

Decision No. 12931.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
 HUGH GOODFELLOW, WARREN OLNEY and
 W.I. BROBECK, as trustees, and KEY
 SYSTEM TRANSIT COMPANY, a corpora-
 tion, EAST OAKLAND RAILWAY COMPANY,
 a corporation, OAKLAND AND HAYWARDS
 RAILROAD, a corporation, and KEY
 SYSTEM SECURITIES COMPANY, a corpora-
 tion, to transfer and acquire the
 property formerly belonging to San
 Francisco-Oakland Terminal Railways,
 a corporation, and to issue securi-
 ties.

ORIGINAL

Application Number 9367.

Morrison, Dunne and Brobeck;
 Goodfellow, Eels, Moore and Orrick;
 McCutchen, Olney, Mannon and Greene,
 by Warren Olney, for Applicants.

Joseph I. Bien, for Louis H. Bien,
 Trustee in Bankruptcy for United
 Properties Company, a bankrupt
 holding all of the capital stock
 of Oakland Railways.

Leon E. Gray, for City of Oakland.

Edward P. E. Troy, for Dr. C.A. Clinton,
 Mrs. Amelia P. Hogan, Mrs. Fred Lee, et
 al, and for himself, as stockholders of
 San Francisco-Oakland Terminal Railways.

BY THE COMMISSION:

OPINION

The above entitled application involves the refinancing
 of the properties formerly owned by San Francisco-Oakland Terminal
 Railways. The properties of such company were on July 17, 1923 pur-
 chased at a judicial sale under a decree of foreclosure of the Superior
 Court of the State of California in and for the County of Alameda, by
 Hugh Goodfellow, Warren Olney and W. I. Brobeck, as trustees for the

bondholders who deposited their bonds under the reorganization plan, to which reference will hereafter be made. The trustees bought the property for the purpose of carrying out the reorganization plan, a copy of which is on file in this proceeding and marked "Applicants' Exhibit A".

The San Francisco-Oakland Terminal Railways was organized on March 21, 1912, two days prior to the effective date of the Public Utilities Act. The Railroad Commission has never authorized the company to issue any stock or bonds, except the general lien bonds authorized to be issued by Decision Number 1604, dated June 23, 1914, (Volume 4 Opinions and Orders of the Railroad Commission of California, page 1290). In that decision the Commission authorized the issue of not exceeding \$1,000,000.00 and authorized the use of the general lien bonds as collateral security for \$650,000.00 of notes, the issue of which the Commission also authorized.

The San Francisco-Oakland Terminal Railways was formed through the consolidation of the Oakland Traction Company, the San Francisco, Oakland and San Jose Consolidated Railway, the East Shore and Suburban Railway Company and the California Railway. The company was engaged in a street railway business in the cities of Oakland, Berkeley, Alameda, Richmond and other cities on the eastern shore of San Francisco Bay, extending from Richmond to Hayward, also interurban street car service between the various municipalities and an interurban ferry service between the cities on the eastern shore of San Francisco Bay and the city and county of San Francisco. Since the foreclosure sale the properties have been operated by the trustees.

The San Francisco-Oakland Terminal Railways, has, since its organization, filed annual reports with the Railroad Commission. The company has also been before the Commission in several formal proceedings. One involved the valuation of its properties; others, the issue of bonds or notes or the increase in rates. Several times during the hearing on the present application, reference was made to Decision Number 6549, dated August 11, 1919, (Volume 17, Opinions and Orders of the

Railroad Commission of California, page 178); and particularly to the following language appearing on page 186;-

"It has been repeatedly pointed out by this Commission that the only permanent remedy for the financial difficulties of this company is a thorough-going reorganization of its finances. As long as the Key System rests on the present unsound financial structure, it is bound to continue in financial difficulties in the future as it has in the past. The rate increases will not affect a complete or permanent remedy of this situation. If it were practical to do so, we would make a reorganization one of the conditions of this order."

The Commission in the language quoted refers to the San Francisco-Oakland Railways as a corporate entity and not to one of its operating divisions, namely the Key Division. The Commission when making the statement had knowledge of the earnings and expenses of the company, of its capitalization and credit, of its arrears in interest payments, its default in sinking fund payments, and its inability to raise money for needed improvements in service. The Commission knew that the company had made no provision prior to 1917, to take care of depreciation, that the company did not earn its interest charges during 1916, 1917, 1918 and 1919. At the time of the Commission's decision the company had outstanding notes payable amounting to more than \$3,500,000.00; its funded debt due and payable amounted to \$1,183,000.; its overdue and unpaid interest was \$952,310.00; while its sinking fund installments under the several mortgages which had accrued but remained unpaid, amounted to \$1,522,130.00. On December 31, 1922 the figures comparable to those just mentioned were as follows;-

Matured notes unpaid (in excess of)	\$3,200,000.00
Funded debt, (matured, not paid)	1,357,000.00
Matured and unpaid interest	2,706,585.00
Sinking fund installments due but not paid . . .	2,919,785.00

Any one of the items just mentioned might have been made the basis of a foreclosure proceeding and of necessity all of such items had to be paid before the company could raise any substantial amounts of money for the improvement of its services. The Commission was convinced in 1918, and is likewise convinced at this time, that the properties formerly belonging to the San Francisco-Oakland Terminal Railways

should be re-financed and that the reorganization of the affairs of the company is imperative. Whether or not the San Francisco-Oakland Terminal Railways was solvent at the time of the foreclosure sale, that is, whether the fair value of its assets exceeded its liabilities, is in our opinion wholly immaterial so far as this proceeding is concerned. The record in this case, we think, clearly shows that no matter what the fair value of the company's properties may have been, it could not meet its interest charges when due, could not pay its bonds and notes when due, nor could it comply with the sinking fund provisions of its mortgages. It was unable to sell either bonds or stock to finance additions and betterments,

Questions were raised at the time of the hearing, first, whether the transfer of these properties to trustees under the decree of foreclosure was invalid because not first approved by the Railroad Commission, and second, whether the transfer herein sought to be authorized will, in fact, constitute an actual sale. We are of the opinion that the validity of the transfer to the trustees under the decree of foreclosure cannot here be questioned. The foreclosure sale was made pursuant to the terms of certain mortgages, executed prior to the enactment of the Public Utilities Act, and that provision in the Act requiring the consent of the Railroad Commission prior to any sale would therefore not be applicable.

