

**ORIGINAL**

Decision No. 54689

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 KEY SYSTEM TRANSIT LINES, a corpora- )  
 tion, for authority to inaugurate )  
 motor coach service in lieu of its )  
 present transbay rail lines between )  
 points in the Cities of Oakland, )  
 Berkeley, Emeryville and Piedmont, )  
 and the City and County of San )  
 Francisco, State of California. )

Application No. 36656  
 As Amended

In the Matter of the Application of )  
 KEY SYSTEM TRANSIT LINES, a corpora- )  
 tion, for Interim Relief and for an )  
 Order Pursuant to Section 454 of the )  
 Public Utilities Code Authorizing )  
 the Establishment of Rates and Fares )  
 for Transportation of Passengers )  
 between Points in the Counties of )  
 Alameda and Contra Costa, and the )  
 City and County of San Francisco, in )  
 the State of California. )

Application No. 36980  
 As Amended

(For appearances see Appendix A.)

O P I N I O N

The Commission, by interim order dated December 11, 1956, (Decision No. 54242), directed Key System Transit Lines to initiate negotiations with the California Toll Bridge Authority and other public agencies involved, for the purpose of concluding arrangements for the financing and construction of modifications to the Bay Bridge Terminal and its approaches, in San Francisco, as might be required to effectuate revised Plan III for substitution of buses for transbay rail service, as that plan is described in the interim opinion preceding the order.

The company was also directed to report the results of such negotiations to the Commission, in bank, at a public hearing to be held in San Francisco on January 31, 1957. At the hearing, counsel for applicant read into the record a prepared statement, supplemented by an oral statement by counsel for the State Department of Public Works and the California Toll Bridge Authority. These statements reveal that, following issuance of the interim order, Key System and various members of the Department of Public Works, including members of the latter's engineering staff, had six discussions concerning modifications to the Bay Bridge Terminal that would be necessary for the accomplishment of revised Plan III. It was tentatively determined that the cost of terminal modifications, including construction of an access ramp, would amount to approximately \$900,000.

Key System, however, made it clear, during these discussions, that it would not voluntarily expend any funds for modification of the terminal, for the following asserted reasons: First, because it would be improper, so it contends, to invest its funds in a state-owned facility; second, because it did not have contractual assurance of continued occupancy of the terminal building; third, because the company had no assurance of its continued existence, in view of the possibility of acquisition of its properties by public transit districts already organized or in process of organization; fourth, because the company believes that it has no reasonable assurance of recovery by it of any funds which might be invested in the project.

The supplementary statement of counsel for the Department of Public Works revealed that on December 12, 1956, the Toll Bridge

Authority, at a meeting in Sacramento, adopted a motion made by the Director of Public Works that the Department be authorized and directed to negotiate with Key System, as contemplated by the Commission's order, and to proceed forthwith with further studies for reconstruction of the lower deck of the San Francisco-Oakland Bay Bridge and other related work, to insure the most efficient use thereof, and that urgency legislation be prepared, for consideration by the Legislature upon its convening in January, 1957, for the financing of any such reconstruction.

We take official notice of the fact that on February 4, 1957, the Governor signed Senate Bill 1367, an urgency measure, which provides for use by the Department of Public Works of the sum of \$50,000 from the bridge Revenue Fund, in order to make studies and perform preliminary work in connection with alterations to the bridge, its approaches and the San Francisco terminal building "as are deemed desirable and necessary to permit the use of the entire San Francisco-Oakland Bay Bridge for traffic". The bill makes reference to the possible abandonment of train service across the bridge as a result of the final decision of the Commission in this proceeding.

The balance of the statement by counsel for Key System consists of an attack on the Commission's interim decision, together with a plea for authority to institute shuttle service across the bridge as provided by Plan VI proposed by the Commission's staff, and for immediate fare relief.

Memoranda have since been submitted by the company and the two state agencies involved, following directions from the Presiding Commissioner, dealing with the question of the propriety of expenditures of corporate funds by Key System for conversion of the San Francisco Bridge Terminal. The Company has concluded that

it would be improper to invest its funds in public property, a conclusion that is opposed by counsel for the state agencies involved.

The company has also submitted a memorandum, at the direction of the Presiding Commissioner and in response to an inquiry by counsel for the state agencies, setting forth its construction of a contract, dated March 6, 1936, as amended April 3, 1936, relating to use and operation of the Bridge Railway by Key System, which contract, the company contends, terminated in December, 1955, with retirement of the bridge bonds.

