BEM

ORIGINAL

Decision No. 72615

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF MOUNTAIN VIEW, a municipal corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, and CARD-KEY SYSTEMS, INC., a corporation, Defendants.	Case No. 8087
CITY OF SUNNYVALE, a municipal corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, Defendant.	Case No. 8188
CITY OF SAN CARLOS, a municipal corporation, Complainant, vs. SOUTHERN PACIFIC COMPANY, a corporation, Defendant.	Case No. 8204

Fred Caploe, for City of Mountain View; Frank Gillio and Gene Fink, for the City of Sunnyvale; Michael Aaronson, for the City of San Carlos; complainants.
John MacDonald Smith, for Southern Pacific Company and Card-Key Systems, Inc., defendants.
Ian G. Allen, for Sunnyvale Area Commuters Club, intervenor.

O P I N I O N

Case No. 8087 is a complaint by the City of Mountain View (hereinafter referred to as Mountain View) against Southern Pacific Company (hereinafter referred to as Southern Pacific) and Card-Key Systems, Inc. (hereinafter referred to as Card-Key). The complaint alleges that there is a Southern Pacific railroad station in Mountain View; that Southern Pacific owns land adjacent to the station; that prior to 1959 the adjacent land had been used by Southern Pacific's customers as a parking area for their vehicles, without charge; that in 1959, Southern Pacific entered into a lease with Card-Key; that pursuant to the lease, Southern Pacific had caused the parking area to be paved, enclosed with barriers and turnstiles; that Southern Pacific and Card-Key have compelled Southern Pacific's customers to pay fees in order to park in the parking area; that Southern Pacific operates and maintains parking areas adjacent to its stations in other municipalities on its system between South San Francisco and San Jose and does not compel its customers to pay fees to park in these areas and that the imposition of parking fees at Mountain View imposes an unconscionable and discriminatory burden on train riders embarking from Mountain View and constitutes a practice that is unjust, unreasonable and improper. Southern Pacific and Card-Key filed answers to the complaint and each filed a motion to dismiss it. The answers admitted the execution of the 1959 lease, the paving and enclosing of the lot and the imposition of a charge for parking thereon. The answers allege that the complaint alleges no facts upon which any relief may be granted under law. Southern Pacific's answer alleges that, from time to time, Southern Pacific allowed its patrons to park on its property

as a matter of convenience; that providing parking is not part of its common carrier or public utility service and that it does not hold itself out to provide parking for patrons, free or otherwise. Card-Key's answer alleges that it is not a public utility and is not subject to the jurisdiction of this Commission.

Case No. 8188 is a complaint by the City of Sunnyvale (hereinafter referred to as Sunnyvale) against Southern Pacific. The complaint alleges that for many years prior thereto Southern Pacific owned certain specified real property in Sunnyvale which it in part used as a passenger depot; that some of the designated area was paved and otherwise improved and Southern Pacific held out and permitted this area to be used by its patrons as a parking area, free of charge; that Southern Pacific notified Sunnyvale that it was withdrawing the parking area from use on June 1, 1965; that Sunnyvale asked Southern Pacific not to withdraw the parking area from use and offered to improve and maintain it at no expense to Southern Pacific; that Southern Pacific maintains or permits cities on its system between South San Francisco and San Jose to maintain parking areas similar to that in Sunnyvale; that on May 27, 1965, 171 vehicles were parked on Southern Pacific's property adjacent to its Sunnyvale depot; that Southern Pacific has 77 employees who work at or board trains in Sunnyvale; that prior to Southern Pacific's notification about withdrawing the parking area from use, Sunnyvale was completing plans for reserving 275 parking spaces to supplement the parking area provided by Southern Pacific; that if Southern Pacific withdraws its parking area it will be necessary for Sunnyvale to raise parking fees in order to acquire funds to acquire an additional 225 parking spaces and that the withdrawal of the parking area constitutes a raise in rates without prior Commission authorization. Southern Pacific filed

an answer to the complaint and a motion to dismiss it. The answer admitted that it had allowed patrons to park at the Sunnyvale depot and that on June 1, 1965, Southern Pacific revoked a license granting its customers the privilege of parking in the depot area; that Southern Pacific continues to allow customers to park in the immediate vicinity of the station while transacting business at the station only; that Sunnyvale never made a firm offer to lease or acquire the parking area on a basis other than that of a token rental; that the property involved has a fair market value of approximately $200,000; that Sunnyvale, over the objections of Southern Pacific, included the property in an off-street parking assessment district; that Southern Pacific has paid over $18,000 in special assessments to provide and maintain off-street parking in Sunnyvale; that Sunnyvale seeks to acquire the Southern Pacific parking area without paying just compensation; that, from time to time, Southern Pacific allowed its patrons to park on its property as a matter of convenience; that providing parking is not part of its common carrier or public utility service; that it does not hold itself out to provide parking for its patrons, free or otherwise; and that the complaint does not state any facts entitling Sunnyvale to any relief. On July 30, 1965, the Sunnyvale Commuters Club (hereinafter referred to as the Commuters Club) filed a petition seeking leave to intervene in Case No. 8188 and the Commission entered an order granting it leave to intervene on September 21, 1965.

Case No. 8204 is a complaint by the City of San Carlos (hereinafter referred to as San Carlos) against Southern Pacific. The complaint alleges that in 1943, San Carlos and Southern Pacific entered into a lease, which was amended in 1950, whereby San Carlos leased property near Southern Pacific's San Carlos depot for parking

lots; that pursuant to the lease, San Carlos surfaced and maintained parking areas known as the Central Parking Lot and Northerly Parking Lot which were used by Southern Pacific's customers; that the total capacity of the Central and Northerly parking lots is 166 automobiles; that in 1952, San Carlos and Southern Pacific entered into another lease which provided for another parking area, which is known as the Southerly Parking Lot, to be maintained by San Carlos; that the Southerly Parking Lot has space for 109 automobiles; that in addition to the three parking lots, some of Southern Pacific's customers park along Old County Road, which is near the depot; that on May 24, 1965, Southern Pacific notified San Carlos that it was terminating the aforesaid leases on June 25, 1965, and that on the latter date the parking lot adjacent to the station would be permanently closed; that the termination of the leases and closing of the parking lot was a retaliatory action by Southern Pacific because San Carlos had denied it a use permit for developing the property except under a variety of conditions which included a restriction that no existing commuter parking be eliminated; that Southern Pacific operates and maintains or permits municipalities to develop and maintain parking areas, similar to those in San Carlos, adjacent to its depots in cities along its system, from South San Francisco to San Jose, and that if Southern Pacific is permitted to withdraw the three parking areas from use it would result in discrimination and an unauthorized increase in rates. Southern Pacific filed an answer to the complaint and a motion to dismiss it. The answer admitted the execution of the leases providing for the three parking lots and the notice terminating the leases and closing of one lot permanently for parking purposes. It denied the notice of termination was a retaliatory action. The answer also alleged that from time to time, Southern Pacific allowed its patrons

to park on its property as a matter of convenience; that providing parking is not part of its common carrier or public utility service; that it does not hold itself out to provide vehicle parking for patrons free, or otherwise, and that the complaint does not state any facts upon which relief can be granted.

