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June 29, 2018

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Petition for Leave to File Reply and Reply – Oakland Global Rail Enterprise –
Authority to Operate A Rail Line in Oakland, CA – Petition for Exemption From 49
U.S.C. § 10901, STB Finance Docket No. 36168*

Dear Ms. Brown:

I am attaching on behalf of my client the City of Oakland a Petition for Leave to File a Reply and a Reply to the petition filed in the above-captioned proceedings.

Please do not hesitate to contact me with any questions.

Sincerely,

Charles A. Spitulnik
Counsel for the City of Oakland

cc: Kathryn Kusske Floyd, Esq.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36168

**OAKLAND GLOBAL RAIL ENTERPRISE
– AUTHORITY TO OPERATE A RAIL LINE IN OAKLAND, CA –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901**

REPLY OF THE CITY OF OAKLAND, CALIFORNIA

Communications with respect to this
document should be addressed to:

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Counsel for the City of Oakland, California

Dated: June 29, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36168

**OAKLAND GLOBAL RAIL ENTERPRISE
– AUTHORITY TO OPERATE A RAIL LINE IN OAKLAND, CA –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901**

REPLY OF THE CITY OF OAKLAND, CALIFORNIA

INTRODUCTION

The City of Oakland, California (“City”) respectfully submits this Reply to THE Petition of Oakland Global Rail Enterprise (“OGRE”) for a declaratory order in this proceeding on May 23, 2018 (“OGRE’s Petition”). The City urges the Surface Transportation Board (“Board”) to fully investigate and resolve the outstanding questions regarding the regulatory status of the trackage in question. This Board cannot fully decide on OGRE’s Petition without undertaking that review/.

BACKGROUND

OGRE’s Petition seeks an expedited decision from the Board confirming that certain rail segments described in OGRE’s Petition and depicted in the Exhibit 2 attached thereto (collectively, the “Segment”) located within the old Oakland Army Base in Oakland, California (“Army Base”) is already subject to the Board’s jurisdiction, and that therefore OGRE’s rehabilitation of the Segment does not constitute construction of a new rail line. *See* OGRE’s Petition at 1 and Exhibit 2 attached thereto. However, the City’s previous research of the

regulatory history of the Segment indicates that there may be some question regarding its regulatory status.

The Segment OGRE seeks to rehabilitate is part of the network of rail lines previously operated by the Oakland Terminal Railroad (“OTR”). In 1941 the U.S. Army took over most of the Oakland’s Outer Harbor District¹ and constructed various additional port facilities. At the suggestion of the U.S. Army, which was dissatisfied with the level of service provided by the existing switching railroad, the Oakland Terminal Railroad Company (“Terminal Company”), the Western Pacific Railroad Company (“Western Pacific”) and the Atchison, Topeka & Santa Fe Railway Company (“Santa Fe”) agreed to purchase the freight lines and trackage rights of the Terminal Company and establish a new carrier, OTR, to assume the Terminal Company’s rail carrier service. Application of Oakland Terminal Railway for Authority to Purchase Certain Properties and Acquire Trackage Rights over Certain Other Properties Owned or Used by Oakland Terminal Railroad Co., ICC Finance Docket No. 14115, 5-7, 9 (Submitted March 11, 1943) (“OTR Application”), attached hereto as Exhibit 1; Purchase Agreement between Santa Fe and Western Pacific and Oakland Terminal, Railway Equipment & Realty Company, Ltd. and Key System dated September 24, 1942 (“Purchase Agreement”) (included as “Exhibit 7-a” of OTR Application), and Oakland Terminal Railroad Company, Western Pacific, Santa Fe, CA&SF, Sacramento Northern and Santa Fe Land Improvement Company dated December 8,

¹ In the historical ICC docket regarding the application for authority to operate rail lines serving the Army Base, the Outer Harbor District is defined geographically as comprising “an area about 1 mile square bounded on the west by the waters of San Francisco Bay, on the north by the main easterly approach to the bay bridge, and on the east and south by tracks of the Southern Pacific.” *Oakland Terminal Railroad Co. Purchase, Etc.*, ICC Finance Docket No. 14115, slip op. at 3 (Decided May 26, 1943).

1942 ("Parent Agreement") (included as "Exhibit 7-b" of OTR Application), excerpts attached hereto as Exhibit 2. The intent of the arrangement was to maintain competitive services to the Army Base and the associated harbor facilities. OTR Application at 19. In 1943 OTR, the Santa Fe, and the Western Pacific sought and obtained ICC authority for OTR's acquisition and operation over the Terminal Company's lines. *Oakland Terminal Railroad Co. Purchase, Etc.*, ICC Finance Docket No. 14115 (Decided May 26, 1943), attached hereto as Exhibit 3.

The Purchase Agreement included narrative and illustrated descriptions of the specific lines over which OTR would be operating, as did the proceedings before the ICC in 1943 for authority to operate the Terminal Company's lines. See Purchase Agreement at Article II; OTR Application, at 15-17 and "Exhibit 6" (map included in excerpts attached hereto at Exhibit 1); Finance Docket 14115, slip op. at 3. OTR's application stated that:

[Terminal Company] lines to be purchased or operated over by [OTR] under trackage rights extend: (a) From a connection with the Outer Harbor District spur and lead tracks easterly parallel with the main easterly approach to the San Francisco Bay Bridge to and along Yerba Buena Avenue and 40th Street to and a short distance beyond the point of interchange with Sacramento Northern near Shafter Avenue, a distance of approximately 2.2. miles.

OTR Application at 17. OTR's application stated that "Santa Fe and Southern Pacific interchange with [Terminal Company] in the Yerba Buena Yard. Western Pacific does not connect directly with Oakland Terminal lines, but its cars destined to and from points thereon are moved in bridge switching by Southern Pacific." In addition, OTR also acquired authority for operation over a "new and more efficient route", known as the Bridge Route, between the Yerba Buena Yard and the Outer Harbor District, using a portion of the Southern Pacific's track on the easterly border of the Outer Harbor District. See *id.* The Yerba Buena Yard was a busy rail yard

utilized by the Terminal Company and Key System located along Yerba Avenue directly east of the Bay Bridge and northeast of the Oakland Outer Harbor.

In addition to the track connecting the Yerba Buena Yard and the Outer Harbor District, OTR acquired some spur track within the Outer Harbor District itself. *See* Purchase Agreement at 15-20 and “Exhibit A, Sheet 1 of 5” (also attached to OTR Application), map included in excerpts attached hereto at **Exhibit 2**.² According to the maps depicting the transaction in the Purchase Agreement, Parent Agreement, and the OTR Application, the facilities located at the West Gateway Area that will be served by the Segment were not directly accessible by lines acquired by the purchase, but were instead served by undesignated trackage that connected with a spur called the Union Construction Company Spur, which was acquired under the transaction. *See id.*

As noted in the OTR Application, OTR agreed in the Parent Agreement that it “shall continue in effect traffic relationships existing between [the Terminal Company] and all lines connecting with its tracks and shall accept, handle, place, and deliver all cars inbound and outbound, loaded and empty, without discrimination in promptness or frequency of service or otherwise as between cars destined to or received from any line connecting directly with the tracks of [OTR].” OTR Application at 21.

² The maps and other ICC records attached to this Reply were copied from the collections of the National Archives. The awkward sizing of the maps in particular made legible copying difficult. In an attempt to make more legible and to capture all of the information provided in each, the maps attached hereto in the exhibits have been photographed at several different scales.

The various acquisition and ICC documents relating to OTR's commencement of service do not indicate what shippers were served at the West Gateway Area. Other shippers located in the Outer Harbor District were described as follows:

Nine private industries in the area include nationally known packers of foodstuffs, which furnish traffic on which the transcontinental carriers obtain or, in more normal times will obtain, long hauls. While the industries along the lines to be used under trackage rights do not have competitive service, Southern Pacific cars are and will continue to be switched between Yerba Buena Yard and their plants as expeditiously as those of the parent companies. The concerns are engaged in various kinds of business, apparently related to more local needs than the export-and-import trade, but some handle nationally known products.

Finance Docket No. 14115, slip op. at 12.

The U.S. Army operated its facilities in the Oakland Outer Harbor for decades using OTR as its switching carrier. In the late 1990's the U.S. Army closed the Army Base, and in the early 2000's the City and the Port of Oakland acquired the Army Base site and initiated plans to redevelop it. Ultimately the City and the Port entered into an agreement with a developer to create a multimodal transportation logistics center. OGRE's plans to rehabilitate and use the Segment is part of this process.

ARGUMENT

A. Applicable Law: Track Subject to Board Jurisdiction vs. Private Track

Pursuant to 49 U.S.C. § 10501, the STB has exclusive jurisdiction over the construction, acquisition, operation, abandonment, and discontinuance of railroad lines that comprise the national rail network. Under 49 U.S.C. § 10906, however, the STB does not have *authority* over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks. The STB and reviewing courts have consistently read these two statutes together to mean that track covered under § 10906 is not subject to STB licensing

authority even though the STB maintains exclusive jurisdiction over § 10906 track, thus preempting state and local regulations. See, e.g., *Joseph R. Fox – Petition for Declaratory Order*, STB Finance Docket No. 35161, slip op. at 4 (Service Date May 18, 2009) (“*Fox*”), *aff’d Fox v. STB*, No. 09-9529 (10th Cir. May 24, 2010); *Port City Props. v. Union Pacific R.R. Co.*, 518 F.3d 1186, 1188 (10th Cir. 2008).

In determining whether a segment of track should be considered a rail line or spur track covered under § 10906, the STB and ICC have looked to the intended use of the track. *Swanson Rail Transfer, LP – Declaratory Order – Swanson Rail Yard Terminal*, STB Finance Docket No. 35424, slip op. at 4 (Service Date June 14, 2011) (citing *Nicholson v. I.C.C.*, 711 F.2d 364 (D.C. Cir. 1983)). Where track is used for loading, unloading, storage, or switching operations that are incidental to the movement of trains, that track is typically considered spur track, *id.*, and is not subject to the STB’s licensing authority, including its construction and abandonment procedures under 49 U.S.C. §§ 10901 and 10903, respectively. The STB has also looked to a number of indicators to determine whether a track is a “line of railroad” or a “spur,” including:

[T]he length of the track, how many shippers will be served, whether it is stub-ended, whether it was built to invade another railroad’s territory, whether the shipper is located at the end of the track (indicating that the sole purpose of the track is to reach that shipper’s facility rather than a broader market), whether there is a regularly scheduled service or not, who owns and maintains the track, etc.

New York City Economic Development Corp. – Petition for Declaratory Order, STB Finance Docket No. 34429, slip op. at 6-7 (Service Date July 15, 2004) (citations omitted).

Although the scope of the STB’s jurisdiction over railroad lines is broad, there are limitations. “Private track” is exempt from STB jurisdiction altogether, even though it may connect with the national rail network. Private track is “track that is used exclusively by the

track's owner for the movement of its own goods (either by utilizing its own equipment or by contracting for service) and for which there is no common carrier obligation to serve other shippers that might locate along the line.” *B. Willis, C.P.A., Inc. – Petition for Declaratory Order*, STB Finance Docket No. 34013, slip op. at 2 (Service Date Oct. 3, 2001) (Director of Proceedings) (“*Willis I*”), *aff’d* July 26, 2002 (Full Board). *See also Allied Erecting and Dismantling, Inc. and Allied Industrial Development Corp. – Petition for Declaratory Order – Rail Easements in Mahoning County, Ohio*, STB Docket No. FD 35316, slip op. at 7 (Service Date Sept. 17, 2015) (“Private track is ‘non-jurisdictional track that is owned, constructed, and maintained by a shipper to serve its own facility. A person operating private track makes no holding out to serve other shippers.’” *Quoting Pinelawn Cemetery – Petition for Declaratory Order*, STB Finance Docket No. 35468, slip op. at 2 n.5 (Service Date Apr. 21, 2015)).

B. The Regulatory History of the Segment Is Unclear Regarding Board Jurisdiction

The Segment is depicted in the maps associated with the 1940's OTR transaction, but it is not designated as track acquired by OTR. The only connection between the Segment and the rest of the Outer Harbor District depicted in the OTR transaction maps appears to be through a segment labeled the “Union Construction Company Spur”. *See* Purchase Agreement, “Exhibit A, Sheet 1 of 5”, attached hereto as part of **Exhibit 2**. This segment is stub-ended in the OTR transaction maps, and serves only one small portion of the Outer Harbor District. The OTR transaction documents do not indicate who constructed this track, although they generally refer to City improvements on City-owned portions of the Outer Harbor District, suggesting that the City likely constructed and owned this track.

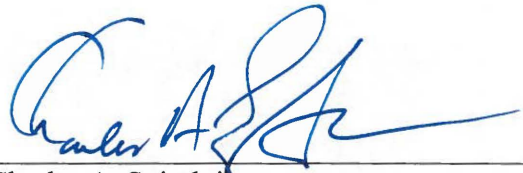
It is also unclear from the available documentation what shippers were served on the Segment, whether they moved their own goods or the goods of others, and how they moved goods on the Segment. The companies located in the Outer Harbor District at the time of the OTR transaction in 1942 appear to be shippers themselves, not transportation companies. *See* Finance Docket No. 14115, slip op. at 12. Furthermore, the U.S. Army, which took over the property, would have been a shipper, not a transportation company. Accordingly, it is possible that the previous owners and tenants of the West Gateway Area served by the Segment used the connecting track to move their own goods.

As noted above, private track is track that is used exclusively by the track's owner for the movement of its own goods. It is possible that the Segment was historically characterized as private track, although it is not entirely clear from the City's review of the historical regulatory documents. Determining this question is critical to the Board's assessment of OGRE's Petition. If the Segment is private trackage, OGRE's "rehabilitation" of this segment would constitute construction of a new line or railroad subject to separate Board regulatory processes. Failure to determine the status of the Segment could potentially lead to incorporation of new rail lines into the interstate rail network without proper Board authority.

CONCLUSION

Wherefore, the City respectfully submits this Reply and urges the Board to fully investigate and resolve the outstanding questions regarding the regulatory status of the Segment.

Respectfully submitted,



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Counsel for the City of Oakland, California

Dated: June 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing Reply to be served by first class mail, on all parties of record in this proceeding.

Kathryn Kusske Floyd
Margaret K. Fawal
Venable LLP
600 Massachusetts Ave.
Washington, D.C. 20001
(202) 344-4000
(202) 344-8300 (fax)



Charles A. Spitulnik

Dated: June 29, 2018

Exhibit 1

Excerpts of

Application of Oakland Terminal Railway for Authority to Purchase Certain Properties and
Acquire Trackage Rights over Certain Other Properties Owned or Used by Oakland Terminal
Railroad Co., Finance Docket No. 14115 (Submitted March 11, 1943)

BEFORE THE

Interstate Commerce Commission

In the Matter of the Application (1) of The Oakland Terminal Railway for Authority to Purchase Certain Properties and Acquire Trackage Rights over Certain Other Properties Owned or Used by Oakland Terminal Railroad Co., and also to Lease Certain Properties from The Atchison, Topeka and Santa Fe Railway Company, and (2) of The Atchison, Topeka and Santa Fe Railway Company and T. M. Schumacher and Sidney M. Ehrman, as Trustees of the Property of The Western Pacific Railroad Company, to Acquire Joint Control of The Oakland Terminal Railway.

Finance Docket
No.

APPLICATION.

*To the Interstate Commerce Commission,
Washington, D. C.*

Preliminary Statement.

This is an application by The Oakland Terminal Railway, hereinafter sometimes called Terminal, The Atchison, Topeka and Santa Fe Railway Company, hereinafter sometimes called Santa Fe, and T. M. Schumacher and Sidney M. Ehrman, as Trustees of the property of The Western Pacific Railroad Company, hereinafter sometimes called Western Pacific or Trustees, as applicants (joined in by Oakland Terminal Railroad Co., hereinafter sometimes called Oakland Terminal, Sacramento Northern Railway, hereinafter sometimes called Sacramento Northern, and The California, Arizona and Santa Fe Railway Company, hereinafter

sometimes called CA&SF, so far as their respective interests are concerned), for orders approving and authorizing:

(a) Terminal to purchase for \$161,000* certain portions and to acquire trackage rights over the remaining portions of the lines of railroad which have been used by Oakland Terminal in the conduct of its business as a freight switching railroad in Oakland and Emeryville, California, which are the only operations conducted by Oakland Terminal, and thereafter to operate the same as successor in interest to Oakland Terminal, which thereupon will abandon all its railroad operations;

(b) Terminal to sublease from Santa Fe and thereafter operate certain trackage which is to be conveyed to CA&SF, all of whose capital stock is owned by and all of whose property, including after-acquired property, is leased to Santa Fe; and

(c) Santa Fe and Western Pacific to acquire control of Terminal by purchase of its stock;

all pursuant to two certain agreements, one dated September 24, 1942, designated as Purchase Agreement, copy of which is hereto annexed as Exhibit 7-a, between Santa Fe and Western Pacific, as Purchasers, and Oakland Terminal, Railway Equipment & Realty Company, Ltd. and Key System, hereinafter collectively called Key Companies,** covering acquisition by Purchasers, or their nominee, of the Oakland Terminal property and trackage rights referred to in (a) above; and a second agreement, dated December 8, 1942, designated as Parent Agreement, copy of which is hereto annexed as Exhibit 7-b, between Terminal, Western Pacific, Santa Fe, CA&SF, Sacramento Northern and

*Included in the property purchased is a small steam switching locomotive now used by Oakland Terminal.

