

**ORIGINAL**

Decision No. 22942

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 A. STRANDBERG, W. A. FITZMAURICE )  
 and J. B. WILSON to sell and KEY )  
 TERMINAL RAILWAY, LTD., a corpora- )  
 tion, to purchase the properties )  
 herein described and of said Key )  
 Terminal Railway, Ltd. to issue )  
 securities. )

Application No. 16816

Brobeck, Phleger and Harrison, by Herman Phleger  
 and James S. Moore, Jr., for applicants.

BY THE COMMISSION:

O P I N I O N

A. Strandberg, W. A. Fitzmaurice and J. B. Wilson ask permission to sell to Key Terminal Railway, Ltd., a corporation, all of the properties purchased by them at judicial sale on August 6, 1930, which properties were formerly owned by Key System Transit Company and which are described in Exhibit "A" attached hereto. The Key Terminal Railway, Ltd. asks permission to purchase the aforesaid properties and to assume such obligations as have been incurred by A. Strandberg, W. A. Fitzmaurice and J. B. Wilson in connection with the operation thereof. It also asks permission to issue 27,000 shares of its capital stock without nominal or par value or such portion thereof as the Commission may deem proper in exchange for said properties.

It is of record that the Superior Court of the State of California in and for the County of Alameda in an action pending

entitled "The Oakland Bank, a corporation, plaintiff, against Key System Transit Company, a corporation, et al, defendants, No. 112,516", which action was brought to foreclose the first mortgage and the general and refunding mortgage of Key System Transit Company, under date of June 23, 1930, entered its judgment and decree of foreclosure and sale. The court ordered the properties of the Key System Transit Company to be sold in parcels, each of which is described in such judgment and decree of foreclosure and sale (Exhibit No. 3). At the sale of the properties held August 6, 1930, A Strandberg, W. A. Fitzmaurice and J. B. Wilson bought Parcel No. 2 of said properties, which are described in Exhibit "A" attached hereto. In so doing they were, and, in operating the properties since August 6, 1930, they have been and are now acting as trustees for the readjustment committee of Key System Transit Company pursuant to the plan of readjustment of Key System Transit Company.

Applications Nos. 16815, 16817 and 16818, which were consolidated with this application, No. 16816, for the purpose of taking evidence, cover the transfer of other parts of the properties formerly owned by the Key System Transit Company. A separate decision will be entered in each application. However, such facts or portions of the opinion in Application No. 16815 as relate to this application or to Applications Nos. 16817 and 16818 or to Key System Transit Company or to Railway Equipment and Realty Company, Ltd. are referred to hereby and incorporated herein, to the same effect as though restated in this opinion.

Exhibit No. 18 shows that the properties which the Key Terminal Railway, Ltd. proposes to acquire appeared on the books of the Key System Transit Company on June 30, 1930, at \$2,747,075.36.

In Exhibit No. 21 the accrued depreciation on these properties is reported at \$440,970.91, leaving a net cost of \$2,306,104.45.

It is of record that all the equipment which the Key Terminal Railway, Ltd. will need in its operations will be leased from the Railway Equipment and Realty Company, Ltd. Certain other properties which it needs to conduct its operations are to be leased from lessors other than the Railway Equipment and Realty Company, Ltd. The total annual obligation which the Key Terminal Railway, Ltd. will assume under the several leases is reported at \$273,704.40, segregated as follows:

	: Six : Percent : on Value	: Depreciation:	: Total : Monthly : Rental
EQUIPMENT:			
(R.E. & R.Co. Lessor)....	\$14,564.92	\$ 4,797.65	\$19,362.57
Misc. rentals (Other than R.E. & R.Co. Lessor)....	---	---	3,446.13
Monthly Total.....	14,564.92	4,797.65	22,808.70
Annual Total.....	174,779.04	57,571.80	273,704.40

Key Terminal Railway, Ltd. has been organized under the laws of the State of California, with an authorized capital stock of 54,000 shares, without nominal or par value, all of which are of one class. In this proceeding, as stated, the company asks permission to issue 27,000 shares of its stock or such portion thereof as the Commission may deem proper in payment for the properties which it intends to acquire from A. Strandberg, W. A. Fitzmaurice and J. B. Wilson. After considering the evidence, we have concluded that the company should be permitted to issue not exceeding 23,000 shares of stock in payment for said properties.

ORDER

The Railroad Commission having been requested to enter its order, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by the issue of the 23,000 shares of stock herein authorized is reasonably required for the purpose specified herein, that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application, insofar as it involves the issue of 4,000 shares of stock, should be dismissed without prejudice, therefore,

IT IS HEREBY ORDERED as follows:

(1) A. Strandberg, W. A. Fitzmaurice and J. B. Wilson be, and they are hereby, authorized to sell, on or before December 31, 1930, to Key Terminal Railway, Ltd., a corporation, all of the properties purchased by them at judicial sale on the 6th day of August, 1930, such properties being more particularly described in Exhibit "A" attached hereto.

(2) Key Terminal Railway, Ltd. may, on or before December 31, 1930, acquire the aforesaid properties and assume such obligations as have been incurred by A. Strandberg, W. A. Fitzmaurice and J. B. Wilson in connection with the operation of the aforesaid properties.

(3) Key Terminal Railway, Ltd. may, on or before December 31, 1930, issue 23,000 shares of its capital stock, without nominal or par value in payment for the aforesaid properties.