Because of the related subject matter and common questions of law, the three complaints were consolidated for hearing. A duly noticed public hearing was held in these consolidated matters before Examiner Jarvis in San Francisco on November 15, 16, 17, 18 and December 6, 7 and 8, 1965. The consolidated matters were submitted, after briefs had been filed, on May 18, 1966. Thereafter, Southern Pacific filed a petition to reopen these proceedings. On July 19, 1966, the Commission entered an order vacating submission of these matters and reopened each proceeding for the limited purpose of receiving evidence relating to a decision of the New York Public Service Commission and any practices of the New York Commission in connection therewith. A further public hearing was held in these consolidated matters before Examiner Jarvis in San Francisco on August 16, 1966, and the matters were resubmitted on that date.

Each complaint involves areas used for commuter parking, but the facts vary. The Mountain View complaint deals with charges imposed for commuter parking. The Sunnyvale complaint deals with the withdrawal of an area for commuter parking. The San Carlos complaint deals with the termination of leases for three areas used for commuter parking and withdrawal of one of these areas. In order to consider the various legal points presented herein, it is necessary to examine the factual situation at each city here involved and other factual matters disclosed by the record.

Mountain View

For many years prior to 1959, Southern Pacific permitted its commute customers to park all day without charge on unimproved land adjacent to its Mountain View depot. Prior to 1959, the condition of the unimproved parking area was bad. The area had many chuckholes and was littered with debris. During the winter months portions of the lot were not usable. Prior to 1959, Mountain View attempted to get Southern Pacific to improve the parking area. Numerous meetings were held between representatives of Mountain View and Southern Pacific in connection with the Mountain View parking lot situation. At some point in the negotiations Southern Pacific represented to Mountain View that it was planning to establish pay parking on numerous lots throughout its system; that Southern Pacific proposed to institute pay parking at the Mountain View depot and that if pay parking were instituted the condition and maintenance of the parking lot would be improved. In the light of these representations, Mountain View granted a use permit for the construction and operation of a pay parking lot.

On April 21, 1959, Southern Pacific entered into a lease with Card-Key. The lease was for a term of five years commencing May 27, 1959. It provided in part that Card-Key would, at its own expense, fill, grade and pave the Mountain View depot parking area and install automatic coin and card operated toll gates thereon. The lease required Card-Key to pay all taxes and assessments on the leased property. It provided that the gross receipts from parking should be applied first, to Card-Key's operating expenses; second, to interest on Card-Key's investment; third, to cover reimbursement to Southern Pacific for taxes and fourth, to amortize Card-Key's investment for improvements. The lease provided that after Card-Key's investment

was fully amortized the gross revenue should be divided, after first deducting Card-Key's operating expenses and taxes paid by Southern Pacific, 70 percent to Southern Pacific and 30 percent to Card-Key. The lease also provided that Card-Key would charge for parking 25 cents per day or $4.00 per month, and that any changes in parking fees required the consent of Southern Pacific. The following is a recapitulation of Card-Key's operations under the lease from July 1, 1959 until July 31, 1965:

Total Receipts		$35,933.90
Total Operating Expenses	$10,950.00	
Total Interest on Capital Investment	4,758.22	
Total Tax Reimbursement to Southern Pacific	11,577.05	
Total Amount Applied to Capital Investment	8,943.75	
Total Losses		295.12
	$36,229.02	$36,229.02
Capital Investment	$18,451.17	
Less Amount Applied	8,943.75	
Capital Investment Balance	$ 9,507.42	

The Mountain View pay parking lot was not a success. The commuters resented paying for parking and did not patronize it in sufficient numbers to enable Card-Key to, in its opinion, earn an adequate return therefrom. Card-Key declined to undertake the construction and operation of any additional pay parking lots for Southern Pacific. In December of 1963, Card-Key discontinued using the monthly parking cards, which cost $4.00 per month, and charged 25 cents per car per day for parking. The elimination of the monthly parking card was done because Card-Key contended that so few cards

were sold that it did not justify the expense in providing an employee one day a month to sell them. Some of the commuters using the Mountain View depot who were unhappy with the advent of pay parking became even more resentful with the elimination of the monthly parking rate. They complained to officials of Southern Pacific and Mountain View. The Mountain View officials continued their discussions with the officials of Southern Pacific, seeking the elimination of any charge for parking. On February 17, 1964, Southern Pacific sent a letter to Mountain View proposing to eliminate the parking fee at the Mountain View depot under the following conditions: 1. Mountain View would reimburse Card-Key for its current outstanding investment in improvements, which was stated to be approximately $14,000 on that date; 2. Mountain View would be given a 10-year lease on the parking lot at a rental equal to Southern Pacific's city taxes upon the leased area. The taxes at that time were stated to be $368 per annum; 3. Southern Pacific would reserve the right to terminate the lease on 60 days' notice. However, if the lease were terminated prior to the expiration of 10 years, Mountain View would be reimbursed for its unamortized balance based on a write-off of 10 years; 4. Mountain View would bear the expense of maintaining and policing the parking lot. Mountain View rejected the Southern Pacific offer. It subsequently filed the complaint here under consideration.

Sunnyvale

For many years prior to 1965, Southern Pacific permitted its commute customers to park without charge in a designated area adjacent to its Sunnyvale depot. This parking area had been in poor condition for many years prior to 1965. On May 18, 1965, a representative of Southern Pacific informed the Sunnyvale City

Council that the parking lot would be closed. Commuters were notified of the closure by cards passed out on Southern Pacific's commuter trains. On June 1, 1965, Southern Pacific erected physical barriers around the parking lot and prevented its use by commuters. The Southern Pacific Sunnyvale depot is located in the downtown district of that city. On January 5, 1954, Sunnyvale, by ordinance, formed an off-street parking district known as District 1. The Sunnyvale commuter parking lot was not included within the boundaries of District 1. On January 19, 1957, other property, including the commuter parking lot and other property owned by Southern Pacific, was included in District 1. On January 14, 1958, another off-street parking district was formed. It is known as District 2 and includes all the property in District 1. On June 16, 1964, a third off-street parking district was formed known as District 3. District 3 includes all the property in Districts 1 and 2. The total investment in parking district lots and improvements for the three districts from January 5, 1954 to June 30, 1965 was $3,060,613.56. The total amount of ad valorem assessments paid by the property owners in the three districts from January 5, 1954 to June 30, 1965 was $973,419.52. The total amount paid by Southern Pacific in ad valorem assessments to the three districts from January 5, 1954 to June 30, 1965 was $19,840.

