

ORIGINAL

Decision No. 72297

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations,
rates of fare, practices, routes,
schedules, tariffs, service, equip-
ment and facilities of GREYHOUND
LINES, INC., WESTERN GREYHOUND LINES
DIVISION, in the San Francisco Bay
Area.

Case No. 8009

FINAL OPINION

The Supreme Court of the State of California, on February 16, 1967, annulled Commission Decision No. 70262, dated January 18, 1966 (65 Cal. P.U.C. 219), for the reason that it did not contain separately stated findings of fact on all material issues, as required by Section 1705 of the Public Utilities Code.

Case No. 8009 is an investigation on the Commission's own motion into the operations, rates of fare, practices, routes, schedules, tariffs, service, equipment and facilities of Greyhound Lines, Inc. (Western Greyhound Lines Division) (hereinafter called Greyhound) in rendering passenger stage service within the scope of its San Francisco Bay Area commutation service, for the purpose of determining whether said operations, rates of fare, practices, routes, schedules, tariffs, service, equipment and facilities are reasonable and adequate, and for the further purpose of determining whether respondent should be directed to extend its passenger stage service over the following routes:

- (a) In San Mateo County on Skyline Boulevard (State Route 35) from its junction with State Route 1 in Daly City south to the intersection of Ralston Avenue west of Belmont.
- (b) In Contra Costa County from the intersection of Main Street and Ygnacio Valley Road in Walnut Creek via Ygnacio Valley Road, Oak Grove Road, to respondent's regular route at Monument Road, Concord.
- (c) In Oakland from the intersection of 20th and Broadway southerly and easterly so as to serve the downtown section of Oakland and the new Kaiser Center.

Case No. 8009 was consolidated for hearing with Applications Nos. 46833 and 46904, in which Greyhound sought increases in its mainline and commute fares for its California intrastate operations. Decision No. 69539, dated August 12, 1965, in said applications and in Case No. 8009 (64 Cal. P.U.C. 641) authorized Greyhound to increase its fares and directed Greyhound to initiate changes and improvements in its San Francisco Bay Area commutation services.

A discussion of the evidence introduced with respect to the proposed operations over the so-called Skyline Boulevard and Ygnacio Valley Boulevard routes is set forth in Decision No. 69539 (64 Cal. P.U.C. 641 at pages 668 and 669). It need not be repeated in full herein. Said decision (at pages 669 and 670) states as follows:

"The proposed additional commute services along Skyline Boulevard and Ygnacio Valley Road involve questions of economic impact as well as the public interest. An expeditious determination of the issues in these proceedings other than those involving Skyline Boulevard and Ygnacio Valley Road services requires that the latter be deferred for consideration in a separate opinion and order."

Decision No. 70262, annulled by the Court, would have required Greyhound to provide additional service along the proposed Skyline Route and to offer service over the Ygnacio Valley Route between points presently served.

Section 762 of the Public Utilities Code provides that whenever the Commission, after a hearing, finds that additions, extensions, or improvements to, or changes in, the existing facilities of any public utility ought reasonably be made, to promote the convenience of the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, improvements or changes be made in the manner and within the time specified in the order. This section empowers the Commission to order the service proposed in the Commission's Order Instituting Investigation in Case No. 8009.

In support of its position resisting establishment of additional service along the proposed Skyline Boulevard and Ygnacio Valley routes, Greyhound cites Hollywood Chamber of Commerce v. Railroad Commission of the State of California (1923), 219 P. 983, 192 C. 307, 30 A.L.R. 68, and Atchison, Topeka & Santa Fe Railway v. Railroad Commission of the State of California (1916), 160 P. 828, 173 C. 577. In the Hollywood case, the California Supreme Court determined that the Commission had no jurisdiction, under former Section 36 of the Public Utilities Act (now Section 762 of the Public Utilities Code), to order a street railway company to extend its lines into a new territory in which it had no franchise. In the Santa Fe case, the Court found that the Commission had not regularly pursued its authority in ordering a new railroad line to be built or an existing one extended to serve the transportation needs of a territory not reached by its lines. In each case the Court recognized that a public utility may limit its "dedication" to a territorial area.

