

ORIGINAL

Decision No. 68271

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
The Atchison, Topeka and Santa Fe
Railway Company, a corporation, for
authority to reduce its passenger
train service between Los Angeles
and San Diego and certain inter-
mediate points.

Application No. 46609
(Filed May 5, 1964)

Investigation on the Commission's
own motion into the operations,
services, rates, rules, regulations,
facilities, equipment, contracts,
and practices of The Atchison, Topeka
and Santa Fe Railway Company, a corpo-
ration, within the State of
California.

Case No. 7905
(Filed May 19, 1964)

(Appearances are listed in Appendix A)

O P I N I O N

Application No. 46609 was filed by The Atchison, Topeka and Santa Fe Railway Company, hereinafter called Santa Fe, requesting authority to discontinue the five daily passenger train schedules between Los Angeles and San Diego and to substitute therefor a limited schedule of one morning and one evening train in each direction.

On May 19, 1964, the Commission issued its order instituting an investigation into the operations of the Santa Fe throughout the State of California. The two matters were consolidated and public hearings were held before Commissioner McKeage and Examiner Fraser on June 24 and 25, 1964 in San Diego, on June 26 in Santa

Ana, and on July 13, 14 and August 5, 6 and 7 in Los Angeles. Further hearings were held on August 12, 13 and 14, 1964, in Los Angeles, before Examiner Fraser and the matters were submitted on August 14, 1964.

The applicant filed a written motion on June 15, 1964, which requested that an order be issued to authorize the discontinuance of Trains 70 and 81. The motion was also made on the record during the first day of hearing in San Diego. Pursuant thereto, the Commission issued Decision No. 67496, dated July 10, 1964, which authorized the Santa Fe to discontinue Trains 70 and 81 during the pendency of this proceeding. Train 70 left Los Angeles on seven days of the week at 1:45 a.m., Pacific Standard Time (add one hour for California Daylight Saving Time) and arrived in San Diego at 5:00 a.m., PST. Train 81 left San Diego on seven days a week at 9:00 p.m., PST and arrived in Los Angeles at 11:50 p.m., PST. The discontinuance was authorized because the trains were originally scheduled as mail trains under the terms of a contract with the United States Post Office Department, which contract was cancelled by the latter on July 1, 1964, and also because the passenger revenue from the trains was less than the wages of the train crew.

Preliminarily, we desire to restate the policy of this Commission concerning rail passenger service as that policy was promulgated in Decision No. 58111, issued by this Commission on the 10th day of March, 1959 (57 Cal. P.U.C. 27, 29-31).

"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.

* * * * *

"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."

Said policy was reaffirmed by this Commission by its Decision No. 61221 rendered on the 20th day of December, 1960, (58 Cal. P.U.C. 340, 343). We adhere to that policy.

The Santa Fe now operates 4 passenger trains daily between Los Angeles and San Diego with an additional southbound train on Sundays and holidays.^{1/} The two trains authorized to be discontinued pending the further order of the Commission are not included. This passenger train service, denominated "San Diegan" service, is operated with modern streamlined lightweight coaches which have reclining seats and are air-conditioned. The scheduled running time between termini ranges from 2 hours and 40 minutes to 2 hours and 55 minutes. The departure times of trains presently operated are as follows:

<u>Southbound</u>					
<u>Train No.</u>	72	74	76	78	80
<u>Frequency</u>	Daily	Daily	Daily	Daily	Sundays- Holidays only
Lv. Los Angeles	7:00 AM	10:15 AM	2:30 PM	5:45 PM	9:15 PM

<u>Northbound</u>					
<u>Train No.</u>	71	73	75	77	79
<u>Frequency</u>	Daily except Sundays-Holi- days	Daily	Daily	Daily	Sundays- Holidays only
Lv. San Diego	6:00 AM	8:00 AM	12:45 PM	5:15 PM	7:00 PM

By application No. 46609 the company seeks authority to reduce passenger train service between Los Angeles and San Diego to two round trips daily, scheduled as follows:

Proposed Schedules

<u>Read Down</u>			<u>Read Up</u>		
9:00 AM	6:15 PM	Lv. Los Angeles	Ar.	10:45 AM	7:15 PM
11:45 AM	9:00 PM	Ar. San Diego	Lv.	3:00 AM	4:30 PM

^{1/} Southbound Trains 72, 74, 76 and 78; on Sundays-holidays, extra Train 80 added.

