

20283  
 Decision No. ~~20283~~

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Southern Pacific Company,  
 The Atchison, Topeka and Santa Fe  
 Railway Company,

Complainants,

vs.

San Francisco-Sacramento Railroad Company,  
 Defendant.

**ORIGINAL**

Case No. 2526

E. J. Foulds and H. W. Hobbs, for Southern  
 Pacific Company, Complainant.

E. W. Camp and Platt Kent, for The Atchison,  
 Topeka and Santa Fe Railway Company,  
 Complainant.

C. W. Dooling, for Defendant.

BY THE COMMISSION -

O P I N I O N

Southern Pacific Company, a corporation, and The Atchison,  
 Topeka and Santa Fe Railway Company, a corporation, by their  
 complaint filed herein under date April 4, 1928, complain of  
 defendant, San Francisco-Sacramento Railroad Company, a corporation,  
 alleging:

1- That defendant, a railroad corporation whose  
 railroad is operated primarily by electric energy,  
 said railroad extending from Oakland to Sacramento  
 with a branch extending from the north into the  
 City of Pittsburg, California, threatens to construct  
 an extension of its line or system from the present  
 terminus to the southerly corporate limits of the  
 City of Pittsburg and for a considerable distance  
 beyond or south of the city limits of said City of  
 Pittsburg; that said territory south of the city  
 limits is already adequately served with the same  
 character of service as that which defendant proposes  
 to install and operate, the present service to said

territory being rendered by complainants as common carriers, the freight service in said territory being handled under and by virtue of a certain agreement entered into by complainants, dated June 1, 1909, relating to industry tracks between Martinez and Antioch. Under said agreement the switching of cars of both complainant carriers to and from the industries in said territory is handled by complainant The Atchison, Topeka and Santa Fe Railway Company for account of both complainants, and by reason thereof the industries in said territory have the service of both complainants, said service being of like character as that which defendant proposes to render.

2. That the proposed extension of defendant's line would constitute an unnecessary duplication of complainants' facilities and there is no public or other necessity therefor; and complainants and each of them will be injuriously affected in that defendant's proposed extension will interfere with the operation of their lines serving the industries located south of the City of Pittsburg, and by diminishing complainants' revenue from such service.

3. That defendant has filed with this Commission an application, No.14470, for the purpose of constructing a track at grade across the existing track of complainant The Atchison, Topeka and Santa Fe Railway Company near said City of Pittsburg, and has filed an application, No.14469, whereby it seeks to obtain permission to construct certain grade crossings across streets in the said City of Pittsburg, both of said applications being on the route of and in connection with the threatened extension of defendant's said line as aforesaid; and that defendant has not obtained a certificate that the present or future public convenience or necessity require or will require the construction of said extension, in accordance with Section 50-a of the Public Utilities Act of the State of California.

Complainants pray for an order of this Commission (a) determining that the proposed construction threatened by defendant is in violation of the provisions of Section 50-a of the Public Utilities Act of the State of California, and that defendant be ordered to cease and desist from undertaking or constructing such extension; (b) that the Commission find that no public convenience or necessity will be subserved by said proposed extension; (c) that the two applications now pending before this Commission be denied; and (d) that the Commission make such other and further orders in the matter as may be appropriate.

Defendant duly filed its answer herein denying the material allegations of the complaint, and in answer to the complaint alleges that it is an interurban electric railroad engaged in the transportation of freight and passengers for hire and is not a street railroad; that the track which it proposes to construct and operate is not a street railroad track or an extension of a street railroad track; and both the complainants herein are steam railroads and the service rendered by complainants in the territory in which defendant proposes to construct and operate its said track, is such as is usually furnished by steam railroads; that defendant has heretofore lawfully commenced the operation of its railroad in the City of Pittsburg, and that the track which it proposes to construct and operate will be within said City of Pittsburg and in territory outside the City of Pittsburg which is contiguous to defendant's existing railroad; and that the territory in which said track is to be constructed has not heretofore been served by a public utility of a character like unto that of defendant. For the foregoing reasons, defendant alleges that it is not required by Section 50-a of the Public Utilities Act of the State of California, or by any other provision of law, to obtain from this Commission a certificate of public convenience and necessity for the construction and operation of said proposed track.

A public hearing on this complaint was conducted by Examiner Handford at San Francisco, the matter was duly submitted following the filing of briefs and is now ready for decision.

George E. Murray, Santa Fe Agent at Pittsburg for twelve years, a witness for complainants, testified regarding the physical conditions at Pittsburg and the method in which the switching of carload freight to industries was handled under his direction for his company and for the Southern Pacific Company, twelve industries being served; that two switching crews were now

used, performing all service required by the industries; and that any additional service required or increased volume of traffic could be cared for by the increase of switch engines and crews.

B. A. Campbell, Assistant Superintendent of the Western Division of Southern Pacific Company and in charge of the district including Pittsburg station, confirmed the testimony of the previous witness regarding the method of joint switching performed at Pittsburg. This witness was generally familiar with the character of freight business as handled by defendant and that the service offered was the same as now available for patrons of his company or the A. T. & S. F. Ry. the same character and kind of freight cars being used and in many cases interchanged with his company.