**Key System operates intrastate electric interurban passenger service over most of the lines used by Oakland Terminal in conducting its freight switching service. The stock of both these companies is owned by Railway Equipment & Realty Company, Ltd.

Santa Fe Land Improvement Company, a non-carrier company whose stock is indirectly owned by Santa Fe (hereinafter sometimes called Improvement Company), providing among other things, subject to the approval of the Interstate Commerce Commission:

(a) That Terminal shall issue \$225,000 of common capital stock and that Santa Fe and Western Pacific each shall purchase at par one-half thereof;

(b) That Terminal, as the nominee of Santa Fe and Western Pacific, shall acquire and operate all the properties covered by the Purchase Agreement;

(c) That approximately 4037 feet of trackage purchased in the name of Improvement Company, from the California Toll Bridge Authority, on which operations have been abandoned, and which, when short connections with the trackage covered by the Purchase Agreement are provided at each end, will constitute an alternate improved route to reach the Outer Harbor District of Oakland, California, shall be leased (with option to purchase) to and operated by Terminal; and

(d) That Terminal shall continue to interchange the cars of Sacramento Northern (whose stock is owned by Western Pacific), at 40th Street and Shafter Avenue, Oakland—Sacramento Northern to pay or bear certain Terminal expenses incident to such handling of its cars during the continuance of interchange thereof at said point which are in excess of expenses incurred by Terminal in handling the cars of any other railroad.

The Outer Harbor District of Oakland (see large Exhibit A map attached to the Parent Agreement, Exhibit 7-b hereto), which embraces about one square mile of land, piers and docks, is bounded on the north by the main easterly approach to the San Francisco-Oakland Bay Bridge, on the easterly and southerly sides by the Southern Pacific tracks, and on the westerly side by San Francisco Bay.

Prior to 1931 the industries in this District, many of which conducted a large export and import business, were served exclusively by Southern Pacific, but the City of Oakland, which then had constructed certain docks and tracks along the waterfront, arranged for additional and competitive railroad freight switching service by Oakland Terminal (the name of which was then Key System, Ltd.). Said Oakland Terminal constructed tracks connecting its lines along the northerly side of the District with the City and Southern Pacific trackage on which it was given the right to operate and over which it thereafter operated. The tracks constructed by Oakland Terminal in 1931, being substantially all the tracks indicated by solid red lines on said Exhibit A map, as slightly relocated, together with electrification over and upon a Southern Pacific track, indicated by dashed red lines on said Exhibit A map, cost about \$158,000 which amount was advanced in equal shares by Santa Fe and Western Pacific. They provided these funds because under the new arrangement their Outer Harbor District cars as well as those of Sacramento Northern were to be handled by Oakland Terminal as a terminal switching line instead of by Southern Pacific as theretofore. Repayment of the funds so advanced was subsequently secured by a mortgage covering the trackage constructed, which mortgage provided for application of 20% of Oakland Terminal's gross revenues from cars handled to and from the trackage covered by the mortgage first toward payment of interest and then toward payment of principal. \$133,400 of the original principal now remains unpaid.

The Army, which has taken over all except the southwesterly portion of the Outer Harbor District, including various warehouses theretofore constructed, has since January, 1941, constructed or is constructing various warehouses, transit sheds and other port facilities at a reported cost of \$40,000,000.

Oakland Terminal transports the cars interchanged between it and Sacramento Northern at 40th Street and Shafter Avenue and those interchanged between it and Santa Fe and Southern Pacific

in its Yerba Buena Yard destined to the Outer Harbor District westerly over tracks (Yellow Lines) that pass through a subway underneath Southern Pacific tracks which run in a northerly and southerly direction a short distance west of the Yerba Buena Yard. Both the lateral and vertical clearances of this subway are so restricted that cars in excess of 15' 1" in height and 10' 10" in width cannot be handled through it.

All Key System interurban passenger lines, including several lines not shown on said Exhibit A map, converge at or near the Yerba Buena Yard and thence continue westerly through the subway under the Southern Pacific tracks, on the tracks concurrently used for handling Oakland Terminal cars to and from the Outer Harbor District, thence over the San Francisco-Oakland Bay Bridge. Large war industries exist in both San Francisco and East Bay points, many of which operate twenty-four hours a day with changing shifts. Consequently such passenger lines handle heavy traffic, particularly during ordinary rush hours in the morning and evening and during the hours when shifts are changed.

In April, 1942, representatives of the Santa Fe and Western Pacific informally agreed, subject to all necessary approvals, to acquire by purchase or grant of trackage rights the freight lines of Oakland Terminal, together with a small steam switching locomotive, in consideration of a cash payment of \$27,600 to be made by Santa Fe and Western Pacific to Oakland Terminal and the release and satisfaction by them of the mortgage from Oakland Terminal heretofore referred to under which \$133,400 of the \$158,000 original principal now remains unpaid.

At the suggestion of the United States Army and approximately concurrently with the making of the informal agreement for acquisition by purchase and grant of trackage rights of the freight lines of Oakland Terminal, referred to above, Santa Fe after consulting Western Pacific purchased from the California Toll Bridge Authority, in the name of Improvement Company, a Y

viaduct and trackage thereon and westerly thereof, formerly operated in interurban electrical passenger service by Interurban Electric Railway Company, which ceased operations on July 25, 1941. The trackage on the north leg of said viaduct and westerly thereof so purchased, and connections therewith being or to be constructed at each end thereof, will constitute a new and more efficient route between Oakland Terminal's Yerba Buena Yard and the Outer Harbor District. The portion of said route so purchased is shown by blue line between points marked B and C on said Exhibit A map, and said portion so purchased together with the westerly connection thereof with existing Oakland Terminal trackage in the Outer Harbor District (between Points C and D on said Exhibit A map), is referred to in the Parent Agreement and herein as Bridge Route. Said viaduct (and approaches) was purchased for a price of \$225,000. The south leg and certain electrical equipment were sold to the United States for approximately \$60,000, and are not included in the Bridge Route, leaving a cost of approximately \$165,000 applicable to the Bridge Route. It is proposed that Santa Fe shall construct or effect a connection between Points A and B on said Exhibit A map and that the Bridge Route and said connection shall be leased to Terminal, with option to purchase.

Detailed Information.

I (a) 1. The full and correct names of applicants and their business addresses are:

The Oakland Terminal Railway, 526 Mission Street, San Francisco, California

The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, Illinois

T. M. Schumacher and Sidney M. Ehrman, as Trustees of the Property of The Western Pacific Railroad Company, 526 Mission Street, San Francisco, California

The full and correct names of the companies joining in this application, and their business addresses are:

Oakland Terminal Railroad Co., 1501 Yerba Buena Avenue, Oakland, California

Sacramento Northern Railway, 526 Mission Street, San Francisco, California

The California, Arizona and Santa Fe Railway Company, Kerckhoff Building, Los Angeles, California

I (a) 2. Terminal and Santa Fe are corporations; T. M. Schumacher and Sidney M. Ehrman are Trustees of the property of The Western Pacific Railroad Company, a corporation, duly appointed by orders of the District Court of the United States for the Northern District of California, Southern Division, in proceeding for reorganization under Section 77 of the Bankruptcy Act of The Western Pacific Railroad Company, Debtor, No. 26591-S, and such appointment was duly ratified by order of the Commission entered in Finance Docket No. 10913.

I (a) 3. Santa Fe and Western Pacific are carriers by railroad engaged in the transportation of passengers and property subject to the Interstate Commerce Act. Terminal is herein seeking authority to become a carrier by railroad.

I (a) 4. The railroad properties owned or operated by the carriers involved are situated in the States of Illinois, Iowa, Missouri, Kansas, Nebraska, Oklahoma, Colorado, New Mexico, Arizona, Utah, Nevada and California.

I (a) 5. The names, titles and business addresses of the officers to whom correspondence with respect to this application should be addressed are:

H. P. Tyler, Attorney, The Oakland Terminal Railway, 526 Mission Street, San Francisco, California

Allan P. Matthew, General Counsel for Trustees of the Property of The Western Pacific Railroad Company, Balfour Building, San Francisco, California

R. S. Outlaw, General Attorney, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, Illinois

I (a) 6. Terminal has not heretofore engaged in interstate commerce as a common carrier by railroad, but by this application and its application concurrently filed for authority to issue and sell at par to Santa Fe and Western Pacific \$225,000 of common capital stock, is now seeking authority to so engage in such commerce. Santa Fe and The Western Pacific Railroad Company each has been engaged in interstate commerce as a railroad continuously since prior to the enactment of the Transportation Act of 1920, the railroad of the latter now being operated by Trustees. Sacramento Northern Railway was authorized by the Interstate Commerce Commission to engage in interstate commerce by I.C.C. Order dated July 8, 1925, in Finance Dockets 1881 and 4690, and by I.C.C. Order dated October 15, 1928, in Finance Docket 7060.

I (b) 1. (1). Terminal was incorporated under the laws of California, December 2, 1942, and Santa Fe under the laws of Kansas, December 12, 1895.

I (b) 1. (2). The names and business addresses of Directors of Terminal are:

H. M. Ardley, 526 Mission Street,
San Francisco, California

R. J. Breton, 1001 Third Street,
San Francisco, California

Bruce McKae, 114 Sansome Street,
San Francisco, California

P. L. Wyche, 526 Mission Street,
San Francisco, California

The names and business addresses of Directors of Santa Fe are:

Warren E. Brown	200 Schweiter Bldg. Wichita, Kansas
W. Laird Dean	501 Kansas Avenue Topeka, Kansas
J. G. Harbord	5322 RCA Bldg., 30 Rockefeller Plaza, New York, N. Y.
B. L. Hupp	811 Commerce Bldg. Kansas City, Missouri
Myer Hurley	444 Elmwood Avenue Maplewood, N. J.
Thomas W. Lamont	23 Wall Street New York, N. Y.
A. H. Mellinger	212 W. Washington Street Chicago, Illinois
Wm. C. Potter	140 Broadway New York, N. Y.
R. W. Robbins	Belvidere, Kansas
E. L. Ryerson	38 S. Dearborn St. Chicago, Illinois
Myron C. Taylor	71 Broadway New York, N. Y.
Merle J. Trees	332 South Michigan Avenue Chicago, Illinois
C. J. Whipple	211 E. North Water Street Chicago, Illinois
F. G. Gurley	80 East Jackson Blvd. Chicago, Illinois
E. J. Engel	80 East Jackson Blvd. Chicago, Illinois

I (b) 1. (3). The names and business addresses of officers of Terminal are:

Bruce McKae, President	114 Sansome Street San Francisco, California
P. L. Wyche, Vice-President	526 Mission Street San Francisco, California
H. M. Ardley, Secretary	526 Mission Street San Francisco, California
Axel Rintala, Treasurer	526 Mission Street San Francisco, California
John Corven, Auditor	526 Mission Street San Francisco, California

The names and business addresses of officers of Santa Fe are:

E. J. Engel, President	80 East Jackson Blvd. Chicago, Illinois
W. K. Etter, Vice-President	80 East Jackson Blvd. Chicago, Illinois
Jas. J. Grogan, Vice-President	80 East Jackson Blvd. Chicago, Illinois
F. G. Gurley, Vice-President	80 East Jackson Blvd. Chicago, Illinois
H. B. Fink, Secretary and Treasurer	920 Jackson Street Topeka, Kansas
R. M. Hugin, Asst. Secretary and Comptroller	120 Broadway New York, N. Y.
G. L. Garver, Asst. Secretary and Transfer Agent	80 East Jackson Blvd. Chicago, Illinois
E. E. McInnis, General Counsel	80 East Jackson Blvd. Chicago, Illinois
Charles H. Woods, General Solicitor	80 East Jackson Blvd. Chicago, Illinois
W. E. Davis, General Auditor	80 East Jackson Blvd. Chicago, Illinois

I (b) 1. (4). Terminal has no stockholders, but if this application and the concurrently filed application of Terminal to issue 2250 shares of common capital stock are approved by the Commission, all of its \$225,000 common capital stock to be initially issued will be issued to and purchased by Santa Fe and Western Pacific in equal amounts, and each of them will hold 1125 shares.

The names and business addresses of ten principal stockholders of Santa Fe as of December 31, 1941, and their respective holdings were:

Name and Address	Common	Preferred
Maatschappij tot Beheer van het Administratiekantoor, opgericht door, Huberecht, Van Harencarspel & Vas Visser, N. V., Amsterdam, Holland	45,159	
Lazard Freres & Co., New York, N. Y.....	38,536	200
The Equitable Life Assurance Society of the United States, New York, N. Y.....	11,680	23,400
King & Co., New York, N. Y.....	12,597	20,696
Sigler & Co., New York, N. Y.....	17,323	15,115
Cudd & Co., New York, N. Y.....	24,261	6,378
Incorporated Investors, Boston, Mass.....	26,000	
Metropolitan Life Insurance Co., New York, N. Y.		25,000
The Prudential Life Insurance Company of America, Newark, N. J.....		24,500
Trustees of the Massachusetts Investors Trust under Declaration of Trust dated March 21, 1924, Boston, Mass.....	22,500	

I (b) 2. and I (b) 3. Not applicable.

I (b) 4. The name and address of the Court under the direction of which Trustees are acting is the District Court of the United States for the Northern District of California, Southern Division, Post Office Building, San Francisco, California.

On August 2, 1935, petition was filed in said Court by The Western Pacific Railroad Company, Debtor, for its reorganiza-

tion under Section 77 of the Federal Bankruptcy Act, proceeding No. 26591-S. By Orders of September 23, 1935 and November 9, 1935, the Court appointed T. M. Schumacher and Sidney M. Ehrman Trustees of the property of said The Western Pacific Railroad Company. Copies of said Orders are on file with the Commission in Finance Docket No. 10913. On October 30, 1935 the Commission confirmed the appointment of said Trustees. Trustees, having filed bond in the amount fixed by the Court, assumed their duties on November 13, 1935, and are vested with the title of and have full control over the properties of The Western Pacific Railroad Company, a corporation.

By Order filed January 18, 1943, the Court authorized the making and filing of this application on behalf of Trustees. Certified copy of said Order is attached to the original of this application as Exhibit 4.

I (b) 5. Not applicable.

I (b) 6. Terminal is not yet a carrier, but by this application and its concurrently filed application to issue and sell capital stock, it is seeking authority to become a carrier.

Santa Fe has been continuously engaged in interstate commerce as a carrier by railroad since 1895.

Trustees have been engaged in interstate commerce as a common carrier by railroad since their appointment in 1935, and The Western Pacific Railroad Company and its predecessor Western Pacific Railway Company were continuously engaged in interstate commerce from 1910 until the appointment of Trustees in 1935.

I (b) 7. Terminal will be controlled through stock ownership by Santa Fe and Trustees if this application and the concurrently filed application of Terminal to issue and sell capital stock are approved by the Commission. Neither Santa Fe nor Trustees is controlled by any other corporation or corporations.

I (b) 8. Until recently Santa Fe had and exercised control through ownership, direct or indirect, of substantially all of their

stock and substantially all of their bonds and other indebtedness, if any, of the 39 railroad corporations listed on page 301 of the annual report of the Santa Fe to the Commission for the year ended December 31, 1941, but pursuant to orders of the Commission dated November 24, 1942, in Finance Dockets Nos. 13956 and 13959 and its order dated November 25, 1942, in Finance Docket No. 13960, the properties of 13 of said companies have been merged with or acquired by Santa Fe; and Santa Fe has and now exercises control of the remaining 26 of said railroad corporations.

In the same manner Santa Fe has and exercises control over the following corporations which are motor carriers, subject to the Interstate Commerce Act: The Santa Fe Trail Transportation Company, Santa Fe Transportation Company (California), and Santa Fe Transportation Company (Delaware).

The measure of control or ownership now exercised by Trustees herein over other corporations subject to the Interstate Commerce Act is as set forth in Schedules 217 and 218, pages 212 to 217, of the Annual Report of said Applicant to the Interstate Commerce Commission for the year ending December 31, 1941, to which reference is hereby made.

I (b) 9. Santa Fe also owns directly or indirectly capital stock of the 31 corporations listed in the Appendix to its Annual Report to its stockholders for the year ended December 31, 1941, on file with the Commission and hereinafter referred to as Exhibit B.

Western Pacific is part of a system or group of corporations to the extent indicated in I (b) 8.

I (b) 10. There are no intercorporate relationships not hereinabove disclosed.

I (b) 11. No officer or director of Santa Fe or any company controlled by it is an officer or director of any company controlled by Trustees.

I (b) 12. As of December 31, 1941, Santa Fe had outstanding 1,241,728 shares of preferred stock of the par value of \$100 each,

held by 18,641 shareholders, and as of April 30, 1942, Santa Fe had outstanding 2,427,060 shares of common stock of the par value of \$100 each, held by 33,430 shareholders. Both classes of stock have voting rights.

Terminal has as yet no capital stock outstanding.

