

ORIGINAL

Decision No. 42199

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
KEY SYSTEM TRANSIT LINES, for authority )  
to substitute motor coaches for its No. )  
1 East 14th Street and No. 2 San Pablo )  
Avenue, No. 4 Shattuck Avenue and No. 5 )  
Telegraph Avenue and No. 5 Grove Street )  
Transit Rail Lines, all in the County of )  
Alameda, State of California. )

Application No. 29174

In the Matter of the Application of )  
KEY SYSTEM TRANSIT LINES, 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  
110th Supplemental

Donahue, Richards, Rowell and Gallagher, by  
Frank S. Richards, for applicant. John W. Collier,  
City Attorney, and Archer Bowden, Assistant City  
Attorney, for the City of Oakland; Ross Miller,  
City Manager, Fred C. Hutchinson, City Attorney,  
and Robert T. Anderson, Assistant City Attorney,  
for the City of Berkeley; Arthur Carden, City  
Attorney, for the City of San Leandro, protestants.  
George R. Glavinovich, City Attorney, for the City  
of Albany; Frank S. Small, for Berkeley Chamber  
of Commerce; Eugene A. Read, for Oakland Chamber  
of Commerce; Dudley W. Frost, for Downtown  
Property Owners Association, Downtown Merchants  
Association, and Downtown Merchants Parking  
Association; Aldo P. Guidotti, for Temescal Merchants  
Association; Thomas Corder, for Emeryville Industries  
Association; O. L. Eaton, for Grove Street Merchants  
Association; Sam Britton, for Alameda County Merchants  
Association, interested parties. Thomas S. McGuire  
and R. J. Hannah, for Central Committee East Bay  
Improvement Club, protestant in part; Charles X.  
Newman, for Lake Merritt Booster's Club; Eugene P.  
Cadenasso, for Bay Area Transportation League;  
James M. Leaver, for Rockridge Improvement Club,  
protestants.

O P I N I O N

In Application No. 29174, Key System Transit Lines seeks authority to discontinue street railway service on its four remaining local rail lines (Nos. 1, 2, 4 and 5) being operated in the Cities of Oakland and Berkeley, and to substitute motorized service along substantially the same routes. In Application No. 19502 (110th Supplemental), the only issues remaining for our determination were raised on petition by the City of Oakland for rehearing of Decision No. 41306 issued in that matter March 9, 1948, which authorized Key System Transit Lines to substitute motorized service for local rail service theretofore rendered on three other rail lines (Nos. 14, 15 and 18) within the City of Oakland, one of which, in part, served an area contiguous to the City of Piedmont. These two matters have been submitted and may appropriately be consolidated for decision.

Subsequent to the issuance of said Decision No. 41306 on March 9, 1948, the Commission granted two other applications of Key System Transit Lines to substitute motor coach service for street railway service, namely Decision No. 41385, covering the No. 7 rail line in Berkeley, and Decision No. 41652 covering rail lines Nos. 10, 11 and 12 in Oakland and Piedmont.

In none of the applications already decided was the discontinuance of street railway service seriously questioned. The only objection raised by the City of Oakland to Decision No. 41306 relates to the characterization of the service authorized, it being claimed the certificate of public convenience and necessity issued should not have been to operate as a passenger stage corporation as defined in Sections 2 $\frac{1}{2}$  and 50 $\frac{1}{2}$  of the Public Utilities Act. Underlying that contention is the claim that no

certificate should be issued to Key System Transit Lines to operate motor coaches until a franchise has first been obtained for the use of the city streets in that manner. As a similar claim is made by both the City of Oakland and the City of Berkeley in connection with the pending Application No. 29174, the issues raised in the two matters may be considered together in this opinion.

The above entitled matters were heard before Commissioner Rowell and Examiner Paul on April 30, 1948, and oral argument received on May 5, 1948. Thereafter, a hearing was had upon an application of Key System Transit Lines for an increase in fares, and a decision is being rendered this day in that matter. It was stipulated by the Cities of Berkeley and Oakland that the evidence taken in the rate proceeding might be considered by the Commission in the above entitled matters involving the substitution of buses for the remaining rail services. All the municipalities appearing in the rate proceeding urged the Commission first to determine whether the Key System Transit Lines should be permitted to motorize fully its local East Bay transportation service.

During the year 1938 about 44 per cent of Key System Transit Lines' combined local rail and motor coach service on a mileage basis was provided by rail operation. At the present time the proportion of local rail service is about 11 per cent. The total length of the routes of the remaining rail lines, the Nos. 1, 2, 4 and 5 lines, is about 26 miles, while the existing local motor coach lines comprise about 281 miles.

