

ORIGINAL

Decision No. 48687

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the reasonableness, adequacy, sufficiency and lawfulness of the fares, rates and certain other subjects and matters, as specified in the amended Order of investigation herein, of Key System Transit Lines and Railway Equipment & Realty Company, Ltd.

Case No. 5259
(as amended)

Donohue, Richards, Rowell & Gallagher, by Frank S. Richards and George E. Thomas for Railway Equipment & Realty Company, Ltd., and Key System Transit Lines, respondents.
Dion R. Holm, City Attorney and Paul L. Beck, City Attorney's Office, for the City and County of San Francisco; Thomas M. Carlson, City Attorney, City of Richmond, by Frederick Bold, Jr., Special Assistant, Grant G. Calhoun, of City Attorney's Staff, Wayne E. Thompson, City Manager, for the City of Richmond;
J. P. Clark, City Attorney, for the City of Alameda; J. F. Coakley, District Attorney, and David I. Wendel, Deputy District Attorney, for the County of Alameda; John W. Collier, City Attorney, and Loren W. East, Public Utility Engineer, for the City of Oakland; Fred C. Hutchinson, City Attorney by Robert T. Anderson, Assistant City Attorney, for City of Berkeley; John D. Phillips, City Manager, City of Berkeley; Edward R. Plotner, for City of Albany; Carl Froerer, for City of Alameda; Kathie S. Zahn, for City of Albany; Kenneth H. Smith, City Manager, El Cerrito; J. F. Hassler, City Manager, Oakland; Walter Dahl, Mayor, Piedmont; Wesley McClure, City Manager, San Leandro; Richard C. Johnston, City Attorney, for San Pablo; John Ficklin, City Manager, for Hayward; George Janssen, Supervisor, for County of Alameda; P. W. Barnard, for Alameda Citizen's Transportation Assn., interested parties.
J. T. Phelps and Wilson E. Cline for the Staff of the California Public Utilities Commission.

O P I N I O N

By Decision No. 45205, dated December 28, 1950, in Application No. 31179 (50 Cal. P.U.C. 368), the Key System Transit Lines, a California corporation, was granted authority to establish certain specified increases in fares. However, because of the complicated factual situation which was found to exist the Commission stated in this decision, at page 379: "While the record as thus far developed is adequate to justify the increases herein authorized, it is not adequate for the purpose of determining certain questions

presented in this proceeding. The Commission is of the opinion that these questions should be finally determined. Accordingly, we shall institute an investigation to that end."

Under date of January 3, 1951, an order instituting investigation was instituted in Case No. 5259 for the purpose of inquiring "into the reasonableness, lawfulness and propriety of the fares, rules, regulations, charges, services, operations, practices and affiliated relationships of Key System Transit Lines...

Public hearings were held thereon before Commissioner Potter and Examiner Syphers at San Francisco on August 1, and 2, 1951. At the conclusion of these hearings the parties were granted permission to file concurrent briefs and on October 10, 1951, a brief was filed by Key System Transit Lines and another brief on behalf of the County of Alameda and the Cities of Alameda, Albany, Berkeley, El Cerrito, Hayward, Oakland, Piedmont, Richmond, San Leandro and San Pablo and the Town of Emeryville.

Under date of November 6, 1951, the Commission issued an order setting aside the submission and reopening Case No. 5259.

A further hearing was held before Commissioner Potter and Examiner Syphers on December 10, 1951. As a result of evidence adduced therein an amended order instituting investigation was issued by this Commission on December 18, 1951, "for the purpose of inquiring into and determining the reasonableness, adequacy, sufficiency and lawfulness of the fares, rates, charges, tolls, rentals, service, operations, facilities, equipment, classifications, practices (including depreciation practices), contracts, rules, regulations, accounts and accounting procedures and practices (including depreciation accounts and accounting procedures and practices), property valuations and procedures, and affiliated interests and relationships of Key System Transit Lines and Railway

Equipment & Realty Company, Ltd.,⁽¹⁾ and for the further purpose of fixing, establishing and prescribing the same by decision and order of this Commission."

Further hearings were held on April 21, 1952, and March 26, 1953. On the last-named date the matter was submitted. It is now ready for decision. It should be noted that Railway Equipment & Realty Company, Ltd., appeared specially, contending that it was not subject to the jurisdiction of the Commission.

