

Decision No. 58111**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY to consoli-
date the operation of passenger
trains Nos. 75 and 76 with passenger
trains Nos. 94 and 95, between
San Francisco and Los Angeles,
California.) Application No. 38039

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY to discon-
tinue operation of passenger trains
Nos. 226, 241, 247 and 248.) Application No. 39327

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY to discon-
tinue the operation of passenger
trains Nos. 59 and 60.) Application No. 39661

Commission Investigation into the
adequacy and sufficiency of passenger
service of SOUTHERN PACIFIC COMPANY
between points in California.) Case No. 5829

(Appearances are listed in Appendix A.)

O P I N I O N

Applicant Southern Pacific Company, hereinafter sometimes called Southern Pacific, filed its various applications as follows: Application No. 38039 on May 17, 1956, Application No. 39327 on August 14, 1957, and Application No. 39661 on December 23, 1957. On October 9, 1956, the Commission instituted its investigation into the adequacy and sufficiency of passenger service of Southern Pacific Company between points in California.

On July 2, 1957, the Commission issued its interim opinion and order, Decision No. 55202 in Application No. 38039 and Case No. 5829, authorizing Southern Pacific on a temporary basis to consolidate the Lark and Starlight passenger trains between San Francisco and Los Angeles. On February 18, 1958, the Commission issued its order holding submission of Application No. 39327 in abeyance until

the completion of the hearings and the submission of Case No. 5829. Southern Pacific filed a petition for rehearing on this order on March 4, 1958, and on this same date filed a petition for interim relief in Application No. 39327. The Commission issued its order granting rehearing on March 17, 1958.

In addition to the hearing dates set forth in Decision No. 55202 and the order holding submission of Application No. 39327 in abeyance, hearings were held before Commissioner Matthew J. Dooley and Examiner Wilson E. Cline in San Francisco on May 7, 8, 9, 14, 15, 16, 21, 22, 23, 26, 27, 28 and 29, 1958. The matters were taken under submission with the filing of the closing statement of the Commission staff on July 3, 1958.

Preliminary Statement.

Preliminary to discussing the issues of this case, analyzing the evidence, making findings of fact and drawing conclusions of law, we deem it desirable that the policy of this Commission concerning the preservation, maintenance and improvement of railroad passenger service should be clearly and unequivocally stated.

It is the policy of this Commission to insist upon the preservation and maintenance of reasonably adequate railroad passenger service and the modernization and improvement of such service, the Transportation Act of 1958 (enacted by the Congress of the United States) to the contrary notwithstanding. Instead of such service being degraded, it should be improved so that the railroads may more effectively compete for the passenger business of the Nation. We believe the Transportation Act of 1958 to be contrary to the public interest, insofar as it not only permits but actually invites railroads summarily to abandon interstate passenger trains and also to seek Federal intervention to abandon purely intrastate passenger trains.

We are not unaware of the difficult situation in which the railroads of this country find themselves because of the competition of the private automobile and other forms of transportation. However, we offer the opinion that the defeatist attitude of many of the railroads as regards passenger service has largely contributed to this regrettable situation. It is our opinion that the public welfare requires that reasonable rail passenger service be preserved and maintained, even though public subvention becomes necessary. Many objectives to which public funds are now being put, in our opinion, are not as important as is the maintenance of reasonable rail passenger service.

The problem presented by a railroad's request to abandon or reduce passenger train service, so far as the State of California is concerned, is one of paramount importance because of the tremendous population and economic growth of this State. This is not the problem of the railroads alone; it is also, and more significantly, the problem of the people of the State of California. The problem presented is one most difficult of solution and one which requires the most careful consideration. There is no problem, in our judgment, which more completely involves the public interest than this one. To say that the problem is insoluble is the road of defeatism. There must be a solution of the problem.

Disagreeing as we do with the fundamental concept underlying that part of the Transportation Act of 1958 which appears to encourage the abandonment or reduction of passenger train service throughout the Nation, nevertheless, we must face the fact that the Transportation Act of 1958 is the latest expression of Congressional policy on the subject. In our judgment, that policy adds to the difficulty of the problem rather than contributing to its solution.

We must keep in mind that this Commission is charged with the fundamental duty of supervising and regulating every public utility in this State and that the Commission is empowered to do all things, whether specifically designated in the statutes or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. Thus, there is placed upon this Commission the lawful duty of attempting a solution of the problem presented, calculated to comport with the public interest.

It is our purpose and it will be our policy to require the railroads of California to maintain a reasonably sufficient passenger service operated with modern equipment until either the people of this State, by constitutional prescription, or the Legislature, by statutory enactment, shall direct otherwise. Anything less than this would, in our judgment, amount to a complete disregard of the dynamic growth in the population and economy of California and its future.

The Scriptures tell us that where there is no vision the people perish. Public officers must have and exhibit vision in the discharge of their public duties, and they must furnish appropriate leadership for the people.

It must not be forgotten that a railroad corporation, being a public utility, performs a function of the State, and that it is charged with a public duty in the nature of a trusteeship. Also, a public utility exercises an extraordinary privilege and occupies a privileged position because of the franchise granted to it by governmental authority. In the circumstances, public service of the highest order is the solemn obligation, and must be required, of such a public utility.

A railroad should be as zealous to maintain reasonable and adequate service as governmental authority is to see to it that such service is maintained. It is the lawful duty of a railroad not only to perform its public duty but to perform it willingly and not to wait until it is compelled to discharge that duty by lawful authority.

Whenever a railroad seeks to abandon or reduce passenger service, the burden strongly rests upon the railroad to prove by clear and convincing evidence that the public convenience and necessity no longer require such service. The law raises a presumption that any service furnished by a railroad is required by the public convenience and necessity; and therefore, when the railroad seeks to abandon or reduce such service it must meet this heavy burden of showing that the public convenience and necessity no longer require the continuation of the service sought to be abandoned or reduced.

Unlike a proceeding involving a general rate adjustment of a railroad, a proceeding involving the abandonment or reduction of service addresses itself to public convenience and necessity rather than to a matter of confiscation. It is a general rule of regulatory law that a public utility may not demand that each segment of its service be profitable or that it realize its out-of-pocket costs in connection with each segment of its service. Public convenience and necessity may require the operation of a particular service at a loss; and if so, the public utility may not complain.

If a railroad claims that it is suffering confiscation as a result of a particular service which it is furnishing, it must present for the consideration of the regulatory body its

over-all intrastate operating results, where the proceeding is pending before a state regulatory body. The record in this case is devoid of such operating results, and we must assume, for the purpose of this proceeding, that the applicant railroad is earning on its total intrastate operations a compensatory return or, at least, is not suffering confiscation. The law will not permit this Commission to assume that the railroad is suffering confiscation, for confiscation must be proven. Therefore, the only issue here presented is one of public convenience and necessity. There is here no issue concerning any alleged unlawful burden on interstate commerce.

In this connection, attention is called to the decision of the Supreme Court of the United States in the case of Alabama Public Service Commission v. Southern Railway, 341 U.S. 341, 346-348, 352-355, 95 L. ed. 1002, 1007-1008, 1010-1011. The Supreme Court, in that case, pointed out the rules of law applicable in cases of the kind here presented, observing that a service, lawfully, may be required to be performed even at a loss where public convenience and necessity justify such a conclusion. See, also, United Fuel Gas Co. v. Railroad Commission, 278 U.S. 300, 309, 73 L. ed. 390, 396, and B & O Railroad v. U.S. 345 U.S. 146, 150, 97 L. ed. 912, 916.

We are aware that many of the railroads throughout the Nation complain of the alleged burden which the rendition of passenger service casts upon the entire operations of the railroads. It is our view that the position of the railroads vastly exaggerates the problem. Be that as it may, the fact remains that the railroads must furnish reasonable passenger service as

a part of their public duty; and it is the responsibility of this Commission, as it is of all other regulatory bodies, state and federal, to see to it that that duty is performed by the railroads.

In our view, the service performed by the railroads of this Nation, both passenger and freight, takes second place to no other public service being performed. We intend that such service, as far as California may be concerned and to the extent that this Commission is permitted so to do, shall be protected and maintained to the end that the public shall be served. We cannot preserve the railroads by taking action which leads only to their destruction.

Application No. 38039,
Consolidation of "Lark" and "Starlight".

Pursuant to authorization in Decision No. 55202, referred to above, the Southern Pacific consolidated its Lark and Starlight passenger trains on Monday, July 15, 1957. The consolidated train is known as the "Lark" and operates on the schedules of the previous "Lark", departing San Francisco and Los Angeles at 9 p.m. and arriving at the opposite terminal the following morning at 8:30 a.m. The only physical change on July 15 was the discontinuance of the Starlight trains, since the chair cars and snack lounge had previously been added to the Lark trains on August 6, 1956. The record shows that traffic has continued to decline, but at an increased rate, on the "Lark" after the consolidation as compared with the traffic on the Starlight and Lark trains prior to consolidation.