I (c) 1. The transactions involved in this application are:

(a) Purchase by Terminal of certain portions and acquisition by Terminal of trackage rights over the remaining portions of the lines of railroad which have been used by Oakland Terminal in the conduct of its business as a freight switching railroad in Oakland and Emeryville, California, and its operation thereof as successor in interest to Oakland Terminal, which will thereupon abandon all its railroad operations;

(b) Sublease by Terminal from Santa Fe of certain trackage; and

(c) Acquisition by Santa Fe and Western Pacific of control of Terminal by purchase of its capital stock.

I (c) 2. *Purchase Agreement.* Terminal, as nominee of Santa Fe and Western Pacific under Section 2.8 of the Purchase Agreement (Exhibit 7-a hereto), is to purchase all the right, title and interest of Key Companies in the following property:

(a) Approximately 4.2 miles of switching tracks and certain electrification of approximately 4800 feet of Southern Pacific trackage, indicated by solid red and dashed red lines on Sheet 1 of Exhibit A to the Purchase Agreement, and described in Section 2.1(a) and (b) thereof;

(b) The industrial and switching tracks indicated by solid green lines on Sheet 1 of Exhibit A to the Purchase Agreement, and described in Section 2.1(c) thereof;

(c) Approximately 1.3 miles of double track line in 40th Street, subject to trackage rights granted to Key System to conduct interurban passenger operations thereover, indicated

by orange lines on Sheet 1 of Exhibit A to the Purchase Agreement, and described in Section 1.1 thereof;

(d) Certain electrification of a Southern Pacific track approximately 67 feet long, indicated by a dashed green line on Sheet 2 of Exhibit A to the Purchase Agreement, and described in Section 1.4 thereof;

(e) Approximately 4.73 acres of land, subject to reversion in event of failure for one year to use for railroad purposes, indicated by yellow coloring on Sheets 3 and 5 of Exhibit A to the Purchase Agreement, and described in Section 1.6 thereof;

(f) A small Baldwin steam switching locomotive, and appurtenances, referred to in Section 2.5 of the Purchase Agreement.

For the above properties, Terminal, as nominee of Santa Fe and Western Pacific, is to pay \$161,000, of which \$27,600 is to be paid to Oakland Terminal, and \$133,400 is to be paid in equal shares to Santa Fe and Western Pacific, in satisfaction of the mortgage on the Oakland Terminal Outer Harbor District trackage and appurtenances constructed in 1931, as subsequently relocated, described in the Preliminary Statement hereto.

Terminal, as nominee of Santa Fe and Western Pacific, is also to acquire under the Purchase Agreement trackage rights over approximately 3.1 miles of double track lines indicated by solid yellow lines on Sheet 1 of Exhibit A to the Purchase Agreement, and also the right to use certain spur tracks aggregating approximately 4,240 feet in length in Key System's Yerba Buena Yard, indicated by dashed yellow lines on Sheet 2 of Exhibit A to the Purchase Agreement; and Terminal also is given an option, upon abandonment by Key System of use for passenger transportation of any of the foregoing solid or dashed yellow trackage, to have conveyed to it, all or any portion of such trackage in paved street areas, and to purchase at its fair and reasonable value, to be

agreed upon or determined by arbitration, all or any portion of any such trackage not in paved street areas, together with the appurtenant right of way (approximately 5.4 acres) indicated by red coloring on Sheets 2, 3, 4 and 5 of Exhibit A to the Purchase Agreement, and described in Section 1.5 thereof.

For the trackage rights over said solid yellow and dashed yellow lines Terminal is to pay or bear a user portion of operations, maintenance and other expenditures chargeable to operating expenses, and is also to pay the cost of additions and betterments made thereon for its benefit. Said lines are mostly in paved streets, and the August 1942 reproduction cost new less depreciation value thereof, including electrification, together with the appraised value of the small amount of owned right of way, as found by the Santa Fe Valuation Department, is \$520,000. No interest rental is to be paid on these lines, but Terminal's proportion of use thereof will be comparatively negligible.

Parent Agreement. The Parent Agreement, so far as material, designates Terminal as nominee of Santa Fe and Western Pacific under the Purchase Agreement, and provides for lease, with option to purchase, of the Bridge Route and connection and for operation by Terminal of the combined properties as a freight switching railroad. The lease provides for 5% interest rental on \$165,000, the cost of the Bridge Route, plus the same interest rental on additions or betterments thereto. The option to purchase may be exercised at any time during the life of the Parent Agreement when Terminal is not in default, for the amount on which it is then paying interest rental.

The Parent Agreement further provides that because Terminal will render a service in handling Sacramento Northern cars that will not be rendered in handling the cars of any other railroad, in that Sacramento Northern cars must be transported about 1.4 miles between interchange point and the Yerba Buena Yard where the cars of other roads are interchanged, Sacramento Northern shall pay or bear the cost of such extra service.

I (c) 3. There is no financial or other relationship existing at the present time between applicants and Oakland Terminal, except as hereinabove disclosed.

I (c) 4. Oakland Terminal lines to be purchased or operated over by Terminal under trackage rights extend:

(a) From a connection with the Outer Harbor District spur and lead tracks easterly parallel with the main easterly approach to the San Francisco Bay Bridge to and along Yerba Buena Avenue and 40th Street to and a short distance beyond the point of interchange with Sacramento Northern near Shafter Avenue, a distance of approximately 2.2 miles;

(b) From Oakland Terminal Yerba Buena Yard southerly along Louise and Poplar Streets to a point near 12th Street, a distance of approximately 1.4 miles;

(c) From a connection with the Poplar Street line easterly along 22nd Street to Brush Street, a distance of approximately 0.70 miles.

Santa Fe and Southern Pacific interchange with Oakland Terminal in the Yerba Buena Yard. Western Pacific does not connect directly with Oakland Terminal lines, but its cars destined to and from points thereon are moved in bridge switching by Southern Pacific. As stated above, the Bridge Route is an alternate route between the Yerba Buena Yard and Oakland Terminal spur and lead tracks in the Outer Harbor District.

I (c) 5. The properties purchased from or over which trackage or user rights are granted by Key Companies constitute all the property now used for freight transportation purposes by Oakland Terminal. The property to be leased is the Bridge Route and connection.

I (c) 6. The Commission has not found the value of any of the properties involved in the proposed transactions, and they have not been appraised for the purpose of such transactions. However, the Santa Fe Valuation Department has appraised, as

of August, 1942, the value of the lands to be conveyed by Key Companies to Terminal, using as a basis sales of similar lands in which fee title was conveyed; and has estimated the reproduction cost new less depreciation value of the trackage and appurtenances to be conveyed or leased.

Such valuation of the property in which the interest of Oakland Terminal is to be conveyed is as follows:

Industrial tracks (green) excluding turnouts from Yellow Lines but including all portions of such tracks paid for by industries.....	\$ 25,495
Other purchased tracks and appurtenances (red, dashed red, and dashed green).....	136,951
Lands (yellow) to be conveyed subject to reversion if not used for railroad purposes for one year.....	34,298
	\$196,744

No appraisal was made of the 40th Street (orange) lines because they are in paved street areas and it is estimated that upon abandonment for railroad purposes the cost of removing them from the street and restoring it to usable condition as required by the franchises under which the tracks were constructed would exceed the value of the salvage recovered by approximately \$15,000, which burden was assumed by Santa Fe and Western Pacific under the Purchase Agreement.

The August, 1942, value of the Bridge Route property to be leased, as found by the Santa Fe Valuation Department, was as follows:

Right of Way	\$ 48,990
Other fixed physical property.....	303,815
	\$352,805

No additions or betterments have been made to said property since the date of said appraisal.

I (c) 7. Not applicable.

I (c) 8. No securities are proposed to be acquired in consummating the proposed transactions except the stock of Terminal, application to issue and sell 2250 shares of which at par is concurrently filed and which has no market value. Applicants believe that upon consummation of the proposed transactions such stock will be worth par.

I (c) 9. Applicants have not agreed to assume any obligation or liability with respect to any encumbrances on the property involved in the proposed transactions.

I (c) 10. Not applicable.

I (d) 1. (1). It is submitted that the transactions covered by this application will be consistent with the public interest. All of the freight switching operations now being performed by Oakland Terminal will be carried on by Terminal, the wholly owned affiliate of Santa Fe and Western Pacific. Santa Fe and Western Pacific financed the major portion of the Oakland Terminal lines in the Outer Harbor District on which freight operations are conducted by Oakland Terminal in order to afford competitive railroad service to the Outer Harbor District in consonance with the desire of the Oakland Board of Port Commissioners that there be such competitive service in such area. The complete withdrawal of Oakland Terminal from such freight switching operations as it now conducts will not adversely affect the public interest because there will be no interruption of the service it now performs. Terminal will continue such service, and will also be able to use the Bridge Route which after connection thereof with existing Oakland Terminal rails is constructed or effected will afford a more direct and efficient route to the Outer Harbor District. The operation of such freight properties by Terminal under the control of its Parent Companies (Santa Fe and Western Pacific), both of which are familiar with railroad freight transportation problems, and will be interested in both the switching and line haul traffic, obviously should result in better service to the public.

I (d) 1. (2). In the opinion of applicants the sum of \$161,000 to be paid for the property purchased from Key Companies is the fair and reasonable commercial or sale value thereof.

While the August 1942 valuation, based on appraised value of lands and the reproduction cost new less depreciation of other property, except the switching locomotive, is approximately \$200,000, the land conveyed is subject to reversion in the event of failure to use for railroad purposes for one year. A substantial part of the green industrial tracks was paid for by the industries; the overhead electrification and track bonding, which constitutes a substantial part (\$37,561) of the reproduction cost new less depreciation value of the entire trackage, is worth little, if any, more than salvage value to Terminal because at the beginning of operations, or shortly thereafter, Terminal expects to use Diesel instead of electric power. Furthermore, the Baldwin steam switching locomotive likewise is of little value because its weight on drivers is only approximately 100,000 pounds, and its tractive effort only 23,000 pounds.

Although applicants expect the properties to be operated efficiently and economically, they do not know of any way in which present operating expenses can be reduced; and while applicants expect to increase somewhat their Outer Harbor District traffic, they have no sound basis for making any estimate with respect to increased traffic, revenue, or net earnings. Generally speaking, terminal switching lines, which have only a comparatively small amount of traffic, are not good earners, and post war prospects for the railroad business are uncertain. However, failure to carry on the freight business of Oakland Terminal would mean that the important Outer Harbor District traffic situation would revert to its prior to 1931 status of exclusive Southern Pacific service, contrary to the desires of the City of Oakland, and, applicants believe, of the Army authorities, and contrary to public interest. Santa Fe and Western Pacific expect

that Terminal may be able to operate with a small profit, and further believe that the line haul revenues which they will derive from traffic handled by Terminal will justify their investment.

I (d) 1. (3). As stated above, applicants expect that the service rendered by Terminal to the public will be an improvement over prior service, and Santa Fe, Western Pacific and Sacramento Northern, by reason of their interest in both switching and line-haul traffic, will have every incentive to do their utmost to see that good service is rendered.

I (d) 1. (4). Not applicable.

I (d) 1. (5). Terminal is attempting to negotiate an agreement with the employees of Oakland Terminal which will fully protect their interests.

I (d) 1. (6). No guaranty or assumption of payment of dividends or fixed charges is contemplated in the proposed transactions.

I (d) 2. (1). Section 3.2 of the Parent Agreement reads as follows:

“Terminal shall continue in effect traffic relationships existing between Oakland Terminal and all lines connecting with its tracks and shall accept, handle, place, and deliver all cars inbound and outbound, loaded and empty, without discrimination in promptness or frequency of service or otherwise as between cars destined to or received from any line connecting directly with the tracks of Terminal.”

Inasmuch as Southern Pacific now serves the Outer Harbor District, where most of the cars switched by Oakland Terminal originate or terminate, and since Southern Pacific also exclusively serves numerous other large industrial districts in San Francisco and East Bay cities, applicants represent that the public interest does not require but forbids inclusion of Southern Pacific in the proposed transactions.

I (d) 2. (2). If Terminal is successful in negotiating the agreement with the employees of Oakland Terminal hereinabove referred to in Section I (d) 1. (5), there will be no occasion for the Commission to impose conditions to meet the requirements of Section 5 (2) (f) of the Interstate Commerce Act.

I (d) 3. Not applicable.

II. The following exhibits are filed herewith or attached hereto and made a part hereof or, having been filed in other proceedings, are made a part hereof by reference.

(a)

EXHIBIT A. A duly certified copy of the charter or articles of incorporation and of the by-laws of Terminal are filed with the original hereof and marked Terminal Exhibits A and A-1, respectively.

A copy of the charter or articles of incorporation and of the by-laws of Santa Fe, with amendments to date, have been filed with the Commission in Finance Docket No. 13948.

A copy of the charter or articles of incorporation of Sacramento Northern, with amendments to date, has been filed with the Commission in Finance Docket No. 7124. A copy of the by-laws of Sacramento Northern, with amendments to date, has been filed with the Commission in Docket No. BMC 50663.

Copies of the Orders of Court appointing Trustees and the Order of the Commission confirming their appointment have been filed with the Commission in Finance Docket No. 10913.

EXHIBIT B. An authenticated copy of annual report of Santa Fe to its stockholders for the year 1940 was filed with and made a part of its application in Finance Docket No. 13323, and an authenticated copy of annual report of Santa Fe to its stockholders for the year 1941 was filed with and made a part of its application in Finance Docket No. 13739.

Authenticated copies of Annual Reports of Trustees to the stockholders of The Western Pacific Railroad Corporation (the latter being the sole stockholder and parent company of The Western Pacific Railroad Company), for the years 1940 and 1941 are filed with the original hereof and marked Western Pacific Exhibits B and B-1, respectively.

(b)

EXHIBIT 1-a. Authenticated copy of resolution of the Board of Directors of Terminal authorizing the proposed transactions and the making of this joint application on its behalf is attached hereto and marked Exhibit 1-a.

EXHIBIT 1-b. Authenticated copy of resolution of the Board of Directors of Santa Fe authorizing the proposed transactions and the making of this joint application on its behalf is attached hereto and marked Exhibit 1-b.

EXHIBIT 1-c. Authenticated copy of resolution of the Board of Directors of Sacramento Northern authorizing execution of the Parent Agreement on its behalf and its joining herein is attached hereto and marked Exhibit 1-c.

EXHIBIT 1-d. Authenticated copy of resolution of the Board of Directors of Oakland Terminal authorizing execution of the Purchase Agreement on its behalf and its joining herein is attached hereto and marked Exhibit 1-d.

EXHIBIT 1-e. Authenticated copy of resolution of the Board of Directors of CA&SF authorizing execution of the Parent Agreement on its behalf is attached hereto and marked Exhibit 1-e.

EXHIBIT 2. Resolutions of the Boards of Directors of Terminal and Santa Fe, designating by name and for that purpose the executive officers by whom this application is signed and verified on their behalf, are contained in Exhibits 1-a and 1-b.

EXHIBIT 3. Not applicable.

EXHIBIT 4. A certified copy of Order of the United States District Court for the Northern District of California, Southern Division, in proceeding for the reorganization of The Western Pacific Railroad Company, Debtor, No. 26591-S, filed January 18, 1943, approving execution on behalf of Trustees of the Purchase Agreement and Parent Agreement and approving the proposed transactions generally, and the making of this joint application on their behalf and designating their Agent to sign and verify this application on their behalf, is attached hereto and marked Exhibit 4.

EXHIBIT 5. Opinions of counsel of Terminal, Santa Fe, Trustees, Sacramento Northern, Oakland Terminal and CA&SF, that the proposed transactions meet the requirements of the law are attached hereto and marked Exhibits 5, 5-a, 5-b, 5-c, 5-d and 5-e, respectively.

EXHIBIT 6. A map, indicating the lines of the applicants and carriers involved in the proposed transactions, is attached hereto and marked Exhibit 6.

EXHIBIT 7. Copies of the Purchase Agreement and of the Parent Agreement are attached hereto as Exhibits 7-a and 7-b, respectively.

EXHIBIT 8. The following general balance sheet statements are attached hereto: Santa Fe, as Exhibit 8-a; Western Pacific, as Exhibit 8-b; Sacramento Northern, as Exhibit 8-c; Oakland Terminal, as Exhibit 8-d; and CA&SF, as Exhibit 8-e.

Terminal has never been an operating company and has no general balance sheet.

EXHIBIT 9. The following income and profit and loss statements are attached hereto: Santa Fe, as Exhibit 9-a; Western Pacific, as Exhibit 9-b; Sacramento Northern, as Exhibit 9-c; Oakland Terminal, as Exhibit 9-d; and CA&SF, as Exhibit 9-e.

Terminal has never been an operating company and has no income account or profit and loss account.