Northbound Trains 71, 73, 75 and 77; on Sundays-holidays, Train 71 does not run but new Train 79 is scheduled.

The application alleges that in spite of numerous schedules, low fares, modern cars and fast diesel locomotives, the number of persons using these trains has declined from 947,527 in 1953 to 530,042 in 1963; that the total revenue from all sources on these trains in 1963 was \$1,650,000 and the out-of-pocket cost more than \$2,600,000, resulting in an out-of-pocket deficit of more than \$950,000. The application further alleges that after the mail contract expires the operating deficit will be in excess of a million and a quarter dollars a year (this estimate includes Trains Nos. 70 and 81, which have been discontinued).

The General Passenger Traffic Manager (systemwide) of the Santa Fe testified as follows: The Santa Fe has always encouraged passenger patronage by providing the best equipment possible and charging the minimum fares for individual passengers with special lower rates for family and tour groups; while other railroads have greatly curtailed or eliminated passenger service, the Santa Fe has endeavored to continue to provide the same service; in 1950 the Santa Fe operated 467,200 passenger train miles between Los Angeles and San Diego; in 1963 this total was 475,000; the total of passenger train miles nationally in 1950 was 357,618,019; in 1963 it had been reduced to 189,360,246, a reduction of about 50 percent; the number of passengers carried by the Santa Fe between Los Angeles and San Diego has generally declined, as shown by the following table from Exhibit No. 1:

Total Passengers Handled

1947	1,026,389
1950	802,228
1955	935,079
1959	615,075
1960	568,316
1961	526,906
1962	547,327
1963	530,460

The witness further testified that the Santa Fe has invested 73 million dollars in new passenger train cars since 1950 in an effort to encourage passenger train travel; 12½ million of this sum was spent during 1963 and 1964; older equipment is used on the Los Angeles to San Diego route, although single self-propelled diesel (Budd) cars, seating 86 or 89 passengers were started on the San Diegan service in 1952 as an economy, but were discontinued on January 22, 1956 as impractical because of the day-to-day variance in the number of passengers carried and because the Budd cars have no space for heavy baggage or mail; after January 1956 the trains were formed with lightweight streamlined passenger coaches (seating 44 to 52), with a lounge and baggage (mail and express) car; the lounge car contains a restaurant and bar, with an area where people can sit and read or observe the scenery; the number of cars may vary from day to day on each train; as an example, Train No. 72 operates with three chair cars, a lounge car and a baggage car on Monday through Friday and an extra chair car is added on Saturday and Sunday; Train No. 78 carries five chair cars on Monday through Thursday, eight chair cars on Friday, four chair cars on Saturday and five chair cars on Sunday. The witness introduced Exhibit No. 6, which shows the total revenue from mail and ticket sales and the total number of passengers carried on each train during 1963.

Statement showing revenue from mail and
from ticket sales, together with total
number of passengers handled, for each
passenger train operated by Santa Fe
between Los Angeles and San Diego during
the year 1963

<u>Train No.</u>	<u>70</u>	<u>72</u>	<u>74</u>	<u>76</u>	<u>78</u>	<u>80</u>
Revenue						
Mail	\$114,402	\$37,221,	\$ 65,569	\$ 81,780	\$ 44,724	0
Ticket	\$ 25,147	\$89,750	\$155,475	\$129,708	\$116,824	\$18,648
No. of Passengers	11,375	42,666	68,476	62,527	74,505	8,895

