

ORIGINAL

Decision No. 50617

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 BAY AREA PUBLIC SERVICE CORPORATION,)
 a corporation, and RAILWAY EQUIPMENT)
 & REALTY COMPANY, LTD., a corporation,) Application No. 35368.
 for orders under Sections 816 and 851)
 of the Public Utilities Code, author-)
 izing issuance of shares and sale and)
 lease of assets.)

Donahue, Richards, Rowell & Gallagher, by George E. Thomas and Joseph A. Woods, Jr., for applicants. John A. Ferguson, stockholder, protestant. Robert J. Foley, City Attorney of the City of Albany; Mrs. Kathie Zahn, in propria persona; Fred C. Hutchinson, City Attorney, and Robert T. Anderson, Assistant City Attorney, of the City of Berkeley; Dion R. Holm, City Attorney, and Paul L. Beck of the City Attorney's Office, City and County of San Francisco; J. P. Clark, City Attorney, City of Alameda; Chickering & Gregory, by John Philip Coghlan; Robert E. Nisbet, Deputy City Attorney, City of Oakland; and John J. Garvey, Jr., Administrative Assistant to City Manager, City of Richmond; interested parties. J. T. Phelps for the Public Utilities Commission of the State of California.

INTERIM OPINION

By Decision No. 48687, dated June 9, 1953, in Case No. 5259 (52 Cal. P.U.C. 589) the Railway Equipment and Realty Company, Ltd., a Delaware corporation, was held to be a public utility subject to the jurisdiction of this Commission. This decision was reaffirmed by Decision No. 48856, dated July 21, 1953. The matter is now pending before the Supreme Court of California on a Petition for Writ of Review.

In this application the Railway Equipment and Realty Company, Ltd. requests that it be allowed to sell certain assets, as described in the application, to the Bay Area Public Service Corporation, which was incorporated on April 9, 1954 in the State of California, for the purpose of acquiring title to the properties now owned by the Railway Equipment and Realty Company, Ltd., and used and useful in the operation of the Key System Transit Lines, a utility subject to the jurisdiction of this Commission.

A public hearing was held before Commissioner Verne Scoggins and Examiner Grant E. Syphers on June 24, 1954, in San Francisco, at which time evidence was adduced and the matter submitted.

At the hearing the vice president of Railway Equipment and Realty Company, Ltd., who is also the president of the Bay Area Public Service Corporation, presented Exhibit No. 1, a resolution of the Board of Directors of the Railway Equipment and Realty Company, Ltd., approving a plan for transferring the operating properties to the Bay Area Public Service Corporation, and Exhibit No. 2, a resolution of the Board of Directors of the Bay Area Public Service Corporation authorizing the officers of that company to apply to this Commission for authority to issue stock in exchange for the properties of Railway Equipment and Realty Company, Ltd. The witness conceded that the Bay Area Public Service Corporation is a public utility subject to the jurisdiction of this Commission. He further stated that by the proposed transaction the Railway Equipment and Realty Company, Ltd. will own all of the stock of the Bay Area Public Service

Corporation, and also all of the stock of Key System Transit Lines. He testified that the interest of the stockholders of Railway Equipment and Realty Company, Ltd. would be secured by its interest in the stock of the new corporation, plus whatever assets are retained by Railway Equipment and Realty Company, Ltd. Exhibit No. 3 is a copy of the consent of the stockholders of Railway Equipment and Realty Company, Ltd. to the proposed transfer.

Attached to the application is a copy of the Articles of Incorporation of the Bay Area Public Service Corporation, showing that they have been filed in the office of the Secretary of State of the State of California as of April 9, 1954. Exhibit B, attached to the application, sets up the investment, depreciation and amortization reserves and the net investment of the Railway Equipment and Realty Company, Ltd. as of December 31, 1953.