In the situation here before us the proposed Skyline Boulevard and Ygnacio Valley Road routes are both within the territory Greyhound is now authorized to serve. Greyhound operates a seasonal service along Skyline Boulevard; it also operates a year-round service on routes which parallel the Skyline route. The paralleling routes provide transportation to commuters in the same communities (i.e., Daly City, Pacifica, South San Francisco and San Bruno), as would be served by the proposed Skyline Route. Said paralleling routes now serve some of the same patrons who would be served more conveniently by the proposed additional service on its Skyline Route. The proposed operation along Ygnacio Valley Boulevard is merely a partial rerouting of Greyhound's existing service within Concord and Walnut Creek to give easier access to a portion of the public now using Greyhound's present service. The facts presented clearly indicate that Greyhound serves, i. e., has "dedicated" its operations for service to the public within the territory in which the proposed additional service would be rendered. To the same effect see Utica Transit Corporation vs. Benjamin Feinberg, et al., 100 N.Y.S. 2d 916 (1950), 87 P.U.R., N.Y.S. 74.

Greyhound in its argument cites Cal. Water and Tel. v. Pub. Util. Com. 51 Cal. 2nd 478, and Richfield Oil Corp. v. Pub. Util. Com. 54 Cal. 2nd 419, in support of its contention that it has not unequivocally "dedicated" its property to public use with respect to the Skyline Boulevard and Ygnacio Valley routes and therefore cannot be required to serve such routes. Greyhound argued that the certificate of public convenience and necessity issued to it by this Commission does not provide for service by it to commuters over the Skyline Route or any service over the Ygnacio

Valley Route; that "dedication" and authorized operation must be coterminous; therefore, the certificate describing the limits of authorized service delineates the extent of "dedication" as well. We do not agree with this. The Legislature clearly intended otherwise in enacting that portion of Section 1032 of the Public Utilities Code which reads as follows:

"...The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission." (Underscoring supplied).

This Commission has consistently interpreted this portion of Section 1032 in a manner to protect existing passenger stage corporations from encroachment by competing carriers within the territory in which they serve the public, even though said territory encompasses more than the specific streets and roads over which they operate pursuant to their certificates.

The Court in California Water & Telephone dealt with the Commission's jurisdiction to modify a contract between a public utility water company and a subdivider to extend service to new subdivisions proposed to be created outside of the utility's certificated service area. Operations to be conducted by Greyhound are within the territory it now is certificated to serve. Richfield Oil Corp. dealt with a gas pipeline company which had never served the public, nor dedicated its property to public use. There is no question that Greyhound serves the public, nor that its property is dedicated to public use (see Corona City Water Co. v. Pub. Util. Com., 357 P.2d 301, 54 Cal.2d 834).

Greyhound's other objection to additional service along the Skyline Boulevard and Ygnacio Valley Boulevard routes was

contained in the proposition that rendering such service at commute fares would require it to conduct additional operations at a loss, in that such fares do not return the costs of providing the additional service. It is true that Greyhound's commute fares within the San Francisco Bay area do not return its costs of service. (Decision No. 69539 (64 Cal. P.U.C. 641 at 660 and 661).) However, the mainline one-way and round-trip fares applicable to the balance of Greyhound's California intrastate service were set at levels sufficiently high so that its total intrastate operations are conducted at a compensatory level. (Decision No. 69539 (64 Cal. P.U.C. 641 at 662).) Indeed, Greyhound's witness admitted that the return from Greyhound's California operations is the highest of any in its seven-state business. (Tr. p.59.)

The only change in costs which would be caused by the Ygnacio Valley Boulevard Route would result from a small increase in miles operated, as no additional buses would be required; they would merely be transferred from an existing route. The estimates furnished indicate that for the Skyline Route, seven buses would be initially required to provide the necessary service. Three of these buses would be diverted from existing routes and four additional buses would be required. While the present fare structure would not fully cover the costs of providing the additional service, the additional costs are so small in relationship to Greyhound's total California intrastate operating costs that the effect of providing the additional service would not materially affect Greyhound's rate of return on its California operations nor reduce said rate of return to an unreasonable level. For the test year used in Decision No. 69539, California total intrastate operating revenues are \$41,066,100 and corresponding operating expenses,

including income taxes, are \$39,706,700 (Table VII, 64 Cal. P.U.C. 641 at 662). The rate of return of 6.4 percent would not be changed in significant figures by the operations over the Skyline and Ygnacio Valley routes. Where the overall operation of a common carrier's intrastate service is profitable, the Commission may compel the continuation of a portion of such services at a financial loss and that requirement raises no issue under the Federal Constitution (Southern Pacific Co. v. Pub. Util. Com., 41 Cal.2d 354, at 366).