<u>Train No.</u>	<u>71</u>	<u>73</u>	<u>75</u>	<u>77</u>	<u>79</u>	<u>81</u>
Revenue						
Mail	\$ 26,137	\$10,272	\$ 7,054	\$ 35,466	\$ 0	\$74,360
Ticket	\$ 39,880	\$96,642	\$110,408	\$218,856	\$ 17,607	\$34,776
No. of Passengers	35,771	52,089	51,816	98,774	7,863	15,703

Note:

1. Trains 70 and 81 have been discontinued since August 1, 1964.
2. Trains 79 and 80 run only on Sundays and holidays.
3. Cancellation of the mail contract on July 1, 1964 eliminated all mail revenue.
4. Railway Express from discontinued trains is transported by trucks of Santa Fe Transportation Co.

The witness also introduced Exhibit No. 7 which lists the total number of revenue passengers carried on each train during February 1964 (the latest month on which the record is prepared) and the points between which the passengers traveled. The exhibit shows the following totals for the month:

SouthboundTrain No.

70	(Lvs. L.A. 1:45 AM)	694	(Discontinued August 1, 1964)
72	(Lvs. L.A. 7:00 AM)	3249	
74	(Lvs. L.A. 10:15 AM)	4234	
76	(Lvs. L.A. 2:15 PM)	4396	
78	(Lvs. L.A. 5:45 PM)	6284	
80	(Lvs. L.A. 9:15 PM)	647	

Sun.-Holidays only

NorthboundTrain No.

71	(Lvs. S.D. 6:00 AM)	3687	
73	(Lvs. S.D. 8:00 AM)	4383	
75	(Lvs. S.D. 12:30 PM)	3346	
77	(Lvs. S.D. 4:30 PM)	6586	
79	(Lvs. S.D. 7:00 PM)	625	

Sun.-Holidays only

81	(Lvs. S.D. 9:00 PM)	1211	(Discontinued August 1, 1964)
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The witness further testified that the first of the new schedules proposed by the applicant has a train leaving Los Angeles at 9:00 AM which will replace the present Train No. 74 (leaving at 10:15 AM) and is timed to connect at Los Angeles with the Super Chief and El Capitan from the East along with the Sunset, Golden State and the Southern Pacific Lark; the applicant has made studies and estimates the new schedule will retain 90 percent of the revenue from Train 74 and 80 percent from Train 72, which now leaves Los Angeles at 7:00 AM; the proposed plan has a train leaving San Diego at 8:00 AM which is the same time as Train 73; this schedule is timed to arrive in Los Angeles early enough to provide a connection with Train 20, the Chief, Union Pacific Train No. 104, the City of Los Angeles, the City of Saint Louis, and Santa Fe Train 124, the Grand Canyon; the second train from San Diego on the proposed schedule leaves at 4:30 PM which coincides with Train No. 77 on the present schedule and is timed to connect with the El Capitan, Super

Chief, Sunset and the Southern Pacific Lark in Los Angeles; the second train leaves Los Angeles on the proposed schedule at 6:15 PM (Train 78 now leaves at 5:45 PM) in order to connect with the Southern Pacific Coast Line Daylight from San Francisco and to give businessmen and shoppers a full day in Los Angeles; the applicant prefers to eliminate Train No. 71 (which now leaves San Diego at 6:00 AM) because it is too early to accommodate passengers holding tickets on other trains out of Los Angeles and because the February 1964 tables in Exhibit No. 7 (page 2) indicate this train transports fewer through passengers (455) than any of the other trains; approximately 100 daily commuters (Exhibits 8 through 12) ride Train No. 71 from Orange and Los Angeles county points into downtown Los Angeles; these people will not be seriously inconvenienced if the train is removed because bus transportation is available; the Metropolitan Transit Authority offers daily service from Santa Ana and Fullerton to Los Angeles (Exhibit No. 14); Western Greyhound Lines has 19 daily express schedules in each direction between Los Angeles and San Diego (Exhibit No. 15) and 19 other schedules which stop at intermediate points; Continental Trailways offers 4 daily schedules in each direction (Exhibit No. 16); and a number of airlines also provide a fast, reasonably convenient service to the through passenger (Exhibit No. 17).