The Commission's interim order requires that Southern Pacific provide sleeping accommodations on the consolidated trains for all intending sleeper passengers who apply at least five hours prior to departure time. Although the record shows that there have been instances where passengers who have wanted roomettes have been

required to take bedrooms and that passengers who have wanted bedrooms have been required to take roomettes if they wanted accommodations on the "Lark", Southern Pacific will not be required to offer a choice of sleeping accommodations. Based upon the record the Commission finds and concludes that the interim order set forth in Decision No. 55202 is sufficient and satisfactory and that public convenience and necessity require that it should be made the final order of the Commission.

Application No. 39327, Discontinuance of
Sacramento Local Trains Nos. 226, 241, 247, and 248.

A. Description of Present and Proposed Service.

Southern Pacific operates three local passenger trains in each direction between Oakland Pier and Sacramento, with bus connection to San Francisco, in addition to through passenger trains serving all or a portion of the route. Three Overland Route trains in each direction cover the entire route of 92 miles between San Francisco and Sacramento; three Shasta Route trains in each direction operate over the route 79 miles between San Francisco and Davis; and two San Joaquin Valley trains in each direction travel 35 miles of the route between San Francisco and Martinez. All of these through trains except the "Shasta Daylight" carry some passengers between points along the San Francisco-Sacramento route.

The schedule of the local trains operated between San Francisco and Sacramento is as follows:

	#224	#226	#248
	<u>Senator</u>	<u>Passenger</u>	<u>El Dorado</u>
Lv. San Francisco	7:20 a.m.	10:50 a.m.	5:10 p.m.
Arr. Sacramento	9:40 a.m.	1:15 p.m.	7:30 p.m.
	#247	#223	#241
	<u>El Dorado</u>	<u>Senator</u>	<u>Sierra</u>
Lv. Sacramento	7:15 a.m.	5:05 p.m.	7:30 p.m.
Arr. San Francisco	9:50 a.m.	7:40 p.m.	10:15 p.m.

Southern Pacific proposes to discontinue operation of the El Dorado Trains Nos. 247 and 248, Passenger Train No. 226 and Sierra Train No. 241. It proposes to operate an additional car on the City of San Francisco Trains Nos. 101 and 102 between Oakland Pier and Sacramento to handle passengers who are now using the El Dorado trains. Also an additional car would be operated on the Overland Trains Nos. 27 and 28 between Oakland Pier and Sacramento to handle passengers who are now using Passenger Train No. 226.

The El Dorado trains are powered generally with a 5300 Class diesel locomotive and regularly carry two passenger cars midweek and three on weekends. Trains Nos. 226 and 241 have the self-propelled RDC Budd Car assigned as equipment. Train No. 241 pulls two headend cars from Sacramento to Davis for transfer to Train No. 20 northbound.

The following table shows the average daily number of revenue passengers and total passengers carried between San Francisco and Sacramento, including intermediate points, for the year ended February 28, 1958, on local trains:

Train	Westbound		Eastbound		Both Directions	
	Rev. Psgrs.	Total Psgrs.	Rev. Psgrs.	Total Psgrs.	Rev. Psgrs.	Total Psgrs.
#223 & #224 Senator	35	50	31	38	66	88
#247 & #248 El Dorado	29	54	40	80	69	134
#241 & #226 Sierra & Passenger	<u>14</u>	<u>19</u>	<u>20</u>	<u>32</u>	<u>34</u>	<u>51</u>
Total	78	123	91	150	169	273

Patronage on Trains Nos. 226 and 241 has been declining at the rate of 13% per year, and on Trains Nos. 247 and 248 at the rate of 14% per year.

If the El Dorado Trains Nos. 247 and 248 are discontinued, passengers will then have to rely on the City of San Francisco Trains Nos. 101 and 102 for service at approximately the same times of day.

Train No. 101 arrives on time (0 - 15 min. late) only 51% of the time, is more than 30 minutes late 30% of the time, and is an hour or more late 17% of the time, while El Dorado Train No. 247 is on time 99% of the time.

The City of San Francisco trains require 14 minutes greater running time eastward and five minutes greater running time westward between San Francisco and Sacramento than do the El Dorado trains.

The schedule of Passenger Train No. 226 duplicates that of Overland Train No. 28, both leaving San Francisco at 10:50 a.m. Train No. 241 leaves Sacramento at 7:30 p.m. The record clearly discloses that few passengers avail themselves of the service at this hour.

The staff Exhibit No. 5829-11 states that it appears that there is no longer a substantial public need for Trains Nos. 226 and 241, in view of the substantially reduced paid passenger traffic thereon. This exhibit also points out that there is still a considerable number of persons using the El Dorado trains for which the schedules and on-time performance of the City of San Francisco trains do not appear to be a satisfactory substitute service.

B. Results of Operation

Southern Pacific's Exhibit 39327-6, Statement B shows an estimated out-of-pocket loss from the operation of Trains Nos. 226 and 241 of \$90,000, and an estimated loss from the operation of the El Dorado Trains Nos. 247 and 248 of \$234,000, totaling \$324,000 for the four trains. In oral argument counsel for Southern Pacific admitted certain adjustments might be made to reduce the \$324,000 out-of-pocket loss to \$296,405 and that by reason of further

adjustments, the savings which might be expected to result from discontinuance of the four trains would amount to \$281,438.

The Commission staff Exhibit No. 5829-12A shows an estimated annual out-of-pocket loss of \$50,001 for Trains Nos. 226 and 241 and an estimated annual out-of-pocket loss for Trains Nos. 247 and 248 of \$94,753. The total estimated out-of-pocket loss for the four trains, as indicated by the exhibit, amounts to \$144,754. These estimates of out-of-pocket loss are smaller than they otherwise would be because of the inclusion of constructive revenue for all passengers using passes, such as (1) employees on company business, (2) company employees on business of their own, (3) employees of other lines on business of their own, and (4) other pass passengers within the scope of Section 523 of the California Public Utilities Code.

C. Alternate Service

Counsel for Southern Pacific has pointed out in his oral argument that from 1950 to 1957, while California's population increased 27 percent, automobile registration increased 38 percent; that Highway U.S. 40 has undergone continuous improvement in recent years, so that at the present time it is practically a four lane divided highway between Oakland and Sacramento; and that during the same period highway traffic on U.S. 40 increased from 65 to 82 percent.

The running times for the express buses between San Francisco and Sacramento are two hours and ten minutes compared with two hours and 20 minutes for the fastest trains. From 1950 to 1957 the number of schedules of express buses increased from 3 to 14 a day. The schedules of the various local buses which operate between San Francisco and Sacramento have also been introduced in evidence in this proceeding.

During this same period Pacific Air Lines increased its number of flights between San Francisco and Sacramento from three to eight each way, and United Airlines increased its seating capacity on its operation between San Francisco and Sacramento 57 percent.

D. Protests.

Certain persons in Berkeley objected to the discontinuance of Train No. 248 because this train is used by members of their families to go to Sacramento on weekends. Counsel for Southern Pacific pointed out that even if Train No. 248 is discontinued, train service will still be available to such persons on Train No. 102 leaving the Berkeley station at 4:48 p.m. and these persons can also take the 5:10 p.m. Greyhound bus from Berkeley to Sacramento.

The City of Richmond protested the proposed discontinuance. The tabulation of on and off counts shows that at Richmond an average of one and two-tenths persons per day board both Trains Nos. 226 and 241 and seven-tenths of a person per day get off both trains. Trains 247 and 248 do not stop at Richmond.

A protest was also voiced by a resident of Sacramento who is a railway post-office worker on one of Southern Pacific's trains.

The protest of the representatives of the railway employees' unions will be reviewed in the portion of this opinion pertaining to Case 5829 herein.

Application No. 39661, Discontinuance
of the West Coast Trains Nos. 59 and 60.

A. Present and Proposed Service.

The "West Coast" is an overnight passenger train between Sacramento and Los Angeles, serving intermediate points located along the main line in the Sacramento Valley. Its winter schedule is as follows:

Read Down

7:35 p.m. lv. Los Angeles
8:10 a.m. arr. Sacramento

Read Up

arr. 7:35 a.m.
lv. 7:45 p.m.