The Commission, in determining whether Greyhound should be authorized and directed to initiate additional service on the Skyline Boulevard and Ygnacio Valley Road routes described in the Commission's Order Instituting Investigation in Case No. 8009, considers the following issues pertinent and material to making such determination:

1. Does the public or a portion thereof require the proposed service?
2. Is the additional service within the territory now served by Greyhound or by any other passenger stage corporation?
3. Will the requirement that Greyhound initiate service along said routes adversely affect Greyhound?
4. Is there any provision of law which would negate a requirement that Greyhound serve such routes?

The record is complete on all issues in this case and no further hearing is necessary.

With respect to the proposed Skyline Route the Commission makes the following findings of fact:

1. Greyhound operates as a passenger stage corporation, a common carrier and a public utility over routes between San Francisco

(7th Street Terminal) and:

- (a) Pacifica via Coast Highway 1, serving also Daly City;
- (b) Redwood City, via Mission Street and El Camino Real, serving Daly City, South San Francisco and San Bruno;
- (c) Redwood City, via U. S. Highway 101 (Bayshore Freeway) and local city streets serving South San Francisco and San Bruno; and
- (d) Santa Cruz, via city streets in San Francisco, and Skyline Boulevard, with intermediate stops in Daly City, Pacifica and San Bruno.

2. Greyhound holds a certificate of public convenience and necessity for and provides year-round daily service, including commutation service on work days, with respect to routes described in Finding 1, subparagraphs (a), (b) and (c).

3. Greyhound holds a certificate of public convenience and necessity for and provides service only during the summer months with respect to the route described in Finding 1 (d).

4. Population and the construction of new homes have grown rapidly along Skyline Boulevard in Daly City, Pacifica, South San Francisco and San Bruno in recent years. More than 20,000 persons now reside in these communities in areas adjacent to Skyline Boulevard.

5. No passenger bus service, other than the seasonal bus service of Greyhound, is operated between points on Skyline Boulevard in San Bruno, South San Francisco and Pacifica, on the one hand, and San Francisco, on the other hand.

6. It is inconvenient because of extreme terrain difficulties and distance for persons living along Skyline Boulevard to walk to the nearest bus lines operated along Coast Highway 1 and El Camino Real.

7. A need exists for regular bus service between points on Skyline Boulevard in Pacifica, South San Francisco and San Bruno, on the one hand, and San Francisco, on the other hand. The greatest need is for peak-hour commutation service for persons living along Skyline Boulevard and working in San Francisco.

8. Adequate peak-hour commutation service along Skyline Boulevard can be performed by Greyhound by the operation of seven buses daily (except Saturday and Sunday). Said operation would require four additional buses daily, except Saturday and Sunday, in each direction, over and above the number of buses now operated on paralleling routes and transferred to said Skyline Route because of diversion of traffic from existing routes.

9. The estimated additional operating cost for the additional four buses described in Finding 8 hereof is \$55,500 per annum. The estimated additional revenue for said service based on commute fares applicable on paralleling routes is \$25,200 per annum. The difference between the estimated revenue and additional cost for the four buses is \$30,300. Said estimates are based on operating costs in effect on February 28, 1966, and fares authorized by Decision No. 69539, supra. The full additional cost of operating said service would not be recovered under the fare structure described in this finding.

10. Greyhound's San Francisco Bay Area commute operations will be conducted at a loss under the fares authorized in Decision No. 69539, supra. However, fares authorized in Decision No. 69539 for Greyhound's overall California intrastate operations are set at a fully compensatory level; and fares outside the commute areas are set at a level sufficiently high to offset losses within the commute areas.

11. Greyhound has sufficient equipment and adequate facilities to provide the service described in Finding 7 hereof, and has the financial ability to initiate said service.

12. Greyhound has dedicated its facilities to the operation of a common carrier passenger stage corporation service between points on Skyline Boulevard and San Francisco, by the means of operations under and acceptance of a certificate of public convenience and necessity to provide seasonal summer service along said route. In addition, that portion of the Skyline Route lying within the city limits of San Francisco and Daly City also is embraced within Greyhound's certificated route covering its operations to and from points on Coast Highway 1.

13. Greyhound now provides commute service as a common carrier and public utility in the same territory which would be served if commute service over the Skyline Route were operated by it; said communities are San Francisco, Daly City, Pacifica, South San Francisco and San Bruno.