H. W. Klein, Assistant General Freight Agent of Southern Pacific Company, and E. C. Pierre, Chief Clerk of the Traffic Department, Atchison, Topeka and Santa Fe Railway Company, testified that the freight facilities, tariffs, rules and regulations of defendant were identical with those of their respective companies and that the same offering to the public as regards freight movement existed which was made by complainant companies. Exhibits were received, by reference to tariffs lawfully filed with the Commission, as illustrating the similarity of conditions.

H. A. Mitchell, Vice President and General Manager of defendant San Francisco-Sacramento Railroad Company, described the proposed track extension, same being approximately 4800 feet in length. From a map filed as an exhibit attached to the answer of defendant herein it appears that approximately 3325 feet of the proposed track extension would be located outside the city limits of the City of Pittsburg. This witness described the service to be rendered to the industries proposed to be served by the track extension, such service being the handling of carload freight transported in standard railroad equipment.

The question here to be decided is whether defendant requires a certificate of public convenience and necessity under the provisions of Section 50-a of the Public Utilities Act authorizing the construction of the proposed extension.

Section 50-a of the Public Utilities Act (Statutes 1911. Extra Session, Chapter 14, page 18. Reenacted 1915, Statutes 1915. Chapter 91, Amended 1917 Statutes. Chapter 120, page 168) provides as follows:

"No railroad corporation whose railroad is operated primarily by electric energy, street railroad corporation, gas corporation, electrical corporation, telegraph corporation, telephone corporation or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant, or system, or of any extension of such street railroad or line, plant or system, without first having obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; provided, that this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county, or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county, or city or town, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and provided, further, that if any public utility, in constructing or extending its line, plant or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility, already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable."

The articles of incorporation of San Francisco-Sacramento Railroad Company, as filed with this Commission in Application No. 4555, show the company to have been incorporated under date January 2, 1920. The following sections of the articles of incorporation set forth the objects and purposes of the corporation and the nature of the railroad proposed to be operated:-

"SECOND: That the objects and purposes for which this corporation is formed are to construct, purchase, lease, own, acquire, operate and maintain railroads in the State of California, and to carry passengers, personal property, express matter, United State mail, and freight on and over said railroads, and to receive tolls, compensation and the reward therefor; and to construct, own, lease, maintain and operate such telegraph and telephone lines, steam boats, barges, ferry boats, wharves, piers, and other public utilities and common carriers in connection therewith as shall be appurtenant to and convenient for the operation of said railroad; and also to acquire, purchase, own, hold, maintain and operate by lease, consolidation or otherwise, railroads situated within or without, or partially within or without, the said State of California, whenever and as thereunto duly authorized by law, the said railroads to be so situated and located as to conveniently and appropriately become and be a part of the line of railroad herein described, or a branch line thereof, or connected with said main line, or to be a continuation of said main line.

To deal in, purchase, sell, acquire, hold, trade in or exchange shares of stocks or bonds of any other corporation.

To deal in, purchase, sell, acquire, hold, trade in or exchange shares of stock or bonds issued by itself.

To borrow money with or without security in connection therewith, and to execute notes, mortgages or deeds of trust or pledges, or create liens covering any or all property of which it may be seized or possessed.

To issue bonds, certificates of stock and certificates covering fractions of stock, promissory notes, guarantees, warranties, indemnities or other instruments of any and all kinds.

THIRD ; That the kind of railroad to be constructed, operated and maintained is a commercial railroad such as is contemplated in Title III, Part IV of Subdivision 1st of the Civil Code of the State of California; the said railroad is to be of standard gauge and is to be operated by steam and electricity, or steam or electricity, or such other motive power as may be allowed by law."

The record herein shows the service as rendered, and proposed to be rendered, to be that of a commercial railroad in the handling of freight and the same character of service that is rendered to the public by complainants. Electricity is used as the motive power by defendant, whereas steam locomotives are used by complainants, but the actual service rendered, insofar as the public is concerned, is identical.

The legislature, by its enactment of Section 50-a of the Public Utilities Act has set forth the requirement that any "railroad corporation whose railroad is operated primarily by electric energy" shall be required to obtain a certificate of public convenience and necessity before commencing the construction or extension of its "line, plant or system" but not requiring such certificate "for an extension into territory either within or without a city and county, or city or town, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character."

After full consideration of the record herein we are of the opinion and hereby conclude that defendant herein is not required by the provisions of the legislative enactment to secure a certificate of public convenience and necessity, in that it is exempted from the necessity for securing said certificate by reason of the proposed extension into territory contiguous to its presently operated line.

O R D E R

A public hearing having been held on the above entitled complaint, the matter having been duly submitted following the filing of briefs, the Commission being now fully advised and basing its order on the conclusion as appearing in the opinion which precedes this order,

IT IS HEREBY ORDERED that this complaint be and the same hereby is dismissed.

The effective date of this order is hereby fixed as twenty (20) days from the date hereof.

Dated at San Francisco, California, this 7 st day of

October, 1923.

Leon White  
Ad. H. ...  
John C. ...  
W. J. ...  
COMMISSIONERS.