The "West Coast" normally carries two chair cars which are of the newer lightweight type. No chair car reservations are required. One pullman car is normally assigned, and an additional pullman car is added when required by advance reservations. On weekends or days of heavier traffic an additional refurbished chair car is used. A snack-lounge car of the newer lightweight type is carried to serve passengers beverages, hot coffee, and soups, and cold foods such as sandwiches and salads.

Five headend cars are handled between Sacramento and Los Angeles and one additional car is handled between Fresno and Los Angeles. Both mail and express are carried between terminals at Sacramento and Los Angeles and for distribution to intermediate points, principally Stockton, Modesto, Fresno, Tulare, Bakersfield, and Mojave. One of the headend cars is sealed. The other four are generally working cars.

The estimated average total daily number of passengers carried on "West Coast" trains for the year ended February 28, 1958, was 102 for No. 59, of which 60 were revenue passengers, and 92 for No. 60, of which 55 were revenue passengers. Checks indicate that about 55% of these passengers were travelling between Sacramento, on the one hand, and the Los Angeles area, on the other hand. An additional 17 to 18% traveled between the Lodi-Turlock area and the Los Angeles area. The balance of about 27 to 28% traveled between all other pairs of points on the route. Spot checks indicate that about two-thirds of the sleeper passengers traveled between Sacramento and the Los Angeles area, and the other third traveled

between the Lodi-Fresno area and the Los Angeles area, with the largest portion of the one-third going to and from Stockton.

By its Application No. 39661 Southern Pacific seeks authority to discontinue the operation of the "West Coast" trains.

B. Results of Operation.

Exhibit No. 39661-12 of Southern Pacific shows an estimated annual out-of-pocket loss of \$999,909 for the operation of the "West Coast" trains. According to Commission staff Exhibit No. 5829-12A, the estimated annual out-of-pocket loss for these trains amounts to \$118,569 when the revenue is adjusted to provide for pass passengers. If no revenue is included for pass passengers, such estimated annual out-of-pocket loss would be increased to \$378,969.

C. Alternate Service.

There is an abundance of bus and airline common carrier service between Sacramento and Los Angeles, viz: eleven direct daily airline flights in each direction and fourteen daily bus schedules in each direction. The "West Coast" trains, however, are the only trains which provide overnight sleeper and coach service between these two cities.

D. Commission Staff Suggestions.

In Exhibit No. 5829-11 the Commission staff witness has suggested five alternative possibilities, as follows:

- (1) "The 'West Coast' could be operated as a separate train between Sacramento and Fresno, a distance of 170 miles, and combined with the 'Owl' at Fresno for operation as a consolidated train between Fresno and Los Angeles, (277 miles)."
The southbound passengers would arrive in Los Angeles at 10:40 a.m. instead of 7:35 a.m., and the northbound passengers would arrive at Sacramento about 7:00 to 7:30 a.m., instead of the present 8:10 a.m.

"Headend business could still probably be handled on the 'West Coast' Trains, but would require switching both ends of the trains at Fresno."

- (2) "The 'Owl' might be rerouted between Tracy and Fresno via Lathrop, Modesto and Merced instead of via the Westside Line through Los Banos. The 'West Coast' could then be consolidated with the 'Owl' at Lathrop, and would operate as a separate train, a distance of 58 miles, between Sacramento and Lathrop, and as a combined train between Lathrop and Los Angeles. ...No passenger service would then be provided over the Westside Line between Tracy and Fresno, where there are very few passengers and a small amount of headend business handled...."
- (3) "The 'Owl' might be rerouted as described in the foregoing plan via Modesto between Tracy and Fresno, and a bus connecting service operated between Sacramento and a connection at Modesto. No delay in switching cars would be experienced, but the northbound transfer at Modesto would have to be made at about 4:30 a.m., which would be too early in the morning, particularly for sleeper passengers. The southbound transfer at Modesto would have to be about midnight, which is rather late."
- (4) "If the 'Owl' and 'West Coast' were consolidated there is a time saving possibility (of about 2½ hours) if bus service between Bakersfield and Los Angeles were established to connect with present 'Owl' schedules at Bakersfield, which might be of particular benefit to chair car passengers, and would enable 'West Coast' passengers to arrive and leave Los Angeles close to the present scheduled times.

"...A disadvantage of this plan would be the necessary transfer from train to bus at about 5 a.m. (6 a.m. in the summer) at Bakersfield."
- (5) "The 'Oakland Lark' might be extended to Sacramento carrying the necessary extra chair cars and sleepers to handle passengers between Los Angeles and Sacramento via the Coast Route. A greater number of second sections of the 'Lark' would have to be operated to handle the additional cars and passengers. The northbound train would

arrive at Sacramento at about 10:30 a.m. The southbound train would depart Sacramento at approximately 6:45 p.m., in order to arrive at Los Angeles at the regular 8:30 a.m. 'Lark' time. There might be some possibility of handling present 'Senator' passengers on these extended trains by consolidation, but the 6:45 p.m. Sacramento departure would be considerably later than the present 5:05 p.m. 'Senator' departure, and the 10:30 a.m. Sacramento arrival would be later than the present 9:40 a.m. 'Senator' arrival."

The Commission staff witness concluded that substitute service for the 'West Coast' trains could be provided by a connection with the "Owl" at Fresno and by extending the "Oakland Lark" to Sacramento, but that such substitute service would result in less convenient leaving or arrival times to many patrons.

Southern Pacific's witness testified that the proposal (#5, supra) to extend the "Oakland Lark" was acceptable to Southern Pacific, provided it could be consolidated with the "Senator". The proposed "Sacramento Lark" would operate as a through train between Sacramento and San Jose, where its sleeping cars would be switched into and out of the "Lark" in the same manner as the present "Oakland Lark". Full breakfasts and dinners would be served in the dining car, which would be operated between Sacramento and Oakland. The "Sacramento Lark" would depart from Sacramento at approximately 6:30 p.m. and arrive at Los Angeles at 8:30 a.m., and depart from Los Angeles at 9 p.m. and arrive at Sacramento between 10 and 10:30 a.m.

E. Protests.

A member of the California Legislature testified that a 10:30 a.m. arrival of the proposed "Sacramento Lark" would be of no value to him during the legislative sessions, as by and large committee hearings begin at 10 o'clock and it is well to be present

in advance of the hearings. He stated that most members of the Legislature try to arrive in Sacramento at least by 9 a.m.

The general protests of the representatives of the railroad brotherhoods will be reviewed in our discussion of Case No. 5829 herein.

Case No. 5829, Commission Investigation
of Passenger Service in California.

Pursuant to this Commission's order dated October 9, 1956, the Commission staff began an investigation into the adequacy and sufficiency of the equipment, facilities, practices, and service of Southern Pacific Company in connection with the transportation of passengers between all points in California.

The staff introduced comprehensive exhibits relating to all train service and usage and revenues and expenses, in addition to analyses of the Southern Pacific's proposed abandonments.

A. Level and Quality of Service.

In Exhibit No. 5829-11, at page 5, the staff enumerated (7) service improvements which have tended to encourage patronage and (17) service curtailments tending to discourage patronage.

These are:

Service Improvements Tending to Encourage Patronage:

1. Establishment of through chair cars on Coast Daylight in 1955 which are transferred at San Jose to serve all Peninsula points; also through Coast Daylight chair cars to Oakland.
2. Extension of toll free telephone service for making train reservations, together with ticket mail-out service.
3. Dome lounge cars placed in service on San Joaquin and Shasta Daylight Trains and Overland Trains in 1955.
4. Lightweight sleepers included as minimum consist on Owl Trains in 1956.
5. Scheduled running time of Lark decreased by 30 minutes, permitting 8:30 a.m. San Francisco and Los Angeles arrivals instead of 9 a.m., in 1955.

6. Establishment of train-to-train hand baggage transfer between Oakland Pier and San Francisco Third and Townsend Depot, and between trains at Los Angeles Union Depot in 1955.
7. Establishment of optional ticket honoring arrangement with Santa Fe between San Francisco and Bakersfield in 1958.

