Decision No. 1045

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

EAST OAKLAND PROTECTIVE LEAGUE,
Complainant,

vs

SOUTHERN PACIFIC COMPANY,
Defendant.

ORIGINAL

Case No. 396.

Decision No. .....

APPEARANCES

E. A. Freeman, for the complainant
C. W. Durbrow, for the defendant

Gordon: Commissioner.

O P I N I O N

The Southern Pacific Company, the defendant in this case, maintains and charges the following passenger fares between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue, stations on its Alameda County electric suburban lines within the limits of the City of Oakland.

Miles	Between	And	One Way Fare	Individual Monthly Commutation Fare
11.1	San Francisco	Fremont Way	$.15	$3.50
11.5	" "	Fairfax Ave.	.15	3.50
11.8	" "	Seminary Ave.	.15	4.50

These fares, the complainant in this case contends, are unreasonable, unjust and discriminatory and should be reduced so as not to exceed 10 cents for the one-way fare and $3.00 for the individual monthly commutation fare.

The complainant alleges as a cause of complaint, that the fares are in excess of the fares between San Francisco and Melrose and contends that such an adjustment is improper and that the fares in question should not exceed the latter, although Melrose is an intermediate point between San Francisco and Fremont Way. This contention is partly based on the theory that the additional service beyond Melrose of .3 of a mile to

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Fremont Way and for .7 of a mile to Fairfax Avenue and 1 mile to Seminary Avenue is so small as not to deserve consideration in adjusting the fares thereto. Manifestly if this argument advanced by complainant in behalf of Fremont Way, Fairfax Avenue and Seminary Avenue is sound a point beyond and more distant from San Francisco could set up the same reasons and demand an extension thereto of the Melrose fares, at least, in accordance with complainant's theory, as far as the trains were operated without additional crews, which the complainant contends should fix the breaking point of the fares. Thus the Melrose fare might be extended to Dutton Avenue or to a point beyond, perhaps as far as the electric line is extended. This is obviously an erroneous proposition. The breaking point must be fixed with regard to other elements than the expense of train crews and this is not a case where a rule of de minimus should apply.

The complainant also contends that the fact that the defendant had, upon beginning of operation of its extension beyond Melrose, voluntarily maintained and charged a one-way fare of 10¢ and an individual monthly commutation fare of $3.00 between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue, conclusively establishes these fares as reasonable for the service. If it were established that such fares were voluntarily maintained and charged by the defendant, for such a service for a period of time, it would undoubtedly establish these fares as prima facie reasonable for the service, but the testimony of the carrier shows that a fare of 10¢ between San Francisco and Fremont Way and Melrose Heights was published and made effective through error on April 12, 1912, and an affidavit to that effect together with data tending to conclusively so indicate, was filed with the Commission by the defendant on April 17, 1912, and the defendant was thereupon permitted to increase this fare to 15¢, effective June 21st, 1912, but approximately two months subsequent to the original publication of the 10¢ one-way fare. The one-way fare of 10

cents was never published and filed in tariffs with this Commission by the carrier to apply between San Francisco and Seminary Avenue nor was the fare of $3.00 for an individual monthly commutation ticket published and filed by the carrier in its tariffs to apply between San Francisco and any point beyond Melrose. The only commutation fares which have been published in the tariffs of the defendant between the points in question are the fare of $3.50 between San Francisco and Fremont Way and Fairfax Avenue and the fare of $4.50 between San Francisco and Seminary Avenue and if passengers were permitted to travel beyond Melrose on the $3.00 individual monthly commutation fare, it was without proper tariff authority and, as testified by the defendant, without its authorization. It does not appear therefore that the same fares that apply between San Francisco and Melrose were ever voluntarily established and maintained by the carrier between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue and therefore the fact, that through error and without authority, passengers were permitted for a time to travel beyond Melrose at the fares applicable thereto, is no criterion of the reasonableness of the fares in question for that service.