(4) This application, insofar as it involves the issue of 4,000 shares of stock, is hereby dismissed without prejudice.

(5) The Commission will not, because of the authority herein granted, consider the aforesaid reported cost of the

properties described in Exhibit "A", or the aforesaid rentals, as reasonable for the purpose of fixing rates or the issue of additional securities, or for any purpose other than the transfer and security issue herein authorized.

(6) Key Terminal Railway, Ltd. shall, until otherwise directed, file with the Commission monthly reports, such reports to be filed as soon as available, but in no event later than 45 days after the close of the month for which a report is to be filed, and to be prepared in accordance with the uniform system of accounts for electric railways, prescribed by the Interstate Commerce Commission, and to cover balance sheet, road and equipment, income, profit and loss, operating revenue and operating expense accounts.

(7) Within thirty(30) days after the transfer of the properties herein authorized to be transferred, Key Terminal Railway, Ltd. shall file with the Railroad Commission a verified copy of the deed or other instrument of conveyance under which it acquires and holds title to the aforesaid properties, and shall also file with the Commission a report such as is required by the Commission by General Order No. 24, which order, insofar as applicable, is made a part of this order.

(8) The authority herein granted will become effective ten (10) days after the date hereof.

DATED at San Francisco, California, this 6th day of October, 1930.

Cl. Seaver  
Emmanuel Smith  
Leon Whitell  
Thos. B. Lewis  
M. P. Lee  
Commissioners.

EXHIBIT "A"

All those certain railway and ferry routes within the City of Oakland, County of Alameda and the City and County of San Francisco, together with all the right, title and interest of the Key System Transit Company in and to roadway, rock and earth fill, trestles, wharves docks, slips and dolphins, tracks, sidings, switches, turnouts and crossings, bonds and bonding cables, culverts and drains, signs, signals, interlocking and other protective devices, station buildings, signal towers and equipment, substation buildings and equipment, shop and storage buildings, poles, trolley wires, span wires, guy wires and suspension wires, telephone and telegraph wires, feeder wires and cables and all other facilities and appurtenances of said structures or any of them, namely:

FIRST: The following described route in the City of Oakland:

Commencing at a point on the easterly boundary of a strip of land as described in Oakland Ordinance No. 3099, dated July 7, 1910; thence westerly over said strip of land to the Ferry Terminal at or near the westerly boundary of aforesaid strip of land.

SECOND: The following described ferry route in the City and County of San Francisco and in the City of Oakland, County of Alameda:

Commencing at the above mentioned Ferry Terminal; thence westerly over, along and upon the waters of San Francisco Bay to the waterfront situate in the City and County of San Francisco.

All those certain franchises, permits, licenses, rights and privileges to construct, lay down, operate and maintain railroads and interurban railroads, passenger and freight terminals, wharves, docks, shops and other facilities and appurtenances of said terminals, over, along and upon that certain strip of land situate in the Bay of San Francisco, City of Oakland, State of California, which was granted to and conferred upon the grantees named therein, their successors and assigns by the City of Oakland by ordinances and resolutions of the respective councils of said City of Oakland, and amendments and supplements thereto, which said ordinances and resolutions are designated

hereunder by the respective numbers thereto and the respective dates of their approval or passage by the said Council of the said City of Oakland, all of which appear from the originals of said ordinances and resolutions on file in the office of the Clerk of the said City of Oakland, the respective numbers and dates of said franchises and resolutions being as follows, to-wit:

Franchises in the City of Oakland:

Ordinance	Number	Date
	3099	July 7, 1910

All right, title and interest of the Key System Transit Co. in and to all industrial, yard, switching and lead tracks, and all sidings, switches, crossings, structures and other appurtenances thereof lying south of the last above described railway route and west of a line which bears south  $39^{\circ} 52' 10''$  west from a point located seven hundred thirty-seven and seventy-hundredths feet (737.70) north  $63^{\circ} 40'$  west from the southwesterly corner of Lot Seven(7), Section Twenty-seven(27), Township One(1) south, Range Four(4) west, Mt. Diablo Base Meridian, together with all franchises, rights, licenses, permits, privileges, leaseholds, and agreements respecting the construction, maintenance or operation thereof.

All those certain easements, leases, licenses and privileges next particularly described and referred to, the dates and manner of creation or reservation of said respective easements, leases, licenses and privileges, and the lands and tenements to which the same are attached and appurtenant, and over and upon which the same are servitudes, being set out and embodied in the said description of said easements, licenses, leases and privileges, that is to say:

FIRST: All those certain easements and rights reserved by the San Francisco, Oakland and San Jose Consolidated Railway, a corporation, predecessor in interest of the Key System Transit Company, a corporation in and by that certain deed from said San Francisco, Oakland and San Jose Consolidated Railway, a railroad corporation, to the City of Oak-

land, a municipal corporation, dated August 30th, 1910, and recorded October 10th, 1910, in Liber 1837 of Deeds, page 84, records of the County of Alameda, State of California, and wherein said San Francisco, Oakland and San Jose Consolidated Railway, its successors and assigns, reserved the right to lay down, construct, maintain and operate a double or single track railroad and street railroad over, along and upon certain lands and streets in the City of Oakland, County of Alameda, State of California, and more particularly described in the deed last above referred to.