Service Curtailments Tending to Discourage Patronage:

1. Discontinuance of seven city ticket offices in California since January 1, 1955.
2. Reduction of hours that tickets may be purchased at various agency stations, and discontinuance of other passenger agency stations.
3. Reduction of hours that station waiting rooms are open to public.
4. Recent passenger fare and pullman fare increases.
5. Discontinuance of passenger agents on Shasta and Coast Daylights during winter season commencing in January 1958.
6. Removal of lounge car from Owl (S.F.-L.A.) trains in 1957.
7. Reduction of hours that advance train reservations may be made by S.F. and L.A. reservation agencies.
8. Removal of snack-lounge car from Senator (Sacramento Local) trains in 1957.
9. Coffee shop car substituted for diner car and hamburger grill lounge car on Overland at time that Chicago connection discontinued in 1956. Coffee shop car removed from Overland trains between Sparks (Reno) and Ogden in 1957.
10. Removal of sleepers and hamburger grill lounge car from Klamath (S.F.-Portland) Trains Nos. 19 and 20 in 1956.
11. Removal of sleepers from Argonaut Trains Nos. 5 and 6, replacement of lounge car and diner car with hamburger grill lounge car in 1956, and finally consolidation of Argonaut with Imperial trains between Los Angeles and El Paso, Texas in 1957.
12. Reduction of speed of San Joaquin and Sacramento Daylight Trains, following discontinuance of Local Trains Nos. 55 and 56 in 1955.
13. Operation of Sacramento Local Passenger Train No. 226 at the same time as Overland Train No. 28.

14. Consolidation of Lark and Starlight Trains between S.F. and L.A. (Coast Route) in 1957.
15. Reduction of Red Cap Porter service at certain stations and increase in Red Cap Porter charges.
16. Pending applications filed for train discontinuances, and past curtailments proposed and then withdrawn for West Coast and Shasta Daylight.
17. Drastic curtailment of passenger advertising program in 1957.

The staff concluded (a) that the Southern Pacific Company has been reducing the level and quality of service rendered on its main lines in various ways, with the over-all result that there has been a lower standard of service to the public; and (b) that if all of the applications for service reductions now pending are granted, the Southern Pacific Company's passenger service will have reached, or perhaps passed, the minimum acceptable level of service for the various main line routes, which is one fast day train and one fast overnight train operated with modern lightweight equipment on each major route.

B. Recommendations for Improved Service.

The staff made a number of recommendations for improved service in its exhibits:

- (1) If the Southern Pacific Company is permitted to abandon ferry boats on the San Francisco Bay:

(a) The responsibility to provide bus service and the authority to operate buses should be held by the Southern Pacific Company.

(b) A new bus terminal should be provided at a location more convenient than the Ferry Building, and deluxe bus equipment with ample room for passengers and their hand baggage provided.

(c) The buses could well be extended to Third and Townsend Streets for connection with Coast Line trains.

- (2) The scheduled running time of the San Joaquin Valley trains should be reduced, particularly the "San Joaquin Daylight" which has been lengthened one hour over the past two years. This might be accomplished by:

- (a) Expediting the handling of headend business at stations.

- (b) Providing additional mechanical aids such as fork-lift trucks and containers.

- (c) Using truck service to a greater extent in short-haul shipments and to consolidate mail and express for handling at fewer train stations with mechanical aids.

- (d) Installing additional centralized traffic control.

- (3) Six additional streamlined lightweight chair cars should be made available to fully equip the "Owl" and "West Coast" with modern cars for heavier traffic during the summer season, so that older type cars would not be required.
- (4) In the event the Commission authorizes discontinuance of Santa Fe Trains #6 and #61 (A. 39616), connecting bus service between Los Angeles and Bakersfield should be provided to the San Joaquin Daylight Trains Nos. 51 and 52.
- (5) The optional ticket honoring arrangement with the Santa Fe Railway recently adopted in the San Joaquin Valley should be extended to Los Angeles.
- (6) Southern Pacific Company should experiment with direct bus connections between Los Angeles Union Passenger Terminal and outlying cities, beginning with service to and from Long Beach connecting with the "Coast Daylight".*
- (7) Southern Pacific Company should make arrangements to promote ticket sales by commission agents and travel bureaus on a basis similar to that used by the airlines and bus lines.
- (8) Southern Pacific Company and Santa Fe Railway should join in issuing a joint timetable between Los Angeles and San Francisco-Sacramento, showing connecting bus schedules and showing California time rather than standard time.
- (9) The color scheme of the passenger cars should be standardized to present a more uniform appearance of the trains.

* Representatives of the City of Long Beach introduced evidence in support of the institution of direct bus connections between the Los Angeles Union Passenger Terminal and the City of Long Beach.

- (10) In relation to the size of its passenger operation, Southern Pacific Company has consistently spent less for passenger advertising than any of the other major railroads in California. The company does not participate in the national Rail Travel Card plan, nor does it have its own family-fare plan.

C. Results of Operation.

1. General Operations.

Both the Southern Pacific and the Commission staff presented exhibits showing the estimated results of operations on an out-of-pocket expense basis for all of the passenger trains operated by Southern Pacific Company. / The Commission staff estimated a deficit of \$221,915 related to trains operating entirely within California. *Which* No comparable estimate was introduced by the Southern Pacific. / The Southern Pacific estimate of the annual system-wide out-of-pocket loss ✓ amounted to \$23,255,994, which may be compared with the Commission staff estimate that the system-wide revenue exceeds the out-of-pocket ✓ expense by the sum of \$1,145,382 annually after provision for income tax.

The principal differences between the staff estimate and that of the Southern Pacific are as follows:

- (1) The staff includes constructive revenue for pass passengers, whereas the Southern Pacific does not.
- (2) The staff estimate of the expense of the maintenance of way and structures is 25% lower than the estimate used by Southern Pacific.
- (3) The staff estimate of locomotive maintenance expense is 30% lower than that of Southern Pacific and the staff estimate of passenger train car maintenance is 40% lower than that of Southern Pacific.
- (4) The staff estimate of transportation expense is considerably lower than that of Southern Pacific. For station employees and station supplies and expenses the staff determined the portion of expense that varied with traffic to be 25%, whereas the Southern Pacific used 50%. For yard switching expenses the staff, with minor exceptions, determined the portion of expense which varied with traffic to be 80%, whereas Southern Pacific used 100% for all items.

- (5) The Commission staff determined that no portion of the traffic expense varied with traffic, whereas Southern Pacific considered that 40% of this expense was variable. The principal items in this group are outside agencies and advertising.
- (6) The staff determined the portion of General Expense which varied with traffic to be 10% of the account, Salaries & Expenses of Clerks, whereas Southern Pacific used 40% of the entire group of accounts.

2. Dining, Tavern, and Lounge Car Operations.

The staff made an extensive analysis of the revenues and out-of-pocket expenses associated with the dining, tavern, and lounge service of the Southern Pacific Company for the year 1957 and for the year 1957 adjusted to reflect current changes in operations.

Exhibit 5829-12A notes that the total dining, tavern, and lounge out-of-pocket loss for 1957 for all trains is \$5,382,298. For certain trains, the dining, tavern, and lounge expenses account for some 25% to 30% of the total train expenses. As shown on Tables B-3 and B-4 of Exhibit 5829-12A, in many instances in the dining car operation, the revenue earned per meal does not even cover the dining car crew wages.

Southern Pacific's Exhibit 5829-23 and Witness Nines' testimony relating thereto (Tr. 1194-97) places dining, tavern, and lounge car expenses in excess of eleven million dollars.

A specific example to illustrate the economic unsoundness of the present dining car operation, predicated on company records, shows the average revenue derived from a meal on the "Lark" is \$1.52. The cost of this average meal served is \$4.29. When the additional expense of operating the dining car is added to this cost, the total cost of serving this average meal becomes \$7.20. (Exhibit 5829-12A, p. B 9)

The staff proposed alternative plans for serving meals to passengers, any one of which would provide sufficient savings to permit the serving of a free meal to every passenger at a smaller loss than is being encountered by the respondent at present. The plans presented were for a dining service comparable to that which may be found on the air lines, some eastern trains, and on the Union Pacific's "City of Las Vegas".

Position of Freight Shippers.

Several witnesses appeared on behalf of freight shippers to urge the Commission to permit Southern Pacific to reduce its out-of-pocket losses on its passenger train operations and thereby lessen the burden on the freight operations.

Position of Protestants.

The representatives of the railroad brotherhoods actively participated throughout the entire proceeding. They contend that the Southern Pacific is not making a sufficient effort to attract passenger business through adequate publicity and advertising.

The representative of the Brotherhood of Locomotive Firemen and Enginemen pointed out that improvements could be made in the telephone reservation service, which would encourage passengers to use the service. He concurred with the staff suggestion that hot meals placed on board at terminals could be served to the passengers at their seats on the coaches and in the Pullman cars instead of in the dining cars. He urges that until such time as a well-coordinated passenger service is functioning to serve the entire area of California, including such cities as Long Beach and Pasadena, no change should be made in applicant's services.

