

ORIGINAL

Decision No. 43823

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of) BENINGER TRANSPORTATION SERVICE, INC.) a California Corporation, for a certifi-) cate of public convenience and necessity)) to operate a passenger stage service in) the County of Contra Costa.)	Application No. 30052
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In the Matter of the Application of) KEY SYSTEM TRANSIT LINES for authority) to extend and reroute portions of its) No: 68 (Barrett Ave.), No. 69 (23rd St.)) and No. 78 (Panhandle Blvd.-13th St.-) Rheem Ave.) passenger stage lines in the) City of Richmond and in the County of) Contra Costa, State of California.)	Application No. 30179
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Marquam C. George, for Beninger Transportation Service, Inc., in Application No. 30052, and protestant in Application No. 30179.

Donahue, Richards, Rowell & Gallagher, by Orlando J. Bowman, for Key System Transit Lines, in Application No. 30179 and protestant in Application No. 30052.

Thomas M. Carlson, City Attorney of Richmond, by Frederich J. Bold, Jr., protestant in Application No. 30179.

Chamber of Commerce of City of Richmond, by Frederich J. Bold, Jr., protestant in Application No. 30179.

Pacific Greyhound Lines by Douglas Brookman, protestant in Application No. 30052.

O P I N I O N

Beninger Transportation Service, Inc., by Application No. 30052 requests a certificate to extend passenger stage service to all points along San Pablo Avenue (U. S. Highway 40) from its intersection with MacDonald Avenue, in the City of Richmond, to its intersection with 23rd Street in the City of San Pablo. From the latter point the operation would extend over a loop route serving residential districts in the northwesterly part of the City

of San Pablo known as Brookside, McArthur Tract, Merritt Park, San Pablo Gardens, El Portal Park and adjacent areas. The proposed service would be an extension of that which this applicant now provides between El Sobrante, El Portal, East Richmond Heights and Richmond.

(1)

Key System Transit Lines by Application No. 30179 requests authority to reroute its No. 68 line and extend its No. 69 and No. 78 lines in the Cities of Richmond and San Pablo in order to serve points along San Pablo Avenue, reduce headways and avoid certain traffic hazards. The route extensions proposed by Key System along San Pablo Avenue would duplicate two-thirds of the route proposed by Beninger Transportation along that avenue.

A public hearing thereon was had before Examiner Paul at San Pablo upon a consolidated record and the matters were submitted subject to the filing of briefs which have since been received.

PROPOSAL OF BENINGER TRANSPORTATION

Beninger Transportation conducts passenger stage service between El Sobrante and Richmond and intermediate points via El Portal and Rollingwood and between East Richmond Heights, in Contra Costa County, and Richmond. These operations are subject to the restriction that no passenger may be transported whose point of origin and point of destination are between the intersection of San Pablo Creek Highway and San Pablo Avenue, the intersection of San Pablo Dam Road and San Pablo Avenue, on the one hand,

(1) Beninger Transportation Service, Inc. will hereinafter be referred to as Beninger Transportation, and Key System Transit Lines will be referred to as Key System.

and the City of Richmond, on the other hand. Neither may passengers be transported locally between points within the City of Richmond. This applicant's proposed extended service would begin at the intersection of San Pablo Avenue and MacDonald Avenue in the City of Richmond, looping over Nevin Avenue, Wilson Avenue and MacDonald Avenue, thence along San Pablo Avenue to 23rd Street, (San Pablo), thence looping over U. S. Highway 40, Broadway, 13th Street and Alvarado Street to its intersection with San Pablo Avenue. The proposed local fare would be 10 cents with a free transfer to and from the East Richmond Heights operation. Transfers to and from the El Sobrante operation would be issued at a charge of five cents cash. School commutation tickets would be sold at a rate of 20 rides for \$1.00 over the proposed extended routes, and 20 rides for \$1.25 when transferring to or from the El Sobrante line.

EVIDENCE IN REGARD TO BENINGER TRANSPORTATION PROPOSAL

The manager of Beninger Transportation testified that he had received numerous requests from many residents of East Richmond Heights District, the McArthur Tract of the City of San Pablo, and residents along San Pablo Avenue to establish the proposed service. A similar request had also been made to the witness by various merchants and professional men who have established their places of business or offices along San Pablo Avenue, and particularly from the merchants in the Mira Vista shopping district along San Pablo Avenue near MacDonald Avenue in Richmond. These requests had persisted for almost two years before filing the application, so he stated. He interviewed many persons in the area in order to determine whether the demands were sufficient to justify the proposal to provide the service. The witness further testified that the round trip distance over the proposed route is 6.2 miles.

