

ORIGINAL

Decision No. 35073

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
KEY SYSTEM AND EAST BAY TRANSIT COMPANY
to merge their properties into Key System
and of Key System to issue securities
pursuant to said merger.

Application
No. 24746

Brobeck, Phleger & Harrison, by James E. Moore, Jr.,
for Applicant.
John J. O'Toole, City Attorney, Dion R. Holm,
Assistant City Attorney, and Paul L. Beck, Chief
Valuation and Rate Engineer, by Paul L. Beck,
for City and County of San Francisco, interested
party.
John A. Ferguson, interested party.

BY THE COMMISSION:

O P I N I O N

In this proceeding, the Railroad Commission is asked to enter its order authorizing Key System and East Bay Transit Company to enter into a merger agreement similar in its terms to the merger agreement filed in this proceeding as Exhibit "A," and to merge their properties in accordance therewith; and further authorizing Key System to issue 65,042 shares of its capital stock in lieu of a corresponding number of shares of capital stock of East Bay Transit Company now outstanding, and permitting said merger, for statistical and accounting purposes, to be effective as of January 1, 1942.

East Bay Transit Company, a California corporation, owns and operates a local urban transportation service by street cars and motor coaches in various points in Alameda and

Contra Costa Counties. It has an authorized stock issue of 70,000 shares, all without par value, of which 65,042 shares are now issued and outstanding. All of the issued and outstanding shares of stock are owned and held by Railway Equipment & Realty Company, Ltd. For the eleven months ending November 30, 1941 it reports operating revenues of \$3,583,218.28.

Key System, a California corporation, operates an interurban service by electric trains over its own facilities and those leased from Oakland Terminal Railroad Co. and those operated under contract with California Toll Bridge Authority. It also operates interurban motor coach service via the San Francisco Bay Bridge. It has an authorized stock issue of 54,000 shares, all without par value, of which 22,991 shares are now issued and outstanding. All of the issued and outstanding shares are owned and held by Railway Equipment & Realty Company, Ltd. For the eleven months ending November 30, 1941 it reports operating revenues of \$2,457,605.46.

The proposed merger agreement provides for the increase of the authorized capital stock of Key System to 100,000 shares, all without par value. As stated, Key System requests permission to issue 65,042 shares of stock in lieu of the same number of shares of stock of East Bay Transit Company, now outstanding.

As of November 30, 1941, the 65,042 shares of outstanding East Bay Transit Company's stock had a stated value of \$6,031,086.81, while the stated value of the 22,991 shares of outstanding Key System stock is reported at \$1,626,006.84. It is of record that the 65,042 shares of stock, which Key System now asks permission to issue in lieu of the 65,042 shares of

East Bay Transit Company's stock, will have the same stated value as the presently outstanding shares of stock of East Bay Transit Company.

If authorized by the Railroad Commission, applicants will execute said merger agreement and cause the same to be filed as required by law and to take such other steps as may be necessary to cause the same to become effective as a statutory merger under the provisions of Chapter XIII, of Title I, of Part IV, of Division First, of the Civil Code of California. Under the merger agreement, the Key System will be the surviving corporation and will retain its corporate name. Section 361 of the Civil Code of California, referring to the merger and consolidation of corporations, provides, in part, as follows:

"Upon the merger or consolidation, as provided herein, the separate existence of the constituent corporations shall cease, except that of the surviving corporation in case of merger, and the consolidated or surviving corporation shall succeed, without other transfer, to all the rights and property of each of the constituent corporations, and shall be subject to all the debts, and liabilities of each, in the same manner as if the surviving or consolidated corporation had itself incurred them.

"All rights of creditors and all liens upon the property of each of said former corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the consolidation or merger.

"Any action or proceeding pending by or against any of such constituent corporations may be prosecuted to judgment, which shall bind the consolidated or the surviving corporation, or the consolidated or surviving corporation may be proceeded against or substituted in their place."

