

ORIGINALDecision No. 61221

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. 223 and 224,
between Oakland and Sacramento.

Application No. 42468

Charles W. Burkett, Jr., for Southern Pacific Company,
applicant.

Orren K. Prentiss, for Order of Railway Conductors
and Brakemen; George W. Ballard, for Brotherhood
of Railroad Trainmen AFL-CIO; G. R. Mitchell, for
Brotherhood of Locomotive Engineers; William V.
Ellis, for Firemen, Enginemen and Railroad
Brotherhoods, California Legislative Board;
L. H. Carmichael, for Brotherhood of Railroad
Signalmen; protestants.

E. A. McMillan, for California State Legislative
Committee, Brotherhood of Railway Clerks;
Sherrill D. Luke, Administrative Assistant
to City Manager, City Hall, Richmond, California,
for City of Richmond; interested parties.
William C. Bricca, William Peters, and T. J. Canty,
for the Commission staff.

O P I N I O N

Southern Pacific Company requests authority to discontinue
the "Senator" Trains Nos. 223 and 224 between Oakland and Sacramento
and intermediate points.

A public hearing was held before Commissioner Matthew J.
Dooley and Examiner Thomas E. Daly at San Francisco with the matter
being submitted on October 7, 1960.

Applicant operates these two local train schedules between
Oakland and Sacramento serving Berkeley, Richmond, Crockett,
Martinez, Suisun-Fairfield, Dixon and Davis as intermediate points.
A bus service is provided between San Francisco and Oakland. Train
No. 224 leaves San Francisco at 7:20 a.m. and arrives at Sacramento

at 9:35 a.m. Train No. 223 leaves Sacramento at 5:00 p.m. and arrives in San Francisco at 7:10 p.m.

Applicant also operates three "Overland" route trains in each direction between Oakland and Sacramento; three "Shasta" route trains over the route between Oakland and Davis, and two San Joaquin Valley trains over the route between Martinez and Oakland. Although all of the schedules serve certain points between Oakland and Sacramento, a few of the trains require advance reservations or extra seat charges. Applicant was recently authorized by the Interstate Commerce Commission to discontinue the "El Dorado" Trains Nos. 247 and 248. Pending before said Commission is a request to consolidate the "Overland" Trains Nos. 27 and 28 with the "City of San Francisco" Trains Nos. 101 and 102. If the authority herein sought, as well as that sought from the Interstate Commerce Commission, is granted, applicant will have one passenger train operating in each direction between Sacramento and the Bay Area, and that would be the "City of San Francisco", Trains Nos. 101 and 102, which require reservations. Train No. 102 leaves San Francisco at 2:40 p.m. and arrives at Sacramento at 5:20 p.m. Train No. 101 leaves Sacramento at 9:15 a.m. and arrives at San Francisco at 11:55 a.m.

According to applicant, the daily average revenue passengers carried per day for the period January 1958 through July 1960 showed the following:

	<u>Train No. 223</u>	<u>Train No. 224</u>
Average	30	24
Average 1959	28	20
Average 1960 (First 7 months)	25	19

The staff prepared a report (Exhibit No. 14) covering the operations of Trains Nos. 223 and 224 for Thursday, September 29, 1960 and for Sunday, October 2, 1960. The total passengers

transported on each train for the days considered are as follows:

<u>Train No. and Date</u>	<u>P a s s e n g e r s</u>		
	<u>Revenue</u>	<u>Non-Revenue</u>	<u>Total</u>
224 9/29/60 Thursday	8	4	12
223 9/29/60 Thursday	16	8	24
224 10/ 2/60 Sunday	8	3	11
223 10/ 2/60 Sunday	39	19	58

Exhibit No. 12 introduced by applicant indicates the financial results of operating Trains Nos. 223 and 224 to be as follows:

	<u>Per Annum</u>
1. Revenue Received Sept. 1, 1959-Aug. 31, 1960	\$ 23,262
2. Estimated Out-of-Pocket Costs Incurred as of July 1, 1960	<u>180,000</u>
3. Estimated Out-of-Pocket Loss On Current Basis	\$156,738

