

ORIGINALDecision No. 69511

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 intermediate
 points.

Application No. 46609

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 corporation, within
 the State of California.

Case No. 7905

Frederick G. Pfrommer, for petitioner.

G. R. Mitchell, for Brotherhood of Locomotive Engineers;
Robert M. Himrod, for Orange County Commuters
 Association; Lynn Fruit, for Brotherhood of Locomotive
 Firemen and Enginemen; Donovan P. Anderson, for Order
 of Railway Conductors & Brakemen; George W. Ballard
 and D. F. Fugit, for Brotherhood of Railroad Trainmen,
 AFL-CIO; Gilbert E. Essell, for San Clemente Chamber
 of Commerce; protestants.

Edwin L. Miller, Jr., for the City of San Diego;
Edward L. Blincoe, in his own behalf and as president
 of the Utility User's League of California; Robert J.
Swan, on his own behalf; interested parties.

Harold J. McCarthy, for the Commission staff.

OPINION ON REHEARING

The Atchison, Topeka and Santa Fe Railway Company filed Application No. 46609 on May 5, 1964 to request authority to discontinue its six round-trip schedules (5 daily and one extra on Sundays and holidays) between Los Angeles and San Diego and to substitute therefor two round-trip schedules. Hearings were scheduled and the application was consolidated with Case No. 7905, which was a statewide investigation of the Santa Fe. Applicant filed a written motion on June 15, 1964 which requested that an order be issued authorizing the discontinuance of Trains Nos. 70 and 81 (two mail trains). Pursuant

thereto, the Commission issued interim Decision No. 67496, dated July 10, 1964, which authorized Santa Fe to discontinue the mail trains. The Commission issued Decision No. 68271 on November 24, 1964, which required applicant to continue operating all ten of its remaining schedules (4 daily round trips, 1 extra on Sundays and holidays). Applicant filed a petition for rehearing on December 14, 1964 and the Commission granted a rehearing limited to the presentation of oral argument on the existing record. Said rehearing was held on May 17, 1965 before Commissioner Gatov and Examiner Fraser, with Commissioners Holoboff, Mitchell and Grover in attendance. Commissioner Gatov presided and argument was presented by six parties who appeared in the original proceeding.

The service is now operating on the following schedule:

	<u>No. 72</u>	<u>No. 74</u>	<u>No. 76</u>	<u>No. 78</u>	<u>No. 80 (Sundays & holidays only)</u>
	<u>Daily</u>	<u>Daily</u>	<u>Daily</u>	<u>Daily</u>	
Leave Los Angeles*	6:00 AM	9:15 AM	1:15 PM	4:45 PM	8:15 PM
	No. 71				
	Daily				
	<u>Exc. Sun. & holidays</u>	<u>No. 73 Daily</u>	<u>No. 75 Daily</u>	<u>No. 77 Daily</u>	<u>No. 79 (Sundays & holidays only)</u>
Leave San Diego*	5:00 AM	7:00 AM	12:01 PM	4:15 PM	6:00 PM

* Pacific Standard Time.

The trains require from two and three-quarters to three hours to complete a single one-way trip.

The discussion of evidence and argument in the original decision will not be repeated. The May 17, 1965 statements were approximately the same as the earlier presentations made by the parties. In addition thereto the petitioner commented on Findings 6, 7, 8 and 9 of Decision No. 68271, which hold that there is a public need for all ten trains now operating between Los Angeles and San Diego; that the ten trains can be operated at an annual out-of-pocket loss of \$2,804; and that other common carriers in the area cannot

substitute for the service provided by petitioner. Petitioner's counsel stated the record shows the public patronage of these trains has steadily declined since 1950 in spite of petitioner's efforts to improve the service; also that the Commission staff found petitioner's out-of-pocket loss, without considering income tax or "feeder value," under the present schedule of trains to be \$357,581 annually (2nd column, page 17, Decision No. 68271); this figure was based on the staff estimates which had \$40,000 less car repair costs, \$160,000 less locomotive repairs and \$15,000 less locomotive depreciation than petitioner's estimates; staff car repair costs were based entirely on a study made of the Southern Pacific Company in 1958; the Santa Fe data on car repairs were not used; staff locomotive repair costs are based on total locomotive repair costs over the Santa Fe system; petitioner's corresponding entry was based on locomotive use on the San Diegan trains; the staff based locomotive depreciation on a service life period of 25 years; Santa Fe used 20 years, which the record shows is the actual life of a Diesel locomotive; the staff did not allow the Santa Fe portion of the expense of operating the Los Angeles Union Passenger Terminal as a separate item, on the basis that it is a fixed cost; in fact the costs are divided among the using railroads according to the total number of cars each railroad runs into the terminal each year, and if a railroad eliminates one or more daily trains, that railroad's annual costs will be substantially reduced.