It is planned to operate 26 round trips daily except Sundays and holidays, which would result in a total daily mileage of approximately 161 miles. The service would be operated from approximately 6 a.m. to 7 p.m. on a 30-minute headway. The witness estimated that the daily operating cost would amount to approximately \$47. This cost estimate was based upon applicant's operating expenses in that area. It was further estimated that under the proposed operation a daily minimum of approximately 600 passengers would be transported which would produce an estimated operating revenue of about \$60. Thus a minimum net operating profit of approximately \$12 a day would result. There is no proposal to provide a local service between points in the City of Richmond except upon that portion of the proposed route along San Pablo Avenue within that city.

Beninger Transportation called approximately 70 public witnesses, most of whom were residents in the various areas presently served or proposed to be served by it. Other witnesses were merchants engaged in business or professional men with establishments along San Pablo Avenue. Officials of the City of San Pablo, officers of the Chamber of Commerce of that city and representatives of improvement clubs and other organizations in that area also testified. It does not appear to be necessary to discuss in detail the testimony of all of these witnesses. Residents of the McArthur Tract in San Pablo testified that they were without public transportation to or from the post office at San Pablo and shops and stores located in that vicinity along San Pablo Avenue. They further testified that they were unable to reach the offices of doctors and dentists and stores and shops of

merchants along San Pablo Avenue between Rheem and MacDonald Avenues except by walking distances in some cases as much as one-half mile to obtain service by Key System at 23rd Street near San Pablo Avenue. They were then required to ride over a circuitous route involving a transfer to arrive in the vicinity of their destinations along San Pablo Avenue. Often an additional walk was necessary to reach their ultimate destinations. Similar testimony was given by witnesses residing in the East Richmond Heights District who had no direct transportation to business establishments along San Pablo Avenue except by walking considerable distances along that avenue or by transferring to the Key System facilities which then require, in many cases, a circuitous journey to reach their destinations. There was testimony of a like nature by other witnesses who indicated a need for direct transportation between their homes either in the East Richmond Heights District or the McArthur Tract District and their places of employment nearby or on San Pablo Avenue. Witnesses engaged in business on that avenue expressed the opinion that transportation for many of their patrons was inadequate. Other witnesses residing in or near San Pablo testified that members of their families attending schools in other East Bay cities are required to travel from their homes to the Richmond Terminal of Key System, where they transfer to the interurban facilities of Key System to reach their destinations. This requires a circuitous journey and a loss of time which could be obviated if more direct transportation were provided with transfer facilities at San Pablo Avenue and MacDonald Avenue. The mayor of the City of San Pablo stated that there are approximately 1,000 homes in the McArthur Tract-San Pablo Gardens area, occupied

by persons who are required to walk distances varying up to approximately one-half mile to obtain transportation service on 23rd Street near San Pablo Avenue. According to the witness this service is not designed to provide adequate transportation to points on San Pablo Avenue which many of these persons desire to reach. He also stated that there are approximately 400 homes in the El Portal district whose occupants are similarly situated as those in the McArthur Tract. It was his opinion that there is a definite public need for the service proposed by Beninger Transportation.

PROPOSAL OF KEY SYSTEM

Of the numerous lines operated by Key System in the East Bay area, we are here concerned with only three lines which operate locally in the Richmond-San Pablo area. These lines are designated as No. 68-Barrett Avenue line, No. 69-23rd Street line, and No. 78-Panhandle-13th Street-Rheem Avenue line. Hereinafter they will be referred to by those numbers. Each of these lines operates through Key System's terminal which is located off street in a portion of the block bounded by 8th and 9th Streets and MacDonald and Bissell Avenues, near the central business section of Richmond. The ground on which this terminal is located is owned by the Richmond public school district. Following is a general description of the routes used by these lines and the proposed changes, all of which are more graphically shown on the map attached to the application and on Exhibit No. 8 introduced at the hearing.