The staff also prepared and introduced a study (Exhibit No. 15) which consists of an estimate of annual passenger train revenue along with an estimate of annual out-of-pocket costs incurred in the operations of Trains Nos. 223 and 224 on a current basis. The results are as follows:

1. Estimate of Passenger Train Revenue	
Revenue Passengers	\$ 23,290
Pass Passengers	<u>8,040</u>
Total Revenue	\$ 31,330
2. Estimated Out-of-Pocket Operating Costs	
Estimated Costs of Connecting Bus Service	<u>147,707</u>
Total Operating Costs	\$159,134
3. Estimated Operating Loss	
	\$127,804

The staff estimated that such a loss would be offset by a tax credit resulting in a tax saving to applicant in the amount of \$69,832.

The policy of the California Public Utilities Commission concerning the preservation, maintenance and improvement of railroad passenger service in California was clearly and unequivocally stated in Decision No. 58111 dated March 18, 1959. We reaffirm that policy and the rationale contained therein. Our decision in this case will accordingly be resolved in the light of those principles.

This Commission will insist upon the preservation and maintenance of reasonably adequate railroad passenger service and the modernization and improvement of such service. It has been and is 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.

The law raises a presumption that any service furnished by a railroad is required by public convenience and necessity. A service furnished by a railroad may be required to be performed even at a loss where public convenience and necessity justify such a conclusion. No claim is made by the railroad in the instant case of confiscation nor was any evidence presented as to the California intrastate operating results of the railroad, which evidence must be shown as a basis for a claim of confiscation. The only issue presented by the railroad in its application for abandonment is public convenience and necessity.

The applicant did not present any evidence as to the number of passengers carried between San Francisco and Sacramento by either the "El Dorado" Trains Nos. 247 and 248 or the "Overland" Trains Nos. 27 and 28. We deem such evidence relevant to the instant proceedings. It is possible that the passenger traffic on these two trains will be diverted to the "Senator" trains. However, the burden of such a showing belongs to the applicant and no such showing was made.

Under the present operating schedule of the "Senator" Trains Nos. 223 and 224, a passenger may leave San Francisco at 7:20 a.m. and arrive in Sacramento at 9:35 a.m. Upon completing his business he can leave Sacramento at 5:00 p.m. and arrive back in San Francisco at 7:10 p.m. If the "Senator" is abandoned, daily round trip rail service between San Francisco and Sacramento will no longer be available.

Basically, Southern Pacific Company did not represent to the Commission that if the application were granted there would be adequate rail service available between Oakland and Sacramento. It took the position that if the abandonment were authorized there would be adequate common carrier service available by bus and air between said points. It is the position of this Commission, however, 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 steps to maintain its service in a competitive condition. The record in this case is devoid of such a showing.

If the authority herein sought were granted it would be tantamount to a complete abandonment of rail service between the San Francisco Bay Area and the Capital of the State of California. It is true that there has been a diversion of public patronage from

Trains Nos. 223 and 224, but it is also true that a more conscientious effort to improve applicant's facilities and schedules between the points herein considered would help considerably to make rail service more competitive with other means of public transportation. The Commission therefore finds and concludes that abandonment of Trains Nos. 223 and 224 is not justified by public convenience and necessity and that such abandonment would be adverse to the public interest. The application will be denied.

O R D E R

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED that Application No. 42468 is hereby denied.

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

Dated at San Francisco, California, this 20th day of December, 1960.

[Signature]
President
[Signature]
Theodore J. Jernigan
Commissioners

*I dissent! My
opinion in support
thereof is attached hereto.
M. J. [Signature]
I concur in the dissent.
C. L. Fox*

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I dissent. The application of Southern Pacific to discontinue the operation of passenger trains Nos. 223 and 224 between Oakland and Sacramento should be granted. The majority decision denies the application to abandon said trains. The travelling public, however, has itself practically abandoned these trains and has gone to other substitute transportation facilities, as will be hereinafter noted.

The rationale of the majority opinion smacks of the horse-and-buggy era, when railroad passenger service was substantially the only transportation means available for travel from one urban center to another. It apparently negates the fact that the monopolistic character of the railroad passenger service no longer obtains. Substitute transportation facilities have drawn the public to them because of faster and more convenient schedules, and more conveniently located termini which permit more reasonable orientation therefrom.

