

ORIGINAL

Decision No. 41306

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
KEY SYSTEM TRANSIT LINES, a corpo-)
ration, 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
110th Supplemental

- DOMANUE, RICHARDS, ROWELL & GALLAGHER by FRANK S. RICHARDS, for applicant.
- JOHN W. COLLIER, City Attorney, and ARCHER BOWDEN, Assistant City Attorney, for the City of Oakland, protestant.
- STANLEY D. WHITNEY, City Attorney, DON C. McMILLAN, City Manager, by JOHN F. HANSEN, Deputy City Attorney, for the City of Alameda, protestant.
- P. W. BERNARD, for Alameda Citizens' Transportation Association, protestant.
- GEORGE R. GLAVINOVICH, City Attorney, for the City of Albany, protestant.
- LOUIS HENNING, protestant in part.
- FRED C. HUTCHINSON, City Attorney by ROBERT T. ANDERSON, Assistant City Attorney, for the City of Berkeley, interested party.
- C. W. WHITE, City Attorney, for the City of Hayward, in support of the application.
- CHARLES E. BROWN, for the City Manager of the City of Richmond, in support of the application.
- EDWARD A. GOGGIN, for East Piedmont Heights Improvement Club, interested party.
- ROBERT RIVERS and EUGENE CADENASSO, for Bay Area Transportation Club, interested party.
- JOHN S. LOGAN, for the City of Piedmont, interested party.
- GEORGE A. BUSH, for Glenview Improvement Club, interested party.
- WALTER R. BOWMANN, JAMES M. LEAVER, MRS. GLADYS ROYCE, MRS. KATHIE ZAHN, MORRIS CAMPBELL, JR., in propria persona, interested parties.

O P I N I O N

In its 110th Supplemental Application No. 19502, as amended, Key System Transit Lines requests authority to abandon street car service within the City of Oakland on its No. 14. - East

13th Street, No. 15 - 14th Avenue-MacArthur Boulevard and No. 18 - Park Boulevard and Lakeshore Avenue rail lines, to remove certain tracks, poles and overhead structures used in connection therewith and to substitute motor coach service for the rail service.

A public hearing was held before Commissioner Rowell and Examiner Paul in Oakland and San Francisco on February 11 and 16, 1948, and, following oral argument, the matter was submitted subject to the filing of briefs which have been received.

The No. 14 rail line begins at 13th and Jefferson Streets and terminates at Fruitvale Avenue and East 27th Street, Oakland. The No. 15 rail line also begins at 13th and Jefferson Streets and terminates at MacArthur Boulevard and 35th Avenue, Oakland. The No. 18 rail line extends from Leimert Boulevard and Oakmore Road to downtown Oakland via Park Boulevard and other streets to 13th Street and Broadway, thence via Broadway, Grand Avenue, Lakeshore Boulevard and Walla Vista Avenue to a point near Carlston Avenue, thence a distance of about 626 feet beyond the latter point over a private right-of-way. Applicant proposes to remove all the rails, poles and overhead structures used in connection with the operation of these rail lines except those portions of such rails and overhead structures which are used for the operation of other rail lines which are not involved herein. (1)

(1) The street car tracks, roadway and electrical overhead proposed to be abandoned are over the following streets:

From Fruitvale Avenue and East 27th Street via East 27th Street, 26th Avenue, East 24th Street, 25th Avenue, East 21st Street, 14th Avenue and East 18th Street to private right-of-way near 3rd Avenue.

Also from MacArthur Boulevard and 35th Avenue via MacArthur Boulevard and 14th Avenue to East 21st Street.

Also from Leimert Boulevard and Oakmore Road via Leimert Boulevard, Park Boulevard and private right-of-way to East 18th Street.

Also from Lakeshore Avenue and Trestle Glen Road via Lakeshore Avenue, Walla Vista Avenue and private right-of-way to the vicinity of Portal and Ashmount Avenues.