The No. 68 line has two arms which are parallel to each other and serve the main business district of Richmond and an area easterly by north of said business district. Each arm of this

route terminates east of San Pablo Avenue which they cross at points about one-half mile apart. With respect to the southerly arm of this route, Key System plans to discontinue operation along one block of San Pablo Avenue north from Barrett Avenue to Roosevelt Avenue. In lieu thereof it desires to turn south from Barrett Avenue along San Pablo Avenue two blocks to MacDonald Avenue, thence returning one block over MacDonald Avenue and three blocks over Wilson Avenue connecting with the present route at Roosevelt Avenue. This proposed rerouting would provide a direct transfer connection at San Pablo and MacDonald Avenues to and from the No. 72-Oakland-Richmond and the "L"-San Francisco-Richmond lines. This would avoid a walking transfer of two blocks. Operation of the No. 68 line would be discontinued through the Richmond Terminal and in lieu thereof it would be operated along MacDonald Avenue from 12th Street to 10th Street, there connecting with the northerly arm of this route. On return trips the route would be southerly from MacDonald Avenue along 10th Street, Bissell Avenue and returning to MacDonald Avenue over 12th Street.

Key System's No. 69 line, like the No. 68 line, has two arms which are approximately parallel to each other serving the main business district of Richmond and an area northerly of, and another area northeasterly of said business district. The westerly arm of this route terminates on Chesley Road at Davis Street. The easterly arm terminates on 23rd Street near San Pablo Avenue in the City of San Pablo. The only proposed change of this route is a loop extension of the easterly arm about four-tenths of a mile southeasterly along San Pablo Avenue, thence along Church Lane and Market Avenue to the present route along 23rd Street.

Key System operates its No. 78 line from the intersection of 11th Street and Broadway in the northeasterly portion of the City of San Pablo, thence southerly through the Richmond Terminal, thence generally southeasterly to the intersection of Lassen Street and San Pablo Avenue in Richmond. A branch of this route in the northerly part of Richmond extends easterly along Rheem Avenue from 13th Street to San Pablo Avenue which Key System proposes to extend along San Pablo Avenue about 1.2 miles from Rheem Avenue to MacDonald Avenue. It would cross both arms of the No. 68 line.

EVIDENCE IN REGARD TO KEY SYSTEM'S PROPOSAL

The only evidence produced by Key System supporting its proposals was the testimony of its traffic manager. He testified that service on the No. 68 route, above described, is provided on a frequency of 35 minutes which would be reduced to 30 minutes if the proposed rerouting of that line should be authorized. A 35-minute frequency, so he stated, results in odd time departures of schedules and has a tendency to discourage patronage because of uneven timing and long waits at transfer points. This saving in time would be achieved by discontinuing operation through the Richmond Terminal. Under this plan the route would be shortened about one-half mile. Applicant would also be able to avoid operation of the No. 68 line in the vicinity of two public schools which are separated from their playground facilities by Bissell Avenue and 9th Street near the Richmond Terminal located on school property. The traffic hazards and slow traffic movement in the vicinity of these schools would thus be avoided. The rerouting of this line along San Pablo Avenue from Barrett Avenue to MacDonald Avenue, according to the witness, would provide a direct transfer connection

at San Pablo and MacDonald Avenues to and from the No. 72-Oakland-Richmond lines and the "L"-San Francisco-Richmond lines for patrons desiring to travel between points on the No. 68 line and San Francisco and points in the East Bay cities. He stated that patrons desiring to make that transfer are now required to walk a distance of two blocks. The witness further testified that Key System's proposal to extend the route of the No. 69 line along San Pablo Avenue, Church Lane and Market Avenue would provide a service requested by persons attending church and parochial schools located on Church Lane who travel between the church or schools, on the one hand, and other points on Key System's lines, on the other hand. This line would continue to be operated through the Richmond Terminal. According to the witness, patrons of this line, by use of transfers, have service available by Key System to most points on San Pablo Avenue between MacDonald Avenue and 23rd Street, although some patrons might be required to walk relatively short distances along San Pablo Avenue.

In regard to the No. 78 line, the witness testified that the proposal to extend the Rhoem Avenue branch along San Pablo Avenue to MacDonald Avenue would enable patrons of the No. 68 and No. 78 lines to transfer at San Pablo and MacDonald Avenues to or from the No. 72 and "L" lines who desire transportation to other points served by Key System. These patrons would thus avoid, in most cases, the circuitous route involved by travelling to 10th Street and MacDonald Avenue to make such transfers. This proposed extension, according to the witness, would also provide a direct service for those desiring to utilize the shopping facilities along San Pablo Avenue, particularly the Mira Vista shopping

district in the vicinity of MacDonald Avenue instead of making the round-about journey through downtown Richmond as now required.

