

ORIGINAL

Decision No. 51980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC ELECTRIC RAILWAY COMPANY, a)
corporation, and METROPOLITAN COACH)
LINES, a corporation, for approval)
of terms of extension of trackage)
agreement.)

Application No. 37107

Waldo K. Greiner and James H. Lyons, by James H. Lyons, for applicant Metropolitan Coach Lines.
E. D. Yeomans, for applicant Pacific Electric Railway Company.

Roger Arnebergh, city attorney, and Allan G. Campbell, assistant city attorney, by Allan G. Campbell, and T. M. Chubb, general manager and chief engineer, Department of Public Utilities and Transportation, for the City of Los Angeles; Henry E. Jordan, chief engineer and secretary, Bureau of Franchises and Public Utilities of the City of Long Beach, and Walhfred Jacobson, city attorney, by Leslie E. Still, assistant city attorney, for City of Long Beach; Don H. Sheets, general chairman, and George W. Ballard, State representative, for Brotherhood of Railroad Trainmen; George E. Bodle, for Brotherhood of Railroad Trainmen; Robert V. Rachford, for Brotherhood of Railway & SS Clerks and Railway Labor Executive Association, interested parties.
Hal F. Wiggins, for the Commission staff.

O P I N I O N

By Decision No. 48923, dated August 4, 1953, this Commission authorized Pacific Electric Railway Company to transfer to Metropolitan Coach Lines its passenger stage operations, both rail and motor coach. The transfer was effected on October 1, 1953, and from that date to the present time the operations have been conducted by

Metropolitan Coach Lines. Two principal changes have been effected during this period, in that Metropolitan Coach Lines has substituted motor coach for rail passenger service on its Subway-Hollywood Boulevard-Beverly Hills line by authority of Decision No. 50477, dated August 17, 1954, on Applications Nos. 34830 and 34990, and on its Subway-Glendale-Burbank line by authority of Decision No. 50873, dated December 14, 1954, on Applications Nos. 34830 and 34900.

At the present time, with approval by this Commission, all of the operations of Metropolitan Coach Lines are motor coach operations with the exception of the so-called four Southern Division rail lines, namely, the Watts, Bellflower, Long Beach and San Pedro rail lines. These rail operations are conducted by Metropolitan Coach Lines over tracks and by the use of facilities which are owned and jointly used by Pacific Electric Railway Company, except in minor instances.

Up to the present time Metropolitan Coach Lines has jointly used the rail facilities of Pacific Electric Railway Company as above indicated, pursuant to the agreement of sale approved by this Commission in Decision No. 48923, supra, rent free. The instant application requests approval of a written agreement made by and between applicants on June 21, 1955, which, by its terms, states: "This agreement supplants in all particulars that agreement of the parties executed October 1, 1953, providing for joint use of certain of Railway's electrified rail lines, for the period covered by this agreement."

Under the terms of this new agreement, Metropolitan Coach Lines agrees to pay and the Pacific Electric Railway Company agrees to accept the following rental fees for the rail facilities and cars presently used on the four southern rail lines:

Rail facilities including Fairbanks Yard	\$3,086,777 at 2½%	\$ 77,170
Electrical overhead	500,000 at 2½%	12,500
Rail passenger cars	-	26,500
Taxes	-	32,000
Right of way including Fairbanks Yard	3,673,200 at 2½%	91,830
		<u>240,000</u>

A public hearing was held before Commissioner Rex Hardy and Examiner Grant E. Syphers in Los Angeles on August 5 and 8, 1955, during which time evidence was adduced. On the last-named date the matter was submitted, the parties being granted permission to file written statements by mailing them on or before August 11, 1955. Such statements, and briefs on behalf of the applicants have now been received and the matter is ready for decision.

At the hearing the applicants presented testimony relative to the background of these proceedings and to the instant proposal. Exhibit 1 is a copy of the contract dated June 21, 1955, which is attached to the application as Exhibit "A", and Exhibit 1-A is a letter supplemental to this contract setting out a description of the so-called West Basin Line, which line is included in the facilities proposed to be rented. Both of these

exhibits were received in evidence. Exhibit 2 is a valuation of the facilities proposed to be rented, and witnesses for both Pacific Electric Railway Company and Metropolitan Coach Lines testified that in their opinion the valuation figures set out in Exhibit 2 were fair and reasonable. The valuation includes five general items: (1) the rail facilities, including the Fairbanks Yard, (2) the electrical overhead structures, (3) the rail passenger cars, (4) taxes, and (5) the right of way, including the Fairbanks Yard. This exhibit is now received in evidence.