At one time Sunnyvale installed parking meters for on-street and off-street parking within the boundaries of Parking Districts 1 and 2 (District 3 was not in existence during this period) but the meters were removed on November 16, 1960. The reason for removal was the petition of local merchants asking that the meters be removed so that the area could be competitive with regional shopping centers, which did not charge for parking. Prior to the closure of

the Southern Pacific Sunnyvale commuter parking area Districts 1, 2 and 3 provided spaces for two types of free parking: spaces were designated for 30-minute parking and 3-hour parking. No provision was made for all-day parking. On July 1, 1965, after the closing of the Southern Pacific parking lot, the Districts designated certain areas for 21-hour a day parking and instituted a parking permit system for parking in these areas. The charge for a parking permit is $5.00 per month and permits are sold for periods of two months.

For at least 10 years prior to the closing of the Southern Pacific Sunnyvale commuter parking lot Southern Pacific and Sunnyvale had been negotiating over the improvement of the parking lot. Some of the proposals contemplated the charging of a fee for parking on the lot, after it was improved. At one point the Sunnyvale planning staff, as part of an overall proposal, indicated it would recommend to the City Council the imposition of a parking fee if Sunnyvale were to take over the lot in accordance with the proposal. The negotiations broke down when Sunnyvale rejected a Southern Pacific proposal to lease it the lot for a period of five years, with no provision for renewal, at a rental of $550 per month plus reimbursement to Southern Pacific for all taxes and ad valorem parking district assessments. This complaint was filed subsequent to the breakdown of negotiations.

San Carlos

Prior to 1939 Southern Pacific's commuter customers using its San Carlos depot parked their cars on unimproved property belonging to Southern Pacific adjacent to the depot. On March 21, 1939, Southern Pacific entered into a lease with San Carlos whereby, for the rental of one dollar per year, San Carlos was given the right to maintain and operate a free parking lot on specified Southern Pacific

property adjacent to the San Carlos depot. On May 3, 1943, Southern Pacific and San Carlos entered into another lease which superseded the 1939 lease and provided that San Carlos could maintain and operate a specified area belonging to Southern Pacific as a free parking lot adjacent to the San Carlos depot. This lease was amended on June 23, 1950, to include an additional specified area. The area covered by the lease of May 3, 1943, as amended, is known as the Central Parking Lot, which can accommodate approximately 48 automobiles and the Northerly Parking Lot, which can accommodate 118 automobiles.

On May 13, 1952, Southern Pacific and San Carlos entered into another lease, similar to the 1943 lease, which provided for the lease to San Carlos of additional specified Southern Pacific property to provide an additional area for commuter parking. This area is known as the Southerly Parking Lot, and can accommodate approximately 109 automobiles.

San Carlos, pursuant to the various leases, surfaced, maintained and operated the three parking lots. Some time prior to May of 1965 Southern Pacific and one Ronald Lambert entered into an agreement whereby Lambert would develop a portion of the San Carlos commuter parking lot area for commercial purposes. Lambert applied to San Carlos for a use permit to carry out the agreement. The planning commission granted the use permit, but inserted a condition which provided that no existing commuter parking could be eliminated. Shortly thereafter, Southern Pacific took steps to terminate the 1943 lease, as amended, and the 1952 lease. Southern Pacific also notified San Carlos that effective June 25, 1965, it would permanently close the Central Parking Lot. San Carlos subsequently filed the complaint here under consideration. At the time of hearing, Southern Pacific had not closed the Central Parking Lot or prevented commuters from using any of the three San Carlos parking lots.

Facts Pertaining Generally to
The Three Consolidated Proceedings

The record discloses that Southern Pacific has never, at any time, had in any of its tariffs a provision relating to the parking of automobiles at any of its stations. It was stipulated that none of the parking lot properties here involved, adjacent to the depots at Mountain View, Sunnyvale and San Carlos, has ever been included by Southern Pacific as operating plant in any proceeding for the establishment of rates for service between San Francisco and San Jose. The following table indicates the average number of daily commuters, using Southern Pacific's commute service between San Francisco and San Jose in October of 1965, the number of parking spaces on Southern Pacific property (including property leased to cities) from San Jose to 23rd Street, San Francisco, and the ratio of spaces to commuters at the various stations:

Station	Average No. of One-Way Northbound & Southbound Daily Commuters (October, 1965)	Parking Spaces on Southern Pacific Property, including Property Leased to Cities	Ratio Spaces to Commuters
San Jose	1,136	335	29%
College Park	192	0	0%
Santa Clara	599	103	17%
Sunnyvale	1,039	0(171)*	0(16%)*
Mountain View	866	0(241)**	0(28%)**
Castro	66	0	0%
California Avenue	943	282	30%
Palo Alto	757	341	45%
Menlo Park	682	227	33%
Atherton	553	129	23%
Redwood City	1,047	300	29%
San Carlos	742	234	32%
Belmont	513	136	27%
Hillsdale	774	70	9%
Hayward Park	313	0	0%
San Mateo	818	175	21%
Burlingame	645	225	35%
Broadway	400	94	24%
Millbrae	628	66	11%
San Bruno	455	122	27%
South San Francisco	295	135	45%
Butler Road	14	0	0%
Bayshore	155	0	0%
Paul Avenue	92	0	0%
23rd Street	160	0	0%
	13,884	2,974 (3,386)	21% (24%)

* Prior to closure of the lot.

** Card-Key 25¢ lot.

The record indicates that Southern Pacific has leased its parking lot adjacent to its San Francisco depot to a private operator who charges for parking.

The evidence indicates that except for the San Bruno depot (hereinafter discussed) Southern Pacific has not improved to any significant degree commuter parking areas adjacent to its depots from San Jose to 23rd Street, San Francisco. The record also indicates

that the Southern Pacific stations of Paul Avenue and 23rd Street, both in San Francisco, are located below street level and there is no area adjacent for parking. The Hayward Park station in San Mateo is located in an area where adjacent land for parking is not available. There is no evidence with respect to the College Park Castro, Butler Road and Bayshore stations.