We are, furthermore, of the opinion that the transfer of the properties by the trustees, for which authorization is herein sought, will constitute an actual sale of public utility property under the provisions of Section 51 of the Public Utilities Act. It is true that the foreclosure sale and the sale which this Commission is here asked to authorize are means to carry into effect a reorganization plan. Notwithstanding this fact, there will not only be a change in the owner-

ship of the title to the properties, but in their management as well. We believe that this proceeding involves an actual sale of properties, both in form and in substance.

The decree of foreclosure required the properties of San Francisco-Oakland Terminal Railways to be sold as a whole to the highest bidder. The trustees mentioned heretofore purchased the properties for \$10,000,000.00, paying \$398,165.02 of the purchase price in cash and \$9,601,834.98 by credit upon said purchase price endorsed pro rata upon the bonds deposited under the reorganization plan. Of the amount paid in cash, \$283,561.72 was paid as the pro rata share of the bondholders whose bonds were foreclosed, but who had not deposited their bonds under the reorganization plan, and \$114,603.30 was paid to meet the expenses of the foreclosure proceedings and sale, in accordance with the terms of the foreclosure decree. The price paid by the trustees for the properties, determines the amount that must be paid to those bondholders who did not deposit their bonds. It does not fix the value of the properties for rate making purposes. Neither is this Commission bound by such price in authorizing the transfer of the properties from the trustees to the new companies, and the issue of securities by the new companies in payment for such properties.

Counsel for applicants maintains that the value of the properties is not particularly material in this proceeding, for the reason that the securities which are to be refunded are already outstanding and that the Commission is asked to authorize the issue of a smaller amount of securities than are now outstanding. The Commission is not inclined to agree with the views of counsel for applicants in this regard. We think the value of the properties in this, as in any other reorganization proceeding, is very material. We realize that this is neither a valuation nor a rate proceeding, but when this Commission is asked to authorize the issue of securities to acquire public utility properties or to re-finance such public utility properties, the Commission should have before it evidence of the actual or estimated cost of the properties. Applicants in their Exhibit Number 22 submit the following figures relating to the reproduction value

of the properties;-

Reproduction value July 16, 1923	\$28,233,710.00
" " less depreciation July 16, 1923	22,186,544.00
" " July 16, 1923 (Average prices 1918-1923)	41,639,463.00 ✓
" " less depreciation July 16, 1923 (Average prices 1918-1923)	32,070,100.00

It was stated that the purpose of the exhibit was "to place in evidence a statement of the reproduction value as developed from the 1914 valuation of the Commission, and taking the same property on those same unit costs for the years in which they were built and endeavoring to transform them into what would be those figures for the reproduction value of the property as of July 16, 1923, at average prices which prevailed during the five years previous to that time. "

The Railroad Commission by Decision Number 2412, dated May 24, 1915 (Volume 6, Opinions and Orders of the Railroad Commission of California, page 1023) made a valuation of the properties of the San Francisco-Oakland Terminal Railways. The figure \$28,233,710.00 reported in applicants' Exhibit No. 22, as the reproduction value on July 16, 1923, is arrived at by deducting from the Commission's valuation, which was as of June 30, 1914, the property retired or sold, at the same figure that such property was included in the Commission's valuation, and adding to the remainder the cost of additions and betterments from June 30, 1914 to July 16, 1923. The \$22,186,544.00 represents the reproduction cost less depreciation of the properties, using the Commission's valuation as a basis and giving effect to the cost of additions and betterments since such valuation. To obtain the second group of values there was applied to the valuation of the Commission and to the additions and betterments installed prior to July 1, 1921 a unit price which represents the average prices during 1918-1923. The cost of additions and betterments subsequent to July 1, 1921 have not been modified.

The City of Oakland in its Exhibit No. 1 and in Exhibit No. 1-A submits the reproduction value less depreciation without any adjustment

in the prices entering into the 1914 valuation, at \$19,677,667.00 and with the prices adjusted to reflect the 1918-1923 average prices at \$29,054,118.00. The \$19,677,667.00 is arrived at by modifying applicants' Exhibit No. 22 in the particular amounts:-

Deducting multiples included in land values in the Commission's 1914 valuation and in applicants' Exhibit No. 22	\$873,540.00
Depreciating overhead expenses which were not depreciated in the Commission's valuation in 1914	938,744.00
Disallowing amount of the cost of the 55 new traction street cars which applicants do not propose to finance through the issue of first mortgage bonds which the Commission is asked now to authorize	450,000.00
TOTAL	<u>\$2,262,284.00</u>

The following tabulation shows the outstanding stock, funded and other indebtedness of San Francisco-Oakland Terminal Railways prior to the foreclosure sale:-

A. Stock	\$28,175,000.00
Common	\$15,125,000.00
First preferred	12,050,000.00
Second preferred	1,000,000.00

B. Funded debt- bonds

<u>Name of bond</u>	<u>Principal</u>	<u>Unpaid Interest</u>
I. Bonds outstanding and interest bearing:		
Oakland, San Leandro, Baywards 1st mortgage 6's due 1922	\$ 236,000.00	\$ 54,280.00
23rd Ave. Electric Railway 1st mortgage 6's due 1923	229,000.00	52,097.50
Oakland Transit Company 1st Con. 6's due 1918	1,121,000.00	267,728.44
Oakland Transit 1st Con. 5's due 1931	1,595,000.00	319,000.00
Oakland Transit Con. 1st Con. 5's due 1932	1,202,000.00	240,400.00
San Francisco, Oakland, San Jose Railway 1st mortgage 5's due 1933	3,000,000.00	600,000.00
East Shore and Suburban Railway 1st mortgage 5's due 1940	620,000.00	124,000.00
Oakland Traction Con. Gen. Cons. 5's due 1933	2,134,000.00	426,800.00
San Francisco, Oakland, San Jose Railway 2nd mortgage due 1933	1,500,000.00	300,000.00
Oakland Traction Co. Gen. Con. mortgage 5's due 1935	3,177,000.00	627,457.50
San Francisco, Oakland, San Jose Con. Gen. Con. 5's due 1938	1,587,000.00	326,445.90
Sub-total	<u>\$16,401,000.00</u>	<u>3,338,209.34</u>