The complainant introduced testimony to the effect that the fares complained of have been detrimental to the sale of real estate in the section beyond Melrose, but obviously this should not be given consideration unless it be shown that by reason of a more favorable voluntary adjustment by the carrier of similar fares to another section and where the transportation conditions and circumstances were similar, that the former section was discriminated against. As a basis for its charge of discrimination the complainant contends that the defendant contemporaneously maintains and charges lower fares for a similar service between San Francisco and Thousand Oaks, a point also on the defendant's Alameda County electric suburban lines more distant from San Francisco via some routes, than Fremont Way,

Fairfax Avenue and Seminary Avenue, which are as follows:

Miles	Between	And	One Way Fare	Individual Monthly Commutation Fare
(See Note)	San Francisco	Thousand Oaks	$.10	$3.00

Note: Via 9th Street Line the distance is 12.1 miles; Via the California Street Line the distance is 11.5 miles and via the Shattuck Avenue Line the distance is 11.9 miles.

The carrier contends that the fares in question are not unreasonable or discriminatory as compared with other fares for a similar service and per se; and further that its present fares between San Francisco and Alameda County suburban points do not yield a return sufficient to cover operating expenses and taxes, not considering interest on bonded debt and a return on the investment, and in justification of the charging of lower fares between San Francisco and Thousand Oaks than between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue, it alleges that it was forced by the competition of the San Francisco-Oakland Terminal Railways to establish the present fares to Thousand Oaks and has not by similar causes been forced to establish similar fares to the points beyond Melrose.

The defendant submitted comparisons between the fares herein involved and like fares for similar distances between points on other lines but it was not shown that the conditions and circumstances surrounding the fares were sufficiently similar to constitute such comparative fares true standards for similar distances under the circumstances obtaining on the Alameda County electric suburban lines of the defendant. Most of the fares offered in comparison are for service by steam lines, whereas the fares in question are for service over electric lines and while the record shows that the trains of the defendant in its Alameda County suburban service during the month of June, 1913, were about three to one of those in similar

service on the largest line operating out of New York City, with which comparison was made, it also shows that the number of passengers carried by the Southern Pacific Company between San Francisco and Alameda County suburban points on its suburban trains during the same month, greatly exceeded those carried by any single line operating a similar service out of New York, but as the defendant made no showing as to the relative consist of the trains in this class of service on these lines, that is, the average number of cars per train on each line, as a unit of some similarity from which some comparison might be drawn, it is impossible to determine anything of value from this showing. I believe it to be the fact that steam lines, like the ones named in defendant's exhibit, seldom operate less than two-car trains, exclusive of the locomotive, while on the defendant's Alameda County electric lines one-car trains are, in some cases, regularly operated - as on the 9th Street Line through Thousand Oaks, and during most of the day on the California Street Line through the same point.

The average number of passengers per train on the lines operating out of New York City, Chicago and Philadelphia was shown to be in excess of the average on the entire Alameda County suburban lines of the defendant and the average number of passengers carried on the trains beyond Melrose to Fremont Way, Fairfax Avenue or Seminary Avenue, but no average of the number of passengers on the defendant's 7th Street or Melrose line, as a whole, was submitted, which is one of the most travelled of the defendant's suburban lines.

Obviously to compare the number of passengers travelling beyond Melrose with the entire number of passengers travelling on another route is not a fair comparison, nor do I believe the comparison made with the entire suburban line of the defendant is proper, for the reason that this average includes the recently constructed lines traversing newly opened and partly settled sections of Alameda County, the

traffic on which is slight, as must have been expected when the lines were built.

Although the defendant's exhibit contains comparisons with fares of the Northwestern Pacific Railroad and the Pacific Electric Railway for a similar service, no satisfactory showing was made as to the comparative conditions surrounding the fares of these lines. [illegible] showing that the density of the traffic on the Northwestern Pacific Railroad between San Francisco and Marin County suburban territory and on the Pacific Electric Railway, as a whole, was greater than the density of the traffic on defendant's suburban lines was ineffectual [illegible] as [illegible], no comparison was made on any other but a per train basis and this only as to the Northwestern Pacific Railroad, which basis, as heretofore suggested, is not at all conclusive. Even this basis of comparison was lacking as to the Pacific Electric Railway, the defendant relying on the testimony as to the number of passengers carried on the respective lines to show the comparative density of traffic.