The statistician of the Santa Fe testified that the applicant suffered a loss of \$6,243,904 on total California intra-state operations during 1963; this figure is composed of a \$1,390,133 loss on freight operations and a \$4,853,771 loss on passenger service (Exhibit No. 21); he further testified that the Los Angeles to San Diego operation sustained a loss in 1963 of \$954,346

(Exhibit No. 22) and if all trains operated in 1963 continue to operate through 1964 the loss will be increased to \$1,318,718, due to the loss of all mail revenue on July 1, 1964; Commission Decision No. 67488, dated July 7, 1964, in Application No. 45766, was noted; this decision granted the applicant authority to raise the fares on its twenty-ride monthly commute book to \$12.50 from Fullerton to Los Angeles, \$14.00 from Anaheim to Los Angeles and \$17.50 from Santa Ana to Los Angeles; the witness estimated that these fare increases will total about \$20,000 a year. The applicant provided the following table (Exhibit No. 41) to illustrate passenger revenue for the first six months of 1962, 1963 and 1964:

Total Approximate Passenger Revenue - San Diego Line
January to June, inclusive

	<u>1962</u>	<u>1963</u>	<u>1964</u>
January	\$ 85,462	\$ 80,274	\$ 82,328
February	74,992	72,067	74,366
March	79,538	73,540	*98,579
April	*101,880	*92,949	78,133
May	85,066	77,509	86,839
June	<u>107,484</u>	<u>104,126</u>	<u>96,464</u>
Total	\$534,422	\$500,465	\$516,709

Comparison 1962 - 1963
Decrease \$33,957 or 6.35%

Comparison 1963 - 1964
Increase \$16,244 or 3.24%

Comparison 1962 - 1964
Decrease \$17,713 or 3.31%

*Easter in April 1962 and 1963 and March 1964.

Staff counsel asserted that the applicant may have deliberately tried to lose the mail contract between Los Angeles

and San Diego to provide additional support for its allegation that the San Diegan trains are operating at a loss. He also suggested that the applicant produce a witness to advise the Commission of the negotiations between the post office and the applicant prior to the cancellation and of the efforts made by the latter to retain the contract. Counsel for the applicant replied that it was his understanding the attempts to renegotiate the contract failed because the Post Office Department prefers service by truck. He stated the official who is familiar with the mail contract is stationed in Chicago and the applicant made no arrangements to bring him to the hearing since the mail contract is one of the minor issues presented in the application and irrelevant to the main issue of discontinuance of the trains.

An engineer from the Commission staff testified as follows: He conducted an investigation of passenger operations on the San Diegan trains and compiled passenger statistics from observation and the records of the Santa Fe for the month of February 1963, a representative month; analysis of the records for February 1963 shows that 35 percent of those carried are through passengers who should be accommodated on any new schedule selected, since they provide the greater portion of the passenger revenue; there are also approximately 100 passengers who ride into Los Angeles every weekday to places of business or employment, using Train No. 71 which arrives in Los Angeles at 8:45 AM; about 80 of these passengers originate at either Santa Ana, Anaheim or Fullerton; the remainder come from Oceanside, San Juan Capistrano and San Clemente; most of these people return in the evening on Train No. 78, which leaves Los Angeles at 5:45 PM; commuter fares were raised substantially by

Commission Decision No. 67488, dated July 7, 1964 and it is estimated that about one-third of these commuters may stop using the railroad because of the increased cost. The staff witness presented two proposed timetables for the San Diegan trains with three trains scheduled north and southbound on each of the two alternatives; the timetable of Alternate No. 1 is recommended for Saturdays, Sundays and holidays; Alternate No. 2 is designed to handle the regular five-work-days-a-week traffic.

Alternate No. 1

Saturday-Sunday and Holidays

Leave Los Angeles
Southbound

9:00 A.M.

1:00 P.M.

6:15 P.M.

Leave San Diego
Northbound

8:00 A.M.

1:00 P.M.

4:30 P.M.