It is the company's position, according to this memorandum as well as its previous statements of record, that it no longer has any contractual rights or obligations, arising out of the 1936 contract, to continue its operation over the state-owned Bridge Railway, including the San Francisco Terminal and its rail approaches. Its only obligation to operate over the Bridge Railway, the company asserts, is based on its certificate of public convenience and necessity issued by this Commission. Its relationship to the Toll Bridge Authority, the company maintains, is only that of a licensee whose possession is subject to termination at the will of the authority. Consequently, in the company's view, an investment of its funds for conversion of the terminal under existing circumstances would be neither proper nor justified.

We have considered the foregoing statement and argument of Key System and find them to be without merit. It is apparent that the company's discussions with the Department of Public Works were carried on in the light of its preconceived position that it was not disposed, for reasons of its own, to provide the necessary funds for alterations to the San Francisco Terminal, including an

approach ramp, as provided for by revised Plan III. We find no inhibition against the use of corporate funds for such purposes, either in the General Corporation Law of this state, the regulatory statutes enforced by this Commission, or in the authorities to which the company has referred, should the management, in its discretion, elect to make such funds available.

Nor do we perceive any merit in the argument that such an expenditure would be improper because of the company's alleged lack of contractual assurance of continued occupancy of the terminal, or because of its lack of assurance of continued existence, or, finally, because it has no reasonable assurance of recovering such funds. Legal safeguards are available, as the company doubtless knows, for the protection of the investment in any such event. Moreover, should the Department of Public Works, pursuant to present or later legislative authorization, undertake major rehabilitation of the bridge and terminal structures, there appears to be no reason why the limited facilities provided by Key System in implementing revised Plan III could not be given due consideration in the over-all planning, construction and financing of such a rehabilitation program by the state.

We are of the opinion that the Commission's efforts to provide a feasible plan for Key System's transbay operations should be brought to a conclusion by the issuance of a final order in this proceeding now. We have already pointed out, in our interim decision, that revised Plan III, if adopted by the company, would result in an estimated saving in operating expenses, for the transbay service alone, amounting to more than \$750,000 annually, and would yield, at present fares, an estimated system-wide rate of return of 9.11 per cent with an operating ratio, after income taxes, of 95.7 per cent for the test year ending May 31, 1957. The present

over-all service, at present fares, was estimated by the staff to produce a rate of return of only 2.70 per cent and an operating ratio, after income taxes, of 98.8 per cent for the test year. However, since the service which this order authorizes is estimated to produce the results indicated, the record, in our opinion, does not justify granting an increase in fares. By refusing to adopt and carry out revised Plan III, the company is unlawfully denying to itself a reasonable opportunity to earn a fair return upon its property reasonably devoted to the public use.

The Commission has been asked by the union representatives to provide adequate protection for employees who might be adversely affected by any order permitting abandonment of rail service. Key System's present contract with the Carmen's Union is in effect until May 31, 1957, and that with the Electrical Workers until June 30, 1957. The staff, in estimating the company's costs of operation during the test year, took into account the monetary effect, under existing contract provisions, not only of wages for all employees, but also of severance benefits for approximately 228 employees estimated by the company to be displaced by motorization, assuming the event as occurring within the test year.

Both agreements provide for employee pensions pursuant to a "Pension Plan", dated January 1, 1913. The Carmen's contract provides for severance pay of \$25 for each full year of service for any eligible employee "laid off due to reduction in force". The Electrical Workers' agreement provides for the transfer, pensioning, or severance of employees, with severance pay of \$25 "for each year of last continuous service when there is abolishment of any trolley line, electrical shop and/or work pertaining thereto." Both agreements contain provisions for arbitration of grievances or differences arising out of the interpretation of such provisions. The Electrical

Workers' contract also contains a provision against work stoppage by strike or lockout, "because of any dispute over matters relating to the provisions herein or during the time that any grievance or any other matter is under arbitration as provided hereinafter." Similar work-stoppage provisions are not included in the Carmen's agreement.

The record shows that there is a dispute between the unions and the company with respect to the interpretation of provisions of the existing contracts relating to severance pay for those employees who may be completely displaced from the company's employ as the result of motorization. The union representatives also contend that the amount of such benefits is inadequate. The evidence also shows that the existing agreements specify procedures to be followed for the settlement of grievances or differences arising from the interpretation of their provisions.