There are 78 rail passenger cars which are herein proposed to be rented at an agreed rental of \$340 per car per year, or a total of \$26,500. In the opinion of the witnesses for applicants, this rental is very low. While the applicants themselves presented no definite figures as to the value of these cars, they did accept figures which were submitted by an engineer of the staff of the Public Utilities Commission which showed a total depreciated value for the 78 cars, including money spent for modernizing, of \$288,000. It was generally agreed that this figure is very close to the scrap value of these cars. In other words, the estimated value of each car is approximately \$3,692. Of the 78 cars, 57 are used on regular assignments by Metropolitan Coach Lines, and the other 21 cars are used as standbys and as a source of spare parts.

Concerning the charge proposed to be made against Metropolitan Coach Lines for taxes in the amount of \$32,000, the testimony disclosed that this is an estimated figure agreed upon by the parties, and coincides with the amounts which Metropolitan Coach Lines now pays for taxes.

Exhibit 2 shows a total value of \$3,086,777 for rail

facilities. This valuation was based upon valuation studies which have been made by the company, and of this amount Metropolitan Coach Lines is to be charged 2-1/2 per cent. It was testified that the usual practice in joint user arrangements between railroads is to charge a rental of 5 per cent, and, since each of the parties is estimated to be an approximate one-half user, Metropolitan Coach Lines is being charged 2-1/2 per cent. This same percentage of charge applies to the items of electrical overhead and rights of way.

The value placed by Pacific Electric Railway Company upon the electrical overhead facilities is \$1,447,409, but in view of the contemplation of the parties that these electrical facilities might be discontinued in the near future, this value was reduced for purposes of the rental agreement to \$500,000. The value placed by Pacific Electric Railway Company upon the right of way is \$4,326,951, but by negotiations this figure was reduced to \$3,673,200.

Exhibit 3 is a map of the lines herein concerned, and Exhibit 5 is a letter from Pacific Electric Railway Company to Metropolitan Coach Lines relative to the existing tax arrangements.

Witnesses for each of the applicant companies testified that these values and the resulting rental of \$240,000 per year are much lower than would have resulted had the matter been submitted to arbitration. A witness for Pacific Electric Railway Company testified that even if Metropolitan Coach Lines pays the \$240,000 per year contract rental (including the allowances for taxes of \$32,000) to Pacific Electric Railway Company, the latter company will be in a worse position than if Metropolitan Coach Lines should discontinue the use of these rail facilities. He contended that in this latter event Pacific Electric Railway

Company would eliminate all of the electrical facilities and completely dieselize its operations. At the present time it operates 34 diesel locomotives on its entire freight system, and 11 electrical locomotives. Ten of the electrical locomotives are used on the southern lines and one in the Hollywood-West Hollywood area. He also testified that Pacific Electric Railway Company would eliminate certain parts of its four-track system between 9th and Hooper Streets and Watts, in addition to the towers at Watts and at a station called Amoco. Furthermore, the company would consider operating only a single-track railroad between Watts and Dominguez Junction and between Dominguez Junction, on the one hand, and North Long Beach and San Pedro, on the other hand. In the opinion of the witness the results of these changes would more than offset the moneys which Pacific Electric Railway Company would receive under the contract. He further testified that the item of taxes will remain about the same regardless of whether or not passenger operations are conducted on the tracks.

An engineer of the staff of the Public Utilities Commission presented testimony as to the operations of Pacific Electric Railway Company, pointing out that prior to the sale to Metropolitan Coach Lines, and during the years 1946-1952, inclusive, Pacific Electric Railway Company lost approximately \$2,000,000 per year on its passenger operations. Since the sale to Metropolitan Coach Lines the earning position of Pacific Electric Railway Company has materially improved, and specifically the witness testified that for the first six months of 1955 a profit of more than \$1,000,000 had been earned.