Forward	\$16,401,000.00	\$3,338,209.34
II. Bonds outstanding and pledged:		
Oakland Traction Co. Gen. Con. mortgage 5's due 1935	1,843,000.00	-
San Francisco, Oakland, San Jose Con. Gen. Con. 5's due 1938	1,413,000.00	-
Total bonds outstanding and unpaid in- terest	<u>\$ 19,657,000.00</u>	<u>3,338,209.34</u>
C. Other funded debt \$847,000.00		
San Francisco-Oakland Terminal Rail- ways equipment notes May 1, 1916	\$ 50,000.00	
San Francisco-Oakland Terminal Rail- ways ferry equipment trust certi- ficates	600,000.00	
San Francisco-Oakland Terminal Rail- ways car equipment trust certifi- cates	175,000.00	
Real estate mortgage against Stoer property	22,500.00	
D. Current liabilities \$7,328,107.36		
Loans and notes payable	3,190,788.02	
Audited accounts and wages payable . .	707,962.77	
Miscellaneous accounts payable	4,336.63	
Matured interest on bonds unpaid, shown above	3,338,209.34	
Other matured interest unpaid	55,790.00	
Accrued interest not due	31,030.60	
E. Contingent liabilities \$3,999,928.40		
Sinking fund installments matured	\$3,183,718.75	
" " " accrued	375,129.44	
Loans and interest from deprecia- tion fund	441,080.21	

The loans and notes payable shown at \$3,190,788.02 includes a \$2,500,000.00 note of San Francisco-Oakland Terminal Railways which was issued and deposited as collateral to secure the payment of notes of Oakland Railways. The \$3,256,000.00 of bonds pledged are deposited to secure the same notes. The notes of the Oakland Railways are not included in the notes payable of San Francisco-Oakland Terminal Railways.

The Oakland Railways is a subsidiary company of the San Francisco-Oakland Terminal Railways and in 1912 issued one year six percent notes for the principal sum of \$2,500,000.00. These notes throughout the proceeding have been referred to as the Halsey notes. The pay-

ment of the notes was secured by the deposit of the following collateral;-

- a. \$2,500,000. note of San Francisco-Oakland Terminal Railways
- b. 1,843,000. of bonds of Oakland Traction Company General Consolidated 5's due 1935.
- c. 1,413,000. of San Francisco, Oakland and San Jose Consolidated General Consolidated 5's due 1938
- d. 1,000,000. of second preferred treasury stock of the San Francisco-Oakland Terminal Railways.
- e. 128,814. note of San Francisco-Oakland Terminal Railways
- f. 3,811,200. of preferred stock of San Francisco-Oakland Terminal Railways loaned from third parties.

The Halsey notes were not paid at maturity. The securities deposited as collateral to secure the payment of such notes have been foreclosed upon and sold, and at such foreclosure sale were purchased on behalf of the holders of the Halsey notes. It is of record that even though the collateral has been reduced to ownership, the owners of such collateral are willing to proceed in accordance with the reorganization plan of the San Francisco-Oakland Terminal Railways and exchange their securities, other than the two notes, which they have obtained through the foreclosure sale for stock of the Key System Transit Company. The two notes they have agreed to cancel.

For some years past the San Francisco-Oakland Terminal Railways has also advanced moneys to the Oakland Terminal Company, another subsidiary, to enable that company to pay its interest on \$1,100,000. of notes issued in 1913 and secured by a mortgage on certain tide lands. The Terminal Company did not pay its notes at maturity. Recently the tide lands were sold for \$1,000,000. and the proceeds applied on the payment of the notes. San Francisco-Oakland Terminal Railways, it appears, paid \$50,000.00 of the balance due on the note. Through the sale of the tide lands and the \$50,000.00 payment by the San Francisco-Oakland Terminal Railways, the Oakland Terminal Company's indebtedness was liquidated, and that company no longer figures in the re-financing of the San Francisco-Oakland Terminal Railway properties.

The properties formerly belonging to the San Francisco-Oakland Terminal Railways are to be re-financed through the medium of four newly organized corporations, namely:-

Key System Transit Company
Key System Securities Company
The Oakland and Haywards Railway Company
East Oakland Railway Company.

To the East Oakland Railway Company are to be transferred the properties described in applicants' Exhibit No. 7 which properties were mortgaged to secure the payment of the bonds of the Twenty-third Avenue Electric Railway.

To the Oakland and Haywards Railway Company are to be transferred the properties described in applicants' Exhibit No. 8, which properties were mortgaged to secure the payment of the bonds of the Oakland, San Leandro and Haywards Electric Railway.

It is of record that San Francisco-Oakland Terminal Railways is indebted to Realty Syndicate in the sum of \$119,206.52. The reorganization committee has arranged that of this amount \$10,530.00 be paid in cash and the balance either in cash or by the conveyance of two pieces of real estate, being the tract known as the Diamond Canyon property and the lot or lots known as the Piedmont Power House property.

To the Key System Transit Company are to be transferred all of the properties formerly owned by the San Francisco-Oakland Terminal Railways except such properties as are to be transferred to the East Oakland Railway Company, the Oakland and Haywards Railway Company and the properties which may be transferred to the Realty Syndicate in payment of indebtedness. The Key System Transit Company will be the operating company and will operate under lease, the railway properties of the East Oakland Railway and the Oakland and Haywards Railway.