The assets and liabilities of the Key System and East Bay Transit Company, as of November 30, 1941, are reported as follows:

Item	Key System	East Bay Transit Company
<u>Assets:</u>		
Investment - road and equipment	\$2,767,359.05	\$6,412,276.90
Cash	378,140.77	166,913.28
Special deposits	2.50	200.00
Accounts receivable	8,994.13	597,360.39
Materials and supplies	58,863.84	248,483.63
Unadjusted debits	<u>98,868.34</u>	<u>87,718.64</u>
Total Assets	<u>\$3,312,228.63</u>	<u>\$7,512,952.84</u>
<u>Liabilities:</u>		
Capital stock	\$1,626,006.84	\$6,031,086.81
Contracts payable	613,968.01	-
Audited accounts and wages payable	77,330.28	219,819.99
Miscellaneous accounts payable	1,360,377.06	-
Deferred liabilities	1,255.00	7,435.00
Unadjusted credits	210,320.24	142,663.49
Operating reserves	-	61,384.24
Accrued depreciation - road and equipment	-	186,431.03
Profit and loss	<u>577,028.80*</u>	<u>864,132.28</u>
Total Liabilities	<u>\$3,312,228.63</u>	<u>\$7,512,952.84</u>

*Debit

It is of record that efficiency and economy will be promoted by the merger of East Bay Transit Company and Key System. The testimony shows that Key System, the surviving corporation, expects to maintain substantially the same underlying operating data that is available under current operations, subject to changes in both practice and method, that are required by changed operating conditions. The merger will

eliminate the corporate records of East Bay Transit Company, bills rendered between Key System and East Bay Transit Company for maintenance work, inter-company bills having to do with the rental of equipment, inter-company bills having to do with the purchase of certain materials and supplies going into the maintenance of coaches and other inter-company records. Adequate records will be kept by Key System, the surviving corporation, to determine its local and interurban operating revenues and operating expenses. In this connection attention is called to the following testimony:

"Mr. Jenkins: Is it the intent of the company to keep revenues segregated as between the, what we now know as Trans-bay operations and the local operations?

Mr. Teasdel: It is the intent of the company to maintain in full detail substantially the same segregation of revenues as we now have, so we will not only have it as between divisions of the company, but also as relates to the respective lines operated within the divisions of the company.

Mr. Jenkins: Is that practice to be extended also for the accounting of operating expenses?

Mr. Teasdel: Yes, that is correct."

No one protested the granting of this application.

O R D E R

A public hearing having been held by Examiner Fankhauser on the above entitled application, the Commission having considered the testimony submitted at such hearing and it being of the opinion that it should authorize East Bay Transit Company and Key System to execute an agreement of merger similar in its terms to the agreement of merger filed in this

proceeding as Exhibit "A,"; that the money, property or labor to be procured or paid for by the issue of 65,042 shares of common stock by Key System is reasonably necessary to refund 65,042 shares of stock of East Bay Transit Company, and that the expenditures for said purpose are not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. East Bay Transit Company and Key System may, on or before June 30, 1942, execute an agreement of merger similar in its terms to the agreement of merger filed in this proceeding as Exhibit "A," said agreement of merger, for statistical and accounting purposes, to be effective as of January 1, 1942.

2. Key System may, on or before June 30, 1942, issue 65,042 shares of its common capital stock, without par value, in lieu of and in exchange for the same number of shares of stock of East Bay Transit Company, now outstanding.

3. If said merger agreement is executed, Key System, the surviving corporation, shall segregate its operating revenues and its operating expenses to its local and to its inter-urban transportation service.

4. Within thirty (30) days after the execution of the agreement of merger herein authorized, Key System, the surviving corporation, shall file with the Railroad Commission two certified copies of said agreement of merger and shall also file with the Railroad Commission a statement showing the number of shares of stock issued under the authority herein granted and to whom said stock was issued.

5. The authority herein granted shall become effective upon the date hereof.

Dated at San Francisco, California, this 24th
day of February, 1942.

Justus J. Coe
Ray W. Casey
W. H. H. H.
Francis D. Havenner
Richard L. L.
Commissioners