At the outset of the proceedings the parties⁽²⁾ entered into a stipulation setting out certain facts, which facts were admitted by all of the parties. The Key System Transit Lines contended some of the facts were not relevant, but nevertheless signed the stipulation. This stipulation sets out that the Key System Transit Lines is engaged in the business of transporting passengers between and in the various communities of the East Bay Area, and between this area and San Francisco, as a public utility operating under certificates of public convenience and necessity from this Commission as well as franchises from various communities in the East Bay Area. All of the stock issued and outstanding of the Key System Transit Lines, amounting to 112,386 shares is owned by the Railway Equipment & Realty Company, Ltd. The National City Lines, Inc.,⁽³⁾ owns 87,057 shares of the common stock of Railway Equipment & Realty Company, Ltd., which represents 66.5% of the 131,000 shares of common stock and 54.07% of the 161,000 shares of common and preferred stock combined.

There are rental agreements between Railway Equipment & Realty Company, Ltd., and Key System Transit Lines covering land and improvements and equipment. It was further stipulated that

(1) A Delaware corporation.

(2) Key System Transit Lines, the East Bay cities and County of Alameda and the staff of the Public Utilities Commission.

(3) A Delaware corporation having its principal offices in Chicago, Illinois.

the record in Application No. 31179, an application of Key System Transit Lines for an increase in rates and fares, be made a part of this proceeding.

Attached to the stipulation (Exhibit 5) are (1) exhibits showing the officers and directors of the Key System Transit Lines, Railway Equipment & Realty Company, Ltd., National City Lines, Inc., and Pacific City Lines, Inc., (2) copies of agreements and leases between Railway Equipment & Realty Company, Ltd., and Key System Transit Lines, (3) the annual reports of Key System Transit Lines for the years 1948, 1949, 1950, and the annual reports of National City Lines, Inc., for the same years, (4) a lease agreement between Key System Transit Lines and Pacific City Lines, Inc., and (5) the bylaws of each of Key System Transit Lines and Railway Equipment & Realty Company, Ltd.

Exhibits 1 to 3 are copies of the articles of incorporation and amendments thereto of Key System Transit Lines (originally Key Terminal Railway, Ltd.), Pacific City Lines, Inc., (originally PCL Service Co., Inc.), and Railway Equipment & Realty Company, Ltd. Pacific City Lines, Inc., and Railway Equipment & Realty Company, Ltd., are Delaware corporations. Exhibit 4 is a copy of the articles of incorporation and amendments thereto of National City Lines, Inc., a Delaware corporation.

To place this evidence in its proper perspective for the purposes of this proceeding and to summarize a portion thereof, it is pointed out that Key System Transit Lines is the operating company here in question and that all of its stock is owned by Railway Equipment & Realty Company, Ltd. These are the two companies concerned in this proceeding by reason of the orders of investigation previously referred to herein. The Pacific City Lines, Inc., formerly leased its general office quarters from Key System Transit

Lines, and the National City Lines, Inc., holds stock in Railway Equipment & Realty Company, Ltd. However, these two companies are not directly concerned in this proceeding and the evidence relating to them was received primarily for the purpose of helping to clarify the factual situation surrounding Key System Transit Lines and Railway Equipment & Realty Company, Ltd.

We further note that the issues relating to the two companies involved in this proceeding are embraced in two problems: (1) a determination of the rate base of Key System Transit Lines, and (2) a determination as to whether or not Railway Equipment & Realty Company, Ltd., should be declared to be a utility subject to the jurisdiction of this Commission.

The cities of Alameda, Albany, Berkeley, El Cerrito, Hayward, Oakland, Piedmont, Richmond, San Leandro and San Pablo, the Town of Emeryville and the County of Alameda conducted a joint inquiry of the Key System Transit Lines and the Railway Equipment & Realty Company, Ltd., through the agency of an executive committee. Exhibit 9 consists of letters and resolutions from this group in this connection. In these documents it was requested that the Commission re-examine the rate base of Key System Transit Lines, that an examination of the reorganization and financial changes effected in 1930 be made, and that a full inquiry into the intercorporate relations of Key System Transit Lines and Railway Equipment & Realty Company, Ltd., be made. Likewise, it was requested that an inquiry be made into such items as operating expense, accounting practices, and adequacy of service.

An engineer of the Public Utilities Commission's staff presented testimony relating to the historical background of Key System Transit Lines, which historical background is reviewed in Decision No. 45205 supra. Inasmuch as the instant proceeding has

for one of its major purposes a determination of the rate base of Key System Transit Lines, and inasmuch as it was contended that the costs of some of the items comprising this rate base should be viewed in their historical perspective, a brief summary of the historical background of Key System Transit Lines is hereinafter set out.