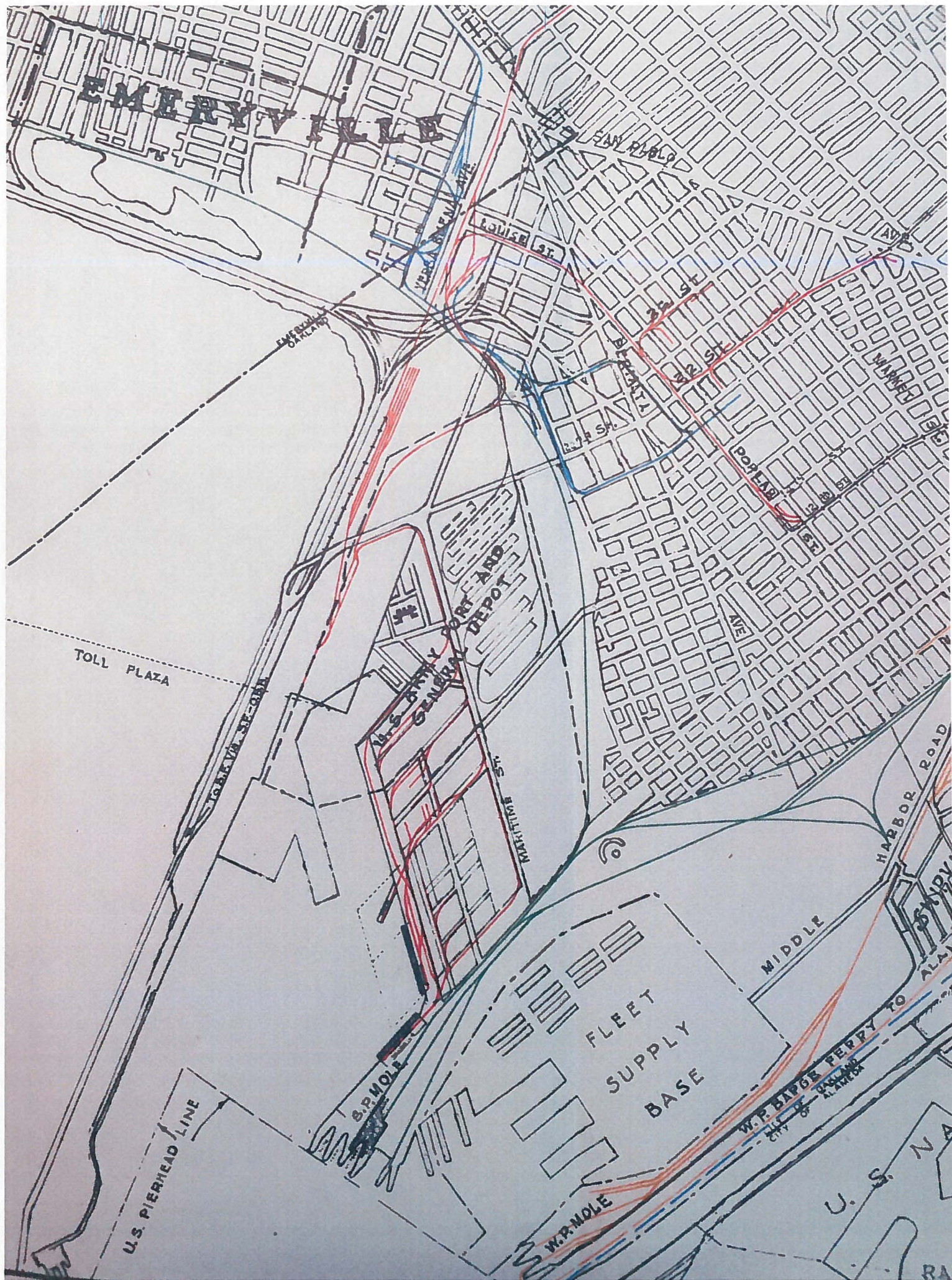




EXHIBIT 6

GENERAL OR KEY MAP on Joint Application to INTERSTATE COMMERCE COMMISSION by THE OAKLAND TERMINAL RAILWAY to acquire and operate railroad properties, and by SANTA FE and WESTERN PACIFIC to acquire control of the Oakland Terminal Railway through stock ownership

Exhibit 2

Excerpts of

Purchase Agreement between Santa Fe and Western Pacific and Oakland Terminal, Railway

Equipment & Realty Company, Ltd. and Key System dated September 24, 1942

and

Oakland Terminal Railroad Company, Western Pacific, Santa Fe, CA&SF, Sacramento Northern

and Santa Fe Land Improvement Company dated December 8, 1942

Agreement

BETWEEN

OAKLAND TERMINAL RAILROAD CO.,
RAILWAY EQUIPMENT & REALTY COMPANY, LTD.,
KEY SYSTEM,

T. M. SCHUMACHER and SIDNEY M. EHRMAN,
AS
Trustees of the Property of
THE WESTERN PACIFIC RAILROAD COMPANY, A CORPORATION,

AND

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

Purchase Agreement

Relating to the sale of freight properties and rights of
Oakland Terminal Railroad Co.

Dated, September 24, 1942

Sheet 2 of Exhibit A, thence running southwesterly along curve to the left over crossing frog owned by C. A. & S. Ry., and along S. P. Co. track a distance approximately 6 feet to the southwesterly line of the bridge highway over head structure.

1.5. *Red Lands.* The term "Red Lands" as used in this agreement shall refer to those certain strips or parcels of land in said City of Oakland and said Town of Emeryville, the locations of which are indicated by tinted red coloring on Exhibit A said strips or parcels of land being particularly described as follows:

All of those certain parcels of land situated in the City of Oakland, County of Alameda, State of California, described as follows, to-wit:

Parcel 1: Beginning at a point on the Southern line of Yerba Buena Avenue distant thereon S. 75° 37' W. 35.30 feet from the intersection thereof with the Western line of Hollis Street; running thence along said line of Yerba Buena Avenue, S. 75° 37' W. 465.70 feet; thence S. 14° 23' E. 51.14 feet to a point on the arc of a circle having a radius of 598.69 feet, the center of which bears S. 23° 37' 40" W. 598.69 feet distant (the center of said circle is also distant S. 31° 44' 30" W. 754.22 feet from the point of intersection of the Southern line of Yerba Buena Avenue with the Western line of Louise Street); thence Northwesterly along the arc of said circle having a radius of 598.69 feet a distance of 92.33 feet to the Southern line of Yerba Buena Avenue at a point distant along said line of Yerba Buena Avenue S. 75° 37' W. 251.83 feet from the said Western line of Louise Street; thence along said line of Yerba Buena Avenue, S. 75° 37' W. 125.11 feet to a point on the arc of a circle having a radius of 548.69 feet, the center of which bears S. 3° 18' 30" W. 548.69 feet distant (the center of which said circle is also the center of the circle first herein mentioned); thence south-

easterly along the arc of said circle having a radius of 548.69 feet a distance of 225.56 feet; thence S. 60° 22' W. 347.33 feet; thence southwesterly along the arc of a circle to the right having a radius of 563.70 feet and tangent to the last mentioned course, a distance of 93.14 feet; thence S. 69° 50' W. and tangent to the last mentioned arc a distance of 51.42 feet; thence S. 75° 37' W. 227.10 feet; thence westerly along the arc of a circle to the right having a radius of 200.00 feet and tangent to the last mentioned course a distance of 33.28 feet; thence S. 85° 09' W. and tangent to the last mentioned arc, a distance of 346.50 feet; thence N. 62° 20' E. 63.16 feet; thence N. 54° 10' E. 407.62 feet to a point on the said southern line of Yerba Buena Avenue distant thereon S. 75° 37' W. 820.70 feet from the said Western line of Louise Street; thence along said line of Yerba Buena Avenue S. 75° 37' W. 83.40 feet; thence S. 54° 10' W. 473.40 feet to a point on the northeastern line of the San Francisco-Oakland Bay Bridge Approach as the same is described in "Parcel IV" in the deed from Wells Fargo Bank & Union Trust Co., a corporation, et al., to State of California, dated June 11, 1935, and recorded August 17, 1935, in Book 3194 of Official Records of Alameda County, page 342; thence along said last named line S. 59° 19' E. 28.80 feet to a point on the arc of a circle having a radius of 250.00 feet the center of which bears S. 27° 31' E. 250.00 feet distant; thence easterly along the arc of said circle having a radius of 250.00 feet a distance of 137.44 feet; thence easterly along the arc of a reverse circle to the left having a radius of 680.00 feet and tangent to the last mentioned arc, a distance of 104.84 feet; thence N. 85° 09' E. and tangent to the last mentioned arc, a distance of 665.00 feet; thence N. 4° 51' W. 20.00 feet; thence N. 89° 44' W. 100.82 feet; thence N. 75° 37' E. 477.80 feet to a point on the arc of a circle having a radius of 548.69 feet, the center of which bears S. 50° 32' W. 548.69 feet distant (the center of which said circle is also the center of the circle

first herein mentioned); thence southeasterly along the arc of said circle having a radius of 548.69 feet a distance of 151.19 feet to a point on the Northern line of that certain parcel of land described as "Parcel V" in the deed to the State of California hereinabove mentioned; thence along said last named line N. 72° 10' 40" E. 2.22 feet to a point on the said western line of Louise Street; thence along said last named line N. 14° 23' W. 161.97 feet to a point on the arc of a circle having a radius of 598.69 feet, the center of which circle bears S. 50° 51' 45" W. 398.69 feet distant (the center of said circle is also the center of the circle first herein mentioned); thence northwesterly along the arc of said circle having a radius of 598.69 feet a distance of 197.56 feet; thence N. 60° 22' E. 415.91 feet to the point of beginning.

Excepting therefrom the following described parcel of land:

Beginning at a point on the arc of a circle having a radius of 548.69 feet, the center of which bears S. 43° 08' W. 548.69 feet distant, the center of which said circle is distant S. 31° 44' 30" W. 754.22 feet from the point of intersection of the Southern line of Yerba Buena Avenue with the Western line of Louise Street (the bearing of the Southern line of Yerba Buena Avenue being assumed as S. 75° 37' W. for the purposes of this description); running thence southeasterly along the arc of said circle having a radius of 548.69 feet a distance of 17.07 feet; thence S. 75° 37' W. 469.00 feet; thence N. 14° 23' W. 14.50 feet; thence N. 75° 37' E. 460.06 feet to the point of beginning.

Parcel 2: Beginning at a point on the Western line of Union Street, distant thereon North 15° 56' East 42 feet from the intersection thereof with the Northern line of 22nd Street; running thence along said Western line of Union Street North 15° 56' East 56.98 feet; thence Northwesterly along the arc of a curve to the right, the radius of which is 473 feet and the chord of which bears North 29° 29' West

an arc distance of 236.82 feet to a point on the Southern boundary line of Lot 6, in Block V, as said lot and block are shown and so designated on that certain map entitled, "Map of Survey of Northern Extension of Oakland", filed November 6th, 1867, in the office of the Recorder of Alameda County, California, distant thereon Westerly 51.94 feet from the Southeast corner thereof; thence along the said Southern boundary line of said Lot 6 North 74° 4' West 57.28 feet; thence Southeasterly along the arc of a curve to the left, the radius of which is 523 feet and the chord of which bears South 29° 18' East, an arc distance of 320.15 feet to the place of commencement.

Parcel 3: Commencing at a point on the Eastern line of Poplar Street, distant thereon North 15° 56' East 11.36 feet from its intersection with the Southern boundary line of Lot 6, in Block V, as said street, lot and block are delineated and so designated on that certain map entitled, "Map of Survey of Northern Extension of Oakland", filed November 6th, 1867, in the office of the Recorder of Alameda County, California, and running thence along the said Easterly line of Poplar Street North 15° 56' East 165.91 feet; thence Southeasterly along the arc of a curve to the left, the radius of which is 473 feet and the chord of which bears South 3° 39' East, an arc distance of 189.42 feet to the aforesaid Southern line of Lot 6; thence along the said line of Lot 6, North 74° 4' West 57.28 feet; thence Northwesterly along the arc of a curve to the right, the radius of which is 523 feet and the chord of which bears North 11° 1' West, an arc distance of 12.74 feet to the place of commencement.

Being a portion of Lots 6, 7, 8, 9, of Block V, as shown on the aforesaid map.

Parcel 4: Beginning at the point of intersection of the Northern line of 22nd Street with the Western line of Magnolia Street, as said streets are delineated and so designated

on that certain map entitled, "Map of Adeline Street Lots", filed November 29th, 1875, in Book 5 of Maps, page 3, in the office of the County Recorder of Alameda County; running thence along the said Northern line of 22nd Street North 74° 04' West 214.28 feet; thence Northwesterly along the arc of a curve to the right having a radius of 523 feet, the chord of which bears North 57° 11' West, an arc distance of 54.59 feet to a point on the Eastern line of Union Street, as said street is shown on said map; thence along the said line of Union Street North 15° 56' East 53.58 feet; thence Southeasterly along the arc of a curve to the left having a radius of 473 feet the chord of which bears South 58° 52' East an arc distance of 114.31 feet; thence Southeasterly along the arc of a compound curve to the left, the radius of which is 640 feet and the chord of which bears South 68° 14' East, an arc distance of 54.71 feet; thence on a tangent to the last said curve, South 70° 41' East 102.15 feet to a point on the said Western line of Magnolia Street; thence along the said line of Magnolia Street South 15° 56' West 27.99 feet to the point of beginning.

Being a portion of Lots 1, 2, 3, 4, 5, 42, 43, 44, 45 and 46 in Block 630, as shown on the aforesaid map.

Parcel 5: Beginning at the point of intersection of the Northern line of 22nd Street with the Western line of Adeline Street, as said streets are shown on the map entitled, "Map of Adeline Street Lots", filed November 29, 1875 in Book 5 of Maps, page 3, in the office of the County Recorder of Alameda County; running thence along said Northern line of 22nd Street North 74° 04' West 256.50 feet to the Eastern line of Magnolia Street, as said street is shown on aforesaid map; thence along said Eastern line of Magnolia Street North 15° 56' East 24.45 feet; thence South 70° 41' East 256.93 feet to the said Western line of Adeline Street; thence along said line of Adeline Street South 15° 56' West 9.33 feet to the point of beginning.

Being a portion of Lots 1, 5, 42, 43, 44, 45 and 46 in Block 631, as shown on the aforesaid map.

Parcel 6: That certain piece or parcel of land shown outlined in green upon Exhibit A entitled, "Map showing Portion of S. F. O. B. B. Alinement and East Bay approach, Alameda County, April, 1935", attached to that certain agreement by and between Wells Fargo Bank & Union Trust Co., et al., and State of California, dated May 31, 1935, and recorded June 12, 1935 in Book 3197 of Official Records of Alameda County, at page 154, and described therein as follows:

Being a parcel of land comprising a portion of Block 33, as said block is delineated and so designated on that certain map entitled, "Map of part of Plot 6, Kellersbergers Survey of Vicente & Domingo Peralta Rancho", filed March 1, 1889 in Book 19 of Maps, at page 68, Alameda County Records, and a portion of Lot 21 in Section 22, Township 1 South, Range 4 West, Mount Diablo Base and Meridian, as said lot is delineated and so designated upon that certain map entitled, "Map No. 4 of Salt Marsh and Tide Lands situate in the County of Alameda, State of California", certified copies of which are on file with the Surveyor General of the State of California, and with the County Recorder of the City and County of San Francisco, said parcel being more particularly described as follows, to-wit:

Commencing at the point of intersection of the center line of the present Key System subway with a curve concentric with and forty-three feet southwesterly measured radially from the "MS" line of the survey for the location of the state highway designated as Road IV Alameda County San Francisco-Oakland Bay Bridge approach, said point of commencement being distant south 80° 47' east seven hundred fifty-one and 0/10 feet from a concrete monument known as Sewer Monument No. 1 and south 16° 05' west forty-three

feet from Station "MS" 384+71.9 P. O. C. of said highway survey; thence from said point of commencement from a tangent bearing south $73^{\circ} 55'$ east along said concentric curve to the right with a radius of nine hundred and fifty-seven feet, a distance of thirty-three and $6/10$ feet, more or less, to a point on a line two feet clear of the southerly wall and footing of said Key System subway; thence along said clearance line, north $76^{\circ} 06'$ east four hundred and thirteen feet, more or less, south $14^{\circ} 23'$ east two and $3/10$ feet, more or less, and north $75^{\circ} 37'$ east five feet, more or less, to a point on the westerly right of way line of the Southern Pacific Railroad Company; thence along said westerly line, northerly forty-nine and $7/10$ feet, more or less, to a point on a line two feet clear of the northerly wall and footing of said subway; thence along said clearance line south $75^{\circ} 37'$ west nine feet, more or less, south $14^{\circ} 23'$ east two and $3/10$ feet, more or less, and south $75^{\circ} 08'$ west four hundred and eighty-four feet, more or less, to a point on said curve concentric with and forty-three feet southwesterly measured radially from the "MS" line of said highway survey; thence southeasterly along said concentric curve to the right with a radius of nine hundred and fifty-seven feet, a distance of thirty-four and $3/10$ feet, more or less, to the point of commencement.

Parcel 7: A strip or parcel of land 31.25 feet in width lying 17.00 feet Northerly (measured at right angles) and 14.25 feet Southerly (measured at right angles) of the following described line:

Beginning at a point on a line drawn parallel with and 51.00 feet Northerly, measured at right angles, from the Southerly line of Yerba Buena Avenue produced Westerly, where said parallel line intersects the Southwestern line of the San Francisco-Oakland Bay Bridge Approach, as said Southwestern line is described in the easement and right of way granted by Wells Fargo Bank & Union Trust Co., et al.,

to State of California in agreement dated May 31, 1935 and recorded June 12, 1935 in Book 3197 of Official Records of Alameda County, at page 154 (said easement and right of way being outlined in green upon Exhibit A attached to and made a part of said agreement); running thence along said parallel line so drawn South $75^{\circ} 37'$ West 890.55 feet. The Northern and Southern lines of said strip or parcel of land being shortened or lengthened so as to intersect the said Southwestern line of said Bridge Approach.

