

Decision No. 44113

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 KEY SYSTEM TRANSIT LINES, a corporation,)
 for authority to enter into a franchise)
 agreement with the City of Oakland, a) Application No. 30863
 municipal corporation, for the State of)
 California.)

Donahue, Richards, Rowell & Gallagher, by Frank S. Richards and J. A. Woods, Jr., for applicant.
John W. Collier, City Attorney, and Lorin W. East,
 Public Utilities Engineer, for the City of
 Oakland, interested party.
Warren P. Marsden, for the Department of Public Works
 of the State of California, interested party.

O P I N I O N

This application by Key System Transit Lines to the Public Utilities Commission is for a certificate of public convenience and necessity to exercise a franchise which has been granted to it by the City of Oakland covering the operations of local motor bus service, transbay motor bus service, transbay rail service and the use of various types of equipment. This franchise was granted by Ordinance No. 3221 C.M.S. as adopted by the City Council of the City of Oakland, California, on November 17, 1949.

A public hearing thereon was had at Oakland on April 5, 1950, before Commissioner Rowell and Examiner Paul and the matter was submitted.

Negotiations between applicant and the City of Oakland with respect to renewal of expired railway franchise rights and obtaining franchise rights for operation of motor coach service have been in progress since August, 1947. The franchise is for a

term of ten years with an option to the grantee under which it may be renewed for three additional periods of five years, provided that notice of intention to exercise the option is given to the City Council. It will supersede all existing franchise rights, provided that grantee reserves all of its rights, if any, existing under Ordinance No. 3099, granted in 1910.

The fee provisions of the franchise provide that the grantee shall pay to the City of Oakland semi-annually one per cent of grantee's total gross receipts arising from its operations for an initial period beginning on the date that grantee filed its application (April 15, 1949) with said City for the franchise and ending five years after the date when said franchise becomes final. Thereafter the fee payment shall be at a rate of two per cent. Payments shall be made not later than the first day of March and of September of each year for the six months periods ending on the preceding thirty-first of December and the thirtieth of June, respectively. The amount of the fee shall be based upon certain proportions of total gross revenues of grantee arising from local bus, transbay bus and transbay rail unit operations. As to the local bus operations, the amount of the fee shall be based upon the proportion of total gross revenues of grantee therefrom which the number of local bus service scheduled miles operated within the City of Oakland during January or July of the semi-annual period involved, bears to the total number of local bus service scheduled miles operated during that period over all local bus

(1) The Charter of the City of Oakland provides that any franchise ordinance adopted by the City Council shall become effective 60 days after such adoption.

service lines of grantee. With respect to transbay bus lines and transbay rail unit lines, the amount of the fee shall be determined in the same manner as that applicable to local bus lines except that the mileage of operation of said transbay bus lines and transbay rail unit lines over the San Francisco-Oakland Bay Bridge and approaches, as indicated on the map attached to the franchise and marked Exhibit "A", shall not be considered a portion of the scheduled miles operated within the City of Oakland.

The semi-annual payments made by the grantee to the City of Oakland shall constitute taxes or payments in lieu of the following:

1. The grantee in operating buses pursuant to the franchise upon the streets of the City of Oakland will not be obligated to repair or repave any streets due to the operation of buses thereon except certain damages to public property.
2. All obligations on account of present or expired franchises except the removal of transbay rail facilities within the City of Oakland including tracks, ties, poles, wires and appurtenances and street repavement, whenever grantee may substitute other service for transbay rail service.
3. All business license taxes but not in lieu of sales and use taxes, taxes on tangible property, ad valorem taxes on real and personal property or any future taxes levied by the City upon the community generally.

The franchise grant is sufficiently extensive to cover all existing railway lines and motor bus routes now operated under certificates heretofore granted by this Commission. These lines and routes are as shown on the map dated April 15, 1949, and attached to the franchise. The franchise provides the procedure to be followed by the grantee when it desires to modify, reroute, extend or abandon any of its railway or motor bus routes. Before filing an application with the Public Utilities Commission, the

grantee will notify the City of Oakland of any plan to modify, reroute, extend or abandon any of its lines, to operate different types of equipment on any of its routes or to make any changes or reductions in service on basic schedules including frequency of stops. Provisions are also made with respect to the determination of costs of street work to be borne by the grantee and the City of Oakland resulting from discontinuance, abandonment or relocation of rail facilities owned or used by the grantee within the City.

None of the provisions of the franchise may be viewed as having been designed to detract in any way from the Commission's jurisdiction. As counsel for the City of Oakland stated at the hearing it would be appropriate for the Commission to declare, when finding that public convenience and necessity justify the exercise of the franchise, that such action is without prejudice to the right and authority of the Commission thereafter to exercise fully all the jurisdiction vested in it by law with respect to the regulation of the operations and service of the applicant utility. Accordingly, the order herein made will be so conditioned.

O R D E R

Key System Transit Lines having filed an application for a certificate to exercise the rights and privileges under a railway and motor bus franchise granted by the City of Oakland by Ordinance No. 3221 C.M.S., adopted November 17, 1949, and a public hearing having been had upon such application, the matter considered, and it appearing to the Public Utilities Commission and being found as a fact that public convenience and necessity so require,

IT IS ORDERED that Key System Transit Lines be and it hereby is granted a certificate to exercise the rights and privileges granted by Ordinance 3221 C.M.S.; this certificate, however, being subject to the following conditions:

1. That no claim of value of such franchise or the authority hereby granted in excess of the actual cost thereof shall ever be made by the grantee, its successors, or assigns, before this Commission or before any court or other public body.
2. The certificate hereby granted shall be without prejudice to the right and authority of this Commission hereafter to exercise fully all jurisdiction vested in the Commission by law with respect to the regulation of the operations and service of the applicant utility.

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

Dated at San Francisco, California, this 2nd day of May, 1950.

R. B. [Signature]
Frank [Signature]
Harold P. [Signature]
[Signature]
 COMMISSIONERS

Commissioner Sustus E. Cracker, being necessarily absent, did not participate in the disposition of this proceeding.