Jurisdiction

Southern Pacific and Card-Key contend that the Commission has no jurisdiction over the matters set forth in the complaints here under consideration. Southern Pacific argues that "parking is extraneous to the furnishing of transportation for persons and their baggage; that it is not part of a public utility service; [and] that it is not a part of the carrier's transportation service...." The complainant cities and intervenor Commuters Club contend that customer parking is incidental to the transportation service rendered by Southern Pacific and subject to the jurisdiction of this Commission.

In considering the question of jurisdiction it is necessary to look at the California constitutional and statutory provisions relevant thereto. Article XII of the California Constitution provides in part as follows:

> "Sec. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state."
>
> "Sec. 22.
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> * * * * * * * * *
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> Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such

transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission than the rates, fares and charges which are specified in such tariff."

Sections 208, 229, 701, 730, 761, 762, 763 and 768 of the Public Utilities Code provide as follows:

"208. 'Transportation of persons' includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage."

"229. 'Railroad' includes every commercial, interurban, and other railway, other than a street railroad, and each branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures, and personal property of every kind used in connection therewith, owned, controlled, operated, or managed for public use in the transportation of persons or property."

"701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

"730. The commission shall, upon a hearing, determine the kind and character of facilities and the extent of the operation thereof, necessary reasonably and adequately to meet public requirements for service furnished by common carriers between any two or more points, and shall fix and determine the just, reasonable, and sufficient rates for such service. Whenever two or more common carriers are furnishing service in competition with each other, the commission may, after hearing, when necessary for the preservation of adequate service and when public interest demands, prescribe uniform rates, classifications, rules, and practices to be charged, collected, and observed by all such common carriers."

"761. Whenever the commission, after a hearing, finds that the rules, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and, by order or rule, fix the rules, practices, equipment,

appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed. The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules."

"762. Whenever the commission, after a hearing, finds that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that new structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structures be erected in the manner and within the time specified in the order. If the commission orders the erection of a new structure, it may also fix the site thereof. If the order requires joint action by two or more public utilities, the commission shall so notify them and shall fix a reasonable time within which they may agree upon the portion or division of the cost which each shall bear. If at the expiration of such time the public utilities fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost, the commission may, after further hearing, make an order fixing the proportion of such cost to be borne by each public utility and the manner in which payment shall be made or secured."

"763. Whenever the commission, after a hearing, finds that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passengers or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop its trains or cars at proper places, or does not run any train or car upon a reasonable time schedule for the run, the commission may make an order directing such corporation to increase the number of its trains or cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof. The commission may make any other order that it determines to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation."

> "768. The commission may, after a hearing, by general or special orders, rules, or otherwise, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand. Provided, however, that the commission shall not regulate the safety of operation of passenger stage corporations, highway common carriers, and petroleum irregular route carriers."

Southern Pacific relies on Post v. Reading Co. 88 P.U.R. (N.S.) 127, a 1951 decision of the Pennsylvania Public Utilities Commission to support its contention that railroad commuter parking is not subject to public utility regulation. In Post a complaint was filed against a railroad protesting the imposition of a fee for parking which had formerly been free. The Pennsylvania Commission dismissed the complaint. It held that a parking fee was not a rate within the contemplation of public utility law and that the law did not require a railroad to provide all-day parking, free or otherwise. The Pennsylvania Commission did not consider statutes similar to Sections 701, 730, 761, 762, 763 and 768 of the California Public Utilities Code. In this respect, we do not believe Post is authoritative on the question of the jurisdiction of this Commission. Furthermore, for the reasons hereafter stated we are not disposed to follow Post.

The complainant cities rely on Re Long Island R. Co., Case 7276, June 26, 1940, 8 P.U.R. Dig.2d, p. 6448, which in part states:

"Parking Facilities There is merit in the village's suggestion that the structure between North Center Avenue and North Village Avenue be of steel and that provision be made underneath for parking facilities; but the railroad company insists that if the space is so used, it shall be compensated just as if it's property were taken for a purpose entirely unrelated to the operation of the railroad. The position stated by counsel is that a railroad company is not under obligation to make any provision for the parking of vehicles on railroad property, that the public may be expected either to walk to the station or if they ride to leave their vehicles elsewhere and that provision only need be made so that they may alight.

"The company also takes the position that if an elevated structure is provided, the railroad company is entitled to use the space under that structure for its own purposes. As the railroad will pay a maximum of 15 percent of the cost of such structure and as it will pay a lesser amount if the benefit conferred upon the whole project does not amount to 15 percent, it may easily happen that the elevated structure would be built at the expense of the State and that the railroad company would retain the revenue from the space created by the structure.

"Now, it is conceded by counsel for the railroad company that this Commission may require an embankment instead of an elevated structure. If it exercises this power, the expense to the State will be reduced and the railroad company will not be able to use any part of the land for any purpose other than the transportation of passengers and property and will therefore obtain no increased income therefrom.

"The attitude of the railroad company as stated by its counsel does not appeal to us either from the standpoint of law or of equity. A railroad company has an obligation to provide for the accommodation of its patrons. Its obligation is not limited merely to the provision of space where passengers may alight from vehicles and stand until a train arrives. It is our opinion that in view of the general use of the automobile, the obligation of a railroad to provide reasonable parking space has come into being, just as much as the obligation to provide more rapid transportation has developed out of changed economic and social conditions. Of course, there must be reasonable bounds to this obligation and we do not subscribe to the doctrine upon which the claims of the village are apparently founded, namely, that it is the duty of the railroad company (or of the State of New York) to provide all of the additional parking space for which the village asks."1/

1/ The text of the decision was received in evidence by reference as Item B. It is attached to Southern Pacific's Petition to Reopen.

Southern Pacific contends that the quoted language is dicta and that the railroad was not compelled to provide parking space by the Long Island decision. We do not have to resolve the question of whether the language relative to the railroad's obligation to provide parking is dicta or necessary to the decision. The Long Island case clearly holds that railroad station parking facilities are "incidental improvements" so that State funds could be used for their construction under the New York Grade Crossing Elimination Act of 1939. This holding supports the contention of the cities and Commuters Club that commuter parking is incidental to the transportation of persons as defined in Section 208 of the Public Utilities Code. The New York Public Service Commission subsequently considered evidence on the amount of parking provided by a railroad and town in determining the adequacy of station facilities. (Re Long Island R. Co., Case 12282, Aug. 7, 1946, 8 P.U.R. Dig.2d, p.6448.)