Parcel 8: All that lot of land situated in the Town of Emeryville, County of Alameda, State of California, and described as follows, to-wit:

Beginning at a point on the easterly line of San Pablo Avenue, distant thereon north $14^{\circ} 19' 30''$ west 225.00 feet from the intersection thereof with the western line of Adeline Street, as said avenue and street are shown on the map entitled "Kimball Tract, Oakland, Alameda Co., Cal.", filed May 9, 1870, in Book 5 of Maps, page 23, in the office of the County Recorder of Alameda County; running thence along said line of San Pablo Avenue north $14^{\circ} 19' 30''$ west 59.60 feet to the Southern line of that certain parcel of land described in the deed from Syndicate Properties Co., Ltd., a corporation, to Railway Equipment & Realty Company, Ltd., a corporation, dated June 1, 1937, and recorded March 26, 1938, in Book 3590 of Official Records, page 388; thence north $72^{\circ} 20' 30''$ East 177.87 feet, more or less, to the said western line of Adeline Street; thence along said last named line south $16^{\circ} 43' 30''$ west 72.10 feet to the intersection thereof with the southern line of Lot 4, as said Lot 4 is shown on said map; thence along said last named line south $72^{\circ} 20' 30''$ west 141 feet to the point of beginning.

Being all of Lots 4 and 5 and a portion of Lots 6 and 13, as shown on the aforesaid map.

1.6. *Yellow Lands:* The term "Yellow Lands" as used in this agreement shall refer to those certain strips or parcels of land in said City of Oakland, the locations of which are indicated by tinted yellow coloring on Exhibit A, said strips or parcels of land being particularly described as follows:

Parcel 1: Beginning at the point of intersection of the Southern line of 26th Street, with the Eastern line of Union Street; running thence Southerly along said line of Union Street 180 feet; thence easterly and parallel with said line of 26th Street 112.25 feet; thence northerly and parallel with said line of Union Street 180 feet to said southern line of 26th Street; thence westerly along the last named line 112.25 feet to the point of beginning.

Parcel 2: Beginning at the intersection of the southern line of 26th Street with the eastern line of Poplar Street, formerly Louise Street, as said 26th Street and said Louise Street are shown on the map hereinafter referred to; running thence easterly along said line of 26th Street 75 feet; thence southwesterly along the arc of a curve concave to the south-east and with a radius of 179.9 feet to a point on said eastern line of Poplar Street, formerly Louise Street, distant thereon southerly measured along said last named line 69.9 feet from the point of beginning; thence northerly along said eastern line of Poplar Street, formerly Louise Street, 69.9 feet to the point of beginning.

Being a portion of Lots 9 and 10 in Block "P", as said lots and block are delineated and so designated upon the Plat entitled, "Map of Survey of Northern Extension of Oakland, as surveyed by W. F. Boardman", filed November 6, 1867, in Liber 3 of Maps, page 34, in the office of the County Recorder of Alameda County.

Parcel 3: Beginning at a point on the Northeastern Charter Line of the City of Oakland as of 1902, distant thereon South 68° 43' 39" East 331.39 feet from the point of intersection

thereof with a line drawn parallel to and 21 feet Northerly (measured at right angles) from the Westerly prolongation of the Northern line of Yerba Buena Avenue; running thence North 71° 08' 51" East 1271.88 feet; thence North 74° 59' 44" East 112.77 feet; thence North 14° 23' West 0.63 feet to a point on a line drawn parallel to and 93.25 feet Southerly (measured at right angles) from the Westerly prolongation of the said Northern line of Yerba Buena Avenue; thence along said last mentioned parallel line North 75° 37' East 2081.40 feet to a point on the Southwestern line of the San Francisco-Oakland Bay Bridge Approach, as said Southwestern line is described in the easement and right of way granted by Wells Fargo Bank & Union Trust Co., et al., to State of California in agreement dated May 31, 1935 and recorded June 12, 1935 in Book 3197 of Official Records of Alameda County, at page 154 (said easement and right of way being outlined in green upon Exhibit A attached to and made a part of said agreement); thence along said Southwestern line as described in said agreement, and along the Southwestern line of said Bay Bridge Approach as described in "Parcel 11" in the deed from Wells Fargo Bank & Union Trust Co., a corporation, et al., to State of California dated June 11, 1935 and recorded August 17, 1935, in Book 3194 of Official Records of Alameda County, at page 342, Easterly along the arc of a curve to the right having a radius of 957.00 feet, a distance of 113.86 feet to the intersection of said last line as described in said "Parcel 11" with a line drawn parallel to and distant 159.25 feet Southerly (measured at right angles) from the Westerly prolongation of said Northern line of Yerba Buena Avenue; thence along said last mentioned parallel line South 75° 37' West 2786.76 feet to a point on a line drawn parallel to and distant 25 feet Southeasterly (measured at right angles) from the first course herein mentioned as "North 71° 08' 51" East"; thence along said last named parallel line South 71° 08' 51" West 743.58 feet to the

said Northeastern Charter line; thence along said last named line North $63^{\circ} 45' 59''$ West 35.30 feet to the point of beginning.

ARTICLE II.

IN CONSIDERATION of the covenants of Purchasing Companies hereinafter contained, Oakland Terminal agrees:

2.1. To convey, or cause to be conveyed, to Purchasing Companies, all right, title, and interest of first party and second parties in and to the following properties and rights:

(a) That certain railroad trackage, including turnouts, poles, overhead wires, and all other appurtenances thereto, in said City of Oakland, the location of which is indicated by solid red lines on Exhibit A, said trackage being generally described as follows:

That certain trackage aggregating approximately 9223 feet in length located upon the land described as Parcel 3 in Section 1.6 of this agreement, and connection of said trackage with portion of Yellow Lines upon private property westerly of westerly right of way line of Southern Pacific; also

That certain trackage aggregating approximately 5580 feet in length located upon the 1,000 foot strip of land described in Ordinance 3099 of the City of Oakland, approved July 7, 1910, said trackage beginning at connection with trackage last above described at a point on the Oakland Charter Line of 1862 distant northwesterly thereon approximately 1332.5 feet from the most easterly corner of said 1,000 foot strip; thence running westerly approximately 2690 feet to point of ending; also, beginning at point of switch on last described track approximately 1500 feet easterly thereon from said point of ending, thence running easterly and southeasterly a distance of approximately 2,040 feet to a point on the southerly line of said 1,000 foot strip distant thereon approximately 400 feet from said most easterly corner thereof; also

That certain main lead track beginning at connection with trackage last hereinabove described at point on southerly boundary of said 1,000 foot strip of land distant thereon approximately 400 feet from said most easterly corner thereof, thence running southerly along a curve to the right to a point approximately 20 feet northwesterly from the northwesterly line of Maritime Street, thence running southwesterly parallel to said Maritime Street a distance of approximately 3550 feet to connection with Southern Pacific track; also

The following spur tracks built from said main lead track: that certain spur track approximately 378 feet in length known as the Union Construction Company spur; that certain spur track approximately 1471 feet in length known as the 14th Street Dock spur; that certain spur track approximately 567 feet in length known as Warehouse "B" spur; and that certain spur track approximately 785 feet in length known as Warehouse "A" lead track; also

That certain spur track built from Southern Pacific track in Pier Street approximately 583 feet in length known as Warehouse "A" spur.

Exhibit A shows the trackage referred to in this subparagraph (a) as the same was located prior to the institution of condemnation proceedings by the United States of America in the United States District Court for the Northern District of California, Southern Division, in cases numbered 21930-L and 22084-S. Conveyance to be made pursuant to this subparagraph shall include all right, title, and interest of Oakland Terminal in said trackage on the day next preceding the institution of the first of the two above numbered proceedings, and if Oakland Terminal has or shall have sold or disposed of any portion of said trackage pursuant to condemnation proceedings, or otherwise, from said day to the date of conveyance pursuant to this subparagraph, then Oakland Terminal shall account for, pay over,

or assign to Purchasing Companies any moneys which Oakland Terminal may have received or be entitled to receive therefor.

(b) That certain overhead electrification and track bonding of certain Southern Pacific tracks in said City of Oakland, the location of which tracks is indicated by dashed red lines on Exhibit A, said tracks being generally described as follows:

Beginning at the end of the main lead track hereinabove in this Section 2.1 described, thence southwesterly parallel to and distant approximately 20 feet northwesterly from the northwesterly line of Maritime Street a distance of approximately 1975 feet; thence along approximately a 20° curve to the right approximately 288 feet; thence westerly parallel to and approximately 300 feet distant northerly from the northerly line of 7th Street a distance of 1468 feet to end of overhead electrification; also

Beginning at a point on the last above described track and distant thereon 2083.3 feet from its beginning; thence southwesterly through a No. 7 turnout to the left and corresponding reverse curve to a parallel line to the last above described track; thence westerly parallel to and approximately 18 feet southerly from said last described track; thence along a curve to the right and a No. 7 turnout to the left to a point of switch on said last described track, a total distance of approximately 1096 feet.

(c) Those portions of those certain industrial spur tracks beyond heels of frogs of turnouts from Yellow Lines including turnouts (except from Yellow Lines), poles, overhead wires, and other appurtenances thereto, in said City of Oakland, the locations of which are indicated by solid green lines on Exhibit A, said tracks being generally described as follows:

West Coast Soap Company Spurs:

Beginning at a point on the westerly track of the Poplar Street Line distant approximately 230 feet southerly from the

southerly line of 26th Street; thence northwesterly through a turnout to the left and a turnout to the right approximately 130 feet to a point distant 8.5 feet easterly from the westerly line of Poplar Street and 105 feet southerly from the southerly line of 26th Street.

Also, beginning at a point on the southerly line of 26th Street distant 8.5 feet easterly from the westerly line of Poplar Street; thence southerly parallel to said westerly line of Poplar Street approximately 264 feet.

Golden State Company Spurs:

Beginning at a point on the westerly track of the Poplar Street Line distant thereon approximately 162 feet southerly from the southerly line of 26th Street; thence along a 30° curve to the right (except crossing of easterly track of Poplar Street line) into 26th Street; thence easterly along 26th Street to the westerly line of Chestnut Street; thence easterly into private property, a total distance of approximately 1675 feet to a point at or near the westerly line of Linden Street.

Also, beginning at a point in the last above described track distant 8 feet easterly thereon from the easterly line of Chestnut Street; thence westerly across Chestnut Street and into private property a distance of approximately 195 feet.

Team Track and Industrial Spur:

Beginning at a point in the first above described track of the Golden State Company spurs distant thereon approximately 6 feet westerly from the westerly line of Union Street; thence southeasterly and southerly along a 30° curve to the right and a tangent parallel to said Union Street a total distance of 580.5 feet.

Laker Spring and Tire Corporation Spur:

Beginning at a point in first above described track of the Golden State Company spurs distant thereon easterly approximately 53 feet from the easterly line of Union Street; thence northeasterly along a 30° curve to the left and a tangent into private property a total distance of 216.7 feet.

Kraft Cheese Company Spur:

Beginning at a point on the first above described track of the Golden State Company spurs distant thereon approximately 16 feet easterly from the easterly line of Magnolia Street; thence northeasterly and easterly along the northerly portion of 26th Street a distance of 233.5 feet.

East Bay Municipal Utility District Spur:

Beginning at a point in the southerly track of the 22nd Street Line, distant thereon approximately 115 feet easterly from the easterly line of Magnolia Street; thence westerly, southwesterly and southerly along a 100 foot radius curve to the left and a tangent a distance of 554.0 feet.

Sprouse-Reitz Company Spur:

Beginning at a point in the northerly track of the 22nd Street Line, distant thereon approximately 75 feet westerly from the westerly line of Adeline Street; thence northeasterly and easterly into private property a distance of 310 feet.

Union Ice Company Spur:

Beginning at a point in the northerly track of the 22nd Street Line, distant thereon approximately 40 feet westerly from the westerly line of Filbert Street; thence northeasterly and easterly into private property a distance of 180 feet.

The Republic Supply Company Spur:

Beginning at a point in the northerly track of the 22nd Street Line, distant thereon approximately 53 feet westerly from the westerly line of Myrtle Street; thence northeasterly and easterly into private property a distance of 303 feet.

Bekins Storage Spur:

Beginning at a point in the northerly track of the 22nd Street Line, distant thereon approximately 80 feet westerly from the westerly line of Brush Street; thence southeasterly and southerly into private property a distance of 374 feet.

H. J. Heinz Corporation Spur:

Beginning at a point in the easterly track of the Poplar Street Line distant thereon approximately 210 feet southerly from the southerly line of 16th Street; thence southeasterly and southerly into private property a distance of 250 feet.

Shredded Wheat Company Spurs and Crossover:

Spur No. 1

Beginning at a point in the easterly track of the Poplar Street Line at or near the southerly line of 14th Street; thence southerly and southeasterly into private property along a curve to the left a distance of 547.3 feet.

Spur No. 2

Beginning at a point in the easterly track of the Poplar Street Line, distant thereon approximately 79 feet southerly from the southerly line of 14th Street; thence southerly and southeasterly along a curve to the left into private property a distance of 480.8 feet.

Spur No. 3

Beginning at a point in the above described Spur No. 1, distant thereon approximately 246.5 feet southerly from its

point of beginning; thence northwesterly and northerly parallel to the easterly line of Poplar Street upon private property a distance of approximately 243 feet.

Crossover:

Beginning at a point in the above described Spur No. 1, distant thereon southerly approximately 257.6 feet from its point of beginning; thence to the right and southerly upon private property a distance of approximately 145 feet to a point in above described Spur No. 2 distant thereon southerly approximately 329 feet from its point of beginning.

(d) The Orange Lines, subject to the right of Key System (which right is hereby granted by Oakland Terminal to Key System) to use the same for the purpose of conducting thereon the business of transporting passengers and for purposes incidental thereto; provided, however, the rights herein granted to Key System shall expire upon abandonment by Key System of passenger operations upon the Orange Lines.

(e) The Connecting Track Electrification, subject to the right of Key System (which right is hereby granted by Oakland Terminal to Key System) to use the same for purposes incidental to its passenger transportation business; provided, however, that the rights herein granted to Key System shall expire upon abandonment by Key System of operations on the tracks over which such Connecting Track Electrification is located.

(f) The Yellow Lands, free and clear of the lien of the indenture dated March 1, 1937, from Realty Company to American Trust Company, Trustee, but subject to the condition that in the event Purchasing Companies shall not, for a continuous period of one year, use any of said parcels for any railroad purpose, then the estate of Purchasing Companies in any such parcel or parcels not so used shall revert to Realty Company, its successors and assigns.

2.2. To grant, or cause to be granted, to Purchasing Companies trackage rights for freight operations upon the Yellow Lines, together with the right to construct therefrom such spurs, cross-overs, and other tracks, including poles, overhead wires and other appurtenances thereto, as shall not unreasonably interfere with the use thereof by Key System for the purpose of conducting thereon the business of transporting passengers and for purposes incidental thereto, subject to the right of Key System (which right, in so far as its properties are concerned, is hereby granted by Oakland Terminal to Key System) to use the Yellow Lines for the purpose of conducting thereon the business of transporting passengers and for purposes incidental thereto; provided, however, that in the event of abandonment of passenger service thereon, the grant to Purchasing Companies provided for in this Section 2.2 shall expire as to any part of the Yellow Lines in which Purchasing Companies shall fail to acquire rights pursuant to Section 2.7 of this agreement.

2.3. To obtain the consent of the owner thereof to the use by Purchasing Companies of the Dashed Yellow Tracks solely for freight operations so long as they shall also be used for passenger service or purposes incidental thereto and thereafter until Purchasing Companies shall have elected to acquire any of the Dashed Yellow Tracks, or the expiration of the period provided in Section 2.7 hereof within which they are permitted to exercise such election.

2.4. To obtain the consent of the owners of the Red Lands to the use thereof by Purchasing Companies in the exercise of the trackage rights provided for in Sections 2.2 and 2.3 hereof, and to obtain the grant by such owners to Purchasing Companies of the option to purchase the Red Lands pursuant to the provisions of Section 2.7 of this agreement.

2.5. To convey, or cause to be conveyed, to Purchasing Companies that certain Baldwin steam locomotive of Oakland Terminal numbered "4", and tools, rerailling frogs, all other appurte-

nances thereto, and all repair parts therefor now owned by first party or second parties. Said conveyance shall be made free and clear of all liens and encumbrances except current taxes which shall be prorated as hereinafter in Section 5.2 provided.

2.6. To assign to Purchasing Companies all of its right, title, and interest in and to the following:

(a) Agreement dated the 1st day of April, 1939, between the City of Oakland, Oakland Terminal and Southern Pacific Company, relating to the joint use of certain tracks in the area of the Outer Harbor of the City of Oakland, County of Alameda, State of California, made pursuant to Resolution No. 1928 of the Board of Port Commissioners—City of Oakland, passed on December 15, 1930.

(b) Agreement dated the 30th day of August, 1939, between Southern Pacific Company and Oakland Terminal supplemental to the contract referred to in subparagraph (a) of this Section 2.6, relating to the reciprocal use by each party of certain trackage of the other party in the area of the Outer Harbor of said City of Oakland.