Exhibit No. 4 received in evidence at the hearing is a balance sheet as of December 31, 1953, of the Railway Equipment and Realty Company, Ltd., and a pro forma balance sheet as of January 1, 1954 for this company and for the Bay Area Public Service Corporation. The date of the proposed transfer is January 1, 1954, and applicants herein request that the Commission approve this transfer as of that date. An examination of Exhibit No. 4 and other exhibits and evidence in this case discloses that under the proposal the physical assets of Railway Equipment and Realty Company, Ltd. will be transferred to the new corporation, but the current assets will be retained by the Railway Equipment and Realty Company, Ltd. These current assets are as follows:

Cash	\$ 98,595.58
U. S. Treasury Notes	49,500.00
Accounts Receivable	11,002.40
Refundable Federal Income Taxes ...	60,708.98
Prepaid Expenses	13,845.42
	<u>\$ 233,652.38</u>
Advance - Key	<u>\$1,213,932.57</u>
Total	\$1,447,584.95

Exhibit No. 5 is an agreement which will be entered into between the applicants if the proposed transfer is approved, and Exhibit No. 6 is the annual report to stockholders of the Key System Transit Lines for 1953. It was the contention of the Railway Equipment and Realty Company, Ltd. that should this transfer be effected it will have no physical assets which are used by the Key System.

The witness estimated that the income of Bay Area for the first four months of 1954, if the proposed transaction is approved, would amount to approximately \$450,000, and the estimated cash expenditures to \$130,000. The income would be received from rentals of property to the Key System. At the present time Railway Equipment and Realty Company, Ltd. leases its property to Key System at a monthly rental including, among other items, an amount equivalent to one-half of one per cent of the original cost of the property so rented. Under the proposal the Bay Area Public Service Corporation would lease its property at a monthly rental including, among other things, an amount equivalent to one-half of one per cent of the depreciated book value of said property. This, in the opinion of the witness, would mean that the new corporation would receive approximately \$50,000 per month less in rentals than the Railway Equipment and Realty Company, Ltd. now receives.

The record indicates that various cities have options to purchase the properties used and useful in the operations of Key System. These options are contained in the franchises under which the Key System operates in the cities concerned. The witness for applicant stated that under these options the cities may purchase the properties at book value plus ten percent, and that if such purchases were effected the company might lose the benefit of the market value of the land. Likewise, other assets might be sold at a lower price. ✓

Further testimony disclosed that the officers and directors of the companies concerned are proposed to be as follows:

RAILWAY EQUIPMENT & REALTY COMPANY, LTD.

Directors

E. V. Anderson
Foster G. Beamsley
E. Roy Fitzgerald

E. C. Houghton
G. L. Stanley

Officers

E. C. Houghton President
G. L. Stanley Vice President
E. H. Siems Secretary and
Treasurer
E. J. Wilson Controller

KEY SYSTEM TRANSIT LINES

Directors

E. C. Houghton
Alfred J. Lundberg
R. Stuart Moore
Edward H. Siems
G. L. Stanley

Officers

E. C. Houghton Chairman of the
Board
G. L. Stanley President
Edward H. Siems Vice President
Edward H. Siems Secretary
Edward H. Siems Treasurer
E. J. Wilson Controller

BAY AREA PUBLIC SERVICE CORPORATION

Directors

Alfred J. Lundberg
E. C. Houghton
G. L. Stanley
Weller Noble
R. Stuart Moore

Officers

E. C. Houghton Chairman of the
Board
G. L. Stanley President
Edward H. Siems Vice President
Edward H. Siems Secretary
Edward H. Siems Treasurer
E. J. Wilson Controller

In this connection it was testified that all of the executives of each of the three companies will be paid by the Railway Equipment and Realty Company, Ltd., it being explained that this is necessary to enable them to be included in a pension plan now in effect. ✓

In opposition to the proposal, a stockholder of the Railway Equipment and Realty Company, Ltd. testified that the proposed transfer, in his opinion, would result in weakening the position of the preferred stock of Railway Equipment and Realty Company, Ltd. since there would be no assets back of it other than the common stock of an intermediate holding company. He had calculated that as of May 30, 1954 the accruals on the preferred stock amounted to \$26.50 per share, and that the asset value in back of each share was approximately \$356.70. In his opinion this placed the preferred stock in a favorable position which, he contended, would be disturbed if the proposed transfer were approved.