It thus appears that reconciliation of the divergent positions of the company and the unions relative to severance benefits requires not only an interpretation of the pertinent provisions of the agreements, but also the determination of the precise amount of the benefits themselves.

The present posture of the dismissal benefits problem here presented is such that we are of the opinion that the interested parties should be given full opportunity to negotiate concerning said problem, looking toward a resolution thereof by mutual agreement.

Since the hearing on January 31, 1957, two petitions have been filed, by various improvement clubs in Alameda and Contra Costa Counties whose membership includes Key System commuters, seeking a reopening of this proceeding for the purpose of reconsideration of plans for Key System's transbay service. Both petitions refer to

the recent organization of the Alameda-Contra Costa Transit District, following the general election held in November, 1956, and express concern lest the Commission authorize removal of Key System's facilities on the San Francisco-Oakland Bay Bridge, or in the East Bay, which might ultimately be utilized by that District or by other public districts concerned with the development of mass rapid transit plans for the entire Bay Area. Both petitions conclude with a plea for retention of rail service on the present "E" and "F" lines, in which the City of Berkeley is primarily interested. Both petitions, also, voice emphatic objection to the rail shuttle service envisaged by Plan VI of the Commission's staff exhibits, the adoption of which was urged by counsel for Key System, at the January hearing, as a temporary expedient pending full motorization.

We are not unaware of the concern of these petitioners, as expressed in their pleadings, and of similar concern exhibited by others on the record prior to submission of this proceeding for decision in July of 1956. The passage of even a relatively short time, in a situation as complex and fluid as that which forms the background of these applications, inevitably brings to light developments that may be supposed to have some bearing on the ultimate disposition of the issues involved.

We are faced, however, with the necessity of reaching a final conclusion on the record now before us, in order that those, including the applicant here, concerned with the unfolding transit developments in the Bay Area may initiate and carry out their several projects. We are convinced that no useful purpose could be served by further delay in issuing a final decision, even though we recognize that by such a decision we are by no means able to



resolve all of the problems inherent in this many-sided and highly controversial proceeding. Accordingly, the petitions of Thousand Oaks Improvement Association and of Kensington Improvement Club and those associated with that organization, should and will be denied.

Upon consideration of all of the evidence in these proceedings, we are of the opinion and find that the substitution by Key System Transit Lines of motor coach operations in accordance with Plan III, as modified with respect to new buses, for the company's existing transbay rail service is in the public interest and is justified on this record. The change in the operations will be authorized, and the operating routes will be described in Appendix "B" herein. A certificate of public convenience and necessity for operation over such routes will be granted.

The estimated financial results of the system operations set forth on page 27 of the interim decision (Decision No. 54242), show that earnings under the present fares, with modified Plan III in operation, would be adequate under prevailing conditions. In the circumstances, no increase in the present fares will be authorized. For the purposes of these proceedings, we find the aforesaid operating results and the return flowing therefrom to be reasonable.

The company will be authorized to motorize its transbay passenger service subject to the condition set forth in the following order.

O R D E R

Public hearing having been held in the above-entitled proceedings, evidence and argument having been received and considered, the matter having been submitted for decision, the Commission

now being fully advised and basing its order herein on the findings and conclusions contained in the foregoing opinion, and in the opinion contained in our interim decision herein (Decision No. 54242), and hereby finding that public convenience and necessity so require,

IT IS HEREBY ORDERED that:

1. Key System Transit Lines be and it hereby is authorized to discontinue transbay rail service and to substitute motor coach service therefor, on its presently existing "A", "B", "C", "E" and "F" rail lines, subject to the condition, however, that such discontinuance and substitution of service be made concurrently in accordance with Plan III set forth in Exhibits 11 and 12 in this proceeding, as said Plan III is modified in the aforesaid interim opinion with respect to the operation of new bus equipment in said motor coach operations.
2. A certificate of public convenience and necessity be and it hereby is granted to applicant to operate transbay motor coach service between San Francisco and Oakland, Berkeley, Piedmont and Emeryville over the routes described in Appendix "B" hereof, as an extension and enlargement of, and to be consolidated with, applicant's existing authority.
3. Applicant, in accordance with the provisions of Sections 694(g) and 697.1 of the California Vehicle Code, is hereby granted permission, in the conduct of the service herein authorized, to operate motor coaches having a maximum outside width of 102 inches and an over-all length not exceeding 40 feet.
4. Applicant shall obtain the approval of this Commission before making any reductions of service on any of its routes, as such service exists at the date hereof.