In comparing the service of the Northwestern Pacific Railroad between San Francisco and Marin County suburban points with the service of the Southern Pacific Company between San Francisco and Alameda County suburban points, in Case No. 333, in the matter of the fares of the Northwestern Pacific Railroad, the Commission said:

> "In all cases the transportation is by rail and ferry, but in the case of the travel from and to Alameda County points the service is between thickly settled communities between which the flow of traffic is more or less regular and closely approaches a street car service, while the service between San Francisco and Marin County suburban points is more or less irregular, being handled mostly during a few hours of the forenoon and the afternoon and the volume of the traffic is considerably less. Again, the service by ferry, an expensive factor, is much shorter in the transportation to Alameda County points, the distance between San Francisco and Sausalito being 6.5 miles and between San Francisco and Alameda County Piers averaging approximately 3 miles. In light of these facts it would

not, in our opinion, be proper for this Commission to require the defendant to establish the same fare between San Francisco and Marin County suburban points as those voluntarily established between San Francisco and Alameda County points by the carrier serving the latter territory."

No new facts were presented in this proceeding which would lead me to differ from the opinion of the Commission heretofore expressed.

In support of its contention that the Alameda suburban lines do not afford sufficient revenue to satisfy operating expenses and taxes, the carrier presented exhibits showing the details on which the averment is based. In my opinion, the basis therein shown, of apportionment of the expense of maintaining and operating the ferry boats across San Francisco Bay is erroneous and burdens the suburban lines with much expense which should be borne by the main line. This apportionment has been made on the basis of the number of passengers carried, the defendant having found that 90% of the passengers using its ferries across San Francisco Bay originate at or are destined to suburban points, while but 10% originate at or are destined to points beyond Alameda County suburban points and the entire expense of maintaining and operating these ferry boats has been segregated on these percentages regardless of the fact that many of them are, operated of necessity, to meet main line trains, which was the original purpose for which the ferry service was established, and would have to be operated if there were no suburban service; and therefore such suburban passengers as use such boats as make connection with main line trains are merely incidental to the trip, the primary purpose of which is to afford transportation to passengers other than those making a suburban trip and which is the essential use of such boats on such trips. The item of maintenance and operation of ~~xxxx~~ vessels being one of the largest general items of expense charged to the suburban lines in the exhibit it follows that any material change in the total of this amount chargeable to the suburban service will materially change the final results and thereby impair the value

of the entire exhibit, and from this I conclude that the exhibit does not present with sufficient accuracy the expenses properly attributable to each line and therefore does not afford a means for determining whether the fares are reasonable or unreasonable.

The building of suburban lines through partly settled sections of Alameda County and the electrification of old steam lines has entailed considerable expenditures by the defendant and it may be possible that some of the newly constructed lines are not producing satisfactory returns; however, these lines were largely projected and built by the defendant to forestall the building into that territory of other competitive lines and are in the nature of experiments, the carrier relying upon the future growth of the communities and the resulting traffic to justify its policy, and it should not therefore expect those lines to yield a profit at once.

Considering now the charge that because of the establishment of lower fares between San Francisco and Thousand Oaks than between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue, that the latter points are unduly discriminated against. The San Francisco-Oakland Terminal Railways has a direct line and maintains a through service, without transfer, except from ferry to cars, from San Francisco to Northbrae, which is a short distance from Thousand Oaks and to which point it has published and maintains and charges a one-way fare of 10¢ and an individual monthly commutation fare of $5.00. The service on this line to Northbrae was inaugurated on November 15, 1911, and its fares then established. The Southern Pacific Company's service to Northbrae via Berryman was inaugurated on January 10, 1912, or practically two months subsequent to the beginning of the San Francisco-Oakland Terminal Railways' service into that point, and the defendant contends that in the nature of things, it could not, if it expected to secure traffic, charge a greater fare than the line already

operating into Northbrae was charging, that is 10¢ for the one-way fare and $3.00 for the individual monthly commutation fare between San Francisco and Northbrae, and further that the competition of the San Francisco-Oakland Terminal Railways did not stop at Northbrae, where the line stopped, but was reflected to Thousand Oaks, a point .8 of a mile further distant from San Francisco, and for that reason the same fares were established thereto by said defendant. The complainants argue that if this is correct then the competition of the San Francisco-Oakland Terminal Railways at Melrose should be reflected to a point the same distance beyond Melrose as Thousand Oaks is beyond Northbrae.