The Key System Securities Company will take the place of the Oakland Railways. It will issue ten year six percent. notes in the principal sum of \$2,500,000.00. The payment of the notes will be secured by the deposit of stock of the Key System Transit Company issued pursuant to the plan of reorganization in exchange for bonds and stock deposited to secure the payment of the Halsey notes. The Key

System Transit Company will guarantee the payment of the interest on the \$2,500,000.00 of notes, but not the principal. The Key System Transit Company, which will own all of the outstanding stock of Key System Securities Company, reserves the right to pay at its option the \$2,500,000.00 of notes on any interest payment date prior to maturity.

The reorganization plan provides for the refunding of the bonds of the San Francisco-Oakland Terminal Railways deposited under the plan through the issue of bonds and preferred stock of the Key System Transit Company. The preferred stock of the San Francisco-Oakland Terminal Railways will be refunded through the issue of common stock of the Key System Transit Company. The unpaid interest on the bonds of the San Francisco-Oakland Terminal Railways, that is, the interest from November 19, 1919 to July 1, 1923, is to be paid through the issue of bonds or stock of the Key System Transit Company, with the exception that the unpaid interest on the bonds of the Oakland, San Leandro and Haywards Electric Railway and the unpaid interest on the bonds of the Twenty-third Avenue Electric Railway is to be paid in cash. The equipment notes and current indebtedness incurred because of the operation of the properties, are to be paid in cash.

The bonds of the San Francisco-Oakland Terminal Railways have for the purpose of the reorganization plan been divided into three groups, as follows:-

Group I-A.

Oakland, San Leandro & Haywards Electric Railway 1st mortgage 6's, 1922	\$236,000.	
23rd Ave. Electric Railway 1st mortgage 6's, 1923	<u>229,000.</u>	
Total		\$ 465,000.00

Group I-B.

Oakland Transit Company 1st Consolidated 6's 1918	1,121,000.	
Oakland Transit 1st Consolidated 5's 1931	1,595,000.	
Oakland Transit Consolidated 1st Consolidated 5's, 1932	1,202,000.	
San Francisco, Oakland & San Jose Railway 1st mortgage 5's, 1933	3,000,000.	
East Shore & Suburban Railway Company 1st mortgage 5's, 1940	<u>620,000.</u>	
Total		\$7,538,000.00

Group II.

Oakland Traction Consolidated General Consolidated 5's, 1933	\$2,134,000.
San Francisco-Oakland & San Jose Railway 2nd mortgage 5's, 1933	<u>1,500,000.</u>
Total	\$3,634,000.00

Group III.

Oakland Traction Company General Consolidated 5's, 1935	
(a) In hands of public, interest bearing	3,177,000.
(b) Pledged, non-interest bearing	1,843,000.
San Francisco-Oakland & San Jose Consolidated Railway General Consolidated 5's, 1938	
(a) In hands of public, interest bearing	1,587,000.
(b) Pledged, non-interest bearing	<u>1,413,000.</u>
Total	\$8,020,000.00

GRAND TOTAL..... \$19,657,000.00

All of the pledged bonds have been deposited under the reorganization plan.

All of the bonds under Group I-A have been deposited under the plan which provides that the owners of the \$236,000.00 Oakland, San Leandro and Haywards Electric Railway bonds shall receive \$236,000.00 first mortgage bonds of Oakland and Haywards Railway Company and that the owners of the \$229,000.00 of Twenty-third Avenue Electric Railway bonds shall receive \$229,000.00 of first mortgage bonds of East Oakland Railway Company. The unpaid interest on Group I-A bonds is to be paid in cash.

Of the \$7,538,000.00 bonds under Group I-B, \$7,423,500.00 have been deposited under the plan. The unpaid interest on the \$7,423,500.00 of bonds is reported at \$1,527,510.08. The owners of bonds under Group I-B, who have deposited their bonds, are to receive general refunding 15-year bonds of the Key System Transit Company in an amount equal to the face amount of bonds deposited, plus the unpaid interest on such bonds.

Of the \$3,634,000.00 bonds under Group II, \$3,622,000.00 have been deposited. The unpaid interest on the deposited bonds is reported at \$724,400.00. The owners of bonds under Group II, who have deposited their bonds will, under the plan, receive seven percent. cumulative prior preferred stock of Key System Transit Company equal in amount to 75 percent. of the face amount of their bonds and unpaid interest; and seven percent. cumulative preferred stock equal in amount to 25 percent. of their bonds and unpaid interest.

Group III bonds includes \$8,020,000.00 face value of bonds of which \$7,612,000.00 has been deposited, including \$3,256,000.00 pledged. The unpaid interest is reported at \$870,182.80. The owners of bonds under Group III who have deposited their bonds will receive seven percent. cumulative prior preferred stock of Key System Transit Company equal in amount to fifty percent. of the bonds and unpaid interest and seven percent. cumulative preferred stock equal in amount to fifty percent. of the bonds and unpaid interest.

The owners of San Francisco-Oakland Terminal Railways preferred stock, which stock aggregates \$13,050,000.00, will receive one share of common stock of Key System Transit Company for every four shares of preferred stock of the old company. In addition to the common stock of the new company to be issued in exchange for the preferred stock of the old company, the new company asks permission to issue \$250,000.00 of common stock in payment of \$229,110.00 of dividend notes mentioned hereafter.

The holders of bonds in the amount of \$534,000.00 who have not deposited their bonds, will receive in cash their pro rata share of the sale price of the properties at the foreclosure sale. The holders of the \$15,125,000.00 of common stock of the San Francisco-Oakland Terminal Railways do not participate in any way in the reorganization plan.

The Commission is asked to authorize the following companies to issue stock and bonds in the following amounts:-

A. Key System Transit Company.

(a) First mortgage 15-year bonds	\$2,500,000.00
(b) General refunding mortgage 15-year bonds	8,951,010.08
(c) Seven percent. cumulative prior preferred stock	7,500,891.40
(d) Seven percent. cumulative preferred stock	5,327,691.40
(e) Common stock	3,512,500.00

B. East Oakland Railways.

(a) First mortgage 15-year bonds	229,000.00
(b) Common stock	250,000.00

C. Oakland and Hayward's Railway Company.

(a) First mortgage 15-year bonds	236,000.00
(b) Common stock	250,000.00

The Key System Securities Company, the fourth company mentioned above, will not own or operate any public utility properties and it may therefore issue its stocks and notes without permission from this Commission. While the securities which the several companies ask permission to issue, will to the amount that they are authorized, be authorized to acquire properties or pay assumed indebtedness, nevertheless we think this opinion should show how such securities will be distributed under the reorganization plan, and the purposes for which the proceeds from the sale of the \$2,500,000.00 of first mortgage bonds of Key System Transit Company may be used.

