

ORIGINAL

Decision No. 70989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF MOUNTAIN VIEW, a municipal corporation,
Complainant,

Case No. 8087

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and CARD-KEY SYSTEMS, INC., a corporation,
Defendants.

CITY OF SUNNYVALE, a municipal corporation,
Complainant,

Case No. 8188

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
Defendant.

CITY OF SAN CARLOS, a municipal corporation,
Complainant,

Case No. 8204

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
Defendant.

ORDER REOPENING PROCEEDING

Complainant, City of Mountain View, in its Closing Brief cited, among other authorities, a digest citation to an unreported case of the New York Public Service Commission; Re Long Island R. Co., 8 P.U.R. Digest 2d, p. 6448.

On June 13, 1966, Defendant, Southern Pacific Company, filed a petition seeking to reopen these consolidated proceedings for the limited purpose of receiving additional documentary evidence

or for further hearing. Southern Pacific appended to its petition an alleged copy of the Long Island case together with an alleged supplemental order thereto and copies of correspondence between Southern Pacific and the vice president and general counsel of the Long Island Railroad. Southern Pacific's petition states that if the Commission takes official notice of the Long Island decision and receives the aforesaid letters in evidence, then no reopening or further hearing is requested.

The three complainants herein and intervener Sunnyvale Area Commuters Club filed a consolidated memorandum opposing Southern Pacific's petition to reopen. The primary objection to Southern Pacific's petition is that the correspondence between Southern Pacific and the vice president and general counsel of the Long Island Railroad is inadmissible hearsay and "nothing but self-serving statements by railroad counsel setting forth a biased interpretation of the policy and ruling of a public body of the State of New York." Complainants and intervener also contend that ex parte receipt of the proffered correspondence would be prejudicial because they would not have the opportunity to cross-examine the writers thereof.

Certain points raised in these consolidated proceedings appear to be matters of first impression in California. There seems to be a paucity of authority elsewhere on these points. In the circumstances the Commission is disposed to permit the fullest development of the record herein as long as it does not unduly extend these matters. The Commission is of the opinion that a hearing on Southern Pacific's petition should be granted.

IT IS ORDERED that:

1. The submission in Cases Nos. 8087, 8188 and 8204 is hereby vacated.
2. Further hearing in Cases Nos. 8087, 8188 and 8204 is hereby ordered for the limited purpose of receiving competent evidence relating to the decision in Re Long Island R. Co., 8 P.U.R. Digest 2d, p. 6448 and any practices of the New York Public Service Commission in connection therewith. Said hearing shall be at the Commission Courtroom, San Francisco, California on August 1, 1966 at 10:00 a.m. before Commissioner Grover and/or Examiner Jarvis or such other Commissioner or Examiner as may be designated by the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 19th day of JULY, 1966.

President

George J. Grover

Fredrick B. Holdoff

Augustin

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

I would simply direct the parties to file briefs on the points raised involved and would not appear.
William W. Bennett