The evidence shows that under applicant's proposal it would be able to effect substantial annual operating economies.

It would also be able to provide a more efficient, more frequent and improved service. Running time on the average could be reduced about 20 per cent. Through motorized services would be established between various cities, thereby eliminating certain loops and vehicle and turning movements in congested traffic areas of Oakland. Evidence of performance of motorized lines in transporting peak traffic in excess of that of the Nos. 1, 2, 4 and 5 rail lines clearly demonstrates the ability of motor coaches to handle efficiently all the traffic of those rail lines. Motor coaches can be operated expeditiously in express service on the same lines as local service. They can be detoured around road blocks resulting from any cause, and by curb loading and unloading, hazards resulting from present methods could be avoided.

The evidence indicates that street railway facilities of Key System Transit Lines require extensive rehabilitation if that form of transportation service is continued. Should the remaining rail service be discontinued, two parcels of real property being used for terminal service and for car repair and storage would be eliminated from the used and useful property upon which Key System would be entitled to earn a return. It clearly appears that substantial economies can be effected with the elimination of the existing rail line operations. In the opinion being rendered this day in the rate proceeding, there appear further facts pertaining to the level of the rates justified with a full motorization of the service as compared with the continued operation of the four remaining rail lines.

The positions taken by the Cities of Oakland and Berkeley will be considered presently. Local commercial and civic groups generally favored applicant's proposal. Representatives of two

civic groups offered minor objections to the proposal of applicant until they had been given an opportunity to determine whether the use of alternative types of equipment might provide a service more suitable to them.

The objections first made by the Cities of Oakland and Berkeley to applicant's proposal were altered materially during the course of the hearing in the rate proceeding (Application No. 29434). It now appears these Cities have no objection to the proposed abandonment provided that the Commission's authorization be made subject to certain conditions as expressed in resolutions adopted by the City Councils of each.

The City of Oakland requests that abandonment of rail operations, if authorized, be conditioned upon retention of overhead facilities, storage yards and shops. The City of Berkeley did not join in this request but desires the removal of tracks and overhead facilities. Each of the Cities requests that the authority sought be withheld until Key System Transit Lines has obtained a franchise or permit to conduct its motor coach operations. Lastly, the Commission is requested to withhold the authority sought until Key System Transit Lines has entered into a contract (a) with the City of Oakland covering the removal of rails and ties and the repavement of the portion of the streets from which the rails and ties would be removed, and (b) with the City of Berkeley covering the removal of tracks, ties, poles and overhead facilities and repavement of the portions of the streets

from which the rails and ties would be removed. In substance, the Commission is requested to so condition its order if applicant's request is granted.

The City of Oakland presumably desires retention of those facilities so that they would be available if at some future time trolley coach operations should be established. The evidence indicates that these facilities would not be adaptable in large part to trolley coach operation and that their retention in place would not result in any economy should trolley coach service facilities eventually be installed. There is no evidence as to the probability of establishment of trolley coach operations within the foreseeable future. It was undisputed that if such operations should be established they would not necessarily be along the same routes now served by the rails. To require the retention of yards, shops and overhead structures as requested by Oakland would in effect compel the continued maintenance of duplicate transportation facilities which would require adequate maintenance if they are not to become a public hazard. In order to provide service by trolley coaches applicant would be compelled to make a very substantial capital outlay for new equipment and complete rehabilitation of the overhead installations. This might require additional increases in fares. The record shows that upon complete abandonment of such facilities, substantial savings would quickly accrue to applicant both as to capital investment and lower cost of operation. In order to achieve the full benefits under such proposal applicant must be allowed to abandon all facilities used in connection with the four remaining local street car lines. It was undisputed that rates can be kept at a lower level by full motorization. In effect applicant would be using two methods of

transportation which it could not completely coordinate to give the best service and would not be able to realize all possible economies. Upon the evidence we conclude there would be no justification for the retention of these facilities.

In regard to the requests by the Cities of Oakland and Berkeley that the Commission first require Key System Transit Lines to obtain franchises or permits from each, the evidence indicates that applicant has for some time been negotiating with these Cities with respect to the terms, and has repeatedly stated in the record its willingness to take out a franchise covering all operations in each of the ten cities it serves. The record shows that applicant has agreed to and has continued to pay to the Cities of Oakland and Berkeley franchise taxes covering certain of its motor coach operations notwithstanding the expiration of most of its street railroad franchises. Acquisition of franchises and the provisions thereof are matters for settlement by and between applicant and the municipalities involved.