However, the service of the San Francisco-Oakland Terminal Railways to Northbrae is direct from the pier, without change, while that line's service to Melrose involves a transfer from its Broadway trains at Union Street and may be said to be a circuitous route and not to any appreciable degree affording the same class of service as the Northbrae line and competing with the defendant for San Francisco traffic. The service of the two lines between San Francisco and Northbrae may be said to be about the same or equal, but this is not true as to the service of the two lines between San Francisco and Melrose and it may be that the defendant would be fully within its authority in making this distinction between the service of the San Francisco-Oakland Terminal Railways to Northbrae and Melrose, and the reflected effect of these distinctive services to points beyond, in adjusting its fares thereto, but in view of the final conclusions in this matter it is not here necessary to determine this point.

It appears that the franchise of the predecessor of the San Francisco-Oakland Terminal Railways to construct and operate its line to the stations of Northbrae and Albany was approved by the Board of Trustees and became Ordinance

No. 543-A of the Town of Berkeley on November 17, 1908. The franchise of the Southern Pacific Company to construct and operate its so-called 9th Street line and California Street line and a line on Marin Avenue, was approved by the Board of Trustees and became Ordinance No. 550-A of the Town of Berkeley on December 11, 1908. The franchise of the Southern Pacific Company to construct and operate a line "commencing at a point on the Western boundary line of the City of Berkeley, in Block 5, as said block is delineated and so designated upon a certain map entitled "Northbrae, Berkeley, California',*** said point being 50 feet, more or less, southerly from the southerly line of Solano Avenue, running thence northeasterly with curve to the right and crossing private property into Solano Avenue at or near its intersection with Fresno Avenue, running thence easterly along and upon Solano Avenue to its intersection with the easterly line of the Alameda", was approved by the City Council and became Ordinance No. 58-N.S. of the City of Berkeley on March 29, 1910, to become effective 30 days thereafter. Both of those franchises were granted to the Southern Pacific Company on the condition that it maintain over the railroad authorized thereby, a one-way fare of 10¢ and an individual monthly commutation fare of $3.00 between the City of Berkeley and the City and County of San Francisco. The franchise of the predecessor of the San Francisco-Oakland Terminal Railways contained no provision regarding the rates of fare to be charged between San Francisco and the City of Berkeley, and that line did not begin operating into Northbrae until November 15, 1911, or over a year subsequent to the date on which the latter franchise was granted to the Southern Pacific Company.

It appears conclusive therefore that the Southern Pacific Company voluntarily agreed to establish the one-way fare of 10¢ and the individual monthly commu-

tation fare of $3.00 between San Francisco and Thousand Oaks and not because it was compelled to do so by the competition of the predecessor of the San Francisco-Oakland Terminal Railways. Presumably, therefore the carrier considered the fares reasonable and just for the service and, in the absence of any conclusive evidence to the contrary, they must be so considered yet. What reasons are there then for not establishing the same fares to points on the Melrose line equidistant from San Francisco? The conditions of operation are not materially different from those on the Shattuck Avenue line, the service is about the same on one line as on the other, and the volume of the traffic on the Melrose line, as a whole, if no greater - is not less than that on the Shattuck Avenue line and certainly considerably greater than that on the California Street or 9th Street lines.

In view of all of those facts it appears indisputable that the defendant in agreeing to establish and in establishing a one-way fare of 10¢ and a monthly commutation fare of $3.00 between San Francisco and Thousand Oaks, and similar points, and refusing to establish the same fares to equidistant points on the Melrose line has unduly discriminated against such points beyond Melrose, and insofar as the fares between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue exceed the fares for a similar service between San Francisco and Thousand Oaks via Northbrae, a distance of 11.9 miles, that such fares are unjust and unreasonable.

I believe it would lead to endless contention and confusion if the defendant were to charge any greater fare between San Francisco and Thousand Oaks than between San Francisco and Northbrae or Albany, owing to the physical characteristics of the defendant's line serving the north end of Alameda County, which the diagram attached discloses.

The line of the defendant, it will be seen, serving this section, forms a loop with Albany and Northbrae as extreme and opposite points between which is located Thousand Oaks, the point of intersection of the California Street line. Trains are operated around the Thousand Oaks - Albany loop in alternate directions and a person, under the present operating conditions, could travel to Albany through Thousand Oaks, and, as a consequence, if the fares were greater to Thousand Oaks than to Albany, by purchasing tickets to Albany and leaving the California Street train at Thousand Oaks could defeat the tariff. Likewise, the Shattuck Avenue trains of the defendant might, for convenience or other causes, operate through Northbrae and Thousand Oaks to Albany and if the fares were greater to Thousand Oaks than to Albany, persons, by purchasing tickets to Albany and leaving the Shattuck Avenue trains at Thousand Oaks could likewise defeat the tariff.

