

ORIGINALDecision No. 48856

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)

OPINION AND ORDER DENYING PETITION FOR REHEARING

Key System Transit Lines and Railway Equipment & Realty Company, Ltd., have petitioned for rehearing respecting Decision No. 48687, rendered in the above-entitled proceeding the 9th day of June, 1953. The Commission, by said decision, found and held Railway Equipment & Realty Company, Ltd., to be a public utility and determined and fixed the rate base of the petitioners for rate-fixing purposes.

Petitioners assert that the finding of utility status as to Railway Equipment & Realty Company, Ltd., is erroneous, confiscatory, a deprivation of property without just compensation and due process of law and results in a denial of the equal protection of the law. Also, petitioners assert that the action of the Commission determining and fixing the rate base is erroneous and results in confiscation of their property without due process of law and just compensation and, otherwise, offends established constitutional and legal principles.

All these assertions of error boil down to the question as to whether or not the action taken by the Commission in said Decision

No. 48687 works a confiscation of petitioners' property, denies them due process of law, results in a denial of equal protection of the law or resulted from the asserted failure of the Commission to properly weigh the evidence adduced in the instant proceeding.

With reference to the last-named specification of error, we hold that the assailed decision properly weighed the evidence, herein, and arrived at findings and conclusions based upon the clear preponderance thereof. We perceive no error in this regard.

The contention that it was erroneous to find that Railway Equipment & Realty Company, Ltd., was and is a public utility subject to the jurisdiction of the Commission, we hold to be without merit. That said corporation is the owner of certain of the operative properties used by Key System Transit Lines in performing public utility service, is admitted. Also, such properties, with the knowledge and consent of Railway Equipment & Realty Company, Ltd., have been included in the rate base of Key System Transit Lines for many years past for the purpose of rate-fixing. The evidence clearly shows that Railway Equipment & Realty Company, Ltd., not only owns Key System Transit Lines, but that the former completely dominates and controls the latter. That each of said corporations is the alter ego of the other, the evidence abundantly demonstrates. One cannot own and control operative public utility property, in the circumstances as the evidence reveals that Railway Equipment & Realty Company, Ltd., does, without becoming a public utility. The law of this State on the subject will permit of no other conclusion. By statutory specification, the Legislature, pursuant to the plenary authority conferred upon it by the State Constitution, has enlarged the common law definition of a public utility. (Western Canal Co. v. Railroad Commission, 216 Cal. 639, 652.) Furthermore, it is not

necessary to find fraud as a condition precedent to disregarding corporate fiction in the circumstances as disclosed by the record herein. (Western Canal Co. v. Railroad Commission, supra, p. 645.) In the Western Canal Company case, the Supreme Court of the United States denied certiorari. (289 U.S. 742, 77 L. ed. 1489.) To permit Railway Equipment & Realty Company, Ltd., to continue to dominate and control Key System Transit Lines without subjecting the former to regulation, we find and hold to be contrary to the public interest. The fact that this Commission has not exercised its jurisdiction sooner is immaterial because the police power never loses any of its vitality from non-use. No possible estoppel can arise. (Kelly v. Washington, 302 U.S. 1, 14, 82 L. ed. 3, 13.) It is here pointed out that it is not necessary to be shown that a corporation is engaging in nefarious practices in order that it be held to be a public utility. All that is necessary to be shown is that such corporation is engaged in action which the law defines as that of a public utility.

A corporate combine consisting of a parent corporation and a subsidiary or subsidiaries may be considered as one operation for purposes of regulation. (Ohio Mining Co. v. Public Utilities Commission, 106 Ohio St. 138, 140 N.E. 143, 147; Chicago etc. Co. v. Minneapolis, 247 U.S. 490, 62 L. ed. 1229; Gallatin Natural Gas Co. v. Public Utilities Commission, 256 Pac. 373, 377; Orendorf v. Public Utilities Commission, 21 N.E. (2d) 334.) The same rule applies with regard to reorganization proceedings. (Re: Pittsburgh Railways (U.S. Court of Appeals, 3rd Cir.), 155 Fed. (2d) 477; cert. den. by Sup. Ct., 329 U.S. 731, 91 L. ed. 632.)

If Railway Equipment & Realty Company, Ltd., insists upon maintaining this corporate combination, it must be content to abide by

the rules of law applicable to such structures. To omit the regulation of the parent and confine regulation to the subsidiary would be like disregarding the substance and seizing upon the shadow.

Petitioners assert that the subjecting of Railway Equipment & Realty Company, Ltd., to regulation as a public utility will be prejudicial to its security holders and others who have done business with said corporation. This assertion, even were it true, is immaterial and has no legal significance.

When one deals with any business he does so with the understanding that such business may become subject to regulation. There are no classes of business closed to regulation. Any contract with a corporation, subject to regulation under the police power, has implied in such contract the possibility of regulation. This rule is elementary and without exception. All contracts, no matter how lawful or valid when executed, and property rights, no matter how long vested, are subject to impairment and even destruction by the lawful exertion of the police power. (Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 434-444, 78 L. ed. 413, 426-432; East New York Savings Bank v. Hahn, 326 U.S. 230, 231-234, 90 L. ed. 34, 35-37; Law v. Railroad Commission, 184 Cal. 737, 739-740.) By citing the foregoing rules of law, we do not mean to imply or to be understood as implying that these petitioners, their security holders or persons doing business with petitioners have been or will be prejudiced by the action which the Commission has taken in this proceeding.

Petitioners assert many claims of error in the Commission's action whereby it determined and fixed the rate base of petitioners. We have carefully considered all these claims of error but find no merit therein. The rate base of these petitioners has been before the Commission in numerous proceedings for the past several years.

The action taken herein by the Commission fixed the rate base of petitioners upon an original cost basis. Such basis is legally permissible. In our opinion, it is the most reasonable and practicable basis.

Other subsidiary and incidental matters are raised by petitioners upon which they assertedly base error but what we, heretofore, have said disposes of such matters.

The petition for rehearing, herein, is hereby denied.

Dated at San Francisco, California, this 21st day of July, 1953.

R. T. Anderson
President
Justus J. Calves
Harold Huls
Kenneth Potter
Commissioners