The representative of the Order of Railway Conductors and Brakemen urged that if the "West Coast" is discontinued the substitute service should be provided both by a connection with the "Owl"

at Fresno and by extending the "Oakland Lark" to Sacramento. Rather than discontinue Train No. 226, he suggested that its time of departure should be changed to 2:30 p.m. He concurred with the staff suggestion that the bus service between Oakland and the San Francisco Ferry Building should be extended to the Third and Townsend Streets Depot. He pointed out that Southern Pacific Company is selling tickets for United Air Lines without receiving any commission, and suggested that the providing of the services, such as Red Cap Porter service, checking of baggage on the trains on which the passenger is riding, and providing train passenger agents and sufficient chair car porters to tend the needs of passengers en route, would be more attractive to the patrons than the gratuitous handling of a competitor's business. He contended that with the possible exception of the "Lark", a complimentary meal would appeal more to the passengers than the present type of service and could, no doubt, effect savings over the present dining car operations. In conclusion he requested the Commission to maintain all passenger service in statu quo until a state-wide investigation of all rail passenger service within the State of California can be completed and an integrated and coordinated rail passenger service can be placed in effect to insure the maximum efficiency of operation with the minimum burden on the carriers.

Conclusions:

A. Request for State-Wide Investigation of All Passenger Service.

The request of the representative of the Order of Railway Conductors and Brakemen for a Commission investigation of all passenger service within the State of California will be denied.

B. General.

A realistic view of the record in this case clearly demonstrates that, should we adopt the view urged upon us by the applicant railroad, there could be no possible argument against gradually permitting the abandonment of all passenger train service performed by this applicant within California. We are not prepared to agree to this unrealistic point of view, and shall proceed upon the principle that railroad passenger service is vitally necessary to the public interest.

The record in this case abundantly discloses, and we hereby find, that the applicant has permitted its passenger service to deteriorate to the point where the riding public may well be discouraged from using such service. This thing can become a vicious circle. The railroad's lack of interest in the passenger service causes such service to become degraded which, in turn, discourages the public from using it. This is the recent history of railroad passenger service in this country. Obviously, this sort of thing can lead only to the complete extinction of the carriage of passengers by the railroads.

What is needed is for the railroads to maintain reasonable passenger service and to undertake to upgrade such service. They should approach the subject with a sincere interest in maintaining and improving that service, thus furnishing real competition to other modes of transportation. This the railroads should voluntarily do, but if they do not volunteer, then it is the duty of this and other regulatory agencies to see that such action is taken. Such is our view and such will be our action with regard to this subject.

It is the Commission's opinion that a railroad has no justification for saying that service by other common carriers warrants abandonment of rail passenger service, unless there is a

convincing showing that the railroad has taken all reasonable action to maintain its service in a competitive condition. The burden is on the railroad to show that it has done this. Applicant has not met such a burden. By permitting its service to become relatively downgraded, as compared to other common carrier service, the railroad, by its own action, defeats its claim to the right of abandoning the service. In our judgment, the applicant should exert its best efforts in trying to upgrade and improve its passenger service, rather than consuming so much effort in attempting to convince governmental authority of the superiority of competing common carrier service. If this were done, we believe that applicant's passenger business would take on a much more favorable complexion.

C. Application No. 39661.

Instead of granting the request of applicant railroad that the "West Coasts" be abandoned, or of adopting one of the staff suggestions regarding consolidation, we shall require the continued operation of these trains and direct that studies be made both by the applicant and the Commission staff with a view to further improving the facilities and service of these trains to the point where they will have a greater attraction for patronage. We find from the evidence that applicant has not sustained the burden of proof that public convenience and necessity no longer require the operation and service of the "West Coast" trains.

D. Application No. 39327.

The record shows that Trains Nos. 226 and 241 operate at substantial out-of-pocket losses, that the use made by the public of these trains is not sufficiently great to justify their continued operation; and that the alternate service presently existing is

adequate to serve the needs of the public. The Commission is of the opinion and hereby finds that public convenience and necessity no longer require applicant to operate its Passenger Trains Nos. 226 and 241 between Oakland Pier and Sacramento and that Southern Pacific's request to discontinue the operations of said passenger trains should be granted.

The public usage of the El Dorado Trains Nos. 247 and 248 is over two and a half times that of Trains Nos. 226 and 241. The City of San Francisco Train No. 101, in view of its poor on-time performance, is certainly not an adequate alternate service for Train No. 247 between Sacramento and San Francisco. We shall require the continued operation of Trains Nos. 247 and 248 and direct that studies be made both by the applicant and the Commission staff with a view to ascertaining how the service and facilities of such trains may be upgraded in order to attract more patronage. We find from the evidence that applicant has not sustained the burden of proof that public convenience and necessity no longer require the operation and service of the El Dorado trains.

E. Application No. 38039.

The conclusions respecting Application No. 38039 are set forth in the portions of this opinion which are concerned with such application.

F. Case No. 5829.

Staff Recommendations Concerning Service and Facilities.

This Commission will take judicial notice of the fact that Southern Pacific has discontinued, pursuant to authority granted by the Interstate Commerce Commission, the operation of the passenger ferry boats on the San Francisco Bay and that it has been authorized by this Commission to substitute passenger bus service between the

Oakland Sixteenth Street Station and the Ferry Building in San Francisco. The recommendation that the operation of the buses be extended to the Third and Townsend Streets Depot for connection with the Coast Line trains will be adopted. Southern Pacific Company will be directed to so extend its bus service.

Southern Pacific will be directed to give careful consideration to the recommendation of the Commission staff that the schedule times of the San Joaquin Valley trains be reduced and to file a report with the Commission advising what reduction in time may be made.

The Commission hereby finds that the equipment of the Owl and the West Coast trains is insufficient, inadequate and unreasonable, and that the public convenience and necessity require that six additional streamlined lightweight chair cars be made available to the Owl and West Coast trains as recommended by the Commission staff witness, so that the older type cars will not be required for heavier traffic during the summer season.

The Commission will take judicial notice that connecting bus service has been provided by the Santa Fe Transportation Company to the San Joaquin Daylight Train No. 51 between Los Angeles and Bakersfield. The Commission will not require such bus service also to be provided for Train No. 52.

The Commission will also take judicial notice of the fact that the optional ticket honoring arrangement between Southern Pacific and Santa Fe adopted in the San Joaquin Valley has been extended to Los Angeles.

The Commission will direct the Southern Pacific Company to make a study regarding the feasibility and desirability of instituting

bus service between the Los Angeles Union Passenger Terminal and the City of Long Beach and other outlying cities, and to report the results of such study to the Commission.

Southern Pacific Company will be directed to seek to arrange with Santa Fe Railway for the issuance of a joint timetable for their passenger train operations between Los Angeles and San Francisco-Sacramento, showing connecting bus schedules and showing California time rather than standard time.

Similarly the two recommendations of the Commission staff witness pertaining, (1) to arrangements to promote ticket sales by commission agents and travel bureaus and (2) to passenger service advertising are worthwhile and should be so considered by Southern Pacific. However, these recommendations will not be made the subject of an order herein.

At page 48 of Exhibit No. 5829-11 appear figures showing the amount of money spent by the Southern Pacific Company and other California railroads for passenger advertising. During the year 1957 Southern Pacific Company spent \$407,214 for such passenger advertising; the Santa Fe spent, during that year, \$1,934,050 for such advertising; and the Union Pacific spent \$2,552,578. For the year 1956 the advertising expenditures for passenger service were: Southern Pacific Company, \$661,423; Santa Fe, \$2,165,892; and Union Pacific, \$3,604,652.

This evidence, coupled with evidence showing the absence of travel inducement plans and noncompetitive schedules and rates, unquestionably establishes the fact that Southern Pacific has no desire to compete with other railroads and other common carriers for passenger business. Applicant's failure to merchandise its services aggressively is inimical to its own best interests and more importantly, to those of the people of the State of California.

When it is considered that the passenger service proposed to be discontinued is between the State's capitol and the State's two largest metropolitan areas, the negative attitude of the railroad with regard to business solicitation is hardly compatible with the population and economic growth prospects of this State.

Southern Pacific will be directed to develop a plan for the improvement and encouragement of passenger service. This plan should contain concrete proposals for the upgrading of passenger service and should encompass a meal service plan which emphasizes customer appeal and service economy.

Staff Recommendations Concerning Operating Results.

The Commission's conclusion and recommendation concerning the operating deficits attributable to the dining, tavern, and lounge service has been noted above.

1. Constructive Revenue for Pass Passengers.

The evidence shows that in the operation of the Southern Pacific Company's passenger service, pass-passenger traffic represents a significant proportion of the total passenger traffic (Ex. 5829-12A, p. A-14). As applied to the trains which applicant has proposed to abandon, if the passengers riding on passes were to pay actual fares, their contribution would constitute approximately 20% of the total revenue.