The manner in which the one-way fares between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue are collected is open to much just criticism and seems to be the source of much annoyance and confusion to passengers travelling to and from those points. There is no system of checking passengers on these suburban trains which will indicate the point at which a passenger boards the train and it is therefore necessary for conductors to inquire of passengers going to points beyond Melrose, in case they do not have tickets thereto, whether they are travelling from San Francisco or Oakland and if the passenger admits travelling from San Francisco or Oakland Pier, an additional fare of 5¢ is collected. If the passenger states that he boarded the train in Oakland at any station other than Oakland Pier, no additional fare is collected as a fare of 5¢ applies from any station in Oakland, except Oakland Pier, to Fremont Way, Fairfax Avenue and Seminary Avenue, and is collected immediately passenger boards train. An instance

of the injustice this method works is illustrated by the testimony of a witness for the complainant in this proceeding, which follows:

"Mr. Freeman: Did you go to the ferry ticket office *** trying to buy a ticket to Seminary Avenue, yesterday?

Mr. Wood: Yes sir.

Mr. Freeman: Please relate what took place.

Mr. Wood: I laid down 15¢ and said I wanted a ticket to Seminary Avenue, and the Agent shoved it back, shoved a nickel back and said, "We haven't any; you will have to pay that 5¢ on the train. I got on the boat and got on the train and went out to Seminary Avenue and nobody came around to collect the extra nickel, but they did to a party ahead of me but didn't ask me, so I made for 10 cents, but the party ahead paid 15 cents"

It is apparent that if passengers travelling from San Francisco and Oakland Pier to points beyond Melrose secured tickets at San Francisco or Oakland Pier to other destinations beyond Melrose, as the defendant states is possible, no such injustice or discrimination could happen, but the defendant should supply means for securing to the public equal and just treatment and the law enjoins this duty and to this end it should adopt some system for checking passengers boarding these suburban trains, and collecting from all its lawful tariff fares.

As this is a matter which might require some time to perfect, I am of the opinion that no order in this regard should issue at the present time, or until such a time as it appears that steps to remedy this condition will not be taken without an order.

After a full consideration of all these matters, I find the following facts.

First,- that the oneway fare of 15¢ and the individual monthly commutation fare of $3.50 maintained and charged by the defendant between San Francisco and Fremont Way

and Fairfax Avenue and the one-way fare of 15 cents and the individual monthly commutation fare of $4.50 maintained and charged by defendant between San Francisco and Seminary Avenue, are discriminatory, unjust and unreasonable.

Second,- That a one-way fare of ten cents and an individual monthly commutation fare of $3.00 would be reasonable and just fares for the service.

I therefore recommend the following form of order.

O R D E R

East Oakland Protective League having filed with this Commission a complaint against the one-way and individual monthly commutation fares established, maintained and charged by the defendant, Southern Pacific Company, between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue, and a full investigation and hearing of the matters and things involved having been had, and the Commission being fully apprised in the premises,

IT IS HEREBY ORDERED: That a one-way fare of ten cents and an individual monthly commutation fare of three ($3.00) dollars be and they are hereby established as just and reasonable fares to be charged by the Southern Pacific Company between San Francisco and Fremont Way, Fairfax Avenue and Seminary Avenue; and

IT IS FURTHER ORDERED: That the Southern Pacific Company shall publish and file, in accordance with the rules of this Commission, within twenty (20) days from the service of this order, tariffs setting out the fares herein established as just and reasonable.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