14. There is no publicly or privately owned carrier, other than Greyhound, furnishing bus passenger service between downtown San Francisco, on the one hand, and San Bruno, Pacifica and South San Francisco, on the other hand, this being territory served by Greyhound within the meaning of said term as used in Section 1032 of the Public Utilities Code.

15. Public convenience and necessity require the operation of a peak-hour commutation service by Greyhound between points on Skyline Boulevard (San Bruno Avenue and north thereof) and San Francisco (7th Street).

16. Adequate turnouts are required before safe bus operations can be conducted on Skyline Boulevard.

17. Adequate service will be provided with bus stops at the intersections of Skyline Boulevard and the following streets or roads: San Bruno Avenue, Sneath Lane, College Drive, Sharp Park Road and Manor Drive.

18. Operations along the Skyline Route will not materially affect Greyhound's total California intrastate financial position, nor reduce its rate of return thereon to an unreasonable level.

The Commission makes the following conclusions of law with respect to the proposed Skyline Route:

1. The Skyline Route is within territory now served by Greyhound. Greyhound has dedicated its facilities to render service to the public within said territory, and there is no statutory or legal prohibition against a requirement by this Commission that Greyhound serve the Skyline Route. Section 762 of the Public Utilities Code clearly provides the necessary authority for the Commission to order the additional service. As hereinbefore discussed, the decisional law of this State either upholds this authority or does not prohibit its exercise under the specific circumstances here before us.

2. Greyhound should be authorized and directed, pursuant to Section 762 of the Public Utilities Code, to furnish peak-hour commutation service along the Skyline Boulevard Route. An amended certificate of public convenience and necessity should be issued to Greyhound so that its operating authority will conform to the foregoing conclusion.

3. Operations under said amended certificate should be commenced within sixty days after adequate turnouts are constructed by the responsible public bodies.

4. Greyhound should be directed to establish fares with respect to said service no higher than the one-way and round-trip fares and commute fares for Peninsula operations authorized in the latest proceeding before this Commission dealing with Greyhound's fare structure. (Decision No. 71787, dated December 29, 1966, in Application No. 48692.)

The Commission makes the following findings of fact concerning the proposed operations over Ygnacio Valley Road and Oak Grove Road:

1. Greyhound operates as a passenger stage corporation, a common carrier, and a public utility over routes between Oakland and San Francisco, on the one hand, and Walnut Creek and Concord, on the other hand, via Mt. Diablo Road, Main Street and Monument Boulevard in Walnut Creek and Concord.

2. The proposed alternate route via Ygnacio Valley Boulevard and Oak Grove Road in Concord and Walnut Creek is approximately one mile longer than the present route in those communities via Mt. Diablo Road, Main Street and Monument Boulevard.

3. The population and construction of new homes have grown rapidly along the proposed route. A new hospital has been constructed on Ygnacio Valley Boulevard.

4. Greyhound's commute service between Contra Costa County points and San Francisco and Oakland has shown a continuous growth over the last five years. A substantial proportion of said additional growth stems from increased patronage in the Concord and Walnut Creek areas.

5. A questionnaire conducted by the City of Walnut Creek, with the assistance of the Contra Costa Commuters Association,

indicates bus commuters residing along the proposed route and presently boarding at Walnut Creek Depot account for at least three bus loads in each direction to and from Greyhound's San Francisco Transbay Terminal. In addition, other riders residing along said route could transfer at Walnut Creek Depot to buses serving San Francisco (7th Street) and Oakland, if service is provided along Ygnacio Valley Boulevard alternate route.

6. Bus operations over the proposed route could be conducted by Greyhound with equipment diverted from adjacent routes. The only additional costs involved would be incurred through the operation over an additional mile of route.

7. Public convenience and necessity require the operations of peak-hour commutation service between San Francisco (Transbay Terminal) and Concord and Walnut Creek via Oak Grove Road and Ygnacio Valley Boulevard, as an alternate route.

8. Operations along the Ygnacio Valley Route will not materially affect Greyhound's total California intrastate financial position, nor reduce its rate of return thereon to an unreasonable level.

The Commission makes the following conclusions of law with respect to the proposed Ygnacio Valley Boulevard alternate route:

1. The Ygnacio Valley Route is within territory now served by Greyhound; Greyhound has dedicated its facilities to render service to the public within said territory; and there is no statutory or legal prohibition to a requirement by this Commission that Greyhound serve the Ygnacio Valley Route. Section 762 of the Public Utilities Code clearly provides the necessary authority for the Commission to order the additional service. As hereinbefore

discussed, the decisional law of this State either upholds this authority or does not prohibit its exercise under the specific circumstances here before us.