In the Commission's opinion, it is perfectly proper to include, as the staff did, constructive revenues flowing from pass riders. It has been held by the courts that an employee of a railroad holding such a pass is in the same category as a fare-paying passenger, because the railroad has received a benefit from the pass privilege extended to the employee.

In a cost study where revenue is constructively credited for pass passengers, there should be corresponding charges to the railroad service properly chargeable with this expense. On the basis of company expenses, approximately 20% of the total operations of the Southern Pacific relate to its passenger service and approximately 80% is related to its freight operations. In addition, the company has pass-passengers' traffic generated by the freight operations of Pacific Motor Trucking, Pacific Fruit Express, Northwestern Pacific Railroad, Pacific Electric Railway, San Diego and Arizona Eastern Railway, Southern Pacific Pipe Lines, and many other affiliate and subsidiary companies. The staff method of expense allocation, as adjusted to reflect the above factors, seems entirely reasonable; and the Commission must reject applicant's contention, as expressed by Witness Crocket, that since, in his opinion, only 5% of the pass travel actually occurred in connection with the company business, no allowance should be made in revenue or expense. (Tr. p. 1746.)

2. Expenses.

All of the trains which Southern Pacific is seeking to discontinue in its applications under consideration herein are operating at an out-of-pocket loss, both according to Southern Pacific estimates and according to staff estimates.

The evidence introduced by the applicant and the evidence introduced by the staff of the Commission is highly conflicting in many details. For the purpose of the action which we will take herein, it is not necessary to resolve these many conflicts. We are of the opinion and find that the evidence of the applicant is exaggerated to a great extent and is lacking in integrity for the reason that it is based upon formulas and theories which, in our

opinion, are impermissible under the law. Furthermore, we find that the evidence of the applicant paints an altogether too pessimistic picture with regard to its passenger operating results and is not in accordance with the realities of the situation and presently prevailing conditions. On the other hand, we find that the evidence presented by the staff of the Commission is reasonable and does possess integrity and depicts an operating picture which is reasonably in accord with the facts.

The evidence submitted by the Commission staff indicates that Southern Pacific should be able to effect certain economies in its expenses for maintenance of equipment, both locomotive and passenger car.

O R D E R

Public hearings having been held in the above-entitled matters, the matters having been submitted and based upon the evidence of record and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that:

1. The interim order of this Commission set forth in Decision No. 55202, issued July 2, 1957, in Application No. 38039, is hereby made the final order of this Commission.
2. The petition of Southern Pacific Company for interim relief in Application No. 39327 is hereby denied.
3. The Southern Pacific Company is hereby authorized to discontinue the operation of its Passenger Trains Nos. 226 and 241 between Oakland Pier and Sacramento and intermediate points.
4. Applicant shall cancel, in conformity with the rules of this Commission, the passenger timetables and passenger tariffs applicable to the operation of Trains Nos. 226 and 241 between Oakland Pier and Sacramento and intermediate points.

5. Applicant shall give not less than seven days' notice to the public of its discontinuance of passenger train service herein authorized by posting notices respecting the discontinuance of Trains Nos. 226 and 241 in said trains and in the agency stations involved.

6. Applicant shall notify this Commission in writing of the date of the discontinuance of each of the passenger trains as herein authorized within ten days after the discontinuance of each of said passenger trains.

7. In all other respects Applications Nos. 39327 and 39661 are hereby denied.

8. The authorizations herein granted if not exercised within six months from the date hereof shall expire six months from the date of the issuance of this order.

9. Within sixty days after the effective date of this order Southern Pacific Company shall make six additional streamlined lightweight chair cars available to the Owl Trains Nos. 57 and 58 and the West Coast Trains Nos. 59 and 60 so that the older type cars will not be required for heavier traffic during the summer. Southern Pacific Company shall notify this Commission in writing of its compliance with this paragraph of the order within ten days after the date of compliance.

10. Southern Pacific Company shall make a study as to how service and equipment on the West Coast Trains Nos. 59 and 60 may be further improved and how the service and equipment on the El Dorado Trains Nos. 247 and 248 may be improved, and within ninety days after the effective date of this order shall file a report with this Commission showing the results of such study.

11. Southern Pacific Company shall make a study to determine the feasibility and advisability of the institution of bus service between the Los Angeles Union Passenger Terminal and the City of Long Beach and other outlying cities, and within ninety days after the effective date of this order Southern Pacific Company shall file a report with this Commission showing the results of such study.

12. Southern Pacific Company shall make a study to determine what reduction in operating time may be made in the scheduled running time of San Joaquin Valley trains, and within ninety days after the effective date of this order Southern Pacific Company shall file a report with this Commission showing the results of such study.

13. Within sixty days after the effective date of this order Southern Pacific Company shall extend its bus service between Oakland and the San Francisco Ferry Building to the Third and Townsend Streets Depot for connection with the Coast Line trains.

14. Southern Pacific Company shall seek to make arrangements with The Atchison, Topeka and Santa Fe Railway Company for the issuance of a joint timetable for their passenger train operations between Los Angeles and San Francisco-Sacramento showing connecting bus schedules and showing California time rather than Standard time. Southern Pacific Company shall file a written report with the Commission informing the Commission of the results of such negotiations within sixty days after the effective date of this order.

15. Southern Pacific Company shall develop a plan for the improvement and encouragement of its passenger service within the State of California. This plan shall contain concrete proposals

for the upgrading of passenger service and a proposal for meal service which emphasizes customer appeal and service economy. A copy of such plan shall be filed with the Commission within six months from the effective date of this order.

16. The Commission investigation into the adequacy and sufficiency of passenger service of Southern Pacific Company between points in California, Case No. 5829, is hereby continued to a date to be set for the purpose of hearing further evidence and considering the reports to be filed by Southern Pacific Company pursuant to this order and for any further action to be taken by the Commission thereon.

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

Dated at San Francisco, California, this 10th day of March, 1959.

President
Arthur E. Mitchell
Theodore H. Jenner
Robert H. Buge

Commissioners

I will write a dissent later.

S. Lyn Fox

I dissent from foregoing order
William J. Bailey

APPENDIX A

LIST OF APPEARANCES

(In addition to appearances shown in Decision No. 55202, issued July 2, 1957, in Application No. 38039 and Case No. 5829, and Order Holding Submission of Application No. 39327 in Abeyance, issued February 18, 1958.)

Randolph Karr and Charles W. Burkett, Jr., and Dean A. Bailey, for Southern Pacific Company, applicant in Applications Nos. 39661, 39327 and 38039 and respondent in Case No. 5829.

Leonard M. Wickliffe, for California State Legislative Committee, Order of Railway Conductors and Brakemen; George W. Ballard and James E. Howe, for Brotherhood of Railroad Trainmen; S. S. Stein, for E. A. McMillan, Chairman of the State Legislative Committee, Brotherhood of Railway Clerks; William V. Ellis, for California State Legislative Board, Brotherhood of Locomotive Firemen and Enginemen; G. R. Mitchell, for the Brotherhood of Locomotive Engineers; Willard V. Hirst, for the Brotherhood of Locomotive Engineers, Division 126; Jerry J. Willey, for Locomotive Engineers, Division 126; Frank J. Noble, Jr., for G. R. Mitchell and the Brotherhood of Locomotive Engineers; and Lester H. Carmichael, for Brotherhood of Railroad Signalmen; protestants in Applications Nos. 39661, 39327 and 38039, and interested parties in Case No. 5829.

A. R. Linn, for City of Redding; Everett M. Glenn, City Attorney, and E. R. Vaughn, Assistant City Attorney, for City of Sacramento; Frank G. Luetthy, for Brotherhood of Blacksmiths and Boilermakers; Bert Delotto, Fresno County Supervisor, in propria persona; Paul L. Garver, for T. M. Chubb, Chief Engineer and General Manager, Department of Public Utilities and Transportation, City of Los Angeles; and Alan G. Campbell, Assistant City Attorney, for City of Los Angeles; interested parties.

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN PACIFIC COMPANY to consolidate the operation of passenger trains Nos. 75 and 76 with passenger trains Nos. 94 and 95, between San Francisco and Los Angeles, California.

Application No. 38039

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY to discon-
tinue operation of passenger trains
Nos. 226, 241, 247 and 248.

Application No. 39327

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY to discon-
tinue the operation of passenger
trains Nos. 59 and 60.

Application No. 39661

Commission Investigation into the
adequacy and sufficiency of passenger
service of SOUTHERN PACIFIC COMPANY
between points in California.