Counsel further argued that the loss of \$357,581 developed by the staff was arbitrarily reduced by a staff estimate of "feeder revenue" amounting to \$351,400, leaving an out-of-pocket loss of \$6,181, which was further reduced by the subtraction of an "income tax adjustment" to \$2,304 (2nd column, page 17, Decision No. 68271).

Staff counsel argued as follows: Decision No. 68271 is legally sound, but if more trains on the San Diegan line are discontinued the remaining trains should be scheduled so service can be provided with two sets of equipment (three sets are now used). If this is done, one daily round trip will have to be eliminated and either Trains Nos. 71 or 73 from San Diego will have to be discontinued. The former train is used primarily by commuters into Los Angeles, the latter train by those traveling by rail to points beyond Los Angeles. The elimination of an additional daily round trip would improve the annual net income of petitioner by approximately \$80,000 after income taxes.

Counsel for the City of San Diego made the following argument. The original pleadings and first witnesses presented make it seem evident that this application was filed to obtain relief from the loss of the mail contract. The two mail trains were discontinued in July of 1964. If the extra trains (Nos. 79 and 80) operating only on Sundays and holidays are canceled and baggage cars are eliminated on the other trains, the annual operating expenses will be reduced by approximately \$300,000. If further relief is needed, it should come from an increase in fares, not lessening of service.

Counsel for the Orange County Commuters Association emphasized the necessity of retaining Trains Nos. 71 and 73 in any future schedule approved by the Commission. Counsel noted that the recent application filed with the Interstate Commerce Commission, but not in this record, reveals that these two trains had a substantial increase in passenger patronage during 1964. He argued they should be kept in operation to satisfy this public need. Counsel further argued that if Train No. 71 left San Diego one-half hour earlier it would be patronized by a much greater number of commuters. It now arrives in Los Angeles too late for the average worker to ride it and get to work on time. Argument for an expanded rail service and better scheduling for commuters was presented by two other parties.

(New page)

Discussion

In this case the "feeder value" theory which originated in proceedings before the Interstate Commerce Commission was for the first time introduced (by the staff) in a Commission proceeding. Its application, with various adjustments, resulted in a minor annual loss on the present schedule.

We do not feel, however, that the application of "feeder revenue" to all train revenues in the table on page 18 of Decision No. 68271 is justified, and it is this item with which we are principally involved in the re-evaluation of the revenues produced by the present service. We do not quarrel with the validity of the "feeder Value" concept, but, as will be discussed later, it has limited effect on the trains to be discontinued.

The trains to be retained on the San Diegan line include all that are presently scheduled to connect with other rail service in or out of Los Angeles. These trains now carry just about all passengers who travel by rail to points beyond Los Angeles. The trains to be discontinued, on the other hand, are the early morning trains in each direction and the two extra trains scheduled only on Sundays and holidays. Such trains are used almost exclusively by special groups, such as commuters and weekend excursionists or visitors. They do not normally carry passengers who are traveling by rail beyond Los Angeles. The "feeder value" of the discontinued trains is therefore inconsequential. We will endeavor to eliminate the trains which are of least use to the entire public. Service will be reduced--not abandoned--and if public patronage of the San Diegan trains increases, additional service will be considered.

It is clear that petitioner has been operating at a financial loss and is entitled to further relief. We are now convinced that Trains Nos. 71 and 72 should be discontinued along with Trains Nos. 79 and 80. The three trains in each direction remaining in service should be scheduled as suggested in one of the findings herein. We realize that some commuters may be inconvenienced, but we must give primary consideration to the overall traveling public, and, if an undue burden exists, consideration to the carrier as well is needed. Virtually all of the passengers who ride Train No. 71 into Los Angeles are commuters because the 6 a.m. departure time from San Diego is too early to attract other San Diego users. Trains Nos. 79 and 80 are Sunday and holiday trains and should be discontinued on a schedule where patronage and revenue have been steadily decreasing. The trains we shall order retained are those which connect with interstate trains in and out of Los Angeles and with the main trains serving northern and central California.