We will now take up in the order mentioned the several classes of stocks and bonds and the purposes for which they will be issued or how they will be finally distributed.

The Key System Transit Company asks permission to issue \$2,500,000. of first mortgage bonds and to use the proceeds for the following purposes:-

1.	To reimburse the Key System Transit Company for the amount paid in cash by the Trustees on account of the purchase price of the properties at foreclosure sale	\$398,165.02
2.	To pay unpaid interest on 23rd Avenue Electric Railway first mortgage bonds and Oakland, San Leandro and Hayward Electric Railway first mortgage bonds to July 31, 1923	106,377.50
3.	To reimburse the Key System Transit Company for the amount paid by the San Francisco-Oakland Terminal Railways in discharge of Oakland Terminal Company Tide land notes	50,000.00
4.	To discharge the following indebtedness of the San Francisco-Oakland Terminal Railways:-	
	(a) Notes payable to various banks covering moneys borrowed for bond interest	69,500.00
	(b) Notes payable to Realty Syndicate Company covering moneys borrowed for bond interest	10,530.00
	(c) Real estate mortgage against Stoer Property #2	22,500.00
	(d) San Francisco-Oakland Terminal Railways Equipment notes- 5/1/16	50,000.00
	(e) Interest on above notes	1,000.00
	(f) Ferry equipment trust certificates	600,000.00
	(g) Interest on ferry equipment trust certificates	3,850.00
	(h) Car equipment trust certificates	175,000.00
	(i) Interest on car equipment trust certificates	1,954.19
5.	To repay loans from depreciation fund:-	
	(a) For two new ferry boats	350,000.00
	(b) For new Key Route cars	89,250.00
6.	To reimburse the treasury for the following expenditures made since July 7, 1922:-	
	(a) Oakland Traction Company equipment bonds	33,000.00
	(b) Interest on above bonds	440.00
	(c) San Francisco-Oakland Terminal Railways equipment notes	20,000.00
	(d) Interest on San Francisco-Oakland Terminal Railways equipment notes	3,200.00
	(e) American Car Company notes	42,516.54
	(f) Interest on Ferry equipment trust certificates	19,211.10
	(g) Balance of loan from depreciation fund for new motors	38,400.00
	(h) Interest on loans from depreciation fund:-	
	on new boat loans	13,798.44
	on Key Division car loans	1,659.83
	(i) Interest on loan from depreciation fund for motors	848.82
7.	To cover part of the cost of 55 new Traction Division cars	300,000.00
	Total	<u>\$2,401,201.44</u>

We think attention should be called to some of the items appearing in applicants' Exhibit No. 2. The \$398,165.02 consists of two principal items, namely \$283,561.72 which will be distributed to those bondholders of the San Francisco-Oakland Terminal Railways who did not deposit their bonds under the reorganization plan, while \$114,603.30 represents expenses incident to the foreclosure sale.

The \$114,603.30 is the only expenditure incident to the reorganization which applicants ask to pay through the use of the proceeds obtained from the sale of bonds or stock. In addition to the \$114,603.30 of reorganization expenses there are other reorganization expenses of about \$389,000. which have been paid, or which it is intended to pay, out of the current income of San Francisco-Oakland Terminal Railways or out of the current income of the trustees. It seems to us that the expenditure of the \$114,603.30 added nothing of a tangible nature to the properties formerly owned by the San Francisco-Oakland Terminal Railways. If it did add any properties they are being recognized by the order permitting the Key System Transit Company to issue securities in payment of the properties formerly owned by the San Francisco-Oakland Terminal Railways. The fact that the court determined the amount of such expenditures is not sufficient reason for paying them through the sale of first mortgage bonds. We think that in substance the \$114,603.30 does not differ from the \$389,000.00 and should be paid out of the current income of the properties and not through the sale of bonds.

During 1919 and prior thereto, the San Francisco-Oakland Terminal Railways was unable to meet its obligations. As a result, the company was informally placed in the control of a set of men constituting the reorganization committee which represented bondholders, other creditors and stockholders of the company. Since 1919 the reorganization committee has labored to bring about an agreement whereby the properties of the company could be re-financed on a reasonable basis of capitalization. Expenses of reorganization amounting to about \$500,000. have been incurred. The payment of the expenses has in effect

been agreed to by all the parties in the reorganization plan. We do not believe that the reorganization expenses should in any manner be a charge against the public or be paid at the expense of proper service to the public. The public was not at fault and cannot be held responsible for the financial difficulties of the company. The reorganization became necessary because of the acts of the owners of the property, and such owners should bear the expense of reorganization. Whatever moneys have been or will be expended for the payment of reorganization expenses should, ~~be returned through appropriation of moneys available for interest and dividends.~~ be returned through appropriation of moneys available for interest and dividends. The order will require this to be done.

The record shows that the trustees borrowed \$285,561.72 to pay the non assenting bondholders. This obligation, we think, may properly be assumed by the Key System Transit Company and paid through the issue of first mortgage bonds.

In effecting a settlement with the holders of the tide land notes (Oakland Terminal Company notes) the San Francisco-Oakland Terminal Railways, it appears, advanced \$50,000.00. The Commission is asked to permit the Key System Transit Company to reimburse its treasury because of a payment made by the San Francisco-Oakland Terminal Railways. We do not think that such a reimbursement is warranted under the terms of the Public Utilities Act. Neither do we think that the Commission is justified in authorizing the Key System Transit Company to reimburse its treasury because of expenditures made by the San Francisco-Oakland Terminal Railways from July 7, 1922 and referred to in paragraph six of applicants' Exhibit No. 2.

