

ORIGINALDecision No. 65142

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PEERLESS STAGES, INCORPORATED for)
 amendments to existing certificate)
 of public convenience and necessity)
 under Section 1031 of the Public) Application No. 43594
 Utilities Code to extend its present)
 service between Hayward and Oakland,)
 California to include local service)
 therein.)

Spurgeon Avakian, for applicant.
Robert E. Nisbet, for Alameda-Contra
 Costa Transit District, interested party.
M. E. Getchel, for the Commission staff.

OPINION AND ORDER ON REHEARING

This matter is now before the Commission as the result of the granting of a Petition of the Alameda-Contra Costa Transit District for rehearing of Decision No. 63476, issued March 27, 1962, in Application No. 43594.

Rehearing was held before Examiner Porter on September 5, 1962, at San Francisco and was submitted subject to the filing of briefs. The latter were received on February 1, 1963 and the matter is ready for decision.

The Commission, by said Decision No. 63476, removed from the certificated passenger stage authority of Peerless Stages, Incorporated, the restriction against providing local service between the Oakland-Hayward segment of its Oakland-San Jose operation. Peerless proposed certain fares, to be applicable to such local service, which also were authorized by said decision.

The restriction in question resulted from competitive operations of Peerless and Key System, in 1936, between Oakland and Hayward. Because patronage was insufficient for both to

operate profitably, they entered into an agreement respecting the territory, which was recognized and implemented by Decision No. 28522, issued January 27, 1936, in Applications Nos. 20346 and 19502, whereby the Commission authorized the abandonment of local service by Peerless and the operation by Key System of such abandoned service. The status then was that Key System provided local service between and in Oakland and Hayward while Peerless provided intercity service only between Oakland and San Jose and intermediate points, including Hayward and Decoto, among others.

Such relationship continued until approximately March 20, 1961. The Commission on September 6, 1960, by Decision No. 60707, in Application No. 42560, authorized Key System to discontinue operations in favor of the newly formed Alameda-Contra Costa Transit District. The District, in March of the following year, extended its service south for a distance of some five miles, from east Hayward to Decoto. This extension was directly competitive with the Peerless service and at lower fares. A substantial decrease in revenues between Oakland and Decoto was experienced by Peerless with the advent of the expanded service by the District.

To offset the loss of revenues and forestall reductions or discontinuance of service, Peerless sought authority to remove the restrictions against local service between Oakland and Hayward and to reduce certain fares in the competitive area. Much of the territory served by Peerless is without other public transportation.

The District was represented by counsel at the original hearing, who participated but introduced no evidence. After submission the Commission, as noted at the outset, issued Decision No. 63476 which found that public convenience and necessity required the removal of the restrictions against local service by Peerless and that its proposed fares were just and reasonable.

The District, at the outset of the rehearing of this matter, made a motion that the application of Peerless be dismissed on the following grounds:

1. The Commission lacks jurisdiction to entertain such application.
2. The Legislature, in providing for the Transit District Law, gave the District exclusive jurisdiction in areas where it has assumed operation.
3. The Supreme Court, in Los Angeles Metropolitan Transit Authority vs. Public Utilities Commission, 52 Cal. 2nd 655, determined that the Commission should give heed to the legislative objective in approving creation of the Authority, by not impairing the growth thereof through certification of private carriers to provide service which the Authority is willing and able to render.

Reduced to its essence, the District's motion is predicated upon a contention that the Transit District Law, by implication, partially repealed the Public Utilities Code. The specific provisions of the Public Utilities Code concerning regulation of passenger stage operations were not even mentioned in the Transit District Law. Had the Legislature intended to repeal them, it seems logical to assume, they would have enacted appropriate amendments for that purpose. It is well established in law that repeals by implication are not favored. Unquestionably, this Commission has jurisdiction of Peerless and its application for relief. District, however, appears to argue that if a decision by the Commission concerning Peerless is issued which in any way affects the District, the Commission is without power to act. We believe this is not the law. The Supreme Court in the Los Angeles Metropolitan Transit District case, cited above, refused to imply any curtailment of this Commission's power. This is true even though

the factual situation was stronger there than it is here. Peerless is the only carrier rendering service in much of the area involved, while in the Los Angeles case the entire territory proposed to be served by the applicant was already being served either by the Transit Authority or other carriers.

The motion has been carefully considered and found to be without merit; therefore, it is denied.

The Commission finds that:

1. Peerless is a passenger stage corporation within the meaning of Section 226 of the Public Utilities Code, and therefore is subject to the jurisdiction of this Commission.

2. The agreement between Peerless and the predecessor of District (Key System) was disregarded by District when it extended service from Hayward to Decoto.

3. Revenues of Peerless decreased between Oakland and ^{Decoto}~~Decoto~~ as a result of the expanded service of District.

4. Peerless affords the only public transportation to many points between Oakland and San Jose.

5. Successful financial operation of the entire Peerless system may be jeopardized unless it is authorized to compete with District between Oakland and Hayward.

6. Public convenience and necessity require removal of the restrictions against local service by Peerless between Oakland and Hayward.

Based upon the evidence of record and the above findings, the Commission concludes that Decision No. 63476 should be affirmed.

Therefore, IT IS ORDERED that Decision No. 63476 is affirmed.

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

Dated at San Francisco, California, this 26th day of March, 1963.

George H. Trover
President
J. P. [unclear]
W. J. [unclear]
Frederick B. Holtschoff
William W. [unclear]
Commissioners