

ORIGINAL

Decision No. 45765

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SAN DIEGO & ARIZONA EASTERN RAILWAY)
 COMPANY to discontinue all regular)
 passenger service furnished by it be-)
 tween (a) San Diego, California, and)
 the California-Mexico Line (between)
 San Ysidro, California, and Tijuana,)
 Mexico), and (b) between the)
 California-Mexico Line (between)
 Lindero, Mexico, and Division, Cali-)
 fornia) and Calexico, California.)

Application No. 31577

Randolph Karr and R. S. Myers for applicant. Ralph B. Moore for City of Calexico, Calexico Chamber of Commerce, and Tijuana Chamber of Commerce, William Nixon for Brotherhood of Railroad Trainmen, Fred G. Seig for Order of Railway Conductors and also for George F. Irvine, State Representative, Brotherhood of Locomotive Firemen and Enginemen, Ray Newberry and R. E. Sagnall for National City Chamber of Commerce, Christian W. Brown for Brotherhood of Locomotive Firemen and Enginemen, George V. Tursky for Brotherhood of Locomotive Firemen and Enginemen, R. V. Rachford for Brotherhood of Railway Clerks, George W. Ballard and T. S. Finley for Brotherhood of Railroad Trainmen, Z. D. Ridder for City of Chula Vista and Chula Vista Chamber of Commerce, Manuel Acosta Mesa for Tijuana Chamber of Commerce, and Pedro Cota for Tecate Chamber of Commerce; protestants. H. F. Landgraf for City of San Diego and San Diego Harbor Commission, and Mrs. Florence Steinert in propria persona, interested parties.

O P I N I O N

By Decision No. 45156, dated December 19, 1950, on Application No. 31577, the San Diego & Arizona Eastern Railway Company was authorized to discontinue "all regular rail passenger service between San Diego, California, and the California-Mexico Line between San Ysidro, California, and Tijuana, Mexico, and between the California-Mexico Line between Lindero, Mexico,

"and Division, California, and Calexico, California, subject to the following condition:

"Changes in service shall be made only after ten (10) days' notice to this Commission and to the public."

Under date of January 6, 1951, a petition for rehearing was filed, alleging that the order exceeded the jurisdiction of the Commission because it attempted to regulate and to cast an unreasonable burden on interstate commerce, that it was not supported by the findings, and that evidence as to freight revenues of the applicant railroad was erroneously excluded.

An answer to the foregoing petition was filed by the applicant railroad on January 11, 1951, to which the petitioners filed a rebuttal on January 19, 1951.

Under date of January 23, 1951, the Commission issued its Order Granting Rehearing. The rehearing was held at San Diego on April 10, 1951, before Examiner Syphers, at which time additional evidence was adduced. The matter is now ready for decision.

At the hearing evidence was presented, showing that the passenger service on the San Diego & Arizona Eastern Railway Company was discontinued on January 11, 1951. This discontinuance resulted in a decrease in the number of employees, and, according to the existing regulations, these men could not be called back to duty without thirty days' notice. It was pointed out that it would be very difficult under these conditions to secure a crew to operate troop trains, should such a necessity arise. It would not be possible to obtain

engineers to operate extra trains, and there are not available men on the extra board who can be called. Also, at the time of discontinuing passenger service, diesel engines were put on the railroad for switching purposes, and the witnesses testified that, while the roundhouse service was still available, it could not handle steam locomotives at this time.

Other testimony showed that the passenger traffic on the railroad increased during the last thirty days of its operation, and, in particular, during the last two days of operation. Railroad witnesses testified that this increase in passenger traffic was due to a desire of many people to take one last ride on the railroad before this passenger service was discontinued.

Concerning the possibility of troop movements, the testimony was to the effect that the railroad has had no request for such business, and, further, that the railroad handled troop movements during the war and would again handle such movements, should the request be made.

In regard to the motive power, it was pointed out that diesel engines could be used to move troop trains, and that such engines are now available.

It was stipulated between the parties that the average daily passenger revenue for January, 1950, was \$28.71, while in January, 1951, it was \$30.10 for the portion of the month that the trains ran.

The annual reports of the applicant railroad were placed in evidence, and from these reports for the years 1948, 1949, and 1950, the following figures have been compiled:

<u>Year</u>	<u>Total Operating Revenue</u>	<u>Freight Revenue</u>	<u>Passenger Revenue</u>	<u>Total Operating Expenses</u>
1948	\$ 2,239,190	\$ 1,980,984	\$ 128,508	\$ 1,534,206
1949	2,088,371	1,852,133	119,395	1,467,003
1950	2,464,693	2,271,647	66,007	1,383,827

After a thorough consideration of the additional evidence presented at the rehearing, and also a reconsideration of the evidence presented at the original hearing in this matter, we are of the opinion, and hereby find, that the authority to discontinue all regular rail passenger service, granted by Decision No. 45156 supra, should be affirmed.

In making this finding we are aware of the contentions presented by the protestants in this case, and, in this connection, point out that these contentions essentially involve two points, (1) the authority of this Commission to regulate or interfere with interstate commerce, and (2) the fact that evidence as to freight revenues was excluded from the original hearing.

As to the first contention relating to interstate commerce, we reaffirm our holding in Decision No. 45156. Some of the traffic here unquestionably was interstate, and we make no attempt to rule on any jurisdiction which may be held by the Government of the United States or the Republic of Mexico. As was stated in that decision, "our order herein is directed to that portion of the traffic which is subject to the jurisdiction of the State of California."

As to the contention that the freight revenue should not have been excluded from the prior hearing, we now point out that evidence as to this freight revenue has now been received and has been considered in this hearing.

However, in this case it becomes apparent that the passenger business handled by applicant railroad has not been sufficient to warrant continuation of the service. Furthermore, there are, as set out in Decision No. 45156 supra, satisfactory alternate means of transportation.

It was contended that the discontinuance of passenger service is now without any authority, since the order for rehearing allegedly set aside the original order in Decision No. 45156. We do not concur in this contention, and note that the provisions of Section 66 of the Public Utilities Act are the governing law relating to rehearings. In this case the petition for rehearing did not have the effect of staying the original order.

There was a further objection that the hearing was held without notice to the United States Government, and, in this connection, we reaffirm our previous finding that notice to the interested parties, to the railroad itself, and to the public constitutes a sufficient notice.

There was a motion made that this application be dismissed and the proceedings be consolidated with a pending Commission investigation relating to the Southern Pacific Company's valley and coast lines. This motion was properly denied.

O R D E R

A petition for rehearing and answer thereto having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and hereby find it to be in the public interest,

IT IS ORDERED that Decision No. 45156, dated December 19, 1950, on Application No. 31577, be, and it hereby is, affirmed.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 29th day of May, 1951.

A. J. Anderson
Justus F. Greene
Harold Kula
Lawrence Pottier
Peter E. Mitchell
COMMISSIONERS