ORDER ON REHEARING

IT IS ORDERED that Decision No. 68271 be amended:

- 1. Finding No. 6 is deleted.
- 2. Finding No. 7 is deleted and the following substituted:

7. In view of the alternative common carrier service, the alternate highway systems, plus the declining public patronage of these trains, we find that public convenience and necessity will be satisfied by retaining three trains in each direction on a seven-day week basis, presently scheduled as:

	<u>Southbound</u>		
<u>Train No.</u>	<u>74</u>	<u>76</u>	<u>78</u>
Leave Los Angeles*	9:00 a.m.	1:00 p.m.	5:15 p.m.
	<u>Northbound</u>		
<u>Train No.</u>	<u>73</u>	<u>75</u>	<u>77</u>
Leave San Diego*	7:00 a.m.	12:00 noon	4:30 p.m.

* Pacific Standard Time

- 3. Finding No. 8 is deleted and the following substituted:

8. Steady patronage by not more than 125 commuters who ride a maximum of forty miles each way, some of whom are occasional riders only, fails to establish a public need for the continuance of this service, when other transportation is available.

4. Finding No. 9 is deleted and the following substituted:

9. Two passenger stage corporations and a publicly owned bus system provide superior scheduling to the applicant between the points on the San Diegan route. Three major airlines provide twenty-minute service between Los Angeles and San Diego on thirty daily flights. A major highway parallels the applicant's right-of-way.

5. Conclusions Nos. 1 and 2 of Decision No. 68271 are deleted and the following substituted:

1. Santa Fe should be authorized to discontinue San Diegan Trains Nos. 70, 71, 72, 79, 80 and 81.

2. The remaining San Diegan trains should be scheduled substantially as at present but the Santa Fe should have twenty days after the effective date of this order within which to republish its schedules in consideration of the current schedules of all rail connecting transportation and recommend to this Commission, having in mind the public interest, the most feasible and practicable schedules for the retained trains.

6. Ordering paragraph 1 of Decision No. 68271 is deleted and the following substituted:

1(a) Applicant, The Atchison, Topeka and Santa Fe Railway Company, subject to a condition precedent hereinafter stated, is authorized to discontinue its San Diegan Trains Nos. 70, 71, 72, 79, 80 and 81, after the effective date of this order, upon not less than ten days' notice to the Commission and to the public, if it files appropriate tariffs and timetables reflecting the authority herein granted;

(b) Posts notice of discontinuance of and changes in all trains, and terminals affected for a period of at least ten days prior thereto;

(c) Publishes notice of discontinuance of and changes in service at least ten days prior thereto in the principal newspapers of general circulation in the San Diego-Los Angeles area;

(d) This authority is subject to this condition precedent:

Within twenty days after the effective date hereof, applicant shall file in this proceeding a proposed schedule, acceptable to the Commission covering the operations of the trains to be continued as required herein; and

(e) If applicant fails to file in this proceeding a proposed schedule and timetable within the time specified, or if the Commission, within twenty days thereafter, disapproves said filing by formal order, this application may be denied.

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

Dated at San Francisco, California, this 3rd day of AUGUST, 1965.

Frederick B. Halaloff
President

George T. Hoover

Alvador

Commissioners

COMMISSIONER PETER E. MITCHELL - CONCURRING OPINION:

I concur in the findings and order of the decision.

It now would be presumptuous of me as one Commissioner to pursue any method of alleviating vehicular congestion in the Southern California area by advocating further the substitution of rail passenger traffic. This suggestion was first presented by me in Decision No. 68271, the subject of this rehearing (see Decision No. 68271, Application No. 46609, Case No. 7905 - November 24, 1964 - Commissioner Peter E. Mitchell - Concurring Opinion).

We are all aware that the Los Angeles freeways and their patrons are exposed daily to a pre-sunrise and post-sunset convention of all mobile automotive equipment in the area. Conferences have been held everywhere in Southern California by just about everyone - even in our Los Angeles offices - seeking alternate methods of transportation.