In summary, the position of the applicant is that the Railway Equipment and Realty Company, Ltd. is a Delaware corporation and therefore it is prohibited from conducting its affairs as a public utility subject to this Commission. Applicant further contends that this corporation is not subject to the jurisdiction of this Commission, and has taken that position in a pending matter before the California Supreme Court. It is proposed herein to create a new corporation, the Bay Area Public Service Corporation, which will be a California corporation and concededly a utility subject to the jurisdiction of this Commission, for the purpose of holding the properties used and useful in the operations of the Key ✓

System Transit Lines. The opposition was based upon the contention that the proposed transfer would be prejudicial to the preferred stockholders of the Railway Equipment and Realty Company, Ltd. since the assets are being transferred to a company farther away from them, and the preferred stockholders will lose any control which they now have as to the right to vote over the disposition or later transfer of the assets by the subsidiary corporation.

Under the proposal the Railway Equipment and Realty Company, Ltd. will retain current assets in the amount of \$1,447,584.95. If this transaction is to be approved, we are of the opinion that these current assets, or at least half of them, should be transferred to the Bay Area Public Service Corporation. Furthermore, it is important from a public interest standpoint that the property used and useful in the operation of Key System Transit Lines be subject to the regulatory jurisdiction of this Commission. Therefore, the ensuing order will provide that the transaction will not be approved without the acceptance by applicant of two additional conditions; first, at no time shall a majority of the Board of Directors of the Bay Area Public Service Corporation be also directors of Railway Equipment and Realty Company, Ltd.; and, second, that at no time shall the president of Bay Area Public Service Corporation be also president of Railway Equipment and Realty Company, Ltd. ✓

In exchange for the assets which it is to receive, the Bay Area Public Service Corporation proposes to issue to the Railway Equipment and Realty Company, Ltd. 57,000 shares of common stock, each share having a par value of one dollar. The total authorized shares of Bay Area Public Service Corporation are proposed to be 100,000 common shares, each having a par value of one dollar.

The findings herein are in no way intended to alter the findings previously made in Decision No. 48687, supra.

INTERIM ORDER

Application as above entitled having been filed, a public hearing having been held thereon, and the Commission being fully advised in the premises and hereby finding it to be not adverse to the public interest,

IT IS HEREBY ORDERED that after the effective date hereof, and upon acceptance of the conditions herein provided on or before

December 31, 1954, this Commission will consider the issuance of a final order authorizing the transfer by Railway Equipment and Realty Company, a Delaware corporation, to Bay Area Public Service Corporation, a California corporation, of the property set forth in Exhibit B, attached to the application, in exchange for 57,000 shares of the common stock of Bay Area Public Service Corporation, each share having a par value of one dollar. The conditions relative to this order follow:

(1) That the Railway Equipment and Realty Company, Ltd., in addition to the assets herein proposed to be transferred, also transfer to the Bay Area Public Service Corporation at least 50 percent of the current assets, which are \$1,447,584.95.

(2) That at no time shall a majority of the Board of Directors of Bay Area Public Service Corporation be also directors of Railway Equipment and Realty Company, Ltd.

(3) That at no time shall the president of Bay Area Public Service Corporation be also president of Railway Equipment and Realty Company, Ltd.

(4) That the authority granted herein shall not be deemed to be a finding of the reasonableness, for rate-fixing purposes, of any contract, agreement, or transaction entered into between Bay Area Public Service Corporation and Key System Transit Lines, or between Bay Area Public Service Corporation and Railway Equipment and Realty Company, Ltd., or the reasonableness for such purposes of any charge, payment or obligation arising out of any such contract, agreement, or transaction.

(5) That the Bay Area Public Service Corporation and the Railway Equipment and Realty Company, Ltd., prior to any consummation of the transfer herein authorized, shall file with this

Commission a satisfactory written acceptance of the conditions herein imposed.

This order shall be interlocutory in nature and shall not become final until a subsequent order of this Commission which will be issued only upon the filing by the parties hereto of satisfactory written consent to the conditions herein proposed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 5th day of OCTOBER, 1954.

John E. Mitchell
President

James F. Calmes
Kenneth Foltz

Gene Higgins

Ralph W. Kerner
Commissioners