Public Service Comm'n of Missouri v. Kansas City Power & L. Co., 30 P.U.R. (W.S.) 193, cited by Southern Pacific, does not compel a different result. In the Kansas City case the Missouri Commission refused to allow the power company to include in the rate base the land upon which it operated a parking lot. The Missouri Commission held that as a factual matter there was not a substantial use of the parking lot by the utility's customers to permit its inclusion in rate base. The Missouri Commission stated:

> "The Commission is of the opinion that the customers' parking lot is not used by enough customers of the company to justify the inclusion of the value of the lot in the rate base. If the lot were generally needed for the operation of the general office building, the Commission might be inclined to include the fair market value of the land in the rate base as used and useful property, but under the circumstances it does not appear proper to do so." (30 P.U.R. (N.S.) at p. 223.)

The Kansas City case holds that parking can be incidental to public utility activity and subject to regulation, but finds, as a matter of fact, that the particular parking lot is not sufficiently incidental to be included in rate base.

The words of one of America's foremost jurists, spoken in a different context, are pertinent:

> "Precedents drawn from the days of travel by stage coach do not fit the conditions of travel today. The principle . . . does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be." (Cardoza, J., MacPherson v. Buick Motor Co., 217 N.Y. 382, 391.)

We do not believe that in the year 1967 it can seriously be argued that customer parking facilities adjacent to a railroad station are not "incidental to the safety, comfort, or convenience of the person being transported" (Pub. Util. Code §208); are not part of a "station" "depot" "grounds" or "terminal facilities" (Pub. Util. Code §229); are not "facilities" or "service" (Pub. Util. Code §§730, 761, 762); cannot be reasonably necessary to accommodate passengers (Pub. Util. Code §763) or by their location and use have no effect on the safety of the public and the railroad's customers, passengers and employees. (Pub. Util. Code §768.) In fact, a 1963 report prepared by independent consultants and introduced in evidence by Southern Pacific in a previous Commission proceeding, which was received in evidence herein, states:[2/]

2/ We do not need to consider to what extent, if any, Southern Pacific is "bound" by the contents of the independent consultants' report introduced in another proceeding. The cited portion of the report is evidence of what is common knowledge, the relationship of the automobile and parking to rail commuter transportation.

> "Adequate parking facilities at suburban stations are an essential part of commute service. Commuters who park at the station obviously have a car at their disposal, and they, therefore, usually have a choice of commuting by car or by train. It is important to accommodate this group of commuters and to encourage their continued patronage of the service."

Furthermore, in Application No. 44396, filed by Southern Pacific on April 30, 1962, Southern Pacific sought authority to discontinue its existing stations and facilities of San Bruno and Lomita Park and establish in their stead a new nonagency station known as San Bruno. Southern Pacific had permitted certain of its property adjacent to the two stations for which discontinuance was sought to be used for commuter parking. The Commission, in Decision No. 64166, authorized the discontinuance of the two old stations and granted authority to establish the new one. The decision provided that "Acceptable ingress and egress to the new San Bruno station with adequate parking facilities should be provided." In connection with the establishment of the new station, the City of San Bruno leased from the City and County of San Francisco some land adjacent to the new station for a commuter parking lot. The remainder of the parking area is on land owned by Southern Pacific. Southern Pacific paid half the cost for paving the entire commuter parking area at the new station, which was approximately $1,650. Thereafter, Southern Pacific leased for commercial purposes the land adjacent to the old stations formerly used for commuter parking. Decision No. 64166 and the actions of Southern Pacific in carrying out the authority granted thereunder, clearly indicate that parking is incidental to railroad commuter service.

The Commission holds that, under the constitutional and statutory provisions heretofore set forth, it has jurisdiction over parking facilities at railroad stations, which are used to a

significant degree by customers of the railroad. (Southern Pacific v. Public Util. Com., 41 Cal.2d 354; Atchison, etc. Ry. Co. v. Railroad Com., 209 Cal. 460 affirmed in Atchison. T. & S.F. Ry. Co. v. Railroad Com. of Calif., 283 U.S. 380; Coml. Communications v. Public Util. Com., 50 Cal.2d 512.) By the foregoing we only hold that the Commission has jurisdiction over parking facilities at railroad stations. We do not hold that such facilities or service must be provided at all stations nor do we say to what degree they must be provided at any station. Resolution of such questions must be accomplished in appropriate proceedings, such as the three complaint matters here under consideration.

The foregoing discussion relating to jurisdiction primarily related to Southern Pacific, a public utility and common carrier concededly subject to the jurisdiction of the Commission. The lease between Card-Key and Southern Pacific, which was received in evidence, as well as other evidence clearly indicates that Card-Key was to operate the Mountain View parking lot and eventually other parking lots for the primary purpose of providing commuter parking for Southern Pacific's patrons. Since customer parking at railroad stations is subject to the jurisdiction of the Commission Card-Key is subject to the Commission's jurisdiction as the agent of Southern Pacific and independently, under Section 216(c) of the Public Utilities Code, which provides as follows:

> "When any person or corporation performs any service or delivers any commodity to any person, private corporation, municipality or other political subdivision of the State, which in turn either directly or indirectly, mediately or immediately, performs such service or delivers such commodity to or for the public or some portion thereof, such person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

In addition to the jurisdiction under the constitutional and statutory provisions heretofore discussed, the Commission further holds that it has jurisdiction over the subject matter of the complaints for the following reasons. In Boynton v. Virginia, 364 U. S. 454, the United States Supreme Court held at pages 458-461, as follows:

> "...The Henderson case largely rested on Mitchell v. United States, supra, which pointed out that while the railroads might not be required by law to furnish dining car facilities, yet if they did, substantial equality of treatment of persons travelling under like conditions could not be refused...."
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> * * * * * * * * * *
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> "Respondent correctly points out, however, that, whatever may be the facts, the evidence in this record does not show that the bus company owns or actively operates or directly controls the bus terminal or the restaurant in it. But the fact that §203(a)(19) says that the protections of the motor carrier provisions of the Act extend to 'include' facilities so operated or controlled by no means should be interpreted to exempt motor carriers from their statutory duty under §216(d) not to discriminate should they choose to provide their interstate passengers with services that are an integral part of transportation through the use of facilities they neither own, control nor operate. The protections afforded by the Act against discriminatory transportation services are not so narrowly limited. We have held that a railroad cannot escape its statutory duty to treat its shippers alike either by use of facilities it does not own or by contractual arrangement with the owner of those facilities. United States v. Baltimore & Ohio R. Co., supra. And so here, without regard to contracts, if the bus carrier has volunteered to make terminal and restaurant facilities and services available to its interstate passengers as a regular part of their transportation, and the terminal and restaurant have acquiesced and cooperated in this undertaking, the terminal and restaurant must perform these services without discriminations prohibited by the Act. In the performance of these services under such conditions the terminal and restaurant stand in the place of the bus company in the performance of its transportation obligations. Cf. Derrington v. Plummer, 240 F.2d 922, 925-926, cert. denied, 353 U. S. 924."