5. Applicant shall observe the following load standards on all of its lines concurrently with the changeover to complete motor coach service:

Transbay Lines: An average of at least a seat per passenger shall be provided on any line during any half-hour period that service is operated.

Local Lines: Service shall be operated so that standees shall not average in excess of 33 per cent of seats provided on any line during any two consecutive half-hour morning or evening peak periods. During all other times, an average of at least a seat per passenger shall be provided on any line during any half-hour period that service is operated.

6. Before making the changes in service herein authorized, applicant shall, on not less than fifteen days' notice to the Commission and the public, file tariffs and timetables satisfactory to the Commission.

7. Applicant shall post and maintain notices in its terminals, on its vehicles operating over and at the principal stops along each affected route, of the service changes herein authorized. Such notices shall be posted at least fifteen days before the effectiveness of the service changes and shall remain posted for a period of twenty days after the said effective date.

8. The petitions of Thousand Oaks Improvement Association and of Kensington Improvement Club and others associated with that organization, filed respectively on February 13, 1957 and February 21, 1957, be and each of them hereby is denied.

9. The authority hereby granted will expire if not exercised within six months after the effective date hereof. Applicant shall evidence its acceptance of the certificate and other authority herein granted by written notice thereof filed with the Commission not less than thirty days prior to such date of expiration.

10. In all other respects, Application No. 36656, as amended, and Application No. 36980, as amended, are, and each of said applications hereby is, denied.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day of March, 1951.

John E. Mitchell  
President  
Raymond Greiner  
Michael J. Cole  
B. U. Christy  
E. J. [unclear]  
Commissioners

APPENDIX "A"

Appearances

Donahue, Richards, Rowell & Gallagher, by George E. Thomas and Joseph A. Woods, Jr., for Key System Transit Lines.  
John W. Collier and Robert E. Nisbet, for City of Oakland.  
Fred C. Hutchinson, City Attorney, and Robert T. Anderson, Assistant City Attorney, for City of Berkeley.  
Robert J. Foley, City Attorney, for City of Albany.  
John Joseph Garvey, for City of Richmond.  
Dion R. Holm, City Attorney, and Paul L. Beck, Chief Valuation and Rate Engineer, for City and County of San Francisco.  
Ralph W. Scott, Deputy Attorney General, and Warren P. Marsden, Attorney, State Department of Public Works, for California Toll Bridge Authority and State Department of Public Works.  
Charles C. Miller, for San Francisco Chamber of Commerce.  
Charles N. Ehlers, for Lakeshore Homes Association.  
Stanley H. Neyhart, for Carmen's Union, Division 192.  
Frank Annibale, City Attorney, for City of Alameda.  
Frederick Dubovsky, in propria persona.  
Allan P. Matthew, for Thousand Oaks Improvement Association, Berkeley.  
A. M. Cohan, for San Francisco Bay Area Rapid Transit Commission.  
Dan W. Campbell, for U. S. Navy, 12th Naval District.  
W. R. Roche, James Gibson and John Pearson, for the Commission staff.

APPENDIX "B"

Line "A" - San Francisco-Oakland (12th Street)

Regular Route

From the intersection of 12th and Oak Streets in the City of Oakland, via 12th Street, Adeline Street, West Grand Avenue, through Oakland Army Base, Maritime Street and Army Base Overpass to San Francisco-Oakland Bay Bridge and thence to the Bay Bridge Transit Terminal in the City of San Francisco; returning via San Francisco-Oakland Bay Bridge, Oakland Army Base Overpass, Maritime Street, West Grand Avenue, Adeline Street, 14th Street, Market Street, 13th Street, Oak Street, to 12th Street in the City of Oakland.

Alternate Route

When the Oakland Army Base Overpass is closed to traffic, routing will be via West Grand Avenue, Cypress Street, thence via San Francisco-Oakland Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via the reverse thereof when Army Base Overpass is closed to traffic.

Line "B" - San Francisco-Oakland (Grand Avenue)

Regular Route

From the intersection of Longridge Road and Grosvenor Place in the City of Oakland, via Grosvenor Place, Trestle Glen Road, Lakeshore Avenue, Lake Park Avenue, MacArthur Boulevard, Grand Avenue and West Grand Avenue, Cypress Street and thence via San Francisco-Oakland Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via San Francisco-Oakland Bay Bridge, Cypress Street, West Grand and Grand Avenues to MacArthur Boulevard, Lake Park Avenue, Lakeshore Avenue, Longridge Road to Grosvenor Place in the City of Oakland.