The Key System Transit Company did not make any of these expenditures. The items listed under paragraph six of Exhibit No. 2 total \$173,074.73, which sum, added to the \$114,603.30 and \$50,000.00 already mentioned, makes a total of \$337,678.03. The testimony shows that a contract for the purchase of 55 new Traction Division cars has been entered into and that they will cost approximately \$750,000. In Exh. No. 2 ap-

plicants ask that they be permitted to use \$300,000.00 obtained from the sale of first mortgage bonds to pay in part for such equipment. The balance due on the equipment, it was stated, would be paid through the issue of short term notes which later may be refunded through the issue of equipment trust certificates. We believe that the \$337,677.03 which applicants intended to use to reimburse the treasury of the Key System Transit Company should be used, to make an additional payment on the new cars, or used for such other purpose as the Commission may authorize.

The Railroad Commission has heretofore authorized the San Francisco-Oakland Terminal Railway to borrow from its depreciation fund \$350,000.00 to pay in part the cost of two new ferry boats and \$89,250. to pay in part the cost of fifteen new Key Route cars. These loans were authorized with the understanding that as soon as the properties were refinanced and first mortgage bonds sold, the amounts would be returned to the depreciation fund. The Commission heretofore has also authorized the San Francisco-Oakland Terminal Railway to assume obligations under a lease agreement looking toward the payment of \$600,000. ferry equipment trust certificates and \$175,000.00 car equipment trust certificates. The company was authorized to enter into these lease agreements provided the equipment trust certificates be refunded within one year after the refinancing of the properties had become effective. The Commission, at the time the orders were made, expected that the company succeeding the San Francisco-Oakland Terminal Railway would, through the issue of its first mortgage bonds, make funds available for the payment of the equipment trust certificates. In addition, there are certain other items of indebtedness aggregating about \$265,711.69 which are to be paid in cash and which we think it is proper that they be paid through the issue of first mortgage bonds of the Key System Transit Company.

The Key System Transit Company asks permission to issue \$8,951,010.08 face value of general and refunding 15-year bonds. These bonds will be part of an authorized issue of \$20,000,000.00. The \$8,951,010.08 of bonds will be issued on a dollar for dollar basis to the holders of bonds and unpaid interest thereon coming under Group I-B, who have deposited their bonds under the reorganization plan. Of the \$8,951,010.08 of bonds \$1,365,810.08 will bear interest at six percent. and the remainder, \$7,585,200.00, at five percent. The general and refunding bonds will bear the same rate of interest as did the bonds for which they will be issued in exchange. Through the exchange of bonds five different bond issues of the old company will be merged into one bond issue of the new company, which will be a second lien on the properties of the Key System Transit Company.

The Key System Transit Company asks permission to issue \$7,500,891.40 of seven percent. cumulative prior preferred stock and \$5,327,691.40 of seven percent. cumulative preferred stock. Of the prior preferred \$1,628,000.00 and of the preferred \$1,628,000.00 will be pledged to secure in part the payment of the Key System Securities Company notes, leaving \$5,872,891.40 of prior preferred and \$3,699,691.40 of preferred stock in the hands of the public. Of the \$5,872,891.40 prior preferred \$3,259,800.00 will be delivered to Group II bondholders and \$2,613,091.40 to Group III bondholders. Of the \$3,699,691.40 of preferred stock \$1,086,600.00 will be delivered to Group II bondholders and \$2,613,091.40 to Group III bondholders. The record shows that dividends may from the outset be paid on the prior preferred stock, but none on the preferred stock. Dividends can, of course, be paid only if earned and if declared by the Board of Directors. Group II and Group III bondholders receive no bonds of the new company.

The Key System Transit Company also asks permission to issue \$3,512,500.00 of common stock, of which \$3,262,500.00 will be delivered to the holders of preferred stock of San Francisco-Oakland Terminal Railways and \$250,000.00 issued in exchange for \$229,100.00 of notes. The reorganization plan provides that there shall be issued forthwith \$2,500,000.00 of first mortgage bonds, of which the "owners of the new common stock, as a condition of the issuance of such stock to them, shall buy at least \$1,000,000.00 of such issue at par." Counsel for applicants stated that common stock will be issued to holders of preferred stock of the San Francisco-Oakland Terminal Railways even though they do not purchase first mortgage bonds.

There are outstanding six non-interest bearing notes aggregating \$357,924.00, executed by the San Francisco-Oakland Terminal Railways in 1914 and representing amounts payable to certain stockholders of the Oakland Traction Company, a predecessor of San Francisco-Oakland Terminal Railways, as dividends declared by said company but not actually paid said stockholders. It appears that the reorganization committee refused to recognize the validity of the notes. One of the notes, amounting to \$128,814.00 was deposited as collateral to secure the notes issued by the Oakland Railways. When the holders of the Oakland Railways notes foreclosed on the collateral the \$128,814.00 note was sold. The present holders have agreed to surrender the \$128,814.00 note. An action was commenced on four other notes aggregating \$145,422.00 and funds, in bank, of the San Francisco-Oakland Terminal Railways in the amount of \$175,000.00 were attached immediately prior to the foreclosure sale. A settlement of the claims upon the notes has been arranged by the reorganization committee whereby the holders of \$229,110.00 of notes will receive in payment therefor \$250,000.00 of common stock of the Key System Transit Company. It appears that the ownership of the \$128,814.00 note which the present holders have agreed to cancel, is in question. This Commission cannot determine the matter of the ownership of the note.