Case No. 5829

DISSENTING OPINION

I dissent from the major findings, conclusions and ordering paragraphs of the majority opinion and order, but concur with ordering paragraphs 1 through 6 which make interim Decision No. 55202 authorizing consolidation of the Lark and Starlight final and authorize discontinuance of Passenger Trains Nos. 226 and 241 between Oakland Pier and Sacramento and intermediate points together with the findings and conclusions relating thereto. I concur also in ordering paragraphs 11 through 14 and the findings and conclusions relating thereto.

It is my conviction that the majority opinion, in the main, deals in broad generalities, fails to cite specific evidence in the record to support such generalities, unjustly besmirches

the integrity of applicant, and imposes upon applicant personal views and philosophies, irrespective of the facts as presented in these proceedings.

Specifically, according to my evaluation of the record, the majority opinion:

1. Ignores uncontroverted evidence presented by both applicant and the staff, where such evidence tends to support applicant's position and emphasizes evidence that tends to discredit applicant's presentation. The summary charts on page 61 of Staff Exhibit No. 5829-11 which are based on 12 months moving averages show that during the years 1953 through 1957 the number of passengers carried by Southern Pacific on its Coast and Valley Trains between San Francisco and Sacramento, on the one hand, and Los Angeles, on the other hand, and intermediate points, has steadily declined from about 3250 average daily passengers in the first part of 1953 to about 2100 average daily passengers at the end of 1957. During this same period these charts show that the average daily passengers carried by the airlines between these points has rapidly increased from about 2400 passengers to about 3600 passengers. While ignoring this sharp decline in rail passenger traffic, the majority opinion emphasizes staff studies showing curtailments in service and criticizes Southern Pacific for such curtailments, for spending less than other railroads on advertising and for failure to

provide travel-inducement plans and noncompetitive schedules in rates. It is logical to assume that the reduction in service and advertising expense came after and as a result of the diminution in traffic. As to the "noncompetitive schedules and rates" it may be pointed out that such schedules and rates, as well as certain of the curtailments in service, have been authorized by this Commission and therefore, in the absence of a showing to the contrary, must be presumed to have been fully justified and reasonable.

2. Accepts as reasonable staff estimates of results of operation without adequate resolution of substantial differences between applicant's and staff's estimates when such staff estimates bolster the majority opinion. I take official notice of the fact that, with one very minor exception, passes issued by applicant are honored on "a space available basis" only; pass riders do not displace fare-paying passengers, but on the contrary, occupy seats that otherwise would be empty. To credit as revenue the use by a nonpaying passenger of a seat which otherwise would go unused, in my opinion, violates all concepts of economics. Furthermore, pass holders still would be able to use other passenger service made available by this applicant. The single exception noted above is where

employees are transported on passes for the convenience of applicant. There was no adequate showing or estimate made as to the dollar value to the applicant of such passes. A witness for applicant testified that such passes used for the convenience of applicant, in his opinion, constituted only 5% of the entire number of passes issued and used; while the staff questioned this estimate it presented no evidence to refute it.

Further, the Commission staff estimates of maintenance of locomotive and car expense were based on an examination of expenses of other railroads. Such evidence would seem to indicate that Southern Pacific Company should re-examine its expenses for the maintenance of locomotives and cars to determine what, if any, savings can be effected. However, the record in this case fails to show the comparability of operations of Southern Pacific Company and those of the other railroads with which maintenance of locomotive and car expenses were compared and is entirely lacking with respect to any showing as to how, specifically, Southern Pacific Company can reduce its maintenance of locomotive and car expense without impairing the safety of its operations. On the other hand, applicant's presentation was based upon company records

which were not discredited by any substantial showing by the staff. Nevertheless, the staff reduced company recorded costs for locomotive and car expense by 30% and 40%, respectively, and sought to justify such reduction by voicing the opinion that Southern Pacific maintenance operations were inefficient. The majority opinion accepts this arbitrary conclusion.

3. Erroneously declares that evidence presented by applicant "is exaggerated to a great extent and is lacking in integrity". The evidence introduced by both applicant and the staff are conflicting in many details. In this type of proceeding there are bound to be conflicts in the manner in which evidence is prepared and estimates made and in the final results of such estimates. To charge that evidence presented by one party lacks integrity, without citing specific evidence from the record to substantiate such charge, in my opinion, does violence to the objective weighing of evidence and thus to the legislative and judicial responsibilities of this Commission. I have been unable to find in the record any evidence indicating, in the slightest degree, any lack of integrity in applicant's presentation. In this connection, it is significant that the presiding Commissioner who had the opportunity, personally, to observe the demeanor and presentation of witnesses, although not accepting as reasonable all of applicant's estimates,

found no lack of integrity in their development and presentation. Furthermore, neither the record nor the majority opinion discloses any law under which formulas and theories used by applicant in determining out-of-pocket loss are "impermissible under the law". I reject this assumption because I am of the opinion that the permissibility or impermissibility of such formulas and theories is a matter within the discretion of the Commission rather than a matter which has been predetermined by law.

4. Unwisely rejects workable staff recommendations for adequate substitute passenger train service to replace West Coast Trains No. 59 and 60 which were acceptable, in part, to applicant. In Exhibit No. 5829-11 the staff witness proposed three alternate services which would preserve overnight train service between Sacramento and Los Angeles in the event discontinuance of the West Coast Trains were authorized. Two of the proposals were as follows:

- (2) "The 'Owl' might be rerouted between Tracy and Fresno via Lathrop, Modesto and Merced instead of via the Westside Line through Los Banos. The 'West Coast' could then be consolidated with the 'Owl' at Lathrop, and would operate as a separate train, a distance of 58 miles, between Sacramento and Lathrop, and as a combined train between Lathrop and Los Angeles. ...No passenger service would then be provided over the Westside Line between Tracy and Fresno, where there are very few passengers and a small amount of headend business handled...."

- (5) "The 'Oakland Lark' might be extended to Sacramento carrying the necessary extra chair cars and sleepers to handle passengers between Los Angeles and Sacramento via the Coast Route. A greater number of second sections of the 'Lark' would have to be operated to handle the additional cars and passengers. The northbound train would arrive at Sacramento at about 10:30 a.m. The southbound train would depart Sacramento at approximately 6:45 p.m., in order to arrive at Los Angeles at the regular 8:30 a.m. 'Lark' time. There might be some possibility of handling present 'Senator' passengers on these extended trains by consolidation, but the 6:45 p.m. Sacramento departure would be considerably later than the present 5:05 p.m. 'Senator' departure, and the 10:30 a.m. Sacramento arrival would be later than the present 9:40 a.m. 'Senator' arrival".

As noted in the majority opinion, proposal No. 5 to extend the Oakland Lark was acceptable to Southern Pacific provided it could be consolidated with the Senator. The proposed "Sacramento Lark" would operate as a through train between Sacramento and San Jose where its sleeping cars would be switched to the San Francisco Lark in the same manner as the Oakland Lark. Full breakfasts and dinners would be served in the dining cars which would be operated between Sacramento and Oakland. The "Sacramento Lark" would depart from Sacramento at approximately 6:30 p.m. and arrive at Los Angeles at 8:30 a.m., and depart from Los Angeles at 9 p.m. and arrive at Sacramento between 10 and 10:30 a.m. Either of the staff proposals cited above, in my opinion, would provide suitable and adequate overnight service between Sacramento and

Los Angeles. Protests voiced at the hearings were concerned with the arrival time of the proposed "Sacramento Lark" at Sacramento, said arrival time being between 10 and 10:30 a.m., or some 40 minutes later than the arrival time of the Senator which service it would displace; and with the arrival time of the Owl at Los Angeles, which arrival time would be at 10:40 a.m. as compared to the 7:35 a.m. arrival of the West Coast and the 8:30 a.m. arrival of the Lark.

5. Quotes voluminously from the record where the record tends to discredit applicant but skips lightly over details of the record when such details tend to support applicant's position. The majority opinion states in one short paragraph the position taken by witnesses appearing on behalf of the freight shippers in this proceeding. The concerns represented by the several shipper witnesses who appeared on behalf of the applicant included the Cannery League of California whose members pack approximately 127 million cases of canned goods in California; Simpson Redwood Company which has annual freight shipments of 5,000 cars; Kaiser Steel Corporation which has annual freight shipments of 71,000 cars; Fairhurst Lumber Company and associated lumber companies which have annual freight shipments of 6,500 - 7,000

cars; California Manufacturers Association which is composed of the predominant shippers and receivers of freight in California; California & Hawaiian Sugar Refining Corporation which has annual freight shipments of 10,000 - 11,500 cars; Alameda Industries, Inc., which represents directly some 70 of the leading industrial firms in Oakland and indirectly over 400 industrial firms in Alameda County; Grower-Shipper Vegetable Association of Central California which has annual freight shipments of 60,000 cars; Sunkist Growers, Inc., which has annual freight shipments of 40,000 cars, and the General Services Administration of the United States Government.