(c) So much of the easement granted by the indenture dated the 1st day of June, 1938, whereby Key System granted to Oakland Terminal the right to construct, maintain, operate, repair, renew, and replace tracks upon certain lands in the City of Oakland, as constitutes a right of way for any of the trackage referred to in subparagraph (a) of Section 2.1 hereof.

(d) Resolution No. 1928, of the Board of Port Commissioners of the City of Oakland, approved December 15, 1930, providing for the granting of revocable permits to railroad companies for the purpose of carrying on switching operations in the area of the Outer Harbor and authorizing the execution of agreements therefor.

(e) Resolution No. 5204 N. S., of the Council of the City of Oakland, passed April 11th, 1913, granting to the

San Francisco-Oakland Terminal Railway permission to construct and maintain a spur track in Twenty-sixth Street from Poplar Street to Linden Street.

(f) All agreements relating to the industrial spur tracks described in Section 2.1 (c) hereof and all other agreements to which Oakland Terminal is a party or successor in interest which are necessary for the conduct by Purchasing Companies of freight operations upon the properties referred to in this agreement; provided, however, that Oakland Terminal shall not be required hereunder to assign any agreement if such assignment would prejudice or interfere with the passenger operating rights of Key System; and provided, further, that Purchasing Companies shall have the right to decline to accept the assignment of any such other agreements.

2.7. (a) In the event of the abandonment by Key System of the use of any part of the Yellow Lines, Red Lands, or Dashed Yellow Tracks for passenger service and purposes incidental thereto, Oakland Terminal agrees promptly to notify Purchasing Companies in writing of the fact and extent of such abandonment; and after any such abandonment, upon written request of Purchasing Companies to be delivered within sixty (60) days after receipt of notice above referred to, Oakland Terminal agrees to convey, or cause to be conveyed, to Purchasing Companies, all right, title, and interest of first party and second parties in all, or any portion less than all, of such abandoned Yellow Lines located in paved street areas without further cost to Purchasing Companies; and Purchasing Companies shall have the option to purchase all right, title, and interest of first party and second parties in all, or any portion less than all, of such abandoned Yellow Lines not located in paved street areas, and all right, title, and interest of first party and second parties in all, or any portion less than all, of such abandoned Dashed Yellow Tracks at a fair and reasonable price to be agreed upon

EXHIBIT 7-b

Agreement

BETWEEN

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
THE CALIFORNIA, ARIZONA AND SANTA FE
RAILWAY COMPANY,
SANTA FE LAND IMPROVEMENT COMPANY,
T. M. SCHUMACHER and SIDNEY M. EHRMAN,

AS

Trustees of the Property of

THE WESTERN PACIFIC RAILROAD COMPANY, a Corporation,
SACRAMENTO NORTHERN RAILWAY,

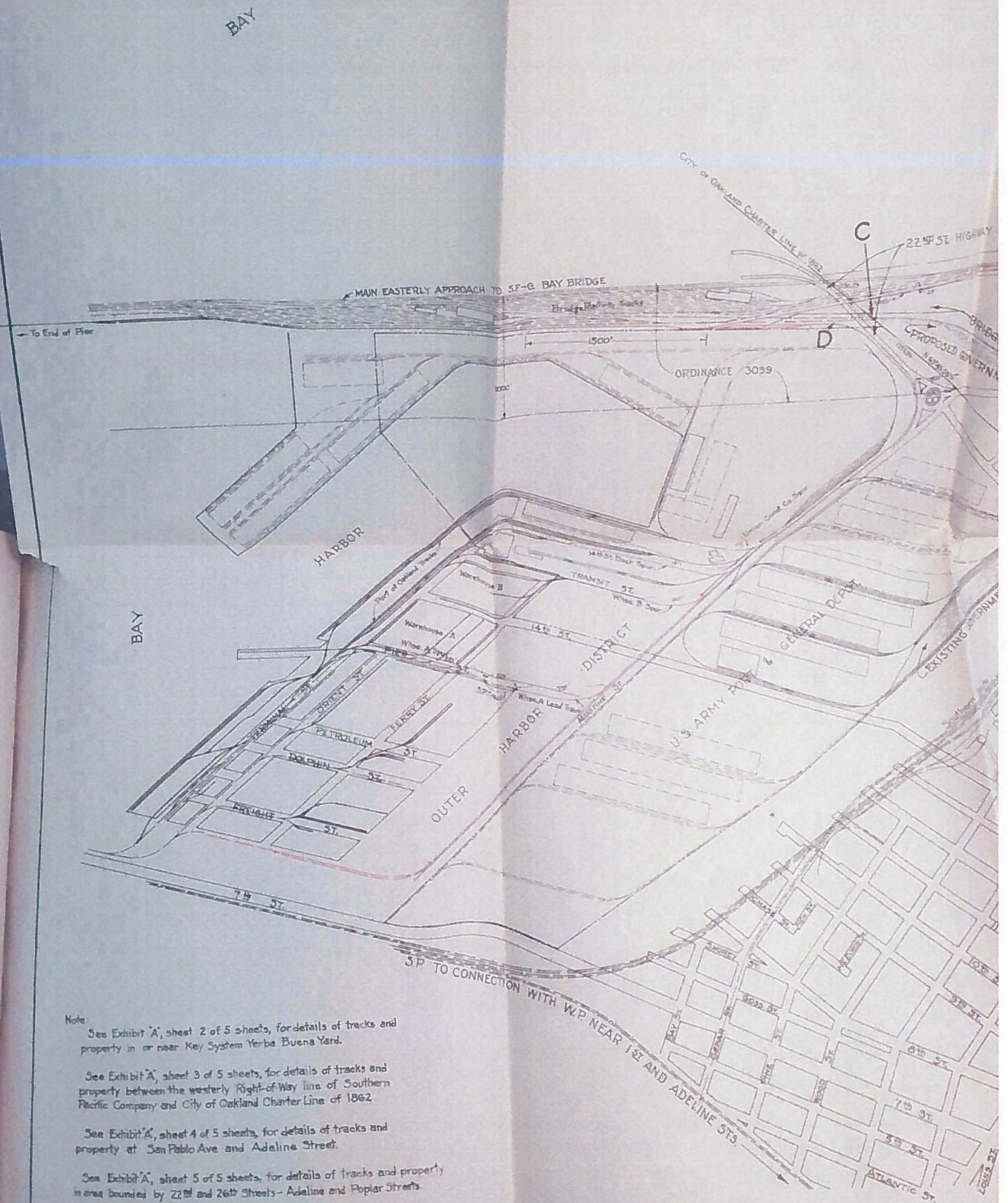
AND

THE OAKLAND TERMINAL RAILWAY

Parent Agreement

Relating to the control, management and conduct of operations of
THE OAKLAND TERMINAL RAILWAY

Dated, December 8, 1942.



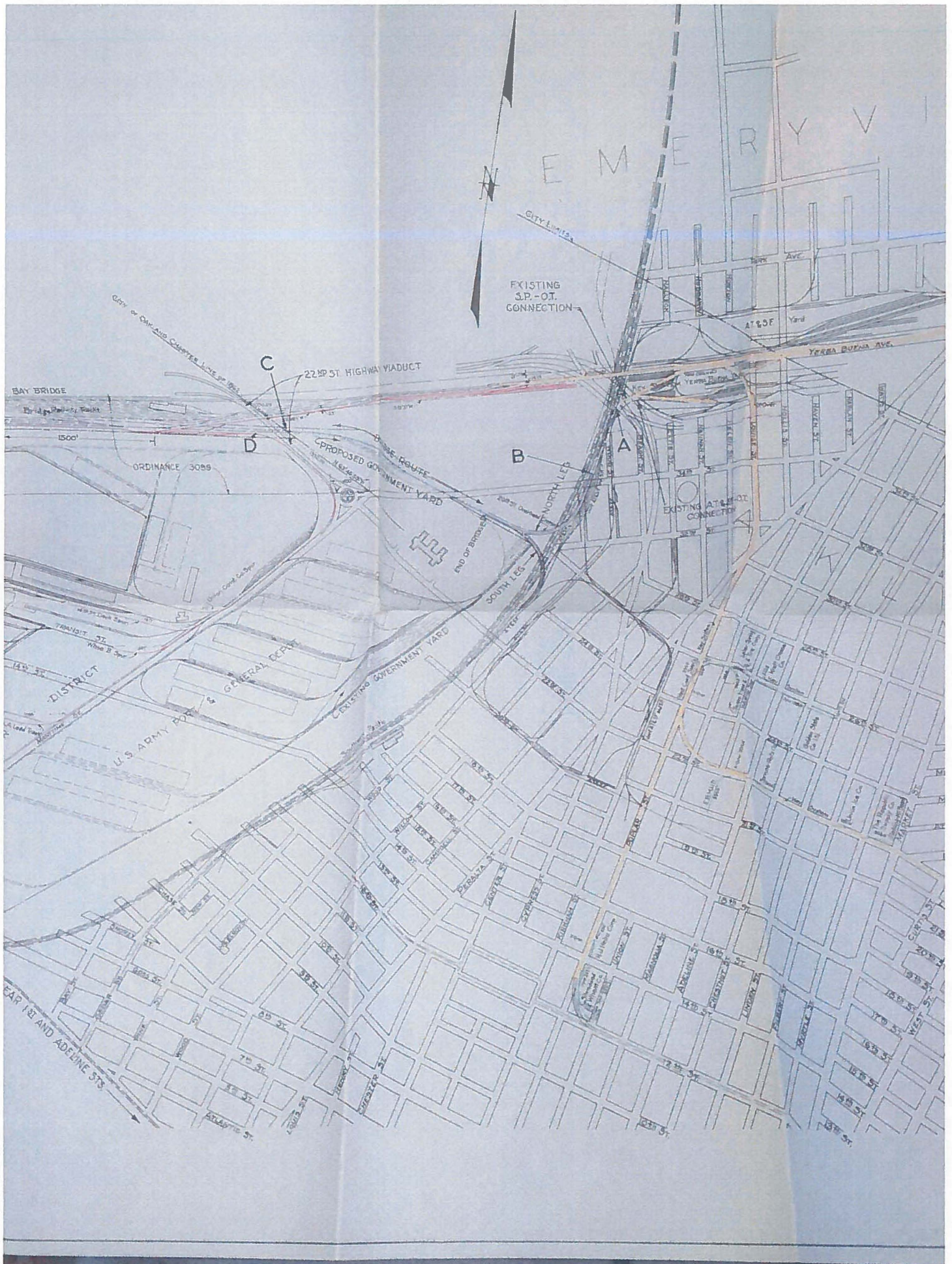
Note

See Exhibit 'A', sheet 2 of 5 sheets, for details of tracks and property in or near Key System Yerba Buena Yard.

See Exhibit 'A', sheet 3 of 5 sheets, for details of tracks and property between the westerly Right-of-Way line of Southern Pacific Company and City of Oakland Charter Line of 1862.

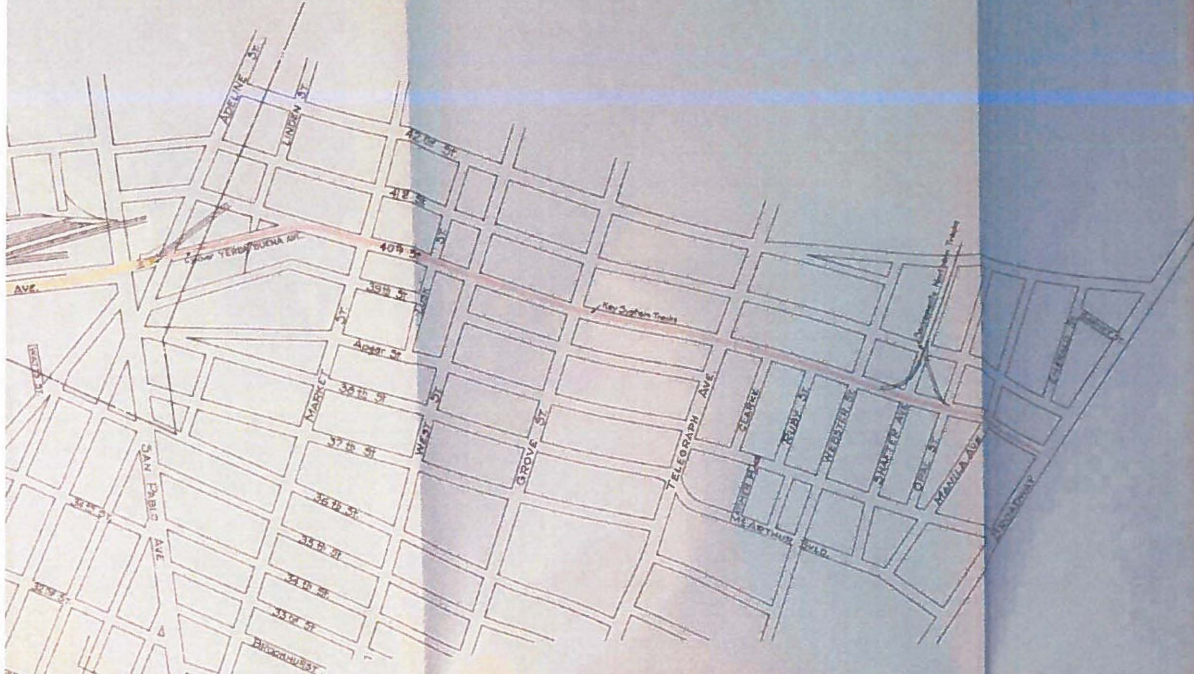
See Exhibit 'A', sheet 4 of 5 sheets, for details of tracks and property at San Pablo Ave and Adeline Street.

See Exhibit 'A', sheet 5 of 5 sheets, for details of tracks and property in area bounded by 22nd and 26th Streets - Adeline and Poplar Streets.



C. BE

ILLE



AND



~ LEGEND ~

- Trackage to be conveyed to Purchasing Companies.
- Overhead electrification and track bonding to be conveyed to Purchasing Companies.
- Industrial spurs to be conveyed to Purchasing Companies.
- Trackage to be conveyed to Purchasing Companies, subject to use of Key System.
- Trackage rights to Purchasing Companies.
- Certain information not shown on original Exhibit to Purchase Agreement is shown hereon.

EXHIBIT 'A' SHEET 1 OF 5 SHEETS
GENERAL MAP

EXHIBIT 'A', consisting of 5 sheets,
attached to and made a part of
AGREEMENT BETWEEN
OAKLAND TERMINAL RAILROAD CO.,
RAILWAY EQUIPMENT & REALTY COMPANY, LTD.
KEY SYSTEM

AND
T.M. SCHUMACHER AND SIDNEY M. EHRMAN
as Trustees of the property of
THE WESTERN PACIFIC RAILROAD COMPANY

AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

July 28, 1942 Rev. Aug. 18, 1942

SCALE IN FEET

Exhibit 3

Oakland Terminal Railroad Co. Purchase, Etc., ICC Finance Docket No. 14115 (Decided May
26, 1943)

INTERSTATE COMMERCE COMMISSION

RECEIVED

MAY 23 1943

Finance Docket No. 14115¹
OAKLAND TERMINAL RAILROAD CO. PURCHASE, ETC. SECTION OF DOCKETS

Submitted March 11, 1943.

Decided May 23, 1943

1. Purchase by the Oakland Terminal Railway of part of the property of the Oakland Terminal Railroad Co., acquisition by the Oakland Terminal Railway of trackage rights over the remaining lines of railroad of the Oakland Terminal Railroad Co., and sublease by the Oakland Terminal Railway of certain trackage from the Atchison, Topeka & Santa Fe Railway Company, lessee of the properties of the California, Arizona & Santa Fe Railway Company, approved and authorized.
 2. Authority granted to the Oakland Terminal Railway to issue not exceeding \$225,000 of common stock, consisting of 2,250 shares of the par value of \$100 each, to be sold at par and the proceeds used in connection with the purchase of certain portions of the lines of railroad used by the Oakland Terminal Railroad Co., and for other corporate purposes.
 3. Acquisition by the Atchison, Topeka & Santa Fe Railway Company and the trustees of the Western Pacific Railroad Company of control of the Oakland Terminal Railway, through stock ownership, approved and authorized.
- E. P. Tyler, Allan P. Matthew, Starr Thomas, R. S. Outlaw,
A. W. Davis, and Harry C. Ames for applicants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, HALLIDAY, AND MILLER

BY DIVISION 4:

The Oakland Terminal Railway, a corporation, hereinafter sometimes called the new company or the new terminal company, The Atchison, Topeka and Santa Fe Railway Company, and T. M. Schumacher and Sidney M. Ehrman, trustees in reorganization proceedings of The Western Pacific Railroad Company, debtor, applied on February 13, 1943, for authority under section 5(2) of the Interstate Commerce Act, as amended, for the new company

This report also embraces Finance Docket No. 14116, Oakland Terminal Railway Stock.