East Oakland Railway Company asks permission to acquire the properties described in applicants' Exhibit No. 7 and issue in payment therefor \$250,000.00 of common stock and \$229,000.00 of first mortgage bonds. The properties that are to be transferred to the East Oakland Railway Company are those on which the bonds of the Twenty-third Avenue Electric Railway are a lien. All of the company's stock, except director's shares, will be issued to the Key System Transit Company, while the bonds will be delivered to the holders of the \$229,000.00 of Twenty-third Avenue Electric Railway bonds. The bonds of the new company are to be dated July 1, 1923, be payable July 1, 1938 and bear interest at the rate of six percent. per annum. The properties of the East Oakland Railway Company will be leased for the term of the life of the bonds to the Key System Transit Company upon the consideration that the lessor pay the unpaid interest on the Twenty-third Avenue Electric Railway bonds up to July 1, 1923 and agree to meet and discharge all obligations of the East Oakland Railway Company as they mature, other than the payment of the principal of the bonds. The lease is to provide that the Key System Transit Company shall have the right at any time when it is not in default under the lease to purchase all the leased property in consideration of its paying the principal of the bonds.

The Oakland and Haywards Railway Company asks permission to acquire the properties described in applicants' Exhibit No. 8. The properties described in such exhibit are those on which the \$236,000.00 of Oakland, San Leandro and Haywards Electric Railway bonds are a lien. The Oakland and Haywards Railway Company asks permission to issue for the purpose of acquiring such properties \$250,000.00 of common stock, \$236,000.00 of first mortgage six percent, 15-year bonds. All the stock, except director's shares, will be issued to the Key System Transit Company, while the bonds will be delivered to the holders of the \$236,000.00 of bonds of the Oakland, San Leandro and Haywards Electric Railway. The properties of Oakland and Haywards Railway Company will

be leased to the Key System Transit Company for the term of the life of the bonds upon consideration that the Key System Transit Company pay the unpaid interest due on the bonds of the Oakland, San Leandro and Hayward Electric Railway and agree to meet all obligations of the Oakland and Hayward Railway Company as they mature, other than paying the principal of the bonds. The lease is to provide that the Key System Transit Company shall have the right at any time when it is not in default under the lease, to purchase the leased property on consideration of its paying the principal of the bonds.

The record shows that arrangements have been made for the retirement of the bonds of the East Oakland Railway Company and the Oakland and Hayward Railway Company. When the bonds are paid the properties of these two companies will be transferred to the Key System Transit Company. Under the facts submitted we do not see any need for the issue of \$250,000.00 of stock of each of the subsidiary companies. We think a nominal issue of \$10,000.00 by each company will secure control of the properties to the Key System Transit Company, as well as a larger amount.

There was a great deal of the time at the hearing devoted to an examination of witnesses for the purpose of establishing what the reorganization plan really accomplishes. The evidence has been analyzed and there is no doubt in our minds but that the capitalization of the new company will be far more conservative than that of the old company. It may not be an ideal capitalization, but we think it to be a practical one under which service can be extended and improved.

The stock, bonds and other funded indebtedness of the San Francisco-Oakland Terminal Railways was about \$48,000,000.00 exclusive of the "Halsey" and "Tide Land" notes, which notes total \$3,600,000.00. The "tide land" notes (Oakland Terminal Company notes) have been paid through the sale of the tide lands. The "Halsey" notes (Oakland Railway notes) will be refunded through notes issued by Key System Secu-

rities Company. The capitalization - stocks and bonds- to be issued by the Key System Transit Company and bonds of East Oakland Railway Company and Oakland and Hayward's Railway Company, total \$28,257,092.88. This includes \$3,458,800.00 of stock that will be pledged to secure the payment of the notes issued by Key System Securities Company. If such pledged stocks as will come back to the company's treasury, when the notes are paid, are excluded and the notes included, the capitalization amounts to \$27,251,092.88. The reduction in capitalization is brought about by eliminating \$15,125,000.00 of common stock of San Francisco-Oakland Terminal Railways and by the exchange of \$13,050,000.00 of preferred stock of the old company for \$3,262,500.00 of common stock of Key System Transit Company. \$11,654,000.00 of bonds of San Francisco-Oakland Terminal Railways are exchanged for \$12,828,582.80 of prior preferred and preferred stock of Key System Transit Company. Equipment trust certificates amounting to \$825,000.00 and calling for annual payments on the principal ranging from \$96,000.00 in 1924 to \$78,000.00 in 1932 are paid through the issue of first mortgage 15-year bonds. Holders of \$7,538,000.00 of bonds of the old company give up any first liens they may have on the properties so that a new \$10,000,000.00 first mortgage may be executed. Initially \$2,500,000.00 of the first mortgage bonds will be sold. The interest charges of the old company during 1921 were \$1,090,143.33; during 1922 \$1,049,336.03. These amounts are exclusive of the interest on the Oakland Terminal Company (tide land) notes. The interest charges of the new company at the outset will be \$795,888.61. This includes \$150,000.00 of interest on new \$2,500,000.00 first mortgage bonds, of which at least \$1,851,000.00 will be issued to acquire new properties or refund indebtedness on which no interest was charged during 1921 or 1922.

The reorganization plan recites that a voting trust of the stock of the Key System Transit Company, which voting trust shall be operative for seven years, will be created and shall be accepted by all stockholders of the company. The plan further provides for a

Board of Directors of fifteen members, four of which are to represent the bondholders, eight the preferred stockholders and three the common stockholders of the Key System Transit Company. This Commission will not direct any stockholder to deposit his stock under a voting trust or direct that the bondholders be given a direct voice in the management of the properties. If the stockholders wish to surrender any of their usual rights, the Commission will interpose no objections. Whether a voting trust is created or not, the Commission expects the properties to be operated primarily in the interest of the public.

Applicants will hereafter file with the Commission copies of the several lease agreements and copies of the several mortgages which they intend to execute and will ask authority to execute such instruments.

O R D E R

Application having been made to the Railroad Commission for an order authorizing the transfer and lease of public utility properties, the execution of mortgages, the issue of stocks and bonds and the carrying into effect the reorganization plan of the San Francisco-Oakland Terminal Railways, a copy of which is filed in this proceeding as Applicants' Exhibit No. 1, a public hearing having been held and the Commission having considered the evidence, hereby orders as follows:-

- 1.- Hugh Goodfellow, Warren Olney and W. I. Brobeck, as trustees, may transfer the properties described in Applicants' Exhibit No. 7, to East Oakland Railway Company, which company may acquire said properties and issue in payment therefor not exceeding \$10,000.00 par value of common capital stock and not exceeding \$229,000.00 of first mortgage 15-year six percent. bonds, provided that none of said bonds be issued until the Railroad Commission has by supplemental order authorized the East Oakland Railway Com-

pany to execute a mortgage to secure the payment of the bonds.