2. Greyhound should be authorized and directed, pursuant to Section 762 of the Public Utilities Code, to furnish peak-hour commutation service along Ygnacio Valley Boulevard and Oak Grove Road in Contra Costa County, as an alternate route.

3. An amended certificate of public convenience and necessity should be issued to Greyhound so that its operating authority will conform to the above conclusion.

4. Operations along said route should be commenced by Greyhound within sixty days after the effective date of the order herein.

5. Greyhound should establish one-way, round-trip, and monthly commutation fares no higher than the fares authorized for comparable service in Decision No. 71787, supra.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby issued to Greyhound Lines, Inc., for the establishment and operation of service as a passenger stage corporation, as that term is defined in Section 226 of the Public Utilities Code, for the transportation of passengers and baggage between the points and over the routes set forth in Third Revised Page 26 and Fifth Revised Page 40, attached hereto and made a part hereof, as an extension and enlargement of and consolidation with, and subject to all the limitations and restrictions set forth in, the certificate granted by Decision No. 55893 and in particular

subject to the provisions set forth in Appendix A thereof.

2. Appendix A of Decision No. 55893 as heretofore amended is hereby further amended by incorporating therein Third Revised Page 26 in revision of Second Revised Page 26 and Fifth Revised Page 40 in revision of Fourth Revised Page 40.

3. In providing service pursuant to the certificate herein issued, respondent shall comply with and observe the following service regulations:

- (a) Within sixty days after the effective date hereof, respondent shall establish peak-hour commute service between points on Route 11.14 (Third Revised Page 26) and its San Francisco (Transbay) terminal, and file tariffs and timetables, in triplicate, in the Commission's office.
- (b) Within sixty days after respondent is informed by the Commission that adequate turnouts are constructed at the junctions of Skyline Boulevard and San Bruno Avenue, Sneath Lane, College Drive, Sharp Park Road, and Manor Drive, respondent shall establish peak-hour commute service between said points and its San Francisco (7th Street) terminal, and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service.
- (d) Respondent shall establish fares as described in the preceding opinion.

- (e) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A.

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

Dated at San Francisco, California, this 18th day of APRIL, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners

11.11 - Between Byron and Byron Road Junction:

From Byron, over Byron Road to Byron Road Junction,
to be operated as an alternate route.

11.12 - Between Walnut Creek Junction and Oak Park Junction:

From junction unnumbered highway and California
Highway 24 (Walnut Creek Junction), over
California Highway 24 to junction unnumbered
highway (Oak Park Junction), to be operated as
an alternate route.

11.13 - Between South Main Street Junction and Walnut Creek
Junction:

From junction California Highway 21 and unnumbered
highway south of Walnut Creek (South Main Street
Junction), over California Highway 21 to junction
California Highway 24 (Walnut Creek Junction),
to be operated as an alternate route.

*11.14 - Between Monument Junction and Ygnacio Valley Junction:

From junction unnumbered highways of Monument
Boulevard and Oak Grove Road (Monument Junction)
over Oak Grove Road and Ygnacio Valley Road to
junction unnumbered highway of Main Street
(Ygnacio Valley Junction), to be operated as an
alternate route.

Issued by California Public Utilities Commission.

*Added by Decision No. 72297, Case No. 8009.

- 14.27 - Intentionally left blank.
- 14.28 - Intentionally left blank.
- *14.29 - Between Edgemar Junction and Santa Cruz (Skyline Route):

From junction California Highway 1 and California Highway 35 (Edgemar Junction), over California Highway 35 to junction California Highway 9 (Saratoga Gap), thence over California Highway 9 to Santa Cruz.

Only summer-season service is authorized between San Bruno Avenue in San Bruno and Boulder Creek, and between Felton and Santa Cruz.

- 14.30 - Between Felton and Scotts Valley:

From junction California Highway 9 and unnumbered highway (Felton), over unnumbered highway via Mt. Hermon to junction California Highway 17 (Scotts Valley).

- 14.31 - Between Santa Cruz and Monterey:

From Santa Cruz, over California Highway 1 to Monterey.

- 14.32 - Between Rob Roy Junction and Watsonville via Freedom:

From junction California Highway 1 and unnumbered highway (Rob Roy Junction), over unnumbered highway via Freedom to Watsonville.

Issued by California Public Utilities Commission.

*Revised by Decision No. 72297, Case No. 8009.