The present operations are the outgrowth of services commenced by predecessor companies more than 80 years ago. In 1912, through a consolidation of the separate companies, the San Francisco-Oakland Terminal Railways was formed. In 1923 the properties of this company were sold under a court decree of foreclosure and, as a result, a new corporation, the Key System Transit Company, was created. In 1930 the properties were again sold at a judicial sale which resulted in the formation of four operating utilities and a holding company. The operating utilities were the Key System, Ltd., the Key Terminal Railway, Ltd., East Bay Street Railways, Ltd., and East Bay Motor Coach Lines, Ltd. The holding company was the Railway Equipment & Realty Company, Ltd. Subsequently, these operating utilities were combined into the Key System Transit Lines.

The engineer of the Commission's staff further presented testimony relating to the present operations of the company, its investments, depreciation expense, depreciation reserve requirements, the amortization of investment in rail facilities, the cost of removing tracks and repaving streets, and the rate base. In setting up a rate base the Commission's staff ignored corporate lines and considered the property used and useful in the business. In considering the cost of land the value as set out in a 1914 appraisal was used. Previously, in Decision No. 45205, in arriving at a rate base, the cost of land based on a 1926 appraisal was used and the

witness pointed out that this resulted in a difference of about \$80,000. In other words, the 1914 appraisal was lower than the 1926 appraisal.

Exhibits 10 to 15 consist of agreements and documents relating to certain properties of the companies here under inquiry known as the Yerba Buena Yard. This Yerba Buena Yard is located in Oakland and was sold by the Railway Equipment & Realty Company, Ltd., to The Oakland Terminal Railway under an agreement dated August 24, 1951. The property sold consisted of approximately 12 acres of land and improvements in the so-called lower Yerba Buena Yard. The Yard presently is jointly used by The Oakland Terminal Railway and the Key System Transit Lines operations. Another engineer of the Public Utilities Commission's staff testified as to the value of this property at the time of the sale, and stated that the sale of the Yerba Buena Yard should result in eliminating from the rate base any value for that property previously included therein.

In Decision No. 42200, dated November 4, 1948, in Application No. 29434, this Commission provided for the amortization of \$1,605,000 to represent the unrecovered investment of local street car operations abandoned during 1948, which decision we hereby reaffirm. Exhibit 8 shows the amount of the Railway Equipment & Realty Company, Ltd's., unrecovered investment in this \$1,605,000. Exhibit 7, presented by an accountant of the Commission's staff, is a study of the savings in federal income taxes which Key System Transit Lines and Railway Equipment & Realty Company, Ltd., may have realized as a result of having deducted for tax purposes during the years 1944 to 1948, inclusive, the above-mentioned amount of \$1,605,000. This accountant likewise presented a study, Exhibit 17, which is entitled "A Report Setting Forth Results of Original Cost Study

of Operative Properties of Key System Transit Lines and Railway Equipment & Realty Company, Ltd." Exhibit 17-A is a supplement to Exhibit 17, giving effect to a sale of right of way, which sale was authorized by Decision No. 47131, dated May 13, 1952, in Application No. 33345. These studies were based on the recorded data appearing in the books, reports and accounting memoranda of the companies and relate to the original cost of property used by the utility as of December 31, 1951. The following tables show the results of the studies of the engineers and the accountant of the Commission's staff as to operative properties includible in the rate base of Key System Transit Lines.

Estimate Submitted by Engineers, as of
December 31, 1950

	<u>Investment</u>	<u>Depreciation Reserve</u>	<u>Depreciated Investment</u>
Rights of Way	\$ 387,051	\$	\$ 387,051
Other Land	1,081,019		1,081,019
Roadway and Equipment			
articulated rail cars	3,008,086	1,817,489	1,190,597
Grading Account	245,376	73,605	171,771
Other Accounts	15,785,854	7,046,770	8,739,084
Overhead Accounts	457,096	333,483	123,613
	<u>\$20,964,482</u>	<u>\$ 9,271,347</u>	<u>\$11,693,135</u>

Estimate Submitted by Accountant, as of
December 31, 1951.