The Chamber of Commerce of the City of Richmond opposed Key System's plan to route the No. 68 line along San Pablo Avenue through the Mira Vista district, and the proposal to reroute this line in order to avoid its operation through the Richmond Terminal. The Chamber also opposed the plan of Key System to extend the No. 78 line along San Pablo Avenue from Rheem Avenue to MacDonald Avenue. A witness for the chamber expressed the view that reroutings of the Nos. 68 and 78 lines along San Pablo Avenue to MacDonald Avenue would divert traffic from the central business section of Richmond to other trading areas. These witnesses further stated that the Merchants Division of the Chamber of Commerce unanimously objected to Key System's proposal to discontinue operating the No. 68 line through the Richmond Terminal. It was their opinion that abandonment of the use of the terminal and the consequent use of 10th Street and MacDonald Avenue as a transfer point for patrons of Key System would create an abnormal congestion at that point which is objected to by merchants in that vicinity. It was pointed out that the Richmond Terminal was established during the war because of abnormal conditions then existing which have disappeared.

The City of Richmond by Resolution No. 4534 of the City Council (Exhibit No. 13) opposed the entire plan of Key System. In substance the basis of its objection was that Key System local service should be improved by reductions of the lengths of intervals between schedules instead of by reroutings and extensions of lines Nos. 68, 69 and 78 as proposed. The basis of the City's objection

was similar to that of the Richmond Chamber of Commerce. No other evidence was produced by the City.

No evidence was produced by Pacific Greyhound Lines which protested the granting of the application of Beninger Transportation.

DISCUSSION AND CONCLUSIONS

Key System contends in its brief that action on the application of Beninger Transportation should be deferred until disposition is made of the application of Key System because of certain alleged unlawful operations of Beninger Transportation; that Key System has the first right to perform additional service in the territory because it was first in the field and is presently operating therein; that the proposal of Beninger Transportation if authorized would result in a diversion of traffic from Key System which could adequately serve the territory under its proposal in conjunction with its present operations; that the proposal of Beninger Transportation would not meet the public need for cross-city traffic between San Pablo and Richmond and that the evidence does not show that Beninger Transportation is financially able to provide the service it proposes.

Key System contends that the evidence shows that Beninger Transportation is picking up and discharging passengers along a portion of San Pablo Avenue in the City of San Pablo without appropriate authority. While there was some inconclusive evidence to indicate that this may be the fact witness Beninger stated that he was following the practice of his predecessor and the advice of prior counsel. Whether the operations of Beninger Transportation

are lawful or otherwise is a question not properly before the Commission in these proceedings which require a determination of public convenience and necessity only. We therefore deem it inappropriate here to give weight to that evidence.

With respect to the contention of Key System that it should have the first right to provide any additional service found to be necessary because it presently serves the territory, it should be observed that Beninger Transportation likewise is serving in that territory although over different routes for the most part.

As noted Beninger Transportation desires to establish a continuous route along San Pablo Avenue for a distance of 2.4 miles. Key System plans to operate over the northerly end of said route a distance of four-tenths of a mile and over the southerly end a distance of 1.2 miles. It would not operate over the intervening gap of eight-tenths of a mile shown to be less developed than the remainder of the route. Key System's plan of operation along this route would be by extensions of its Nos. 69 and 78 lines. Such plan would improve its cross-town service. Persons desiring service along San Pablo Avenue and particularly to and from the McArthur Tract would be more adequately served by the Beninger Transportation proposal. While it appears that some traffic might be diverted from Key System by the Beninger Transportation proposal, it is our conclusion that such diversion would be insubstantial. Neither plan alone would adequately serve the

(2) Key System has filed a formal complaint alleging certain unlawful operation by Beninger Transportation along San Pablo Avenue. Case No. 5018.

areas involved.

The evidence shows that each applicant had been requested to establish local service along San Pablo Avenue. Requests to Key System had extended over a long period of time. Those made of Beninger Transportation were more recent. It should be noted that the application of Key System was not filed until seven weeks after that of Beninger Transportation and one week prior to the first day of hearing on the latter application.