Alternate No. 2

Monday through Friday
(holidays excepted)

Leave Los Angeles
Southbound

9:00 A.M.

1:00 P.M.

5:45 P.M.

Leave San Diego
Northbound

6:00 A.M.

8:00 A.M.

4:30 P.M.

Another Commission engineer presented extensive testimony and documentary evidence on the issue of applicant's out-of-pocket costs on operating the San Diegan trains. The engineer computed the Santa Fe costs by a different method than the applicant and omitted several items of expense that the latter included. The engineer's

findings are set out below from a table on Page 9 of Exhibit No. 37.

Estimated Results of Operation for the "San Diegan"
Trains on Out-of-Pocket Basis for the Year 1963
(Without Mail Service)

	<u>All Trains</u>	<u>All Trains Except 70 and 81</u>	<u>Three pairs of Trains (see note)</u>	<u>Two Pairs of Trains Proposed by Applicant</u>
Total Expense	\$1,757,874	\$1,471,123	\$1,086,669	\$ 773,861
<u>Total Opera- tions</u>				
Net Income	(566,585)	(357,581)	(183,065)	(93,848)
Income Tax	309,582	195,382	100,027	51,279
Net After Income Tax	(257,003)	(162,199)	(83,038)	(42,569)

(Red Figure)

Note: Comprised of a morning, midday and evening schedule in each direction, as a possible alternate plan.

Exhibit No. 40, placed in evidence by the Commission staff, introduced the element of feeder revenue. This revenue total is computed by multiplying the adjusted total of passengers who travel on the San Diegan trains as a part of an interstate trip on the Santa Fe Railway by the average revenue per passenger on the Santa Fe system. The resulting figure is reduced by half, leaving a total of \$351,400, which is added as "feeder revenue" to the total revenue from the San Diegan trains as illustrated in the following table from page 2 of Exhibit No. 40.

Effect of Feeder Value Upon Operating Results
On Out-of-Pocket Cost Basis of "San Diegan"
Passenger Operations - As Set Forth on Page 9
of Exhibit 37

	<u>All Trains</u>	<u>All Trains Except 70 and 81</u>	<u>Three Pairs of Trains (Alternate 1)</u>	<u>Two Pairs of Trains Proposed by Applicant</u>
<u>Revenues:</u>				
1. Total Revenue without "feeder" (Line 5, page 9, Exh. 37)	\$1,191,289	\$1,113,542	\$ 903,604	\$ 680,013
2. "Feeder" Revenue	\$ 351,400	\$ 351,400	\$ 351,400	\$ 351,400
3. Total Revenue	\$1,542,689	\$1,464,942	\$1,255,004	\$1,031,413
<u>Expenses:</u>				
4. Total Exps. (Line 9, page 9, Exh. 37)	\$1,757,874	\$1,471,123	\$1,086,669	\$ 773,861
<u>Operating Results Out-of-Pocket Cost Basis</u>				
5. Net Income before Taxes (Lines 3-4)	\$ (215,185)	\$ (6,181)	\$ 168,335	\$ 257,552
6. Income Taxes (54.64% x Line 5)	\$ 117,577	\$ 3,377	\$ 91,978	\$ 140,726
7. Net Income After Taxes	\$ (97,608)	\$ (2,804)	\$ 76,357	\$ 116,826

(Red figure)

A witness for the Brotherhood of Locomotive Engineers testified along with seventy-one members of the public. The latter were almost exclusively commuters and representatives of real estate and construction companies who were constructing and selling

homes in towns close to the railroad right-of-way. Their testimony can be summarized as follows: Commuters use the train from Fullerton, Santa Ana, Laguna Beach, Fallbrook, San Clemente, Orange, and other points to downtown Los Angeles; a few commute into San Diego; they prefer traveling by train because they can walk around during the trip, use the restaurant in the lounge car, or work and read comfortably; there is also adequate parking at the Santa Fe stations; the freeways are jammed every morning and are too slow and dangerous for either a private car or a bus; many commuters believe the applicant could greatly increase its passenger revenues if more early morning and late evening trains were scheduled; the present trains--especially early morning--do not accommodate the average commuter; all of the witnesses believe that the enormous growth of population along the route should result in a steady increase in railroad passengers and freight, if proper advertising and promotion of the service are undertaken; several municipalities located near the railroad right-of-way sent representatives who testified and presented statements or resolutions by their City Councils and Chambers of Commerce in opposition to the Santa Fe application.