By agreements, portions of the trackage used by the Nos. 14, 15 and 18 rail lines have been quitclaimed to the City of Oakland by applicant and payments have been made to the city to cover the expenses of removal of trackage and repavement of the streets. These agreements were approved by the Commission. (Dec. No. 38433, Appl. No. 27097)

With a few exceptions the proposed motor coach service would follow the identical rail routes, and would also include a number of extensions. A motor coach extension is proposed beginning at Lakeshore Boulevard, thence along Mandana Boulevard in Oakland and Crocker Avenue in Piedmont to Wildwood Avenue. Motor coach operation along Walla Vista Avenue would be terminated at Carlston Avenue. A motor coach extension is proposed beginning at MacArthur Boulevard thence along Coolidge Avenue to Alida Avenue. Applicant proposes to abandon a portion of its No. 54 motor coach line along 35th Avenue and Redwood Road from MacArthur Boulevard to Anderson Street and to establish in its place a new extended motor coach operation (No. 15 line) which would provide through service from downtown Oakland to Mountain Boulevard and Carson Street which would eliminate the present requirement to transfer between lines. Applicant proposes to discontinue that part of its motor coach line No. 66 between 12th and Clay Streets and the end of the line at 13th Avenue and MacArthur Boulevard. Service along this part of the No. 66 bus line would then be provided by the proposed No. 15 motor coach line, just described, and the proposed No. 14 motor coach line. Between 12th and Clay Streets and East 10th Street and 5th Avenue the proposed No. 14 coach line would operate within one or two blocks of the present No. 66 coach line. From 10th Street and 5th Avenue to East 24th Street and 11th Avenue

the Nos. 14 or 15 lines would operate over the present route of said No. 66 coach line, and beyond 24th Street and 11th Avenue, the No. 15 coach line would operate within three or four blocks or not to exceed approximately 3/10 of a mile as the greatest distance from the No. 66 coach line as presently operated. The No. 14 rail line, now terminating at Fruitvale Avenue and East 27th Street, would be replaced by applicant's proposed No. 14 motor coach line which would extend beyond Fruitvale Avenue and East 27th Street over Fruitvale and Brookdale Avenues to 35th Avenue.

Applicant presently operates its No. 72 motor coach line between Richmond and Berkeley which terminates at Ashby Avenue and San Pablo Avenue, Berkeley. (2) It proposes to establish through service between Richmond and Oakland by extending this line to 10th and Grove Streets in Oakland. Limited stops would be performed between Ashby Avenue and downtown Oakland between approximately 6 a.m. and 7 p.m. daily except Sundays. During this period all local stops in this area will be served by applicant's No. 2 rail line. At other periods the No. 72 motor coach line would provide both local and through service. It is also proposed to extend this line on the route of its present No. 2 rail line from San Pablo Avenue and Washington Street to 7th and Pine Streets in Oakland for the handling of local passengers after 7 p.m., during which time the No. 2 rail line would not be operated. Between the hours of about 6 a.m. and 7 p.m. on week days applicant proposes to supplement the No. 2 rail line service on West 7th Street between Washington and Pine Streets by operation of its No. 5 rail line from its present terminus at 7th and Washington Streets via 7th Street to Pine Street.

(2) Decision No. 37339, 75th Supplemental Application No. 19502.

When local service on West 7th Street is provided by the No. 72 motor coach line the No. 5 rail line will terminate as at present at 7th and Washington Streets.

Applicant operates its Nos. 80, 81, 81A and 82 motor coach lines between San Leandro and Hayward and intermediate points, one of the lines being routed via Castro Valley and two of them via San Lorenzo. All four of these lines now provide a local service between 103rd Avenue, Oakland, and Hayward, and during the morning and evening peak periods they operate express service between 103rd Avenue and downtown Oakland. Applicant plans to operate these lines on an express service basis with limited stops between downtown Oakland and 103rd Avenue and East 14th Street between approximately 5:30 a.m. and 7:30 p.m. daily except Sundays and holidays. During other service periods of the day and on Sundays and holidays these lines would provide local service making all regular stops along East 14th Street between downtown Oakland and 103rd Avenue. This local service is now provided by the No. 1, East 14th Street car line, which, under the proposed plan, would not operate after 7:30 p.m. nor on Sundays and holidays. Minor reroutings are planned between the intersection of East 14th Street and 14th Avenue and downtown Oakland in order to avoid traffic congestion and to improve the service on these motor coach lines.