With respect to the request of both Oakland and Berkeley that applicant be required to enter into contracts for the removal of the tracks and other facilities and repavement of portions of the streets from which the tracks would be removed, the record clearly shows that on a number of occasions and in various proceedings applicant has unequivocally declared its willingness and intention to remove its rail facilities and repave the streets as quickly as that can be done giving due consideration to its financial position. This would be done on a schedule mutually agreeable to all the parties. In Decision No. 41652, above

referred to, the Commission stated that it was convinced that it does not possess authority to impose the condition which the Cities request. We find no reason to change that conclusion. In determining whether Key System Transit Lines should be permitted to substitute motor coach service for the four remaining rail lines, the Commission may rely upon such declaration of intention to repave those streets. But its action in these applications cannot be deferred pending execution of detailed agreements covering paving schedules sought by the Cities.

The Commission cannot, as requested by the Cities of Oakland and Berkeley, declare that no authority should be granted to applicant to establish motor coach service in substitution for the remaining local rail lines, as required by the public interest, until such time as applicant may have successfully negotiated franchises and contracts with those Cities.

Giving full consideration to all the evidence and facts of record in this proceeding, the Commission is led to the conclusion and finds that it is in the public interest to authorize Key System Transit Lines to discontinue street railroad operations on its No. 1, East 14th Street, No. 2, San Pablo Avenue, No. 4, Shattuck Avenue, and No. 5, Telegraph Avenue-Grove Street lines, and to abandon all facilities exclusively used in connection with the operation of those lines. The Commission further finds on the facts of record that public convenience and necessity require the establishment and operation of the passenger stage service proposed by applicant in the place of the rail service now provided on its Nos. 1, 2, 4 and 5 rail lines.



The issue raised on the petition for rehearing of Decision No. 41306 as to whether or not certificates to operate motor-coach service should be issued as a street railroad corporation or as a passenger stage corporation does not now appear to require extended comment. Prior certificates granted to Key System for the operation of motor coaches for many years have been to operate as a passenger stage corporation under Sections 2½ and 50½ of the Public Utilities Act, and we do not perceive any error in so doing. The Cities of Oakland and Berkeley having consented to complete abandonment of the remaining local street rail lines and the operation of motor coaches, subject to certain conditions as above noted, it seems to the Commission that the certificate now to be granted authorizing motor-coach operations in substitution of the last of the local street car operations must be granted under Section 50½ of the Public Utilities Act. Accordingly, said Decision No. 41306 will be affirmed. A certificate will be granted to applicant authorizing operation over the streets only where needed to enable it, in conjunction with its present certificates, to establish passenger stage service over the routes as proposed.

O R D E R

A public hearing having been held upon the above-entitled matters, which have been duly submitted, the Commission being fully informed therein and based upon the conclusions and findings of facts expressed in the foregoing opinion,

IT IS ORDERED:

(1) That Key System Transit Lines may discontinue street railroad service on its No. 1, East 14th Street Line, No. 2, San Pablo Line, No. 4, Shattuck Avenue Line, and No. 5, Telegraph Avenue-Grove Street Line and abandon all facilities exclusively

used in connection with the operation of those lines, provided that concurrently therewith passenger stage service shall be established as authorized in paragraph (2) of this order.

(2) That 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, 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 2½ of the Public Utilities Act, between all points on and over and along the following streets in the Cities of Oakland and Berkeley:

- a. Along Grove Street between University Avenue and Adeline Street;
- b. Along Adeline Street between Grove Street and Grove Street;
- c. Along Grove Street between Adeline Street and San Pablo Avenue;
- d. Along Telegraph Avenue between Durant Avenue and 22nd Street;
- e. Along Shattuck Avenue between Durant Avenue and Telegraph Avenue;
- f. Along 11th Street between Harrison and Fallon Street;
- g. Along Fallon Street between 11th Street and 12th Street;
- h. 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.

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

(4) That applicant shall establish the passenger stage service herein authorized not later than 90 days after the effective date hereof.

(5) That Decision No. 41306 in Application No. 19502 (110th Supplemental), on which rehearing has been granted and the matter heard and considered, is hereby affirmed.

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

Dated at San Francisco, California, this 4<sup>th</sup>  
day of November, 1943.

R. E. Inman  
Justice J. C. C. C.  
Deputy Commissioner  
Harold P. Kuls  
Kenneth Potter  
COMMISSIONERS