(a) to acquire part of the property of the Oakland Terminal Railroad Co., later herein sometimes referred to as the vendor or the old terminal company, (b) to acquire trackage rights over the remaining portions of the vendor's lines of railroad, and (c) to sublease certain trackage from the Atchison, Topoka & Santa Fe, lessee of the property of The California, Arizona & Santa Fe Railway Company; and (2) for the Atchison, Topoka & Santa Fe and the Western Pacific trustees to acquire control of the new terminal company through stock ownership, Finance Docket No. 14115. The old terminal stock ownership, Finance Docket No. 14115, a wholly owned Western Pacific subsidiary, and the California, Arizona & Santa Fe, a wholly owned subsidiary of the Atchison, Topoka & Santa Fe, a wholly owned subsidiary of the Atchison, Topoka & Santa Fe, joined in this application so far as their respective interests are concerned. On the same date the new terminal company applied for authority to issue \$225,000 of common stock, Finance Docket No. 14116. A hearing was held. The Railroad Commission of the State of California recommends that the applications be granted; and no objection to the applications has been presented.

Hereinafter in this report the term Western Pacific will be used in referring to the debtor company or to its trustees, without distinction between them; and the Santa Fe Land Improvement Company, a non carrier company indirectly controlled by the Atchison, Topoka & Santa Fe, will be referred to as the improvement company. Except as otherwise indicated, all points mentioned herein are in California.

KEY COMPANIES

The stock of the old terminal company, formerly known as the Key System, Ltd.; and the stock of a corporation now known as the Key System, are owned by the Railway Equipment & Realty Company, Ltd., hereinafter sometimes referred to as the equipment company and sometimes, together with its subsidiaries, as the Key Companies. The old terminal company is engaged in switching freight in Oakland and Emeryville, on the east side of San Francisco Bay opposite the city and port of San Francisco. The Key System operates intrastate electric passenger service between San Francisco and points across the bay. It uses most of the lines owned and operated by the old terminal company in conducting its freight switching service. These lines converge in the Yerba Buena yard, in Oakland, and then are extended westward, through a subway under tracks of the Southern Pacific Company, to and across the bay bridge. At various times, both day and night, because of conditions arising from the war emergency, and for other reasons, the passenger traffic now is unusually heavy.

GENERAL RAILROAD SITUATION

Oakland is served by lines of the Atchison, Topoka & Santa Fe, Western Pacific, and Southern Pacific railroad systems. The Atchison, Topoka & Santa Fe operates lines from Chicago, Ill., and the Western Pacific operates lines from Salt Lake City, Utah, and from Bieber. The California, Arizona, & Santa Fe owns lines of steam railroad in Arizona and California, and one of its lines extends into Oakland. All the property of this company is leased to the Atchison, Topoka & Santa Fe. See Dodge City & Cimarron Valley Ry. Co. Control. Finance Docket No. 2870, decided January 12, 1945. The Sacramento Northern owns and operates in California an electric railroad that extends into Oakland.

OAKLAND OUTER HARBOR DISTRICT

The transactions proposed by the applicants relate pri-

arily to railroad service in a section of Oakland known as the outer harbor district. This territory comprises an area about 1 mile square bounded on the west by the waters of San Francisco Bay, on the north by the main easterly approach to the bay bridge, and on the east and south by tracks of the Southern Pacific. That carrier has direct access to the harbor district and tracks of its own within the district. The Atchafalaya, Topoka & Santa Fe and the Western Pacific, sometimes hereinafter, as in the record, collectively referred to as the parent companies, and the Sacramento Northern gain access to the district through the service of the old terminal company. Cars of the parent companies and the Southern Pacific are interchanged with this carrier in Yerba Buena Yard, two or three city blocks east of the subway; but traffic of the Sacramento Northern is interchanged at Fortieth Street and Shafter Avenue, about 2.4 miles east of the yard. To reach that interchange the switching carrier uses owned lines, used also by the Key System, extending from the yard eastward in Yerba Buena Avenue to Adeline Street, and then in Yerba Buena Avenue and Fortieth Street to Shafter Avenue and beyond. Its present route to the harbor district is over its line, also used by the Key System, westward from the yard, through the subway, to a point 1,546 feet west of the westerly right-of-way line of the Southern Pacific; and then over its own lines, used only by the owning company; (a) continuing westward along the north side of the district, and (b) extending from a junction therewith, 1,500 feet east of its western terminus, along a curve into Maritime Street and southward in that thoroughfare to Pier Street. The latter line is continued southward from Pier Street to a curve near Seventh Street, and then westward to the waterfront, by a Southern Pacific track. The Southern Pacific operates this last mentioned trackage by steam or diesel locomotive, but the vendor operates thereover by electricity, having equipped the facility with overhead installations and track bonding necessary for that operation.

BACKGROUND OF PROPOSALS

The Board of Port Commissioners of Oakland was created in 1927 to promote the development of the port; and, in pursuance of that objective, constructed in the harbor district extensive docks, warehouses, and tracks along the waterfront. The vendor, or some predecessor in title, has been engaged in freight-switching operations for more than 25 years.^{2/} Until 1931 it served only industries outside the harbor district. The latter territory was directly served only by the Southern Pacific. This was not in conformity with the policy and purposes of the port commissioners, and in 1931 they determined that the service of all the transcontinental carriers, and the Sacramento Northern, should be made available to the district in such wise as to assure competitive service to its shippers. They adopted a resolution suggesting that such service be provided by the vendor. As that carrier was without funds for extending its tracks into the district, it was arranged that

^{2/} The vendor and the equipment company were incorporated in 1930 as a consequence of reorganization of the Key System Transit Company. The vendor's corporate title was changed in 1935. The Sacramento Northern has interchanged traffic with this carrier, or some predecessor, since 1913.

the necessary funds would be advanced to the vendor by the parent companies, which were to be important beneficiaries of the new service.

Accordingly, the vendor constructed tracks connecting the line along the north side of the district with city and Southern Pacific trackage within the district, and was given the right to operate on the latter. The cost of constructing its own connecting tracks, and electrifying the Southern Pacific track south of Pier Street, was about \$158,000, and the necessary funds were advanced by the parent companies in equal shares. Repayment of these advances, with interest at 6 percent annually, was secured by a mortgage covering the new trackage and providing for application of 20 percent of the vendor's gross revenues from cars handled to and from the trackage covered by the mortgage, first toward payment of interest, and then toward payment of principal of its indebtedness for the amounts advanced to it. In the ensuing years only about \$25,000 has been available for application to principal, and \$135,400 of the original indebtedness now remains unpaid. At present facilities of the City of Oakland and of the Southern Pacific in the harbor district are being used by the vendor under agreements dated April 1, 1939, and August 30, 1939.

REASONS FOR PROPOSED CHANGE IN OPERATION

The old terminal company has continued, since 1931, to perform switching service over the facilities thus specially provided, but military authorities have taken over all the harbor district except the southwesterly portion, and since January 1941 have constructed, and are constructing, important additional port facilities therein. The vendor is unable to cope with demands for service arising from this development, and the other Key Companies are concentrating their attention on providing passenger service essential to the war effort. This situation, together with limitations imposed on car movements over the old terminal company's present route to the district by lateral and vertical clearances of the subway, and density of the passenger traffic, led to steps already taken, and transactions now proposed, for substitution of the new terminal company for the vendor as the switching carrier.

NEGOTIATIONS AND PRELIMINARY STEPS

As the Key Companies desire to retire from the freight business entirely, they approached the parent companies with the suggestion that the latter take over the old terminal company's railroad; and in April 1942, representatives of these two trunk lines informally agreed to purchase part of the vendor's freight facilities and acquire trackage rights over the remainder of its lines. At about the same time the Atchison, Topeka & Santa Fe, at the request of the military authorities, and after consultation with the Western Pacific, bought from the California Toll Bridge Authority, in the name of the improvement company, a wye viaduct and certain related trackage at a cost of about \$225,000, as a measure looking to provision of an alternative route from Yorba Buena yard to the harbor district free from restrictions of the route through the subway. This property formerly was used in interurban passenger service by the Interurban Electric Railway Company, which ceased operation on July 25, 1941. Subsequently the south leg of the wye and certain electrical equipment thereon were resold to the Government for about \$60,000, leaving the net cost of the trackage retained to be about \$165,000.

The retained trackage consists of approximately 4,037 feet of double-track line extending from a point near Thirty-fourth

Wood Streets, southwest of Yerba Buena yard, south and west, above Southern Pacific main and yard tracks, to a point near the Twenty-second Street highway viaduct, together with right-of-way for extension of this trackage westward about 188 feet to a connection with the vendor's tracks along the north side of the district. The existing connection for interchange between the old terminal company and the Southern Pacific is reached by a short track extending southwest from the west end of the yard, about two blocks northeast of the intersection of Thirty-fourth and Wood Streets. This includes 67 feet of Southern Pacific tracks that the Key Companies have equipped for operation by electricity. To unite this track with the track on the north leg of the wye viaduct the Atchison, Topeka & Santa Fe is to construct a connecting track about 770 feet long at an estimated cost of about \$12550, and this, along with certain minor connections or cross-overs, will physically complete the proposed alternative route. In the record the purchased portion of this route and the track to be built by the Atchison, Topeka & Santa Fe are sometimes referred to together as the bridge route, and the connecting track alone, as the Santa Fe connection.

INSTRUMENTS

The informal understanding between the parent companies and other interests has been confirmed and perfected in two written instruments: (1) A contract dated September 24, 1912, called the purchase agreement, entered into by the parent companies, sometimes referred to, in this instrument, as the purchasing companies, and the Key Companies; and (2) a contract dated December 8, 1912, called the parent agreement, entered into by the purchasing companies, the California, Arizona & Santa Fe, the improvement company, the Sacramento Northern, and the new company. The parent agreement provides for substitution of the new company as nominee of the purchasing companies to receive properties and rights to which they are to be entitled, and to perform obligations they propose to undertake, by the purchase agreement; for control and management of the new company; and for the conduct of its operations.

PROPERTY TO BE ACQUIRED

Under the purchase agreement, as thus supplemented, the vendor, with the acquiescence of the other Key Companies so far as they are affected, undertakes to convey or have conveyed to the new company, (a) the connecting track along the northern boundary of the harbor district, the track connecting therewith and extending thence into and along Maritime Street to Pier Street, and four spurs from the latter track (one of which is in two short segments, connected by a short segment owned by the Southern Pacific), a total of about 4.2 miles of switching tracks; (b) the double-track line in Fortieth Street and Yerba Buena Avenue from a point near Broadway to the westerly line of Adeline Street, about 1.3 miles, subject to the right currently granted to the Key System to conduct interurban passenger operations thereover; (c) the overhead electrification and track bonding on about 4,800 feet of Southern Pacific track that serves to extend the vendor's operation south of Pier Street; (d) a small Baldwin steam locomotive and appurtenances; (e) right-of-way lands, aggregating about 4.75 acres in all, occupied by tracks described in brackets (i) and (j) post, subject to reversion if not used for railroad purposes for a continuous period of 1 year; (f) all the vendor's interest in 15 industrial spurs, and a team track and industrial spur, a total of about 6,682 feet of track, all connected with and operated from facilities to be used by the new company under trackage rights; and (g) the electrification and track bonding of the 67 feet of Southern Pacific track.

For this property the new company is to pay \$27,000 in cash to the vendor and the parent companies are to execute and deliver to that party a full release and satisfaction of the vendor's mortgage indebtedness to them.

The vendor is to assign to the new company all its right, title, and interest in the agreements dated April 1, 1939, and August 30, 1939, relating to joint or reciprocal use of Southern Pacific or municipal tracks within the harbor district; all agreements relating to the industrial spur tracks; all in certain lands, granted by the Key System to the vendor for right-of-way purposes; and certain permits from the port commissioners or the city council.

TRACELAGE RIGHTS.

The vendor also undertakes to grant or cause to be granted to the new company trackage rights for freight operations on (h) the line in Yerba Buena Avenue westward from Adeline Street, past the yard and through the subway, to the connection with the line first described in bracket (a), together with certain freight interchange and connecting tracks in or near the yard, and (i) a line extending from a connection with (h) at or near the yard southward in Louise and Poplar Streets to a point near Fourteenth Street, and a connecting line extending from a point near Twenty-fourth and Poplar Streets on a curve into and along Twenty-second Street to Brush Street, a total of about 3.1 miles; to obtain the consent of the owner thereof to use by the new company solely for freight operations of (j) spur tracks, aggregating approximately 4,240 feet in length, in Yerba Buena yard; and to obtain the consent of the owners for use in the exercise of such rights of certain other lands occupied by tracks or parts of tracks included in brackets (h) and (i), and to obtain options in favor of the new company to purchase such lands. Provision is made for acquisition of all or any part of these facilities by the new company, in some instances without further cost, in the event that use thereof for passenger service is abandoned by the Key System, but we are not to be understood as passing on that matter herein at this time. The lines are mostly in paved shoots.

The Key System is to maintain and supervise operation of these tracks; the tracks described in bracket (b), and the electrified segment described in bracket (g). For use of these properties jointly with the Key System the new terminal company is to pay a train-movement proportion of the cost to the former for wages of towmen, switch tenders, flagmen, and crossing watchmen applicable to operation of the tracks described in brackets (b), (h), (i) and (j) and car-rail proportions of the cost incurred by it in maintaining these facilities and the tracks described in bracket (g); a share, corresponding to the new company's share of the maintenance expense, of taxes; and the cost to the Key System of electrical energy by it made available to and consumed by the new company. No interest rental is included in the amounts to be payable by the new company; but it is to pay the cost of additions and betterments made for its benefit. Its proportion of use of the facilities will be comparatively small.

MEASURES OF VALUE

As yet we have not determined the value, for rate-making purposes, of properties involved in the proposed transactions, but the Atchison, Topeka & Santa Fe's valuation department has appraised the value of lands, and has estimated the cost of reproduction now less depreciation as of August 1942, of the

trackage and appurtenances, to be conveyed to the new company, as follows: Bracket (f) tracks, including portions thereof paid for by industries, \$25,495, bracket (a), (c), and (g) tracks \$136,951, and bracket (c) lands \$54,298; total \$196,744; and has estimated the cost of reproduction new less depreciation as of the same date, of the facilities to be used for trackage rights, at \$520,000. No appraisal of the bracket tracks was made for reasons explained in the application. The facilities included in bracket (c) \$37,561, will have little more than salvage value to the new company, however, as it expects to operate with Diesel locomotives instead of electricity.

The vendor's balance sheet as of November 30, 1942, shows investment in road and equipment \$2,777,061, miscellaneous physical property \$11,378, current assets \$404,537, unadjusted debits (net credit) \$14,289, capital stock \$2,335,196, funded debt unmatured \$139,572, current liabilities \$6,295, unadjusted credits (including accrued depreciation, road and equipment, \$23,271) \$429,295 and corporate surplus \$268,329. Income statements for each of the years 1937-41, and the first 11 months of 1942, in order, show that this carrier received railway operating revenues of \$74,245, \$55,216, \$59,798, \$60,059, \$117,314, \$269,218, incurred railway operating expenses of \$47,047, \$45,775, \$56,176, \$50,146, \$109,046, \$96,172, and, after taxes, negligible non-operating income, and fixed charges (consisting mainly of interest on funded debt, averaging about \$7,500 a year) earned net income (deficits in italics) of \$14,958, \$2,160, 7,137, \$1,617, \$3,458, and \$96,441. In 1942 the freight revenue averaged \$10.04 a car. The vendor's charges are absorbed by the line-haul carriers.

3/ Freight revenue, \$74,245, \$55,216, \$59,498, \$57,779, \$114,904, and \$109,555. The large difference between total revenue and freight revenue for the indicated period of 1942 is accounted for chiefly by the fact that in this year the vendor received rental for the use of its facilities by the Key System amounting to \$157,023. For the full year 1942, the freight revenue was \$117,695.

EFFECT ON VENDOR

Certain properties of the vendor are leased to the Key System. Upon consummation of the proposed transactions, the vendor will cease entirely all participation in interstate transportation.

It is contemplated that this company will be consolidated or merged with the Key System, and the successor through consolidation or merger then will become the owner of the vendor's railroad facilities which are not to be conveyed to the new company. Our authorization and approval of the transactions proposed herein would seem to be all the authority from us needed in the premises.

CONTROL OF NEW COMPANY

The purchase agreement provides for organization of the new company, and the parent agreement for subscription of one-half of the \$225,000 of stock which it now proposes to issue by each of the parent companies. Ownership of the company's stock at all times is to be divided equally between the parent companies during the life of the agreement, and neither is to sell its shares, except to an affiliate, subsidiary, or successor, without first offering them to the other.

BRIDGE ROUTE - LEASE

Title to the bridge route is now vested in the improvement Company, which is to convey it to the California, Arizona & Santa Fe, subject to an option to purchase in favor of the new company.