The fares, rules and regulations which apply to applicant's present operations would be applicable to the proposed motor bus service.

The evidence of record shows that applicant will immediately devote 57 automotive units to render the additional service proposed. A sufficient number of new buses are on hand for this purpose.

There was some objection to the proposed abandonment of that portion of the No. 66 motor coach line between East 24th Street and MacArthur Boulevard on the basis that some of the persons now using this part of the line would be compelled to walk a greater distance. According to the record, the greatest distance from this area to present or proposed lines is approximately $\frac{3}{10}$ of a mile, and only a few persons might be required to walk this distance. There was no suggestion that any other routing would serve a greater number of people than the proposed lines. A test of the proposed operation will determine whether such service will be adequate.

Representatives of the Cities of Richmond, Berkeley, Piedmont and Hayward, and numerous patrons generally favored applicant's proposals. No other cities directly opposed the proposals. A slight modification by applicant of the terminal of the Mandana Boulevard leg of its proposed No. 18 motor coach line overcame minor objections by the City of Piedmont.

Some objections were voiced by residents situated near the terminal of the existing No. 18 car line who will not have convenient access to the substituted motor coach line unless they be permitted to use Key System Transit Lines' private property at that location. Key System Transit Lines offers to deed a sufficient pedestrian way for that purpose. It appears that with such a walkway available most of the residents in this area will have convenient access to both branches of the No. 18 bus line. The City of Oakland asked that Key System Transit Lines also pave and light such right-of-way. Key System Transit Lines refuses to undertake such obligation.

The position taken by the City of Oakland on the entire application requires more extended comment. The City does not protest the discontinuance of the street railway services requested by Key System Transit Lines. In fact, it heretofore has entered into an agreement with the Key System Transit Lines for the removal of the rails along streets involved. Neither does the City directly protest the granting of Key System Transit Lines' application for a certificate to extend its motor bus service. However, a resolution passed by the City Council declares that its consent to the granting of the application is conditioned upon the Commission making a finding that "Key System is required to obtain a franchise or special permit from the City of Oakland to operate therein as a transportation utility." A second condition imposed is that the Commission grant a certificate for the operation of buses on a trial basis for one year only. The reason underlying the City's request that the Commission so condition its order granting the application was explained by its counsel and by testimony presented through the engineer for the City Planning Commission.

With respect to the request that the Commission find that Key System Transit Lines is required to secure a franchise from the City of Oakland to operate therein as a transportation utility, the Commission concludes that it would be inappropriate to express any opinion on this question. The record made in this proceeding reveals that Key System Transit Lines and the City of Oakland have been discussing the terms of a franchise agreement, but they have not yet settled upon the terms of such a franchise. The City's request that the Commission find that Key System Transit Lines is required to obtain a franchise or permit to operate as a "transportation utility", seemingly contemplates that such a

franchise encompass the three classes of transportation service performed by Key System Transit Lines within the City, namely, the electric interurban railway service over the Bay bridge, the local street railroad service, and also the passenger stage service, as these three distinct classes of transportation service are legally defined in Sections 2 and 2½ of the Public Utilities Act.

It should be observed that the passenger stage service now conducted by Key System Transit Lines under certificates issued by this Commission comprises operations within ten separate East Bay municipalities. It is evident, therefore, that the passenger stage operations of the Key System Transit Lines are operations as defined and comprehended by Section 2½ and Section 50½ of the Public Utilities Act, for the reason that they are not operations exclusively within the limits of a single incorporated city. Applicant is requesting the granting of a certificate of public convenience and necessity to operate passenger stage service over certain streets and for certain extensions of its present passenger stage service. It is also requesting authority to discontinue operations of certain of its street railway lines. It is the opinion of the Commission that it must determine whether public convenience and necessity require the granting of the instant application for the inauguration and the extension of such passenger stage service, without determining the claim of the City of Oakland that Key System Transit Lines must first obtain a franchise or permit to operate within that City. Section 50½ of the Public Utilities Act requires no showing by a passenger stage corporation that it has secured a franchise or permit from a municipality as a condition precedent to the granting by this Commission of a certificate to operate passenger stage service in such municipality. We express

no opinion on the question whether or not, as between the City of Oakland and applicant, the City may require applicant to secure a franchise for the use of its streets.