In this proceeding lay the possibility to bring a small measure of relief to weary drivers of the Santa Ana freeway. I have no illusions that present passenger rail transportation at present fares is the ultimate answer to traffic congestion in the cities. But, at least, grant this! It is a beginning. And begin we must - sometime and with some other means of transportation than automotive.

The record in this rehearing is barren of any support for passenger rail traffic in and out of Los Angeles at peak hours save only the exhortations of a small band of tenacious commuters.

No civic body or governmental agency representing Los Angeles came forward to request this Commission or the railroad to utilize its best efforts in the growing transportation blockade which engulfs Southern California. If they had - but they did not.

I can only conclude that I stand alone in my belief as a public official that there did exist an opportunity to ease traffic congestion on the Santa Ana freeway by the continuance of passenger train service on an appropriate time schedule.

It can only be assumed, therefore, that there must be a more agreeable solution to the transportation problem now under consideration which will be swiftly forthcoming.


Peter E. Mitchell, Commissioner

DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

I am opposed to the decision of the majority which represents a further retreat from a sound public policy which should insist upon the maintenance of adequate passenger train service within the State of California.

Today's decision excuses completely the obligation of a public utility common carrier to meet its public service obligations. It is to be noted that we are not here discussing a railroad corporation which is hovering upon the brink of financial disaster -- to the contrary, system earnings more than justify the retention of this service. Added to that fact is the need of those commuters who daily patronize the service which is being discontinued today. The growth of California and the further congestion of the freeways will ~~continue to return the~~ commuter to rail transportation. But if all rail transportation is discontinued with the blessing of this Commission, then there is nothing left to which the frustrated, harrassed workbound and homebound commuter may return.

This application is not to be judged upon the revenue or lack thereof of a single segment of an almost nationwide transportation system. A public service corporation as here cannot nor does it expect a uniform complete profit on every single item of service which it is obligated by law to render. And the majority can entertain the plea of the carrier here only by ignoring its financial affluence.

We are not here confronted with that type of abandonment situation in which the record clearly demonstrates a scarcity


of patronage, an apathetic public and a failure of significant protest. To the contrary, there was great public interest displayed in these proceedings and the record is abundantly clear that there was substantial patronage of the service involved. The public convenience and necessity was well demonstrated by the Orange County Commuters Association, the City of San Diego and others. The Orange County Commuters Association properly pointed out that a rescheduling of train No. 71 would undoubtedly attract further patronage and with this I agree.

In any event the majority, confronted with a choice between public convenience and necessity and the private convenience of the railroad, has decided in favor of the latter. Regulation and its *raison d'etre* to favor the public interest is ignored. The Commission has missed the opportunity to direct The Atchison, Topeka and Santa Fe Railway Company to retain the trains here affected and to devise train schedules calculated to improve patronage.

The entire case on behalf of the applicant rests upon the proposition that it is providing a necessary public service at less than adequate return. At the same time it is beyond dispute that this carrier is in a very fortunate financial position. To reach the conclusion then that the public convenience and necessity is to be defeated for private gain makes regulation a thing of form but no substance. The proposition that public utilities and common carriers have taken unto themselves public service obligations which are not to be defeated by inconvenience, decreased profit or facts such as here is either unknown to the majority or

else conveniently overlooked. The decisions of this Commission in the past have been replete with statements of so basic a proposition so far as regulation is concerned.

As the freeways of the nation and of California in particular become further congested and tend toward that state of vehicular immobility then that day will be upon us when the traveller and the commuter will return to transportation by rail. And any grasp of the growth of California and the transportation needs of its citizenry should take this into account. These passenger services which are obligations imposed by law should be retained for the clear present use which the public has demonstrated in this proceeding and equally important for the increased and expanded future use which is inevitable. Today's decision which is contrary to the public interest for all the reasons I have set forth and which ignores the needs of those residents of Orange County also represents the Commission's contribution to a further choking of the freeways leading from the southern counties into Los Angeles.


WILLIAM M. BENNETT
Commissioner

San Francisco, California

August 4, 1965

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BENNETT, William M., Commissioner, Dissenting Opinion:

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San Francisco, California

August 4, 1965