The bridge route is carried over the Southern Pacific's main line and yard tracks by means of a concrete and steel bridge about 350 feet long, with approaches consisting in part of pile trestle and in part of earth fill. After this trackage was purchased by the improvement company, military authorities filled in the land south of and adjoining the bridge route between Twenty-second and Twenty-fourth Streets for the purpose of constructing a hold yard, and an arrangement was made for removal of the bridge-route trackage at that point and raising the grade about 4 feet to correspond with the grade of the new yard. The cost of replacing the trackage removed in this connection is estimated at \$11,455. In the parent agreement, the Atchison, Topoka & Santa Fe undertakes to construct or effect construction of the Santa Fe connection with Yerba Buena yard necessary to make the bridge route usable. Of the estimated cost of \$12,550 for that work, \$11,750 will be chargeable to investment accounts, and the actual amount so chargeable for this construction and the actual cost of replacing the tracks mentioned above are to be paid by the Atchison, Topoka & Santa Fe and added to the bridge route's initial net cost of \$165,000 to form the amount on which the new company is to pay interest rental, or for which it may purchase the bridge route and Santa Fe connection. The yard being constructed by the Government is to be of 350-cars capacity. It will be connected at both ends with trackage operated by the new company. The new means of approach provided by the bridge route and Santa Fe connection will greatly facilitate more rapid flow of freight into the hold yard, and will insure service in the event of casualty to the only route now available. The August 1942, value of the bridge route property to be leased has been estimated by the Atchison, Topoka & Santa Fe's valuation department, as follows: Right-of-way \$48,990, other fixed physical property \$303,815, total \$352,805.

The bridge route is to be conveyed by the improvement com-

by to the California, Arizona & Santa Fe, but in the parent agreement the former, for itself and successors in ownership, gives a new company the right and option to purchase the bridge route, and the California, Arizona & Santa Fe and the Atchison, Topeka & Santa Fe join in giving it the right and option to purchase the Santa Fe connection, or an undivided one-half interest therein the event any part thereof consists of trackage used jointly by the Atchison, Topeka & Santa Fe and the new company, at prices, for the bridge route, of a sum equal to the amount on which the new company is then required to pay interest rental on that property, and for the connection, of a fair and reasonable amount to be determined by agreement or arbitration. Other railroads may be admitted to joint use of the connecting track.

In the meantime, by the parent agreement the Atchison, Topeka & Santa Fe, with the consent of the California, Arizona & Santa Fe, leases to the new company the bridge route and Santa Fe connection, and all additions and betterments thereto constructed after August 1, 1942, for a term co-extensive with the period during which the parent agreement remains in effect, subject to joint use of the connection by the lessor, or by other railroads, as previously mentioned. On termination of the new lease dated January 1, 1943, from the California, Arizona & Santa Fe to the Atchison, Topeka & Santa Fe, the former is to be substituted as lessor under the lease to the new company.

Under the terms of that lease, the new company is required to pay monthly to the Atchison, Topeka & Santa Fe, as interest rental, sums equal to one-twelfth of 5 percent of (a) \$165,000, or the approximate cost of purchasing the bridge route, (b) the portion of the cost of constructing the Santa Fe connection chargeable to investment in road property, and rental charges not so chargeable, (c) additions and betterments to the bridge route and Santa Fe connection, and (d) any taxes and assessments levied thereon, or fairly assignable thereto, which are chargeable to capital account. It is also to pay all taxes and assessments levied on or equitably assignable to these properties not so chargeable. In the event the Santa Fe connection is used by any other carrier in common with the new company, during the period of such common use the payments which are applicable to the portion thereof so used are to be decreased so that the new company will pay as to such portion only a user share of such sums in the ratio of one to the total number of user railroads; but, as of the date on which the parent agreement becomes effective, the new company is to pay to the lessor an amount equal to the aggregate of such monthly sums mentioned in (a), (b), (c), and (d) above, for the period from August 1, 1942, to such effective date, and an amount equal to all taxes and assessments, costs incurred by the lessor in maintaining or changing the bridge route and Santa Fe connection, and premiums for insurance thereof, which are not chargeable to road and equipment accounts for that period.

As used in the parent agreement, the term "terminal trackage" means all the trackage to be operated by the new company, regardless of ownership. Except for maintenance performed or additions and betterments constructed by the Key System, or by the Southern Pacific or the City of Oakland pursuant to the agreements of April 1, 1939, and August 1, 1939, or as may be necessary because of military requirements, the Atchison, Topeka & Santa Fe is to maintain all the terminal trackage, except overhead electrification and track bonding west of the subway under the Southern Pacific tracks, and construct additions and betterments thereto; and the Western Pacific or the Sacramento Northern, as may be agreed upon between them, is to maintain and improve all

other terminal trackage, including the subway, and to construct and maintain the overhead electrification and track bonding of all the terminal trackage, and additions and betterments thereto.

The vendor's rates or divisions are and have been the same in the case of all railroads. Yet its operations upon the tracks heretofore described in bracket (b) and a large part of its operation upon the part of the line in Yerba Buena, bracket (h), have been for the purpose of moving the Sacramento Northern's cars between the interchange at Fortieth Street and Shafter Avenue, and Yerba Buena yard. In order to permit the new company to continue the vendor's policy as to rates and divisions, and to distribute its expenses more nearly in proportion to the amount of services to be rendered, so long as the rates and divisions with the Sacramento Northern remain the same as those with the new company's other connections, and the points of interchange and other conditions affecting the amount of services to be rendered for the respective connections remain substantially as at present, the Sacramento Northern is to reimburse the new company for all costs incurred by it in switching cars for the additional distance of 1.4 miles between the Sacramento Northern interchange point and the yard, and for the cost of maintenance, additions and betterments, retirement charges, and taxes applicable to the line in Fortieth Street, bracket (b); but this is to be replaced by some other equitable arrangement if it later appears to be inequitable because of changed conditions. If the Sacramento Northern ceases to interchange cars with the new company at Fortieth Street and Shafter Avenue, as between the parties the former is to assume all responsibility for the Fortieth Street line, and be entitled to have that line conveyed to it or its nominee. The Sacramento Northern's undertakings under the agreement are guaranteed by the Western Pacific. The Western Pacific does not now connect directly with the vendor's ^{lines} and its cars moving to or from points thereon are handled in bridge switching by the Southern Pacific.^{4/} Provision is made for direct interchange between the new company and the Western Pacific in the event the latter constructs a connection with rails of the new company, and, in that event, the Western Pacific is to provide interchange facilities at its own expense.

The new company agrees to pay for maintenance, and additions and betterments, except as otherwise provided, a sum equal to the cost of the services rendered and materials used for these purposes; but, in the event that any other carrier operates over any part of the Santa Fe connection in common with the lessee, it is only to pay its proportionate share on a user basis, or a fixed percentage, or an agreed arbitrary amount, in lieu of an exact computation of such share, as may be agreed upon. It is to keep insured, at its expense, the viaduct forming a part of the bridge route, and cause it to be restored to usable condition in the event it should be damaged or destroyed. Any loss from abandonment or retirement of, or other changes in, the bridge route and Santa Fe connection after August 1, 1942, are to be deemed maintenance expense for which the lessee is to pay, but the aggregate of such payments is to apply in offset against the basic valuation on which it is to pay interest rental. Depreciation is to be excluded from both calculations.

^{4/} To and from a connection near First and Adeline Streets, a short distance south of the vendor's tracks at Twelfth and Poplar Streets.

MOTIVE POWER

The parent agreement contemplates that the parent companies or the Sacramento Northern may furnish to the new company such motive power or other equipment as it may require from time to time; and for this the company is to pay such rental as may be mutually agreed upon. The steam locomotive is needed for operation on tracks where the use of cranes for unloading precludes operation by electricity.

OTHER PROVISIONS

The parent agreement contains further provisions relating to the advance to the new company of funds necessary for its cash requirements, division of its profits and losses, neutrality of its operation and management, liability for loss or damage, arbitration of disputes, and other matters which we do not deem it necessary to describe in this report. The agreement is to become effective at a date to be agreed upon by the parent companies as soon as practicable after our approval and authorization in the premises is obtained, and is to remain in effect until terminated by mutual agreement of the parent companies and the new company. The purchase agreement is to become effective if and when our authorization and approval in the premises has been granted.

STOCK ISSUE

The new company was incorporated on December 2, 1942, under the laws of California, with an authorized capital stock of \$1,000,000, consisting of 10,000 shares of the par value of \$100 each. In connection with the purchase of properties, it proposes to issue \$225,000 of this stock to the Atchison, Topeka & Santa Fe and the Western Pacific at par for cash, pursuant to the parent agreement.

The proceeds of the sale of the stock will be applied as follows:

Purchase Price:

Unpaid portion of mortgage on line to be purchased	\$133,400
Cash for road	25,000
Cash for steam locomotive	2,600
Organization expenses	3,000.00
Accrued rent, bridge route (August 1, 1942-May 1, 1943)	6,187.50
2 crossovers - 22nd Street	11,532.00
2 crossovers - main line near Yerba Buena Yard	3,594.00
Cab signal control installation - For Diesel or steam locomotive (interchangeable)	4,100.00
Miscellaneous expenditures	2,000.00
Three months' operating expenses (working capital, as stated below)	33,000.00
Expense for Santa Fe connection	800.00
Total	225,213.50

All of the items listed above, with the exception of the purchase price of \$161,000, are estimates.

The new company estimates that operating expenses will be approximately \$11,000 a month, and that in the ordinary course of business about 3 months will elapse before amounts due from connecting lines for the first month are fully paid. The total of \$55,000 is therefore actually working capital. As of the date the company commences operations, assuming that it commenced May 1, 1943, approximately \$7,000 would be due the Santa Fe for accrued rentals and expenditures from August 1, 1942, chargeable to operation on or in connection with the bridge route, as required by parent agreement, and approximately \$2,000 will be paid for a year's insurance premium, and stationery and supplies, before any revenues are received. The expense amounting to \$800 necessary to the installation of the Santa Fe connection, is a proper capital expenditure. The accrued rent of \$6,187.50 for the bridge route represents 9 months' interest on the cost thereof, and may be considered in the nature of interest during construction.

It is probable that the new company, after it has acquired the properties, will retire about 4,800 feet of overhead electrification having an estimated net salvage value of \$6,055, but as this will not occur until the bridge route is placed in operation, no funds from that source will be available initially.

In addition to the steam locomotive to be purchased, the new company will rent two electric locomotives from the Sacramento Northern and a diesel locomotive from the Atchafalaya, Topoka & Santa Fe.

A theoretical balance sheet for the new company, assuming consummation of the proposed transactions as of May 1, 1943, shows investment in road \$153,400, investment in equipment \$2,600, general expenditures \$9,987.50, cash \$54,012.50, and capital stock \$225,000.

PUBLIC INTEREST

Complete withdrawal of the vendor from the freight-switching operations it now performs will not adversely affect the public interest because all such operations will be continued by the new company, and there will be no interruption of the service. The new company will have the benefit of the bridge route, which will afford a more direct and efficient route to the harbor district, free from interference by passenger trains; and control and support of this carrier by the parent companies should assure better service to the public. Its operations will assure continuance of competitive service in the harbor district.

The military establishment in the district is intended to be permanent. The record indicates that it is a large and important project. Nine private industries in the area include nationally known packers of foodstuffs, which furnish traffic on which the transcontinental carriers obtain or, in more normal times will obtain, long hauls. While the industries along the lines to be used under trackage rights do not have competitive service, Southern Pacific cars are and will continue to be switched between Yorba Buena yard and their plants as expeditiously as those of the parent companies. The concerns are engaged in various kinds of business, apparently related more to local needs than to the export-and-import trade, but some handle nationally known products.

TERMS AND CONDITIONS

Concerning the price to be paid by the new company for

property proposed to be purchased from the Key Companies, the record shows that the tracks are laid with 90-pound rails and are generally in good condition. The applicants consider that the sum of \$161,000 to be paid for the property represents its fair and reasonable commercial value.

In 1938, before the present extraordinary development of the harbor district was begun, ordinary traffic, in carloads, handled by the vendor to and from the harbor district was, in line haul for the Atchison, Topeka & Santa Fe 1,438, Sacramento Northern, 1,262, Western Pacific 586; local hauls by the vendor 49, by the Southern Pacific 27; total 3,362. In the same year, the vendor handled in the territory east of the Southern Pacific tracks for the Atchison, Topeka & Santa Fe 355, Sacramento Northern 669, Western Pacific 201, and Southern Pacific 1,462; total 2,687. Most of the business is transcontinental traffic. In 1942, shipments of the military authorities alone, by all carriers, totaled 39,284 carloads.

It is not expected that operation by the new company will result in economies of any consequence because it intends to provide 24-hour service. There is to be no change in the switching rates, the new company to receive the same revenue a car that the vendor is now receiving. The increase in the latter's earnings in 1942 resulted partly from the new development in the harbor district, but more especially from rentals amounting to \$157,023, for use of its facilities by the Key System.^{5/} However, it is expected that for at least 5 years after termination of the war the new company's freight revenue will be increased over that of the vendor, in view of the fact that much of the traffic movement formerly through the port of San Francisco has been or is being transferred to the Oakland side of the bay.

ADEQUATE TRANSPORTATION SERVICE

The vendor has been handicapped by shortages in motive power and in employees. The Key Companies' chief interest has been for this member of the group to operate at a profit, or at least without loss, so that they were not inclined to furnish service on Sundays or at night. At present the vendor is giving only one-crew service. The parent companies have a different incentive in that, with the additional business necessitating more and better service, their line-haul revenues will be increased. They therefore propose that all extra service be provided that the traffic may need, beginning with three crews; and this will better suit the desires and needs of the military authorities.

OTHER RAILROADS

The applicants contend that, inasmuch as the Southern Pacific now serves the harbor district, the public interest does not require, but forbids, inclusion of that carrier in the proposed transactions. The Southern Pacific is fully advised in the premises, and has made no representations herein. On the contrary it has cooperated with the applicants to the extent of arranging to sell them about 0.14 acre of land needed to construct the Santa Fe connection,

EMPLOYEES

The applicants further contend that no conditions for the

Until 1942 the Key System had not paid any rental, as its passenger earnings before that year never reached a specified minimum.

protection of employees are necessary; and, in support thereof, produced in the record a copy of contracts that have been negotiated with employees, which make acceptable provision for every employee of the vendor except its president and its superintendent. The former is to remain with the Key System, and the superintendent is to be employed by the new company. The employees are satisfied with the prospect of having the main-line carriers take over sponsorship of the switching railroad.

FIXED CHARGES

Except as previously stated, no financial or other relationship between the applicants and the vendor exist at the present time. The transactions do not contemplate any guaranty or assumption of payment of dividends or fixed charges. We find that the increase in total fixed charges resulting from rentals payable under the proposed lease will not be contrary to the public interest.

Our authorization and approval herein will be granted upon the express understanding that before acquisition of any of said properties, or of said stock, is recorded in the books of the respective applicants, the related journal entries first will be submitted for our approval. Nothing herein is to be construed as authorizing abandonment by the new company of any line of railroad, or of operation thereof, dealt with in this report, or as authorizing any change hereafter in the terms and conditions herein approved by us.

We find that purchase of part of the property of the Oakland Terminal Railroad Co., acquisition of trackage rights over its remaining lines of railroad, sublease of trackage from The Atchison, Topeka and Santa Fe Railway Company, by The Oakland Terminal Railway, and acquisition of control of The Oakland Terminal Railway, through stock ownership, by The Atchison, Topeka and Santa Fe Railway Company and T. M. Schumacher and Sidney M. Ehrman, Trustees of The Western Pacific Railroad Company, as aforesaid, are transactions within the scope of section 5(2) of the act, that the terms and conditions proposed are just and reasonable, and that the transactions will be consistent with the public interest. No conditions as to employment are necessary.

We further find that the proposed issue by The Oakland Terminal Railway of not exceeding \$225,000 of common stock, consisting of 2,250 shares of the par value of \$100 each, as aforesaid, (a) is for a lawful object within its corporate purposes, and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.

An appropriate order will be entered.

Commissioner MILLER did not participate in the disposition of this proceeding.

at a Session of the INTERSTATE COMMERCE COMMISSION, Division 4,
held at its office in Washington, D. C., on the 28th
day of May A. D. 1943

FINANCE DOCKET NO. 14115

OAKLAND TERMINAL RAILROAD CO. PURCHASE, ETC.

FINANCE DOCKET NO. 14116

OAKLAND TERMINAL RAILWAY STOCK

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That purchase by The Oakland Terminal Railway of part of the property of the Oakland Terminal Railroad Co., acquisition by The Oakland Terminal Railway of trackage rights over the remaining lines of railroad of the Oakland Terminal Railroad Co., sublease by The Oakland Terminal Railway of trackage from The Atchison, Topeka and Santa Fe Railway Company, lessee of the properties of The California, Arizona and Santa Fe Railway Company, and acquisition by The Atchison, Topeka and Santa Fe Railway Company and T. M. Schumacher and Sidney M. Ehrman, trustees of The Western Pacific Railroad Company, of control of The Oakland Terminal Railway through stock ownership, as set forth in said report, and upon the terms and conditions therein found just and reasonable, be, and these transactions are hereby, approved and authorized.

It is further ordered, That The Oakland Terminal Railway shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

It is further ordered, That The Oakland Terminal Railway be, and it is hereby, authorized to issue not exceeding \$225,000 of common stock, consisting of 2,250 shares of the par value of \$100 each, to be sold at par and the proceeds used in connection with the purchase of certain portions of the lines of railroad used by the Oakland Terminal Railroad Co., and for other corporate purposes.

It is further ordered, That, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by The Oakland Terminal Railway, unless or until so ordered or approved by this Commission.

It is further ordered, That The Oakland Terminal Railway shall report concerning the matters herein involved in conformity with the order of the Commission, by division 4, dated February 19, 1927, respecting applications filed under section 20a of the Interstate Commerce Act.