A representative of the United States Department of Agriculture also indicated concern regarding the passenger train deficit problem because of the influence of such deficits upon freight rates applicable to products of agriculture and farm production supplies. The majority in its opinion does not see fit to list these important members of the public.

6. Gives little weight to the fact that applicant no longer enjoys a passenger carrier monopoly in the territory under consideration, or to the terrific impact of competing airlines and buses and of private automobiles.
7. While commenting thereon, disregards the abundant and adequate alternate services of both competing types of public passenger carriers and private automobiles.

8. Ignores the economics of the situation in general and of California shippers, agricultural, industrial and government, in particular.

Staff estimates of the average total daily number of revenue passengers carried on West Coast Trains Nos. 59 and 60 as of February 28, 1958, are stated in Staff Exhibit No. 5829-11. This staff study estimated that southbound train No. 60 carried an average of 55 revenue passengers daily, and that northbound train No. 59 carried an average of 60 revenue passengers daily. Checks indicated that about 55%, or about 30 southbound passengers - less than a single bus load - used train No. 60 between Sacramento and Los Angeles and that 33 passengers - less than a bus load - used the overnight service north from Los Angeles to Sacramento. Another 11 passengers used the northbound overnight service from Los Angeles to the Lodi-Turlock area, while approximately 10 passengers used the overnight service from the Lodi-Turlock area to Los Angeles. The balance of the revenue passengers carried on these two West Coast trains traveled between intermediate points on the route, according to the staff study. The majority opinion, while vague as to the reasons therefor, made the finding that applicant had not sustained the burden of proof that public convenience and necessity no longer required the operation and service of the West Coast Trains Nos. 59 and 60.

This finding was based, apparently, on the determination that a combination of the West Coast and the Owl would not provide satisfactory substitute service because of the delay in arrival at Los Angeles to between 10:00 and 10:40 a.m., as opposed to a 7:35 a.m. arrival for the West Coast; and that a combination of the Lark and the proposed "Sacramento Lark" also would not provide a satisfactory substitute service because of an arrival in Sacramento of between 10:00 and 10:30 a.m. rather than 9:40 a.m., the present arrival time of the Senator.

The record does not disclose how many of the revenue passengers presently using West Coast Trains actually would be inconvenienced by the later arrival in Sacramento and Los Angeles of the substitute trains.

The record shows that, considering revenue passengers only, the staff estimated out-of-pocket loss would amount to \$378,969 or approximately \$10.26 for each of the average number of daily passengers traveling the West Coast Trains between Los Angeles and Sacramento based on the average loss per passenger-mile for these trains. Southern Pacific Company estimated that the out-of-pocket loss for the West Coast Trains would amount to \$999,909 or approximately \$27 for each of these average number

of daily passengers on the same passenger-mile basis. The record does not indicate the extent of actual saving in out-of-pocket loss in the event the Southern Pacific Company is authorized to discontinue the West Coast Trains and the suggested staff alternate service is instituted. It may be observed, however, that the additional cost of operating the "Sacramento Lark" between Oakland and Sacramento would, to a large extent, be offset by the saving resulting from the consolidation of the "Sacramento Lark" with the Senator trains and that the operation of the stub train for the 58 miles between Sacramento and Lathrop to connect with the Owl is but a small portion of the total number of miles now operated between Sacramento and Los Angeles by the West Coast Trains.

The issue for consideration is whether the delayed arrival at destination of a few through revenue passengers using the two West Coast Trains on an average day is sufficiently great to justify the tremendous economic loss to Southern Pacific Company based upon either staff or applicant estimate. In considering this issue, we must realize that the burden of any loss which results from the operation of the West Coast passenger trains over a period of time will be

borne by the more profitable operations of Southern Pacific Company and, hence, will be borne by the agricultural, industrial and governmental shippers. The majority opinion skips hastily over this important economic fact.

The foregoing observations regarding the two West Coast Trains apply with relative force to the four trains operating between Sacramento and San Francisco which applicant seeks to abandon. In my opinion, adequate alternate rail service for the two El Dorado Trains, which the majority decision requires applicant to continue operating, is provided by interstate trains operated by applicant between these two points. Inauguration of the proposed "Sacramento Lark" would provide not only a suitable substitute for the two Senator Trains presently operated, but would in addition provide dining car service between Sacramento and San Francisco. In addition to the alternate services by the interstate trains and the proposed "Sacramento Lark", there is an abundance of adequate alternate bus and air transportation between the Bay Area and Sacramento.

It is my opinion that applicant, Southern Pacific Company, has met fully the burden of proof necessary to sustain its application for the abandonment of San Francisco to Sacramento Trains Nos. 226, 248, 247 and 241, and the abandonment of West Coast Trains Nos. 59 and 60. Consolidation of the Senator Trains Nos. 223 and 224 with the proposed "Sacramento Lark", or consolidation of the West Coast Trains with the Owl, as recommended by the Commission staff, also, is justified and reasonable.

I am keenly aware that once a public utility has devoted its property to the public use, that utility incurs an obligation to meet the demands of public convenience and necessity as long as it is economically feasible so to do; and that a temporary or moderate loss sustained by a utility from one phase of its operations does not justify the abandonment of such losing operation, provided the public convenience and necessity is sufficiently great. It must be pointed out as an economic factor, however, that any deficit suffered as a result of a losing operation must be made up with revenues derived from the profitable operations, if a utility is to continue operations; stated plainly, the consumers of a utility's profitable operations, -- in this instance agricultural, industrial and governmental shippers -- in effect, subsidize the consumers of the unprofitable phase of the operation. The question emerges, therefore: to what extent shall one class or group of consumers of a utility's service be required to subsidize the losing part of the operation? The answer to this question falls in the realm of relativity, and is influenced by many factors.

In these instant proceedings the evidence clearly establishes that a relatively minor number of revenue passengers avail themselves of the services provided by applicant in the operation of the six trains under consideration herein. In no instance does the daily average number of through revenue passengers carried between major termini by any one of these six trains equal one bus load. To require applicant to continue to provide railway passenger service for a single bus load of passengers is uneconomical in the extreme. Applicant, in my opinion, is to be commended rather than condemned for initiating economies designed to reduce its out-of-pocket loss and thus enable it to continue on a reasonable basis a public passenger service which will meet the public need and convenience as demonstrated by present usage.

The majority opinion (page 2 of the mimeographed copy) refers to the Federal Transportation Act of 1958 and declares such Act "to be contrary to the public interest". Section 13a, paragraph (1), of this statute gives the Interstate Commerce Commission complete jurisdiction over the discontinuance of interstate passenger trains; paragraph (2) gives the Interstate Commerce Commission final jurisdiction over the discontinuance of intrastate passenger trains, thus stripping state regulatory agencies of any real authority over the discontinuance of both interstate and intrastate passenger trains. It is significant to note that Section 13a of the Transportation Act of 1958 was enacted by the Congress despite opposition of the California Public Utilities Commission and the regulatory agencies of many other states. This Commission, through California Members of Congress, pointed out to the Nation's lawmakers the effect enactment of Section 13a of said statute would have on state regulatory agencies. House Report No. 1922 of Committee hearings on the Transportation Act of 1958 contains the following:

"...the Interstate Commerce Commission has jurisdiction over the complete abandonment of a line of track. The discontinuance or change of schedules of trains (without complete abandoning of the line of track over which they operate) however, is subject to the jurisdiction of the interested States. Such local regulation of what has come to be a national problem has hampered the railroads from making some changes in their passenger train operations in line with changes in patronage, and has contributed greatly to the passenger deficit. Witnesses have not suggested that all State commissions have taken obstructive attitudes, but only that it has proved impossible to secure necessary relief in some States. The National Association of Railroad and Public Utilities Commissioners has been active in recommending a more helpful attitude on the part of its members, but the recommendations appear not to have been adopted by some of them."

It is only reasonable to conclude that Congress in its consideration of the Transportation Act of 1958, found the "obstructive attitudes" referred to above highly persuasive in its decision to enact the measure. There presently is pending in Congress HR 4292 which would repeal Section 13a of the Transportation Act of 1958. In my opinion the majority decision in these instant proceedings typifies the "obstructive attitude" of state regulatory agencies, as cited, and thus will provide ammunition to those opposing the repeal.

There comes a time when those charged with the responsibility of regulating public utilities should face up to the facts of change and act with objectivity and reason. That time has arrived in the State of California.

Dated at San Francisco, California, this 18th day of March, 1959.

E. Lynn Fox
President

I concur in the foregoing
dissenting opinion.

Walter Dooly
Commissioner