The record clearly indicates, and Southern Pacific concedes, that it permits its land adjacent to certain of its Peninsula stations

to be used for commuter parking. Even if it does not have a legal requirement to provide parking, since it has undertaken to do so the Commission can inquire whether it is discriminating between municipalities in that which it has undertaken to do. (Boynton v. Virginia, supra; Cal. Constit., Art. XII, Sec. 21; Pub. Util. Code §§453, 494, 532.) Card-Key, which operates the Mountain View Commuter Parking lot, is subject to the jurisdiction of the Commission to determine whether it is a party to any unlawful discrimination. (Boynton v. Virginia, supra, at pp. 460-61.)

Status of the Peninsula Parking Lots[3/]

In order to properly determine the matters raised by the three complaints, it is necessary to determine the status of Southern Pacific's Peninsula parking lots. We must determine the status of the Mountain View, Sunnyvale and San Carlos lots because they are the subject matters of the complaints here under consideration. We must consider the status of the other Peninsula lots in dealing with the question of discrimination.

Southern Pacific contends that its property used for commuter parking adjacent to its stations on the Peninsula is nonutility property, which it can develop to its highest and best use. Southern Pacific points to the absence of any tariff provision on parking, the fact that some of the parking lots have been leased to cities and portions of other parking lots have been leased to commercial enterprises, without approval of this Commission, to support its contention that the property has a nonutility status. Southern Pacific also contends that it has not dedicated its parking

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3/ Peninsula refers to the San Francisco Peninsula - from San Francisco to San Jose.

lot property to public utility use, but merely "allowed parking on its property in the vicinity of suburban stations when the property was idle at the particular time and not being used for any other purpose." Southern Pacific contends that there are not sufficient parking spaces in any of its parking lots to accommodate all of its commuter patrons, so it could not have held out a spot for each commuter. Southern Pacific contends that the parking areas are generally unimproved and those that are surfaced were improved by cities and not Southern Pacific. Southern Pacific also argues that even if it has an obligation to furnish parking for patrons dealing with it, it has no obligation to furnish all-day parking for commuters who use its service for only a small portion of the day. Southern Pacific contends that it is a function of the cities to provide suitable parking for their inhabitants. The complainant cities and the Commuters Club argue that the Peninsula parking lots have been dedicated to public use, that Southern Pacific assumed the obligation to provide a certain amount of all-day commuter parking for its patrons and that the cities and various commuters have relied upon the continued availability of these parking lots in planning their affairs. The parties also refer to their previous arguments on whether commuter parking is an incidental service or facility of a railroad, previously considered, to support their views on dedication.

A public utility cannot be compelled to render a service or use its facilities where it has not dedicated itself or its facilities to do so. (California Water & Telephone Co. v. Public Utilities Comm., 52 Cal.2d 478.) However, we have previously held, in the discussion on jurisdiction, that patron parking at existing stations is subject to the Commission's jurisdiction. Thus, Southern Pacific as a common carrier and public utility could be ordered to

take appropriate action with respect to commuter parking under its dedication of railroad service, generally, to the communities with existing stations. The precise question with which we now deal is whether a specific dedication relating to commuter parking has been made.

The test to determine whether facilities or service have been dedicated to public utility use is whether there has been a holding out of the facility or service to the public or portion thereof. (Yucaipa Water Co. No. 1 v. Public Util. Comm., 54 Cal.2d 823, 827; Coml. Communications v. Public Util. Comm., 50 Cal.2d 512, 523; California Water & Telephone Co. v. Public Util. Comm., 51 Cal.2d 478, 494; S. Edwards Associates v. Railroad Comm. 196 Cal. 62, 70; Camp Rincon Resort Co. v. Eshleman, 172 Cal. 561, 563.) Dedication may be found to exist by implication. (Yucaipa Water Co. No. 1 v. Public Util. Comm., supra; S. Edwards Associates v. Railroad Comm., supra.)

The record discloses, and Southern Pacific does not seriously dispute, that since the advent of the automobile, Southern Pacific has permitted parking on unimproved land which it owns adjacent to its Peninsula stations.[4/] Southern Pacific does dispute the character of the parking, claiming it to have been done under a revocable license with no dedication involved.

Prior to the three complaints here under consideration, Southern Pacific had never posted on any of the unimproved areas which it owned adjacent to its Peninsula stations, upon which it permitted its commuter patrons to park, any signs or notices which indicated that the right to park was subject to any conditions or

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4/ As indicated, there has never been parking at a few stations because of physical impossibility or the lack of space when constructed.

was pursuant to a revocable license. Various commuters testified that they examined and relied upon depot commuter parking facilities before purchasing homes. Numerous commuter witnesses testified that they considered parking 5/ as part of the commute service offered by Southern Pacific. A member of the Sunnyvale City Council for 17 years prior to the hearing testified that "We /Sunnyvale/ have always figured on the Southern Pacific parking and /sic/ developing the downtown area." The actions of Mountain View city officials prior to 1959, seeking to have Southern Pacific improve the Mountain View commuter parking lot indicate that the city considered it a permanent part of the depot. The San Carlos leases, and the improvements and maintenance of the parking lots thereunder, indicate that San Carlos considered the parking lots to be part of the depot.

Southern Pacific contends that the absence of tariff provisions relative to parking shows that no dedication has occurred. It also argues that the leases to various cities and the leasing of areas adjacent to some Peninsula stations, without Commission authorization under Section 851 of the Public Utilities Code, indicate that no dedication occurred. The Cities and Commuters Club contend that the leases to the Cities are evidence of dedication.

Southern Pacific's chief rate representative, passenger division, testified on cross-examination that it was Southern Pacific's policy to provide a seat for every commuter on the San Francisco-San Jose commute service, but admitted that Southern Pacific had published nothing in its Peninsula commute tariff about

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5/ Some of these witnesses indicated that it was "free" parking which they considered as part of the service offered. This point is hereinafter considered.

this.[6] He also testified that it was Southern Pacific's policy to provide clean trains which were equipped with rest rooms, but there was no provision in Southern Pacific's Peninsula commute tariff concerning this policy. Since it appears that practices dealing with its service and facilities which are admittedly done by Southern Pacific, or required by law, do not appear in its Peninsula commute tariff, we believe little weight should be given to the absence of a provision on parking.

