

Decision No. 36427

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

KEY SYSTEM and
OAKLAND TERMINAL RAILROAD CO.

for an order authorizing (a) surrender by Key System of certain rights under an existing lease in substitution of the trackage rights therefor; (b) sale of certain properties by Oakland Terminal Railroad Co. to The Oakland Terminal Railway; (c) merger of Oakland Terminal Railroad Co. into Key System; and (d) issuance of 24,353 shares of the capital stock of Key System pursuant to such merger.

Application
No. 25539

ORIGINAL

Brobeck, Phleger & Harrison, by
James S. Moore, Jr. for Applicants

BY THE COMMISSION:

O P I N I O N

Oakland Terminal Railroad Co. and Key System ask the Commission to enter its order authorizing them to terminate the existing lease from Oakland Terminal Railroad Co. to Key System of the Fortieth Street line from Adeline Street to Broadway and a substitution of a trackage right thereon, further authorizing Oakland Terminal Railroad Co. to sell certain of its properties to The Oakland Terminal Railway and further, after the sale of such properties, authorizing the merger of Oakland Terminal Railroad Co. into Key System as the surviving corporation, and the issue by Key System of 24,353 shares of capital stock without

par value upon such merger.

A description of the properties which Oakland Terminal Railroad Co. proposes to sell and transfer to The Oakland Terminal Railway and the terms and conditions of the sale are set forth in the agreement filed in this application as Exhibit 1. In general, the agreement contemplates the transfer of the freight business now conducted by Oakland Terminal Railroad Co. to The Oakland Terminal Railway, a corporation which will be controlled through stock ownership by The Atchison, Topoka & Santa Fe Railway Company and by T. M. Schumacher and Sidney M. Ehrman, as Trustees of the property of The Western Pacific Railroad Company. Incident to the transfer of the freight business of Oakland Terminal Railroad Co. there will be transferred to The Oakland Terminal Railway all of the former's properties which are devoted exclusively to freight purposes, consisting principally of switching tracks in the Outer Harbor District of Oakland. There will also be transferred to The Oakland Terminal Railway various industrial spur tracks and trackage rights over the lines now leased to and operated by Key System in passenger service. There will likewise be transferred to The Oakland Terminal Railway title to the Fortieth Street Line extending from a point near Adeline Street and Fortieth Street to a point near Fortieth Street and Broadway in the City of Oakland to afford a connection with the Sacramento Northern Railway. The transfer of said Fortieth Street Line will be subject to a trackage right granted to Key System. This trackage right will supplant the existing lease from Oakland Terminal Railroad Co. to Key System, which was authorized by Decision No. 27770, dated February 25, 1935, in Application No. 19822.

The Interstate Commerce Commission, by its decision of May 26, 1943, authorizes the sale and transfer of Oakland Terminal Railroad Co. business and properties described in said Exhibit 1 to The Oakland Terminal Railway.

Counsel for applicants asks that this Commission also authorize the sale and transfer of said properties, to the extent that it has jurisdiction, in order that no question can be raised about the validity of the sale and transfer.

Following the sale and transfer of the business and properties of Oakland Terminal Railroad Co. described in said Exhibit 1 to The Oakland Terminal Railway, it is proposed to merge Oakland Terminal Railroad Co. into Key System as the surviving corporation. A copy of the merger agreement is on file in this application as Exhibit 6. Through this merger Key System will become the owner, generally speaking, of the tracks east of the Bridge Railway over which it now operates, excepting said section of track on Fortieth Street and the tracks formerly used by the Interurban Electric Railway Company, and now owned by municipalities. The location of the Oakland Terminal Railroad Co. track is shown in Exhibit 2.

All of the outstanding stock of Oakland Terminal Railroad Co. and of Key System is owned by Railway Equipment & Realty Company, Ltd. The former company has 24,353 shares of capital stock without par value outstanding. Upon the execution of the merger agreement it is proposed that Key System issue in exchange for said shares of stock, 24,353 shares of its stock. This stock will be issued to, and be owned by, Railway Equipment & Realty Company, Ltd.

In Exhibit 3 the recorded cost of the properties to be merged with Key System is reported at \$2,404,387.70, while Exhibit 4 shows an accrued depreciation of \$383,521.82 in said properties. Though the order herein authorizes the merger of Oakland Terminal Railroad Co. into Key System we are making no finding as to the value of the properties of either Oakland Terminal Railroad Co. or Key System. Neither are we making any finding as to the cost of said properties or the adequacy of the reserve for accrued depreciation.

No one appeared at the hearing to protest the granting of this application. We believe that the merger of Oakland Terminal Railroad Co. and Key System should result in certain economies in keeping records. It will do away with the lease under which Key System is now operating over tracks of Oakland Terminal Railroad Co. and the payment of rent for the use of such tracks.

ORDER

A public hearing having been held in the above-entitled matter before Examiner Fankhauser, the Commission having considered the record in this matter and it being of the opinion that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

1. Oakland Terminal Railroad Co. may, on or before December 31, 1943, sell and transfer to The Oakland Terminal Railway the properties, rights and business described in the agreement on file in this application as Exhibit 1, said sale

and transfer to be made pursuant to the terms and conditions of said agreement.

2. The Commission's Order in Decision No. 27770, dated February 25, 1935, in Application No. 19822, is hereby modified so as to permit Oakland Terminal Railroad Co. and Key System to terminate the lease on said Fortieth Street Line referred to in the foregoing opinion, and substitute therefor the trackage right described in the agreement on file in this application as Exhibit 1, which agreement Key System and Oakland Terminal Railroad Co. may execute.

3. Upon the sale and transfer of said properties, rights and business of Oakland Terminal Railroad Co. to The Oakland Terminal Railway, and on or before December 31, 1943, Oakland Terminal Railroad Co. may merge into Key System as the surviving corporation and Key System may issue 24,353 shares of its capital stock without par value upon such merger in exchange for 24,353 shares of capital stock without par value of Oakland Terminal Railroad Co., which stock issue the Commission finds to be reasonably necessary for the purpose of effecting said merger and which stock issue is not reasonably chargeable to operating expenses or to income; said agreement of merger to be in substantially the same form as the agreement of merger filed in this application as Exhibit 6.

4. Within thirty (30) days after the execution of the agreement of merger herein authorized to be executed, Key System shall file with the Railroad Commission a true and correct copy of said agreement of merger, together with a statement showing the number of shares of stock it issued under the authority

herein granted and the purpose for which such stock was issued.

5. The authority herein granted is subject to the condition that the Commission is not, by this order, making any finding as to the value of the properties of Oakland Terminal Railroad Co. for the purpose of fixing rates.

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

Dated at San Francisco, California, this 8th
day of June, 1943.

Francis P. Havenner
H. L. Baker
Justice F. Calver
Richard L. Ketchum
Wm. M. O'Connell
Commissioners