The applicant presented considerable evidence in rebuttal. It was contended that although the population in the area is increasing, the total of passengers using the San Diegan trains is steadily decreasing and that the continuous construction of new freeways and the improvement of other means of transportation, especially airline service, will continue to offer increasing competition to the San Diegan trains. The executive vice president of the applicant on the West Coast testified as follows: Commuter

runs are invariably operated at a loss by railroads in the United States and are prohibitive in expense because of the vast amount of equipment and the personnel assigned to commuter traffic which could be more efficiently used elsewhere; in addition, the losses suffered on commuter runs must be absorbed, in part, by the rates charged the interstate passengers and the shippers of freight; as these rates increase, more railroad passengers and shippers are inclined to try other types of transportation.

The record reveals that the applicant's total system operations showed a profit and that its total California intrastate operations showed a net loss. While these figures may well be questioned as to their integrity because of the infirmities which may inhere in the separation procedures employed by applicant, for the purpose of this case and the decision rendered herein we will accept such figures. *Te*

After consideration, the Commission finds that:

1. Applicant's railroad connects California's most populous urban area (Los Angeles) with the third most populous area (San Diego), which areas, together with the other territory served by the passenger trains here involved, contain over

one-half of California's population. The population growth in this part of California is phenomenal. Applicant has for many years provided a very necessary service in this particular territory.

2. The public patronage of these passenger trains has been generally declining since 1948, except for the years 1955 and 1962.

3. The applicant's last reduction of service of the San Diegan trains, prior to this proceeding, was authorized in October 1957, when one train in each direction was removed.

4. On July 10, 1964, the Commission authorized the discontinuance, pending the further order of the Commission, of San Diegan trains 70 and 81. Public convenience and necessity no longer require the operation of these two trains.

5. Effective July 1, 1964, the United States Post Office Department canceled a mail contract with the applicant which decreased the revenue on the San Diegan trains approximately \$500,000 annually.

6. The applicant has not shown that the continuance of four trains in each direction, plus one extra southbound train on Sundays and holidays would constitute an unreasonable burden on it or on interstate commerce. There is a pressing public need for the continuation of said trains.

7. Public convenience and necessity require the operation of four trains in each direction and the Sunday and holiday trains as scheduled below:

		<u>Southbound</u>				
Train No.		<u>72</u>	<u>74</u>	<u>76</u>	<u>78</u>	<u>80</u>
<u>Frequency</u>		Daily	Daily	Daily	Daily	Sundays-Holidays only
Lv. Los Angeles		7:00 AM	10:15 AM	2:30 PM	5:45 PM	9:15 PM

		<u>Northbound</u>				
Train No.		<u>71</u>	<u>73</u>	<u>75</u>	<u>77</u>	<u>79</u>
<u>Frequency</u>		Daily Except Sundays- Holidays	Daily	Daily	Daily	Sundays-Holidays only
Lv. San Diego		6:00 AM	8:00 AM	12:45 PM	5:15 PM	7:00 PM

8. The foregoing specified service, which we have found that public convenience and necessity require, may be reasonably operated at an approximate out-of-pocket loss by applicant of \$2,804.00 a year.

9. The other common carrier services provided in the territory, wherein applicant's passenger train service operates, are not designed to nor do they reasonably meet the public need as does the service of applicant.

Based upon the foregoing findings the Commission concludes that:

1. Santa Fe should be authorized to discontinue San Diegan trains Nos. 70 and 81.

2. All other San Diegan trains will remain in operation as currently scheduled.

3. Case No. 7905 should be discontinued.

APPENDIX A

List of Appearances

For Applicant:

Frederick G. Pfrommer, Richard K. Knowlton and Neal W. McCrory,
for The Atchison, Topeka and Santa Fe Railway Company.

