

Decision No. 36852

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation upon the Commission's own motion into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the operations, service, and facilities of the Market Street Railway Company.

Case No. 4680

BY THE COMMISSION:

ORDER POSTPONING EFFECTIVE DATE
OF DECISION NO. 36739

Upon the application of the Market Street Railway Company, the respondent above named, and good cause appearing therefor,

IT IS ORDERED that the effective date of said Decision No. 36739 be and the same is hereby postponed to and including the 29th day of February, 1944.

As a condition to the granting of the within order, the said Market Street Railway Company, as petitioner in that certain proceeding before the Supreme Court of the State of California (S.F. No. 16,988), is required to sign and file a written stipulation in said proceeding waiving any right which said petitioner may have to request an extension of time beyond the ten days time allowed by Rules of the Supreme Court within which to file its reply to the Commission's answer and brief to said petitioner's petition for a writ of review in said proceeding.

Dated at San Francisco, California, this 3rd day of February, 1944.

Richard L. Jackson
Francis D. Danaher
Justus J. Gales
Francis X. Havener

Commissioners

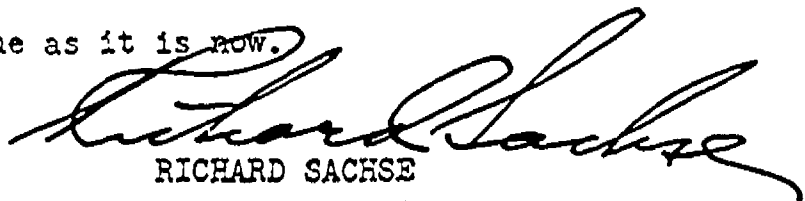
I concur in the order extending the effective date of our Decision No. 36821 to February 29, 1944. This second extension of time should, however, have been granted with a condition providing for the impounding of the excess fares collected by the company from its patrons and amounting to over \$100,000 each month. We should have impounded these funds in obedience to the clear intent of section 66 of the Public Utilities Act ⁽¹⁾ and in accordance with section 67 of the Act which prescribes the method by which the public interest is to be protected in the event of a stay of the Commission's order by the State Supreme Court. We, I think, should do no less than the Supreme Court would do, especially in view of the fact that the company has suggested to the Supreme Court and to us a practical method of impounding and agreed to put it into effect.

The granted extension of time from February 11 to February 29 is a relatively short period, but we can have no

(1) Section 66 reads, in part:

"An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change or modify the same. An order or decision made after such rehearing abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission." (Emphasis supplied)

assurance that at the termination of the second extension a final decision of this case will have been reached in or out of court. The eventualities of a trial in the State Supreme Court, or appeal to the United States Supreme Court, or continued and lengthy negotiations between the company and the City of San Francisco for the acquisition of this property by the city, exist and the impounding of the excess fares would then become the issue as it is now.


RICHARD SACHSE
Commissioner

In explanation of our concurrence in the order above, signed by all four Commissioners, we desire to append the following statement:

The Commission on January 12, 1944, issued an order denying the application of the Market Street Railway Company for a rehearing on the Commission's previous order reducing the streetcar fare from seven cents to six cents. At the same time the Commission granted an extension of thirty days in the effective date for the carfare reduction, and made the order effective February 11 next. This was done in order to allow the Company sufficient time to file its petition for a writ of review with the State Supreme Court and to enable the Court to rule upon the petition without, in the meantime, compelling the Company to resort to the extremely cumbersome and expensive procedure of impounding the one cent differential in fares and printing and distributing millions of receipts to the street car riders, pending the Supreme Court decision.

Obviously such a procedure would involve delays in handling the already congested street car traffic which would seriously impede wartime transportation in San Francisco.

It now appears, as a result of a conference of attorneys for the Company, the Commission and the City of San Francisco, in the chambers of the Supreme Court, that about nineteen additional days will be required in order to give the Company and the Commission the time permitted by law to file their respective arguments with the Supreme Court and to allow a reasonable amount of time in addition for the Court to make its ruling. This extension of time is hereby granted.

Justus J. Cameron
Francis R. Havenner