	<u>Investment</u>	<u>Depreciation Reserve</u>	<u>Amortization Reserve</u>	<u>Depreciated Investment</u>
Rights of Way	\$ 368,489.24	\$	\$ 1.00	368,488.24
Other Land	787,428.19			787,428.19
Roadway and Equipment				
articulated				
rail cars	1,610,394.90	957,039.84	393,092.66	260,262.40
Grading Acct.	239,534.40	156,022.96	6,715.48	76,795.96
Other Accts.	15,872,656.06	7,636,869.81	124,733.25	8,111,053.00
Overhead Accts.	551,182.70	390,861.59	10,806.84	149,514.27
	<u>\$19,429,685.49</u>	<u>\$9,140,794.20</u>	<u>\$ 535,349.23</u>	<u>\$9,753,542.06</u>

It will be noted that the estimate of the engineers is for properties in service as of December 31, 1950, while that of the accountant is for a year later. During the year 1951, there were certain additions, betterments and retirements which obviously had an effect upon the investment in properties, such changes including the sale of the Yerba Buena Yard, previously referred to

herein, the purchase of a considerable amount of new equipment and the retirement from service of certain old equipment. The estimate of the accountant gives effect to these transactions while that of the engineers does not. It will also be noted that the accountant's estimate provides for an amortization reserve in the amount of \$535,349.23 which has not been allowed in the estimate of the engineers.

An analysis of the foregoing figures and the testimony presented in connection therewith discloses that the engineers' valuation of the investment in rights of way and other lands is based upon the 1914 valuation whereas the accountant's figures in this connection are based upon the original costs as disclosed by the earliest available records. The accountant testified that in his opinion the study made "exhausts all possibilities of determining the original costs of the properties in question."

For the purposes of this decision we will accept the original cost figures, less related reserves, set forth in Exhibit 17, as representing the rate base, exclusive of materials and supplies, of the two companies as of December 31, 1951. In accepting these figures for this purpose we take cognizance of the fact that the companies have recovered through operations the amounts reflected in the reserve balances. In establishing this rate base we do not bind ourselves to recognize for the future the service lives presently used by the companies in computing annual charges for depreciation and amortization. The companies now are placed on notice that subsequent accruals for depreciation shall be computed on a remaining life basis and the annual accruals to the depreciation reserves shall be obtained by spreading the original costs of the depreciable plant, as reflected by the books, less the estimated net salvage and less the related reserves, as recorded, over the estimated remaining life of the properties. The accruals to depreciation shall be

reviewed annually and the companies shall submit the results of these reviews to the Commission. A thorough consideration of this record, giving effect to all of the evidence adduced, the briefs filed herein, and to the points raised by the joint investigation of the East Bay Cities and the County of Alameda as set out in Exhibit 9 and in the record in Application No. 31179 supra, leads us to the finding that a rate base for Key System Transit Lines should include all properties used and useful in the transportation operations, regardless of corporate ownership, and that the costs developed by the witness from the accounting staff are based upon the original costs thereof and should be used in this rate base. Therefore, we find the rate base, exclusive of materials and supplies, of Key System Transit Lines as of December 31, 1951, to be as follows:

Rights of Way	\$	368,488.24
Other Land		787,428.19
Roadway and equipment	8,448,111.36	
Overhead Accounts		<u>119,514.27</u>
Total	\$	<u>9,753,542.06</u>

Our second issue herein concerns whether or not Railway Equipment & Realty Company, Ltd., should be declared to be a public utility. This company was formed to own the equipment and real estate used in the transportation operations, the purpose being to provide the credit standing necessary to finance the operating company. The principal business of Railway Equipment & Realty Company, Ltd., is the ownership of the properties used by Key System Transit Lines and 99 per cent of its revenues come from rentals paid by Key System Transit Lines. About 1 per cent of its revenues come from other rentals.

From Exhibit 18 and from testimony of witnesses it is disclosed that the officers and directors of the two companies are, with very few exceptions, the same individuals. Exhibit 18 shows that five members of Key System's seven-man board of directors are

also members of Railway Equipment & Realty Company, Ltd's., nine-man board. The testimony of the controller discloses that the ten chief officials of Key System Transit Lines are officers or employees of Railway Equipment & Realty Company, Ltd. Those include the following officers of Key System Transit Lines: (1) president, (2) vice president and operations manager, (3) controller, (4) secretary-treasurer, (5) public relations director, (6) executive assistant and traffic engineer, (7) executive assistant, (8) purchasing agent, (9) assistant controller, and (10) the automotive maintenance supervisor. All of these officials receive their salaries from Railway Equipment & Realty Company, Ltd., but \$400 per month for each of them is charged back to Key System Transit Lines.

