

ORIGINALDecision No. 47275

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN PACIFIC COMPANY to discontinue the operation of passenger trains Nos. 246, 244, 229 and 243, operating between Oakland Pier and Sacramento, California.

Application No. 31304

In the Matter of the Commission's investigation on its own motion into the sufficiency of passenger train service of SOUTHERN PACIFIC COMPANY between Sacramento and San Francisco and other points in California.

Case No. 5234

OPINION AND ORDER MODIFYING DECISION
AND DENYING REHEARING

The Southern Pacific Company, applicant and respondent in the above-entitled consolidated proceedings, has filed its petition for rehearing and has urged many objections respecting Decision No. 47161 rendered by the Commission herein under date of May 13, 1952. Petitioner asks the Commission to set aside and annul said decision.

The points made by petitioner, in essence, are the same as those made by it on the submission of this matter but said points are somewhat elaborated and, in addition, incidental and subsidiary points are injected into its petition for rehearing.

The Commission has carefully considered the petition for rehearing and is of the opinion that petitioner has not demonstrated therein, or otherwise, that the Commission has committed any error in Decision No. 47161. Petitioner appears to experience difficulty in understanding the principles of regulation underlying said decision and alleges that proper findings are not included in said decision

and that the periods of time within which petitioner is required to perform certain acts are far too short for the performance thereof. Petitioner raises the ancient contention that the decision of the Commission invades the province of management and substitutes Commission judgment for the lawful judgment which management is entitled to exercise. The further contention is made that there is no finding, and no evidence to support such finding if made, that public convenience and necessity requires the continuation of the service performed by passenger trains Nos. 229, 243, 246 and 244, sought to be abandoned, and that public convenience and necessity requires the improvement of that service and the equipment and facilities used in performing the same, or that public convenience and necessity requires the other improvements directed to be made in connection with other service, equipment and facilities of petitioner. It, also, contends that there is no justification for requiring the studies and reports to be made, which said decision requires petitioner to make. Lastly, petitioner asserts that said decision denies to it certain constitutional guaranties.

As to the contention that the periods of time are not sufficient within which petitioner could perform the acts required, we point out that petitioner well knows that it may request extensions of such periods of time and that the Commission will grant such extensions upon a reasonable showing of the necessity therefor. The record in this case convinces us that it is not the time element that presents difficulty to petitioner but the absence of the will on the part of petitioner to perform its public duty relating to the matters and things which the decision, herein, orders petitioner to do and perform.

We are of the opinion that the decision herein is valid and lawful and fully informs petitioner as to what it is ordered to do but,

in light of the fact that petitioner appears to misunderstand the provisions of said decision and in order to clarify said decision so that no possible misunderstanding may be said to exist, we make the following additional findings:

The Commission hereby finds:

1. That public convenience and necessity requires that the passenger service now performed by trains Nos. 229, 243, 246 and 244 be continued and that said service be improved by substituting self-propelled railway passenger cars, as required by Decision No. 47161, for the equipment now used in performing said service, the Commission hereby further finding that the service, equipment and facilities, now being furnished, used and employed, are inadequate and insufficient.
2. That public convenience and necessity requires the improvement of the passenger service performed by trains Nos. 223 and 224 and 247 and 248 and the improvement of the equipment and facilities now used in performing such service, as in Decision No. 47161 ordered and directed, the Commission hereby further finding that said service, equipment and facilities, now being furnished, used and employed, are inadequate and insufficient.
3. That the petitioner, having the ability so to do, has failed to discharge its public duty by failing to make the foregoing described improvements of service, equipment and facilities, which failure on petitioner's part requires the exercise by this Commission of its supervisory powers to require petitioner to discharge its public duty in this regard.
4. That the improvement of service, equipment and facilities required by Decision No. 47161 will not constitute an undue financial or other burden upon petitioner.
5. That public convenience and necessity requires that petitioner make the studies and reports required by Decision No. 47161 and the Commission further finds that petitioner has failed to discharge its public duty by its failure in the past to investigate fully and comprehensively those matters and things which said decision requires it to investigate and report on. The Commission also finds that operations, service, equipment and facilities concerning which said studies and reports are to be made are inadequate and insufficient and that public convenience and necessity requires the improvement thereof.

Decision No. 47161 IS HEREBY MODIFIED by the inclusion therein

of the foregoing findings of fact and the petition for rehearing,
herein, is hereby denied.

Dated, San Francisco, California, this 17th day of
June, 1952.

[Signature]
President

Harold P. Hule

[Signature]

Commissioners