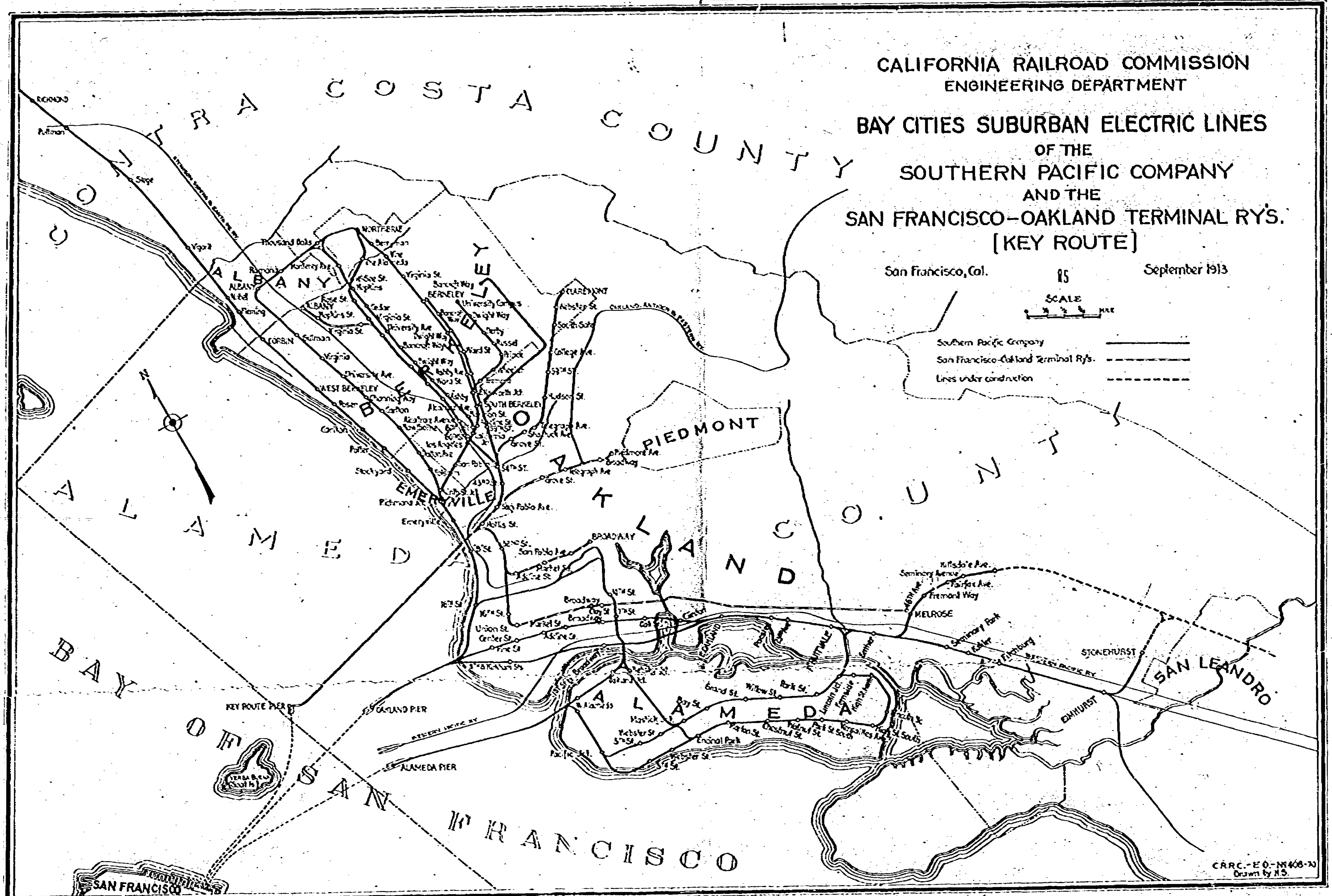
Dated at San Francisco, California, this 28th day of October, 1913.

Alex Gordon

Max Thelen

Edwin O. Edgerton

Commissioners


CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
BAY CITIES SUBURBAN ELECTRIC LINES
OF THE
SOUTHERN PACIFIC COMPANY
AND THE
SAN FRANCISCO-OAKLAND TERMINAL RY'S.
[KEY ROUTE]
San Francisco, Cal.
September 1913
SCALE
Southern Pacific Company
San Francisco-Oakland Terminal Ry's.
Lines under construction
CONTRA COSTA COUNTY
ALAMEDA COUNTY
BAY OF SAN FRANCISCO
ALBANY
BERKELEY
OAKLAND
EMERYVILLE
PIEDMONT
ALAMEDA
SAN LEANDRO
SAN FRANCISCO
KEY ROUTE PIER
OAKLAND PIER
ALAMEDA PIER
MELROSE
STONEHURST
ELMHURST
FRUITVALE
BROADWAY
N
CRRC.-E.O.-No.408-X
Drawn by K.S.