For Protestants:

H. W. Taggart, for Brotherhood of Railway Clerks; Leonard M. Wickliffe, for Railroad Brotherhood's California Legislative Association; Robert M. Himrod, for Orange County Commuters Association; Kenneth E. Kulzick and Carl B. Smith, for Capistrano Beach Community Association; Gerrit Stuurmans, for San Clemente Chamber of Commerce; James H. Hicks, for The Order of Railroad Telegraphers; James L. Evans, for Brotherhood of Locomotive Firemen and Enginemen; A. L. Loretz, for Self and Rancho Santa Fe Association; Edward L. Blincoe, individually and as president of Utility User's League of California, in Application No. 46609; and George W. Ballard, for Brotherhood of Railroad Trainmen, AFL-CIO.

For Interested Parties:

Edward L. Blincoe, individually and as president of Utility User's League of California in Case No. 7905; D. F. Fugit, for George W. Ballard; Jim Galligan, for self and Citizens of California; Dr. Davis L. Paden, for Stanford Research Institute, Southern California Laboratories; R. W. Russell, by K. D. Walpert, for the City of Los Angeles; Dale Austin, for City of Oceanside, Alan R. Watts, for City Attorney's Office of Anaheim; George P. Karcher, for Anaheim Downtown Association; Thomas J. O'Keefe, for president of Shorecliffs Community Association; and Edwin L. Miller, Jr., for City of San Diego.

For Commission Staff:

Harold J. McCarthy and Charles Astrue.

I concur in the findings, conclusions and orders of this decision. I do so for the reasons enumerated hereinafter. I do not subscribe to many statements in the decision which are pure dicta and particularly to those observations relating to matters outside the record of this proceeding.

The essential conflict formalized by this record focuses on a basic tenet of the concept "public utility" in the field of railroad passenger transportation. Who ultimately is empowered to determine the duty to serve and the extent of duty of service by a public utility? Is it the utility with its impersonal obligation to its creditors and stockholders? Is it the public which creates the need for service but has none of the responsibilities of service? Or is it the regulators, State and Federal, providing the forum for the utility and the public, who must make the final decision? It is true that the utility and the public by their actions may discourage service, impair service, or may even improve service. But any final resolution of the issue can only be made by the regulatory bodies, State and Federal. The demands of the public or the denials of the railroads, to the contrary notwithstanding, must be balanced on the scales of regulation.

The Santa Fe Railroad has filed an application for the discontinuance of a portion of its daily passenger service between Los Angeles and San Diego. The public has countered by representing a need for additional Santa Fe train service in the Los Angeles area in the early morning and early evening. Santa Fe emphasizes they will not sponsor such additional service under any circumstances. Wherein then lies the role of the State regulatory body?

Fundamentally, there can be no doubt that the Santa Fe Railroad is a common carrier and a public utility subject to the

orders of this Commission.¹ The Legislature has authorized this Commission to increase the number of trains whenever it finds that a railroad does not run sufficient trains reasonably to accommodate the traffic, passenger or freight.² Both our State Supreme Court³ and the United States Supreme Court⁴ have indicated that a railroad must provide adequate facilities for the convenience of the communities served by them. Nevertheless, such service cannot be ordered without restraint and a consideration of the reasonableness of the duty to serve.

The testimony in this hearing clearly reveals the continual growth of the Los Angeles metropolitan area with its attendant syndrome of inadequate transportation facilities. Traffic congests traffic on the Los Angeles freeways. Civic officials and citizens expressed a belief to the Commission that a partial solution is in the expansion of passenger traffic by the Santa Fe in its Los Angeles-San Diego operation at peak hours. As one Commissioner who has encountered mass automotive migration on the Santa Ana freeway, I concur with the witness who designated that freeway as "the largest parking lot in the world." Alternative transportation in the Los Angeles area other than freeways is required most in peak morning and evening hours. Can the Santa Fe Railroad help alleviate the stagnation in passenger transportation? There is insufficient evidence in the record to reach a conclusion.