The record shows that Beninger Transportation needs no additional equipment to extend service as proposed. Although its gross operating revenues were currently less than gross operating expenses, Exhibit No. 2 shows a net worth of approximately \$28,000.

After a full consideration of all the evidence of record we find that public convenience and necessity require the establishment and operation of passenger stage service as proposed by both applicants. We also find that the proposal of Key System to discontinue operating its No. 68 line through the Richmond Terminal is in the public interest and should be authorized.

O R D E R

Applications therefor having been filed, a public hearing had thereon, and the matters having been submitted and the Commission being fully informed therein and basing this order upon the conclusions and findings as expressed in the foregoing opinion,

IT IS ORDERED as follows:

PART I

(1) That a certificate of public convenience and necessity is hereby granted to Beninger Transportation Service, Inc., authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 2 $\frac{1}{2}$ of the Public Utilities Act, for the transportation of passengers between the City of San Pablo and the City of Richmond and intermediate points, subject to the following restrictions:

- a. No passenger whose origin is on the route described in paragraph (2)(c) of Part I of the order hereof may be transported south of the intersection of 23rd Street and San Pablo Avenue via 23rd Street or west of the intersection of San Pablo Avenue and Rheem Avenue via Rheem Avenue.
- b. No passenger whose destination is on the route described in paragraph (2)(c) of Part I of the order hereof may be transported from points south of 23rd Street and San Pablo Avenue via 23rd Street or from points west of the intersection of San Pablo Avenue and Rheem Avenue via Rheem Avenue.

This certificate is granted as an extension and enlargement of the operative rights created by Decision No. 35426, in Application No. 24984, and Decision No. 40174, in Application No. 27303.

(2) That in providing service pursuant to the certificate granted in paragraph (1) of Part I of this order, Beninger Transportation Service, Inc., shall comply with and observe the following service regulations:

- a. A written acceptance of the certificate granted in paragraph (1) of Part I of this order shall be filed within a period of not to exceed thirty (30) days after the effective date hereof.
- b. Within sixty (60) days after the effective date hereof and on not less than five (5) days' notice to the Commission and the public, Beninger Transportation Service, Inc. shall establish the service authorized in paragraph (1) of Part I of this order, 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, Beninger Transportation Service, Inc. shall conduct operations pursuant to the certificate granted in paragraph (1) of Part I of this order, over and along the following route:

Beginning at the intersection of Alvarado Street and San Pablo Avenue (U. S. Highway 40), in the City of San Pablo, thence along Alvarado Street, 13th Street, Broadway, U. S. Highway 40, San Pablo Avenue, to the intersection of San Pablo Avenue and MacDonald Avenue in the City of Richmond, thence looping over MacDonald Avenue, Wilson Avenue and Nevis Avenue to its intersection with San Pablo Avenue.

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.

PART II

(1) That a certificate of public convenience and necessity is hereby granted to Key System Transit Lines authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 2½ of the Public Utilities Act, for the transportation of passengers between all points located upon the following routes:

- a. Wilson Avenue between Roosevelt Avenue and MacDonald Avenue.
- b. Beginning at the intersection of 23rd Street and Market Avenue, in the City of San Pablo, thence along Market Avenue, Church Lane and San Pablo Avenue to the latter's intersection with 23rd Street.
- c. San Pablo Avenue between Rheem Avenue (City of San Pablo) and MacDonald Avenue (City of Richmond).

This certificate is granted as an extension and enlargement of and consolidated with other passenger stage operative rights held by Key System Transit Lines.

(2) That Key System Transit Lines is hereby authorized to discontinue the operation of its No. 68-Barrett Avenue line through the Richmond Terminal.

(3) That in providing service pursuant to the certificate granted in paragraph (1) of Part II of this order, Key System Transit Lines shall comply with and observe the following service regulations:

- a. Key System Transit Lines shall file a written acceptance of said certificate within a period of not to exceed thirty (30) days after the effective date hereof.
- b. Within sixty (60) days after the effective date hereof and on not less than five (5) days' notice to the Commission and the public, Key System Transit Lines shall establish the service herein authorized.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 14th day of February, 1950.

R. F. Anderson
Justice F. Coe
James H. Hill
Harold P. Hill
Kenneth Patten
COMMISSIONERS