The criteria of public convenience and necessity should be applied in the light of modern conditions and not by recourse to the dim past.

The evidence adduced in this case, in my opinion, compels the conclusion that it is not only unbusinesslike but contrary to the public interest to require the applicant to continue the operation of the said respective trains involving a large financial loss when there is more than adequate substitute transportation available. An examination of the salient portions of the record in this case reveals the following established facts, to wit:

That Western Greyhound Lines operates 31 express schedules daily between San Francisco and Sacramento, and during the month of August 1960, 21,611 passengers were transported by bus using these express schedules; 20,317 passengers in the same month and year were transported by bus on local schedules between said points; a total of 41,928 passengers were transported between said points by Greyhound;

That United Airlines operates 3 daily schedules between San Francisco, Oakland and Sacramento, and for the period from August 1, 1960 to September 10, 1960 it averaged 449 passengers per day;

That Pacific Airlines for the month of June 1960 averaged 113 passengers per day between the said points; and

That West Coast Airlines averaged 24 passengers per day between said points;

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That the Southern Pacific sustains an out-of-pocket loss in the operation of the said trains of \$156,728 per year (applicant's Exhibit No. 12) or a slightly lesser sum, to wit, \$127,804 per year (as indicated in the staff's Exhibit No. 15).

The record does not show how many persons utilized their private automobiles for transportation between Sacramento and Oakland and San Francisco during the year 1960. Admittedly, the fast travelling freeway consisting of a four-lane divided highway direct from Oakland to Sacramento, has made the use of private automobiles desirable for the travelling public between said points. This Commission, in my opinion, should take reasonable notice of the density of the highway traffic between said points which is apparent even to a casual user of said highway.

The majority decision fails to give due weight to the sparse use of the two trains in question, which carried less than a half a busload of passengers on all of their respective runs in the past year as is evidenced from a perusal of Exhibit No. 3 received in evidence in this case. Moreover, the revenue received from said trains does not even pay the cost of the fuel used nor the wages of the train crew. In my opinion, it is abortive regulation to require the maintenance of trains for use by a handful of the public, involving a loss of between \$127,000 to \$156,000 per year.

The myopia of the majority opinion is clearly manifest. The opinion seeks to apply the test of public convenience and necessity predicated upon the hypothesis that perhaps the passengers who used the El Dorado and Overland Limited trains for transportation to and from Oakland and San Francisco will utilize trains Nos. 223 and 224. There is not a scintilla of evidence in the record supporting this very tenuous fallacious hypothesis. This Commission must predicate its decisions on evidence in the record and not upon an intransigent philosophy which has become outmoded and archaic.

In my opinion, the number of the travelling public transported by the Western Greyhound Lines, the airlines, and by private vehicle to and from Sacramento, Oakland and San Francisco, decisively indicates that such substitute transportation services are more than adequate and desirable, and that public necessity and convenience are being met by such services. The public interest requires that this Commission be alert at all times to insure adequate and proper transportation

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facilities between the points in question. When, however, the riding public has indubitably demonstrated its decisive choice by its use of bus and airline modes of travel, which are more than adequate to meet the public needs, the occasion does not arise for this Commission to require the continuance of a passenger train, which is conspicuous by the absence of even a half a busload of passengers.

In view of the uncontradicted evidence in this case, it appears to me that it makes little or no difference what the availability of the railroad service might be between the said points if the travelling public does not make reasonable use thereof. However, for those of the scant few of the travelling public who are desirous of having train connection between Oakland and Sacramento for sentimental or other reasons, even though the El Dorado and Overland Limited trains are discontinued by an order of the Interstate Commerce Commission, the service of the City of San Francisco trains will still be available for transportation between the two points involved herein.

When the public itself practically abandons a service, it does not appear to me to be in the public interest for this Commission to order the continuance of such service at a substantial loss sustained by the railroad which must be borne by other segments thereof.

Dec. 30 1960

William D. Dooly
 Commissioner
L. J. Fox
 Chairman