With respect to the request made by the City of Oakland that the Commission condition its grant of a certificate to operate buses on those routes referred to as Lines 15 and 18 by limiting such operations to a period of one year on a trial basis only, reference was made to a transportation survey prepared for the City which recommended the institution of electric trolley coach service instead of motor coach service on these lines. Although the City does not appear to demand that such trolley coach service be inaugurated at once, it requests the Commission to direct Key System Transit Lines not to remove the existing poles and overhead wires along the rail lines to be abandoned. The retention of such facilities is desired in order that electric facilities will be available for possible future operation of trolley coaches in the event the City should determine that that form of transportation is preferable to the operation of self-propelled motor coaches. The Key System Transit Lines resists such a proposal. It argues that it should not be required to make the substantial investment in the bus facilities necessary to render adequate service along these routes if its operative rights thereon are limited to one year only and it then may be compelled to make the additional investment necessary to render an entirely different class of transportation service. The Commission does not believe that it is now called upon to determine the extent of the powers it might exercise at some time in the future, or what may be compelled by the City of Oakland, in requiring Key System Transit Lines to replace one form of transportation service with another. We believe that the requests of the City of Oakland that the passenger stage

service as proposed on street car lines No. 15 and No. 18 should be authorized on a trial basis for a period of one year or as such period may be extended by the Commission, and that the electric poles and overhead wires be retained in place for a like period of one year appear to be reasonable. Should electric trolley coach service ever be instituted along these streets, either by agreement of interested parties or by any lawful direction given to Key System Transit Lines, the utilization of the existing overhead electric facilities would serve to reduce the capital investment then required.

After full consideration of all the facts of record, it appears that under applicant's proposals more schedules will be available to the public and an improved service will be provided on all lines involved. Therefore, it is our conclusion and we find that public convenience and necessity require the abandonment of the street car service and concurrently therewith the establishment of passenger stage service on the No. 14 line as proposed herein. With respect to the establishment of passenger stage service on the No. 15 and the No. 18 lines as proposed herein, we find, however, that such service on these lines should be established on a trial basis for a one year period subject to further order of the Commission, and that during such period the overhead electric facilities should not be abandoned or removed.

The Commission will grant a certificate over the streets only where needed to enable applicant, in conjunction with its present certificates, to establish the passenger stage service over the routes as proposed.

O R D E R

An application therefor having been filed, a public hearing held thereon, the matter duly submitted, the Commission being fully informed therein, and it having been found that public convenience and necessity so require,

IT IS ORDERED as follows:

(1) Key System Transit Lines may discontinue and abandon street car service on its No. 14 - East 18th Street, No. 15 - 14th Avenue-MacArthur Boulevard, and No. 18 - Park Boulevard and Lakeshore Avenue street rail lines in the City of Oakland, subject to the following conditions:

- a. That upon abandonment of its street rail road facilities it shall not abandon nor remove, for a period of one year from the effective date hereof, poles and overhead structures used in connection with the operation of its No. 15 and No. 18 rail lines, said poles and overhead structures to be maintained in a safe condition,
- b. That Key System Transit Lines in accordance with an offer made during the hearing shall tender a deed to a sufficient portion of its private rail right-of-way to be used as a walk way between Walla Vista Avenue and a cross walk between Carlston Avenue and Portal Avenue, either to the City of Oakland or to the owners of property adjacent to such right-of-way,
- c. That the abandonment of said street car service shall be made effective concurrently with the establishment of passenger stage service as authorized in paragraph (2) of this order.