Metropolitan Coach Lines has been paying certain rentals to Pacific Electric Railway Company, including \$100,000 per year

for use of the 6th and Main Streets station, \$40,000 per year for office space, and prior to June 1955, \$36,000 per year for rental of the bus deck in connection with the Subway Terminal station. In addition to this, Metropolitan Coach Lines has been sharing on a pro rata basis certain major expenses in connection with the operation. These include payment to Pacific Electric Railway Company of \$180,000 per year for maintenance of track, \$261,000 per year for distribution and transmission of electric power, and \$32,000 per year for taxes. These last three items total \$473,000 per year. In the opinion of the witness, if Metropolitan Coach Lines should cease its rail line operations, Pacific Electric Railway Company would still be required to pay \$188,000 of this amount. The staff witness contended this is a benefit which would be lost to Pacific Electric Railway Company should Metropolitan Coach Lines cease its rail operations. In view of this situation, it was the opinion of this witness that a fair rental for the facilities concerned is \$50,000 per year. This consists of \$32,000 for taxes and \$18,000 for rental of the cars. This \$18,000 was computed as 6 per cent of \$288,000, which was agreed to by the parties as the present depreciated value (and the approximate salvage value) of the 78 rail cars hereinbefore discussed.

The position of the cities of Los Angeles and Long Beach was that the agreement of March 10, 1953, as approved subject to certain conditions by Decision No. 48923, supra, and under the terms of which Pacific Electric Railway sold its passenger operations to Metropolitan Coach Lines, does not provide for rental of any of these facilities, and only contemplates rental on the rail cars. Reference was made

to certain provisions of that agreement in this connection. Paragraph 2 of Article II of that agreement refers to rail passenger cars, and provides in part as follows:

"... Railway grants to Buyer rental free the right to the use of the rail passenger cars specifically described in Exhibit C attached hereto, but not to exceed two years from the closing date. If Buyer continues use for rail passenger service after two years Railway will lease on a month to month basis at a fair rental value."

Paragraph 3 of this same contract provides as follows:

"During the period of time between the closing date of this agreement and the time Buyer secures authority to discontinue rail passenger service on the particular line, but not to exceed two years, Railway grants to Buyer the right to the use of the joint freight and passenger rail facilities, together with overhead electric facilities under trackage agreement, which agreement is attached hereto and marked Exhibit D."¹

Likewise it was pointed out that the contract provides for the apportionment of costs as to the operating expenses between passenger operations and freight operations, but that in no place does it provide for a rental on anything other than the rail passenger cars. The applicants contended this was not a correct interpretation of the contract, and in this connection submitted an agreement entered into between the parties in August 1955, the day not being designated, which was marked Exhibit 4 for identification, which agreement purports to explain the contract of March 10, 1953. However, the agreement of August 1955 (Exhibit 4 for identification) will not be received in evidence in this proceeding since it purports to alter the terms of a written contract (that of March 10, 1953) in which the public interest is involved, and which has heretofore been approved by this Commission.

A representative of various labor unions and railroad brotherhoods appeared at the hearing to state that those unions

1. Paragraph 3 of said Exhibit D states: "If Buyer does not secure the substitution of said rail passenger service with motor coach service within said two year period this agreement shall continue on a month to month basis thereafter."

took no position with reference to the instant application. It was requested that this should not be construed as a waiver of any rights which the employees or the unions representing them may have against Pacific Electric Railway Company or Metropolitan Coach Lines in connection with any existing rights or agreements.

We note that in Decision No. 48923, supra, after referring to the fact that the testimony disclosed that it was the intention of Metropolitan Coach Lines to apply for authority to abandon and discontinue the rail passenger service within six months after taking over the operations, it was said:

"However the issue of abandonment was not tried in this proceeding, and we now declare that regardless of the intention of the buyer or regardless of any provisions in the Agreement of Sale to the contrary, the Metropolitan Coach Lines will be required to continue in a reasonable and adequate manner the existing rail passenger operations and the Pacific Electric Railway Company will be required to furnish the necessary rail facilities to conduct these rail passenger operations unless and until otherwise ordered by this Commission." And that decision conditioned this Commission's approval of the transfer by Pacific Electric Railway Company to Metropolitan Coach Lines as follows:

- a. That the parties hereto, before the sale herein authorized is completed, shall file with this Commission satisfactory evidence that the Pacific Electric Railway Company has specifically agreed to furnish to Metropolitan Coach Lines and to keep in an adequate state of repair and maintenance all the rail facilities necessary to conduct the rail passenger operations herein concerned, and that the Metropolitan Coach Lines has specifically

agreed to conduct these rail passenger operations in a reasonable and adequate manner unless and until otherwise authorized by this Commission. Nothing in this decision and order shall in any way be construed as authorizing the discontinuance of rail passenger operations.

