concurrent opening and concurrent reply briefs.

PROPOSAL OF BEWINGER AND BENINGER

These applicants presently provide a passenger stage service between El Sobrante and Richmond and intermediate points via Rollingwood and El Portal subject to a restriction prohibiting local service within Richmond. (1) The service proposed between Richmond and East Richmond Heights would be provided over a route connecting with the El Sobrante-Richmond route at the junction of County Road No. 7 (San Pablo Dam Road) and Key Boulevard. The proposed route extends approximately 2.7 miles southeasterly from such junction. (2) They request the certificate sought be consolidated

(1) In addition they have authority to provide a seasonal service between Richmond and Red Rock Fisheries Inc., at San Pablo Point, for passengers destined to or originating at the Fisheries.

(2) The following route would be used in providing this service: Commencing at the intersection of County Road No. 7 (San Pablo Dam Road) and Key Boulevard, outside of but near the north-easterly corporate limits of the City of Richmond; thence via Key Boulevard, Riverside Avenue, Marin Avenue, Park Avenue, Tulare Avenue, Bernhard Avenue, Kensington Avenue, Elm Avenue, and Arlington Boulevard to its intersection with Cutting Boulevard and return over and along the same route.

with the El Sobrante-Richmond operative right subject to a local restriction within Richmond.

A local one-way cash fare of 10 cents is proposed. The equipment to be used would consist of 1942 year model used Ford Transit type buses having a seating capacity of 29 passengers each. Applicants plan to operate 19 round trip schedules daily except Sundays and holidays on an hourly headway between 5:30 a.m. and 11 p.m., 17 of which would be operated Sundays and holidays.

PROPOSAL OF KEY SYSTEM

Key System's proposal to extend its No. 68 Line to Crest and Bernhard Avenues is for the purpose of providing service to and from the major part of the East Richmond Heights district. Most of the proposed extended route would be over the route proposed by Beninger Brothers along Bernhard Avenue between McLaughlin and Kensington Avenues. Key System's proposal to extend its No. 68 Line to Alvarado Park would serve the Park and a part of the northerly section of East Richmond Heights. A modification of the route of the No. 68 Line together with the proposed extension of the No. 48 Rheem Avenue Line to the intersection of McDonald and San Pablo Avenues is to provide service to and from a proposed new terminal facility to be established at the latter point. The new terminal facility would enable patrons of the lines to receive a better transfer service to Key System's other local lines as well as inter-city lines serving other east bay cities and San Francisco.

EVIDENCE IN SUPPORT OF THE BENINGERS' PROPOSAL

Russell L. Beninger testified that improvement clubs and numerous residents of East Richmond Heights had requested him to

establish the proposed service. He made a survey of the district in order to determine the feasibility of their plan. He stated that about 500 families reside in the area they would serve and those using public transportation are now required to walk varying distances up to two miles to receive service from Key System. These applicants have five units of equipment, two of which are used in the El Sobrante-Richmond operation and the witness was of the opinion that one unit would be ample to provide the extended service. This would leave two units for standby and use in other operations which they conduct. While this witness' estimates of the daily ⁽³⁾ cost of the proposed operation were inconclusive, it was his opinion that it could be conducted profitably.

Some twelve public witnesses testified on behalf of these applicants and it was stipulated that approximately 25 others present at the hearing would testify similarly if called. These witnesses all reside in East Richmond Heights. Most of them testified that they have a need for^{or} and would use the Beningers' proposed service between East Richmond Heights and Richmond. Some stated that they travel to Richmond for the purpose of shopping, trading, to attend church or for other purposes. Witnesses stated that the proposed service would be used by their children in traveling to and from school and Richmond. Others testified that in order to obtain public transportation they are required to walk distances varying from one-fourth mile to more than one mile; that in many cases walking is arduous because of steep hills and lack of sidewalks, and that they make frequent trips for which they need an adequate public transportation service. Witnesses testified that Key System had been requested to extend its service to

(3) Beninger stated that the present operations of the partnership are conducted at an overall cost of about 15 cents per bus mile. This includes drivers' wages, gasoline, oil, tires, repairs, depreciation and other charges. No cost studies were introduced.

the Heights but no reply to such requests had been received.

EVIDENCE IN SUPPORT OF KEY SYSTEM'S PROPOSAL

The only testimony produced by this applicant in support of its proposals was that offered by its president and its transportation consultant. In substance the president stated that Key System had been studying the territory in the Richmond area with the view of instituting added service where needed; that it was ready and willing to provide any and all service in that area which the Commission may find is required by public convenience and necessity; that Key System as a matter of right is entitled to the first opportunity to perform such service; and that Key System is opposing the application of the Beningers to protect its investment in the area in order to provide the best possible service to the public. He described Key System facilities available in the Richmond area and drew a comparison between the increases of motor coach operations and a decrease of passengers carried.