Section 851 of the Public Utilities Code was amended in 1959 to exclude common carriers by railroad, including Southern Pacific, from the scope of its provisions. Prior to 1959, Southern Pacific was subject to the provisions of Section 851. Section 851 as amended in 1951, but prior to 1959, provided:

> "No public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or

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6/ This is also a statutory requirement under Section 2185 of the Civil Code which in part provides that: "A common carrier of persons must provide every passenger with a seat."

> enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.
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> "Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value."

The record discloses that for a period of years, commencing in at least 1936, Southern Pacific leased parking lot areas adjacent to its Peninsula depots to the various cities in which the depots were located. These leases provided for a nominal rental and that the city would surface and maintain the lot. Most of the leases provided that the city would be liable for any increased taxes or assessments because of improvements. Some leases provide that the city is liable for all taxes and assessments attributed to the leased parking lot. Leases or modifications thereof were executed between Southern Pacific and the various cities as follows: Burlingame - 1937, 1939, 1950, 1951; Belmont - 1951, 1963; Menlo Park - 1946, 1955, 1964; Palo Alto - 1939, 1940, 1949; Redwood City - 1943, 1944 and San Mateo - 1936, 1938, 1940, 1944, 1950, 1952, 1958. Not all of these leases are presently in effect.

As indicated, the leases between Southern Pacific and the various Peninsula cities go back as far as 1936. It is clear that the purpose of the leases was to shift to the cities the cost of surfacing and maintaining the parking lots and to provide that Southern Pacific be reimbursed for any taxes or assessments for the properties. Although the leases provide for termination, usually on thirty days' notice, there is no suggestion that if they were terminated, the properties would be used for other than parking lot

purposes. The Menlo Park lease of September 30, 1955 and the San Mateo lease of May 19, 1958 require the cities to post the following notice on the parking lots involved:

"NOTICE

THIS PROPERTY IS LEASED FROM SOUTHERN PACIFIC COMPANY. VEHICLES PARKED ON THIS PROPERTY WILL BE AT THE SOLE RISK OF THE OWNER OR OPERATOR THEREOF. SOUTHERN PACIFIC COMPANY WILL NOT BE RESPONSIBLE FOR THEFT OF OR LOSS OR DAMAGE TO VEHICLES OR CONTENTS FROM ANY CAUSE."

Nothing is said about the use of the parking facilities being temporary and subject to other commercial uses by Southern Pacific.

Prior to the proceedings here under consideration, Southern Pacific never attempted to withdraw any significant amount of its commuter parking area from use without first arranging for other equivalent commuter parking facilities.[7/] The San Bruno proceeding illustrates this point. This shows a recognition on the part of Southern Pacific that it could not withdraw its parking areas without making suitable provisions for commuter parking at the depot involved.

None of the parking lot leases heretofore mentioned was authorized or disapproved by the Commission because none was submitted to it. This is the first proceeding in which the Commission's jurisdiction over and status of the Peninsula commuter parking lots has been put at issue.[8/] We construe the failure to submit the leases,

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7/ There is evidence that parts of some land leased by Southern Pacific for commercial purposes had been used for commuter parking. However, the amount of parking lot area involved was small.

8/ In the San Bruno case (D. 61466), Southern Pacific submitted to the jurisdiction of the Commission with respect to parking. See, Golden Gate Scenic S.S. Lines v. Public Util. Comm., 57 Cal.2d 373, 377, footnote 2.

prior to 1959, as a lack of recognition of the legal consequences of the conduct, heretofore set forth, by Southern Pacific Company for many years. If we find that the commuter parking lots were dedicated to public use, such holding would not affect any lease made prior to 1959. We are of the opinion that in the absence of a prior Commission holding on the status of these lots any lessee would be a "lessee...in good faith for value" so that these transactions would have finality.

The Commission finds that Southern Pacific has held out to the public or portions thereof that Southern Pacific's patrons, including commuter patrons, could use land owned by Southern Pacific and adjacent to its Peninsula stations, where such land was available, for parking. It is not here necessary to define specifically the property so dedicated. Furthermore, we recognize that some property, previously held out for parking, may have subsequently been put to other uses and these changes in use may not now be questioned. While we find that Southern Pacific has dedicated certain property for patron and commuter parking use we reject the contention made by the cities and Commuters Club that the parking areas were dedicated to free parking in perpetuity. This proposition is contrary to common sense and to so hold would be a violation of due process and constitute confiscation. (Lyon & Hoag v. Railroad Comm., 183 Cal. 145; Smyth v. Ames, 169 U.S. 466, 546; Miller v. Railroad Comm., 9 Cal.2d 190, 201; The Minnesota Rate Cases, 230 U.S. 352, 414-15, 433-34; Cf., Power Comm'n. v. Hope Gas Co., 320 U.S. 591, 602.

The term free parking is, of course, an oversimplification. To the extent taxes and assessments may be levied, maintenance necessary or improvements made, there are expenses attributable to the parking lots. As indicated, and hereinafter discussed at length,

Southern Pacific, itself, did not significantly improve, by surfacing, any of the dedicated parking lot areas. In earlier years taxes and assessments were nominal. There were no maintenance costs. The amounts were relatively small and were absorbed in the general expenses of Southern Pacific. However, some of the Peninsula parking lot land has appreciated in value and some has become subject to current assessments. The estimated taxes for 1964-65 on the parking lots here involved are: San Carlos $5,937, Sunnyvale $3,881 and Mountain View $2,399. Southern Pacific is at least entitled to recoup these expenses.[9/] Furthermore, Southern Pacific does not have to allow the dedicated parking lot areas to lie unimproved. To the extent it improves, or causes these areas to be improved, and to the extent it incurs maintenance costs, these expenses may also be recouped.

Since the Commission holds that Southern Pacific may recoup at least the costs and expenses attributed to station parking lots, the next question presented is how they are to be recouped. The Commission finds that the only fair, just and equitable way for Southern Pacific to recoup the expenses attributable to taxes and assessments and costs of surfacing and maintaining its Peninsula station parking lots is by levying parking fees on those using the lots. It has heretofore been set forth that there are not enough spaces at any of the Peninsula station parking lots to accommodate

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9/ Southern Pacific contends that, assuming the parking lots to be dedicated to public utility use, it is entitled to earn a reasonable rate of return on the value of each lot. It is not necessary herein, and the Commission does not pass upon the point of how parking lot rates should be calculated. See, Power Comm'n. v. Hope Gas Co., supra, 320 U.S. 591, 602.

all of Southern Pacific's commuter patrons. For example, there are 241 spaces for an average of 866 daily commuters in Mountain View, 171 spaces for an average of 1,039 daily commuters in Sunnyvale and 234 spaces for an average of 742 daily commuters in San Carlos. As a practical matter, the commuters embarking on early trains get the limited number of parking spaces. The overall ratio of parking spaces to commuters at Peninsula stations is 24 percent.[10/] It would be manifestly unjust and unfair to the overwhelming number of commuters, for whom no station parking is available, to make them pay for the expenses of station parking. Other reasons also support this conclusion.