Exhibit 19 consists of excerpts from the minute books of Railway Equipment & Realty Company, Ltd., which minutes show actions by the board of directors of that company as to the properties used by Key System Transit Lines and also as to approval of certain actions taken by the boards of Key System Transit Lines and its predecessor companies. Exhibit 20 is a copy of an indenture executed by Railway Equipment & Realty Company, Ltd., to the Bank of America National Trust & Savings Association on August 1, 1945, securing an authorized issue of \$4,500,000 in bonds of Railway Equipment & Realty Company, Ltd. The properties of the company were pledged as security. Exhibit 20-A is a supplement to the aforementioned indenture.

After considering all of the evidence presented herein and the briefs which have been filed, we now find that the Railway Equipment & Realty Company, Ltd., owns and exercises a substantial control over the operations of Key System Transit Lines to such an extent that each of said corporations is the alter ego of the other and we, therefore, find that Railway Equipment & Realty Company, Ltd., is a public utility subject to control and regulation by this

Commission. We further find that the properties owned by Railway Equipment & Realty Company, Ltd., which are used in connection with the operations of Key System Transit Lines have been dedicated to the public use. As a matter of law, it follows that once ownership or control over a public utility operation is established then the entity exercising such control is a public utility. Article XII, Section 23, of the Constitution of California reads as follows:

"Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipeline, plant, or equipment, or any part of such railroad, canal, pipeline, plant or equipment within this State, for the transportation or conveyance of passengers ... either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the Legislature ..." (Underlining added).

The statutes enacted by the Legislature contain provisions having a similar result. A public utility is defined to include a common carrier (Public Utilities Code, Sec. 216). The term common carrier includes "every railroad corporation; street railroad corporation" and "every passenger stage corporation." (Sec. 211). The terms railroad corporation (Sec. 230) street railroad (Sec. 231) and passenger stage corporation (Sec. 226) include entities which own or control such operations.

In the evidence in this case it was disclosed that the Railway Equipment & Realty Company, Ltd., executed an indenture to the Bank of America National Trust & Savings Association on August 1, 1945, whereby the properties of the company were pledged as security for a bond issue of \$4,500,000. In effect, the Railway Equipment & Realty Company, Ltd., mortgaged all of its properties used and useful in the public utility operations of Key System Transit Lines. Such an action clearly indicates a measure of control

over the properties of the Key System Transit Lines, which places Railway Equipment & Realty Company, Ltd., within the Constitutional declaration as set out in Article XII, Section 23, a portion of which is hereinabove quoted. Likewise the statutes clearly contemplate that such a transaction should be subject to the jurisdiction of this Commission. (Sec. 841).

O R D E R

An order of investigation as above entitled having been instituted, public hearings having been held thereon, the matter having been submitted, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED:

(1) That the rate base, exclusive of materials and supplies, of Key System Transit Lines ^{and R.E.R. Ltd.} as of December 31, 1951, be, and it ^{R.E.M.} hereby is, declared to be as follows:

Rights of Way	\$ 368,488.24
Other Land	787,428.19
Roadway and Equipment	8,448,111.36
Overhead Accounts	149,514.27
Total	<u>\$9,753,542.06</u>

(2) Key System Transit Lines and Railway Equipment & Realty Company, Ltd., shall adopt the straight-line remaining life method of accounting for depreciation. Said companies shall base the annual accruals to the depreciation reserves by spreading the original cost of the depreciable plant, as reflected by the books, less the estimated net salvage and less the related reserves, as recorded, over the estimated remaining life of the properties. Said companies shall review the accruals annually and shall submit the results of these reviews to the Commission on or before December 31st of each year beginning December 31, 1953.

(3) Within 60 days after the effective date of this order, ^{R.E.M.} Key System Transit Lines ^{and R.E.R. Ltd.} shall file with the Commission a statement

showing the amounts of the depreciation accruals recorded during 1952 and the lives used and estimated salvage considered in computing the accruals and the same information as recorded and proposed during 1953.

IT IS HEREBY FURTHER ORDERED that the Railway Equipment & Realty Company, Ltd., be, and it hereby is, declared to be a public utility subject to such control and regulation by the Public Utilities Commission as has been or may be provided by the State Constitution and the State Legislature.

IT IS HEREBY FURTHER ORDERED that Railway Equipment & Realty Company, Ltd., hereafter shall comply with all applicable provisions of regulatory law in connection with its operations as a public utility..

This order shall become effective twenty days after the date hereof.

Dated at Los Angeles, California, this 9th day of June, 1953.

Ch. J. Dinderman
 PRESIDENT

Justice J. Cooney

Harold P. Hills

Samuel P. Pottel

Edw. E. McMill
 COMMISSIONERS