Key System's transportation consultant stated that he had made a survey of the Richmond area and decided there is a public need to extend its No. 68 Line to serve East Richmond Heights and to serve Alvarado Park. It was his opinion that these proposed extensions over the routes he selected, with service between about 6 a.m. and 7 p.m. on a 30-minute headway each way, would adequately serve the Heights. He estimated there are about 500 to 550 homes in the Heights of which about 30% are immediately adjacent to the area. Key System's local Richmond zone cash fare of 10 cents or 4 tokens for 35 cents with free transfers would be applicable. He stated that while it had not been requested, the plan to extend the No. 48 Rheem Avenue Line to the proposed new terminal facility at the junction of San Pablo and McDonald Avenues, was to provide a more adequate transfer arrangement

for patrons of the local Richmond lines and for others desiring to transfer to and from lines serving other east bay cities and San Francisco.

Key System proposes a 30-minute headway compared to the one hour headway of the Beningers. Key System's proposed routes would be more direct than the Beningers' route and transfer privileges would be available to patrons of Key System. Key System contends in its brief that it is already serving the territory of East Richmond Heights under certificates issued by this Commission and that the proposed extended routes are not competitive with any of its existing routes. It emphasizes that the financial condition of the Beningers is inadequate to sustain their proposed extension and that no showing was made that it would be profitable. Key System relies upon the Commission's Decision in the Fialer's Inc. Case (38 C.R.C. 880) and contends that if the Commission finds that public convenience and necessity exist that it should be given the exclusive right to transport passengers between East Richmond Heights and Richmond.

CONCLUSIONS AND FINDINGS

As hereinabove stated the Beningers are presently operating a passenger stage service between El Sobrante and Richmond over the San Pablo Dam Road and propose to serve East Richmond Heights by diverging from their present route at the junction of San Pablo Dam Road and Key Boulevard for a route distance of approximately 2.7 miles. From the evidence of record it appears that the Beningers have sufficient equipment and are financially able to provide the extended service which they propose herein. No public witness testimony was produced except by the Beningers. This testimony was overwhelmingly conclusive that there is a definite public need for the type of

service proposed by the Beningers; that many of the witnesses walk distances as great as one mile, and in some cases more, to reach the facilities of Key System, and that requests had been made of Key System to extend its service to East Richmond Heights long before such offer was made. Such offer was not made until the filing of Key System's amended 90th Supplemental application herein on October 16, 1946, following the testimony of the public witnesses on September 18 and 19, 1946. This refutes Key System's contention that it is already serving the territory of East Richmond Heights, satisfactorily or otherwise. It is significant that it made no offer to provide a service, the need for which was shown to have existed for a long time; until confronted with the offer of another carrier who convincingly proved the need for such service.

While the evidence of record is conclusive that there is a public need for service between East Richmond Heights and Richmond; it does not show that there is sufficient potential traffic to justify the operation of more than one service. Nor was it shown that there is any need for service along the proposed route south of the intersection of Arlington Boulevard and Hillcrest Road.

After full consideration of all the evidence of record, it is our conclusion and we find that public convenience and necessity require the establishment of service by Russell L. Beninger and Frank Beninger, copartners, and the denial of the application of Key System.

Russell L. and Frank Beninger are hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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.

O R D E R

An application therefor having been filed, a public hearing had thereon and it having been found that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity is hereby granted to Russell L. Beninger and Frank Beninger, co-partners, authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 24 of the Public Utilities Act, for the transportation of passengers between East Richmond Heights and Richmond, as an extension and enlargement of and consolidated with the operative right created by Decision No. 35426, subject to the following restriction:

No passengers may be transported whose point of origin and point of destination are between the intersection of San Pablo Dam Road and San Pablo Avenue and the city of Richmond, nor between points locally within the city of Richmond.

(2) That in providing service pursuant to the certificate herein granted, applicants shall comply with and observe the following service regulations:

- a. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.

- b. Within 60 days from the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicants shall establish the service herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective, appropriate tariffs and time tables.
- c. Subject to the authority of this Commission to change or modify it by further order, applicants shall conduct operations pursuant to the certificate herein granted over and along the following route:

Commencing at the intersection of County Road No. 7 (San Pablo Dam Road) and Key Boulevard, outside of but near the northeasterly corporate limits of the City of Richmond; thence via Key Boulevard, Riverside Avenue, Marin Avenue, Park Avenue, Tulare Avenue, Bernhard Avenue, Kensington Avenue, Elm Avenue, and Arlington Boulevard to its intersection with Hillcrest Road and return over and along the same route.

(3) That 90th Supplemental Application No. 19502 as amended is hereby denied.

The effective date of this order shall be 20 days from the date hereof.

Dated at San Francisco, California, this 15th day of April, 1947.

Harriet Huls
Justus F. Callahan
Edward Powell
A. T. [unclear]
Kenneth Potter
 COMMISSIONERS