Express Route

From the intersection of Longridge Road and Grosvenor Place in the City of Oakland, via Grosvenor Place, Trestle Glen Road, Lakeshore Avenue, Lake Park Avenue, MacArthur Boulevard, and thence via San Francisco-Oakland Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via San Francisco-Oakland Bay Bridge, MacArthur Boulevard, Lake Park Avenue, Lakeshore Avenue, Longridge Road to Grosvenor Place in the City of Oakland.

Line "C" - San Francisco-Piedmont (40th Street)

From the intersection of Fairview and Oakland Avenues in the City of Piedmont, via Fairview Avenue, Arbor Drive, Oakland Avenue, Grand Avenue, Pleasant Valley Avenue, Piedmont Avenue, Piedmont Station, 40th Street, Howe Street, 41st Street, Broadway, 40th Street, Adeline Street, MacArthur Boulevard, San Francisco-Oakland Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via San Francisco-Oakland Bay Bridge, MacArthur Boulevard, Adeline Street, Yerba Buena Avenue, 40th Street, Broadway, 41st Street, Howe Street, 40th Street, Piedmont Station, Piedmont Avenue, Pleasant Valley Avenue, Grand Avenue, Greenbank Avenue, Oakland Avenue to Fairview Avenue.

Line "E" - San Francisco-Clairemont (55th Street)

From the intersection of Domingo Avenue and Ashby Avenue in the City of Berkeley, via Ashby Avenue, Claremont Avenue, 56th Street, Vicente Street, 55th Street, Market Street, 40th Street, Adeline Street, MacArthur Boulevard, San Francisco-Oakland Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via San Francisco-Oakland Bay Bridge, MacArthur Boulevard, Adeline Street, Yerba Buena Avenue, 40th Street, Market Street, 55th Street, Vicente Street, 56th Street, Claremont Avenue, Russell Street, Domingo Avenue to Ashby Avenue.

Line "F" - San Francisco-Berkeley (Shattuck Avenue)

Regular Route

From the intersection of Solano Avenue and The Alameda in the City of Berkeley, via The Alameda, Marin Avenue, Lassen Avenue, El Dorado Avenue, Sutter Street, Henry Street, Shattuck Place, Shattuck Avenue, Adeline Street, Market Street, 40th Street, Adeline Street, MacArthur Boulevard, San Francisco-Oakland Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via Bay Bridge, MacArthur Boulevard, Adeline Street, Yerba Buena Avenue, 40th Street, Market Street, Adeline Street, Shattuck Avenue, Shattuck Place, Henry Street, Sutter Street, El Dorado Avenue, Lassen Avenue, Marin Avenue, Fresno Avenue, Solano Avenue to The Alameda.

Express Routes

Via regular route to University Avenue and Shattuck Avenue, thence via University Avenue, East Shore Highway, Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via the same route in the reverse direction to University Avenue and Shattuck Avenue, thence continuing via regular route.

Via regular route to Adeline Street and Stanford Avenue, thence via Stanford Avenue, Powell Street, East Shore Highway, San Francisco-Oakland Bay Bridge to Bay Bridge Transit Terminal in the City of San Francisco; returning via the same route in the reverse direction to Adeline Street and Stanford Avenue, thence continuing via regular route.

From Bancroft Way and Telegraph Avenue, via Bancroft Way, College Avenue, Alcatraz Avenue, Adeline Street, Stanford Avenue, Powell Street, East Shore Highway, San Francisco-Oakland Bay Bridge to Bay Bridge Transit Terminal in the City of San Francisco; returning via the same route in the reverse direction to College Avenue and Durant Avenue, thence via Durant Avenue, Dana Street, Bancroft Way to Telegraph Avenue.

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Line "Y" - San Francisco-Yerba Buena  
and Treasure Islands - Oakland

Commencing at 11th Street and Broadway in Oakland, thence via Broadway, 12th Street, Clay Street, San Pablo Avenue, Peralta Street, MacArthur Boulevard, San Francisco-Oakland Bay Bridge to Treasure Island Entrance Gate, thence via Bay Bridge to the Bay Bridge Transit Terminal in the City of San Francisco; returning via Bay Bridge to Treasure Island Entrance Gate, thence via Bay Bridge, MacArthur Boulevard, San Pablo Avenue, Washington Street, 11th Street to Broadway.

END OF APPENDIX "B"