- 2.- Hugh Goodfellow, Warren Olney and W. I. Brobeck, as trustees, may transfer the properties described in Applicants' Exhibit No. 8 to the Oakland and Haywards Railway Company, which company may acquire said properties and issue in payment therefor not exceeding \$10,000.00 per value of common capital stock and not exceeding \$236,000.00 of first mortgage 15-year six percent bonds, provided that none of said bonds be issued until the Commission by supplemental order has authorized the Oakland and Haywards Railway Company to execute a mortgage to secure the payment of the bonds.
3. - Hugh Goodfellow, Warren Olney and W. I. Brobeck, as trustees, may transfer to the Key System Transit Company and said Key System Transit Company may acquire all the properties purchased by said trustees at the foreclosure sale, to which reference is made in this decision, together with the rights, issues and profits thereof except (a) such properties as are to be transferred to the East Oakland Railway Company and the Oakland and Haywards Railway Company; (b) such properties as are to be used in settlement of the balance due the Realty Syndicate; (c) such amounts as said trustees may have expended in the maintenance, improvements and operation of the properties, in the retirement of obligations of San Francisco-Oakland Terminal Railway; in otherwise properly discharging the duties of the trustees of said properties or in meeting the expenses of reorganization or otherwise carrying out the reorganization plan.

4. - The Key System Transit Company, in order to pay for the properties mentioned in paragraph three of this order, to pay indebtedness and to acquire additional properties, may issue the following amounts of bonds and stock:-

(a) First mortgage 15-year bonds	\$2,500,000.00
(b) General refunding mortgage 15-year bonds	8,951,010.08
(c) Seven percent cumulative prior preferred stock	7,500,891.40
(d) Seven percent cumulative pre- ferred stock	5,327,691.40
(e) Common stock	3,512,500.00

provided, that none of the bonds be issued until the Commission has by supplemental order authorized the Key System Transit Company to execute mortgages to secure the payment of the bonds, and provided further that none of the first mortgage bonds be sold until the Commission by supplemental order has fixed the price at which such bonds may be sold and the purposes for which the proceeds may be used, and provided further that the par or market value of such bonds and stock be not urged as the value of the properties for any purpose other than the transfer herein authorized.

5. - Key System Transit Company may acquire all of the stock except directors' shares of the East Oakland Railway and of the Oakland and Hayward's Railway Company, but shall not dispose of such stock except as authorized by the Railroad Commission.

6. - Key System Transit Company may guarantee the interest up to but not after maturity on the six percent notes of the Key System Securities Company, in the amount of \$2,500,000.00, to be issued by that company in retirement of the notes (Ealsey), of the Oakland Railways and in return for such guarantee acquire all of the stock of Key System Securities Company except directors' shares. Any stock of the Key System Transit

Company that will be pledged to secure the payment of the \$2,500,000.00 of notes of the Key System Securities Company shall, when returned to the Key System Transit Company because of the payment of the \$2,500,000.00 of notes, be disposed of only in such manner as may be authorized by the Railroad Commission.

7. - Key System Transit Company may assume such indebtedness of the San Francisco-Oakland Terminal Railways and of the trustees, as the Commission will hereafter indicate by supplemental order.
8. - The authority herein granted to issue bonds will not become effective until applicants have filed with the Railroad Commission a stipulation in satisfactory form in which the Key System Transit Company agrees to appropriate within a period of three years after the date of this order, from its moneys available for the payment of interest and dividends, approximately \$500,000. or such sum of money as shall equal the reorganization expenses, and expend such appropriation for the acquisition of properties and the improvement of service, and further agrees not to use said expenditures as a basis for the issue of stock, bonds or other evidences of indebtedness.
9. - The trustees shall file with the Commission a stipulation providing that the Commission may, by order, substitute or join them as parties defendant in any matter or matters now pending before the Commission in which the San Francisco-Oakland Terminal Railways is a party defendant; that upon and after the making and filing of such order by the Commission, decision upon such matter or matters may be rendered upon the record now before the Commission, and that any decision which may

be rendered by the Commission in such matter or matters upon such record shall and may run in favor of or against them, and each of them, in like manner and to the same degree and effect as such decision would have run in favor of or against said San Francisco-Oakland Terminal Railways.

In any conveyance of the properties here in question, or any of them, by the trustees, or either of them, it shall be provided that such conveyance is made expressly subject to the right of the Commission, by order, to substitute or join any grantee or beneficiary of said conveyance, or any of them, as party or parties defendant in any matter or matters now pending before the Commission in which the San Francisco-Oakland Terminal Railways is a party defendant; that upon and after the making and filing of such order by the Commission, decision upon such matter or matters may be rendered upon the record now before the Commission, and that any decision which may be rendered by the Commission in such matter or matters upon such record shall and may run in favor of or against them, and each of them, in like manner and to the same degree and effect as such decision would have run in favor of or against said San Francisco-Oakland Terminal Railways.

10. - Key System Transit Company, East Oakland Railway and Oakland and Hayward Railway Company shall file reports with the Commission, as required by the Commission's General Order No. 24, which order is hereby made a part of this order.

11. - Key System Transit Company, East Oakland Railway and Oakland and Hayward Railway Company shall file with the Railroad Commission, as soon as possible, a copy of the deed under which they acquired and hold title to the properties which they are herein authorized to purchase.
12. - The authority herein granted will not become effective until the fee prescribed by Section 57 of the Public Utilities Act has been paid. The authority herein granted to issue stocks and bonds will expire on June 30, 1924.

DATED at San Francisco, California, this 14th day of December, 1923.

C. C. Shaver

W. B. Brundage

J. W. Martin

Edwin Shore

J. T. Whittelsey

Commissioners.