(2) There is hereby granted, as an extension of and combined and consolidated with applicant's present certificates permitting passenger stage service between Oakland, Piedmont, Berkeley, Emeryville, Albany, El Cerrito, Richmond, Alameda, San Leandro and Hayward and all points intermediate thereto, a certificate of public convenience and necessity to Key System Transit Lines

authorizing the establishment and operation of a service as a passenger stage corporation, as defined in Section 24 of the Public Utilities Act, between all points on, and over and along, the following streets in the Cities of Oakland and Piedmont:

- a. On Brookdale Avenue between 35th Avenue and Fruitvale Avenue.
- b. On East 27th Street between Fruitvale Avenue and 23rd Avenue.
- c. On East 21st Street between 23rd Avenue and 14th Avenue.
- d. On 10th Street between Clay Street and Grove Street.
- e. On Clay Street between 7th Street and 10th Street.
- f. On Grove Street between 10th Street and 11th Street.
- g. On Jefferson Street between 10th Street and 13th Street.
- h. On Coolidge Street between Charleston Street and MacArthur Boulevard.
- i. On 14th Avenue between MacArthur Boulevard and East 24th Street, and between East 21st Street and East 18th Street.
- j. On East 18th Street between 14th Avenue and Lakeshore Avenue
- k. On Lakeshore Avenue between East 18th Street and Foothill Boulevard.
- l. On 12th Street between 14th Street and extension to Oak Street.
- m. On Oak Street between 12th Street and 13th Street.
- n. Park Boulevard between Leimert Boulevard and East 18th Street.
- o. On Franklin Street between 13th Street and 21st Street.
- p. On 21st Street between Franklin Street and Broadway.
- q. On Grand Avenue between Broadway and Lake Park Avenue.
- r. On Lake Park Avenue between Grand Avenue and Lakeshore Avenue
- s. On Lakeshore Avenue between Lake Park Avenue and Walla Vista Avenue.

- t. On Walla Vista Avenue between Lakeshore Avenue and Balfour Avenue.
- u. On Mandana Boulevard between Lakeshore Avenue and Piedmont City Limits, vicinity Ashmount Avenue.
- v. On Crocker Avenue between Oakland City Limits and Wildwood Avenue.
- w. On 1st Avenue between Lakeshore Avenue and East 12th Street.
- x. On 14th Avenue between East 14th Street and East 18th Street.
- y. On Leimert Boulevard between Park Boulevard and Oakmore Road.
- z. On San Pablo Avenue and Washington Street between Ashby Avenue and 7th Street.
- aa. On 7th Street between Broadway and Pine Streets.
- bb. Applicant may turn its motor vehicles at termini or intermediate points either in the intersection of the street, or by operating around a block, in either direction, contiguous to such intersection.

This certificate, insofar as it authorizes passenger stage service over and along those streets on which the No. 15 and the No. 18 street rail lines now operate, is granted upon the condition that said passenger stage service shall be on a trial basis of one year only unless extended by further order of the Commission.

(3) Key System Transit Lines, effective concurrently with establishment of passenger stage service as authorized in paragraph (2) of this order, may discontinue and abandon service for the automotive transportation of passengers over and along the following streets in Oakland:

Beginning at MacArthur Boulevard and 13th Avenue, thence along 13th Avenue, East 28th Street and 11th Avenue to its junction with East 24th Street; along 5th Avenue between East 10th Street and East 8th Street, around a loop comprising MacArthur Boulevard, Stuart Street, 34th Street and 13th Avenue,

and the passenger stage operative rights therefor are hereby cancelled.

(4) On or after and not to exceed 20 days after the effective date hereof, applicant shall file an acceptance of the certificate herein granted.

(5) Applicant shall establish the passenger stage service herein authorized not later than 30 days after the effective date hereof, and shall comply with the provisions of General Order No. 79 by filing in triplicate appropriate tariffs on or after the effective date hereof which may be made effective on not less than five days' notice to the Commission and the public.

The effective date of this order shall be 10 days from the date hereof.

Dated at San Francisco, California, this 9th day of March, 1948.

P. B. Underwood
Justin F. Craven
Grant Howell
Harold Kula
Harriet Potter
COMMISSIONERS