It was, therefore, the effect of that decision that Metropolitan Coach Lines be required to operate, and Pacific Electric Railway Company be required to furnish the necessary rail facilities, for the rail operations unless and until otherwise ordered by this Commission.

We hereby find that some rental charge for the use of the rail passenger cars by Metropolitan Coach Lines is justified and should be allowed, but not to the extent specified in the agreement of June 21, 1955. We find that the suggestions of the staff engineer that a rental be paid upon the agreed value of the 78 rail cars is justified, and that an annual rental of \$18,000, being in excess of 6 per cent on the agreed value of \$288,000, is just and reasonable.

We further find that the continued payment by Metropolitan Coach Lines of the tax contribution to Pacific Electric Railway Company in the sum of \$32,000 annually is just and reasonable.

This Commission has considered all the evidence of record in this proceeding. We are of the opinion that the agreement of June 21, 1955, except as to the items of \$32,000 for taxes and \$18,000 hereby allowed as rental for the rail passenger cars, is unjust and inequitable and is not in the public interest. With the exceptions noted we withhold our approval of that agreement.

In making these findings we are aware of the benefits which are accruing to Metropolitan Coach Lines through the use of these rail facilities, and of the moneys it is paying to Pacific Electric Railway Company, totaling \$473,000 annually, including the taxes of \$32,000. We are also aware of the benefits which are accruing to Pacific Electric Railway Company as a result of the sale, including the moneys it is receiving from Metropolitan Coach Lines.

The fact that the rail facilities involved are, for the most part, jointly used by the two companies under an arrangement whereby Metropolitan Coach Lines contributes a substantial share for track maintenance, and for the electrical overhead facilities, presents a further compelling reason as to why such an arrangement is neither inequitable nor confiscatory to Pacific Electric Railway Company.

During the course of the hearing on August 5, 1955, the Cities of Los Angeles and Long Beach made a motion in effect to dismiss the application or to dismiss that part of it which related to rentals other than rentals for the cars of the Pacific Electric Railway Company being used by Metropolitan Coach Lines. The matter was argued extensively and the ruling on the motion was reserved. Because the Commission has considered the entire record in this proceeding, and has found that the agreement of June 21, 1955, should not be approved in its entirety regardless of the interpretation that might be put on the agreement of March 10, 1953, the motion will be denied.

O R D E R

Application as above entitled having been filed, public hearings having been held thereon, the Commission being fully advised

in the premises and hereby finding it to be not adverse to the public interest,

IT IS ORDERED:

1. That Metropolitan Coach Lines may pay to Pacific Electric Railway Company, from and after October 1, 1955, an annual rental of \$18,000 for the use of rail passenger cars, computed and paid on a monthly basis.
2. That Metropolitan Coach Lines may make and pay to Pacific Electric Railway Company, from and after October 1, 1955, an annual contribution of \$32,000 towards the ad valorem taxes assessed against and paid by Pacific Electric Railway Company, computed and paid on a monthly basis.
3. That all other rentals, payments and contributions cast upon Metropolitan Coach Lines by the agreement of June 21, 1955, made by and between the applicants, are hereby disallowed.
4. That the provisions of Decision No. 48923, dated August 4, 1953, in Applications Nos. 34249 and 34402 shall remain in full force and effect except as modified by this decision.
5. That nothing in this opinion and order shall, in any way, be construed as authorizing the discontinuance of rail passenger operations by Metropolitan Coach Lines nor authorizing the discontinuance of the furnishing by Pacific Electric Railway Company of the necessary facilities to conduct those operations.

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

Dated at Los Angeles, California, this 19th day of September, 1955.

John E. Mitchell President
Justin F. Casner
Paul J. [unclear]
Montgomery [unclear]
R. [unclear] Commissioners