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1. Art. XII Section 17 et seq. California Constitution
 2. Section 763 Public Utilities Code.
 3. Southern Pacific Company v Public Utilities Commission
41 C2d 354.
 4. A.T. & S.F. Railway Co. v Railroad Commission 283 US 380.

The Public Utilities Commission of the State of California should immediately institute an investigation into the need for rail passenger transportation in the Los Angeles area. Informed parties are not oblivious that this Commission for over a year held informal conferences in its Los Angeles office on this same subject with no accord reached by the participants.

I do not suggest that the solution is more passenger service by any railroad at the expense of its financial integrity. Nor do I advocate a subsidy or tax relief to any railroad as an inducement for extra passenger service. Neither solution even if feasible is within our province.

Our function as outlined in the record of this proceeding is now readily apparent; ascertain the scope and nature of rail passenger service warranted within the Los Angeles-San Diego area without the limitation of the Santa Fe application.

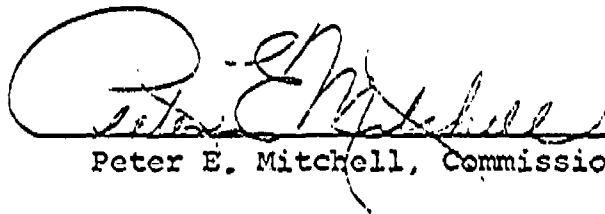
The applicant, Santa Fe made no showing to disprove the many witnesses who alleged a need for further rail passenger service; nor did they request any time modification of their current passenger schedules. Instead they responded that even if such passenger demand were present they would not supply railroad transportation for the needs of the public.⁵

The California Constitution and the Public Utilities Code adopted by the Legislature of this State are the handbooks of this Public Utilities Commission. Until the Supreme Court of this State

5. Testimony of Robert W. Walker, Vice President, Santa Fe Railway Company, Vol. II.

or the Supreme Court of the United States rules otherwise, I shall be guided by the precepts contained therein.

Therefore, I recommend that this Commission institute an investigation to determine whether any railroad company should be ordered to furnish service and facilities for rail passenger transportation in the Los Angeles area and if so to what degree.


Peter E. Mitchell, Commissioner

We dissent. The record justifies a reduction to three trains in each direction.

The "feeder revenue" calculations adopted in the majority opinion are simply not realistic. Even with the alleged feeder revenue, the majority concedes an out-of-pocket loss; with feeder revenue eliminated, that out-of-pocket loss is serious. The regrettable but irrefutable fact is that the public does not patronize this service enough to make it pay. The Commission has no more power than King Canute to control the tide by shouting at it.

Neither can this Commission change federal law by shouting at it. Our experience in the recent Southern Pacific Peninsula commute case indicates that the railroads will accept a passenger burden within reasonable limits; but if we impose upon them an unreasonable loss, they will inevitably appeal to the Interstate Commerce Commission pursuant to the federal statute. The majority's attack upon Congress can only discredit the position of this Commission and lead to stricter review at the federal level.

George E. Grover

Fredrick B. Holoboff

Commissioners

BENNETT, William M., Commissioner, concurring opinion:

I concur with the decision herein but wish to point out that in reality the control of passenger train service in California is for all practical purposes vested in the Interstate Commerce Commission under the Transportation Act of 1958. At best, decisions such as this are a mere holding action. Our attempt to fulfill our obligation to the train riding public of California is but a transient thing until such time as the Interstate Commerce Commission, at least as it has in the past, overrules our authority.

I am aware of the fact that this applicant, The Atchison, Topeka and Santa Fe Railway Company, has made commendable efforts to expand and to improve its passenger train service, generally speaking. My judgment here is predicated upon the fact that I do not consider the continuance of these trains to be such a burden upon the applicant as to warrant their removal from service.


WILLIAM M. BENNETT
Commissioner