The record discloses that while the Southern Pacific Peninsula station parking lots are primarily used by commuters, they are also used by others. Southern Pacific introduced in evidence a three-day survey taken at the three San Carlos parking lots. The survey disclosed that 85 percent of the persons parking on the lots embarked on Southern Pacific commute trains. Eight percent used the lots to park and then used the service of Western Greyhound Lines. Four percent used the lots as a point to park and form car pools and drove off in vehicles. Three percent used the lots to park and then embarked on the local bus line. There is other evidence to support the conclusion that a certain percentage of noncommuters, not otherwise patrons of Southern Pacific use the parking lots adjacent to Southern Pacific's Peninsula stations. Without an identification and policing system, which would entail additional expense, this noncustomer parking cannot be prevented. Clearly, Southern Pacific

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10/ Even if stations having no Southern Pacific station parking were eliminated from the ratio, it would not be appreciably lower.

commuters generally should not be saddled with any cost for parking by persons who are not even patrons of Southern Pacific. This again leads us to the conclusion that the costs of the parking lots should be borne by the users.

The record also indicates that Southern Pacific competes with Western Greyhound Lines for commuter traffic on the Peninsula, and that Greyhound does not provide commuter parking space at any of its Peninsula depots. It would have a detrimental effect on Southern Pacific's Peninsula commute operations to require Southern Pacific's passengers, generally, to support parking facilities for a limited number of commuters while Greyhound provides no parking facilities and its patrons would not be required to contribute any part of their fare as an increment for parking.

The Complaints

We have considered the questions of jurisdiction and status of the Peninsula parking lots. Before we turn to the complaints of the three cities here involved to see what, if any, relief they may be entitled to, we must look to the general situation of the Southern Pacific Peninsula parking lots. If, for example, taxes and assessments on the unimproved Southern Pacific station parking lot in City "X" are less than $100 per year, whereas the taxes and assessments on the unimproved parking lot in City "Y" are $5,000 per year, it is not unlawful discrimination for Southern Pacific to permit free parking in City "X" and charge patrons a fee to park in City "Y".

The record shows that Southern Pacific has itself never made more than substantially unimproved land available for commuter parking. It has consistently shifted to others the costs of paving and maintaining lots and payment of taxes and assessments thereon. In some cases it has induced cities themselves to provide some of

the land for commuter parking. In the case of San Bruno, Southern Pacific did contribute $1,650 toward paving the parking area adjacent to the new station. Part of the new parking lot is not on Southern Pacific property. However, as a result of that transaction, Southern Pacific was able to withdraw the old parking area from public utility use and devote it to a commercial one. We cannot find, in the San Bruno transaction, any indication of any commitment by Southern Pacific to pay for all or part of the development of commuter parking lots by cities. Where Southern Pacific has permitted a city to take over, improve and maintain and pay the costs of taxes and assessments on a parking lot, the costs are being defrayed by someone other than Southern Pacific. When these costs are not paid by others, but by Southern Pacific, it is not unlawful discrimination for Southern Pacific to recoup them.

The Mountain View Complaint

Preliminarily, we note that Mountain View, in its complaint, did not allege any specific parking lot area to have been dedicated to public utility use. The complaint does allege that the land leased to Card-Key, for which fees are charged, is the subject matter of the complaint. The land is adequately described in the record,[11/] and even if it be assumed that the complaint contained an insufficient description, the insufficiency was cured by proof at the hearing. The Card-Key lot is the only Southern Pacific property in Mountain View alleged to be dedicated to public utility parking purposes and Mountain View did not attempt to produce evidence with respect to any other property. We only consider the complaint with respect to the Card-Key parking lot.

11/ Exhibit 1, the stipulation between Card-Key, Southern Pacific and Mountain View contains a description of the land as does Exhibit 86.

The Mountain View complaint raises the question of discrimination because of pay parking. No question is raised about the reasonableness of the rates presently charged by Card-Key, and the Presiding Examiner correctly did not receive any evidence dealing solely with the reasonableness of those rates. The issue raised is whether the instituting of a pay parking lot at Mountain View constitutes discrimination as to Mountain View and those Southern Pacific patrons using the Mountain View station.

The record discloses that the Mountain View depot is the only one on the Peninsula which has a pay parking lot. There is a pay parking lot on Southern Pacific land adjacent to its San Francisco depot. Southern Pacific's lease with Redwood City permits installation of meters by the city in the parking area leased to it.

It has previously been shown that, except for San Bruno which is distinguishable, Southern Pacific itself has not paved and maintained any of the Peninsula depot parking lots. All the improved depot commuter parking lots were surfaced and are maintained by the cities in which they are located. They were not improved at any expense to Southern Pacific and the cost of maintenance is not paid for by Southern Pacific. Thus, the failure of Southern Pacific to provide a paved parking lot with maintenance would not constitute discrimination as to Mountain View and the patrons using the depot there. However, Southern Pacific did through Card-Key, as it had a right to do, surface the Mountain View depot parking lot. Furthermore, for some period prior to 1959 Mountain View had been pressing Southern Pacific to do this. The record discloses that Card-Key's capital investment in the lot was $18,451.17. Card-Key or Southern Pacific has the right to at least recoup the operating expenses and over a period of time attempt to recoup the capital invested in surfacing

and improving the lot. This could be done by charging a parking fee. Furthermore, in 1964, Southern Pacific offered to let Mountain View take over the lot on substantially the same terms as other Peninsula cities having improved depot parking lots.[12/] Mountain View refused to do so.[13/] The Commission cannot, on this record, find that Mountain View or the patrons using the Southern Pacific depot there have been unlawfully discriminated against by Southern Pacific or Card-Key or have been subjected to any unjust, unreasonable or improper practices by Southern Pacific or Card-Key. Mountain View is entitled to no relief in this proceeding.

The Sunnyvale Complaint

The Sunnyvale complaint involves Southern Pacific's closing, to commuter parking, of a specified area adjacent to its Sunnyvale depot. The Commission finds that this area has been dedicated to public utility purposes as one of the areas previously referred to. We find, on the evidence heretofore set forth, that it is necessary for Southern Pacific to reasonably and adequately meet its public requirements for service to reopen and continue in operation the closed Sunnyvale commuter parking lot. The closing of the lot was an

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12/ In Mountain View, since the lot was already surfaced and improved, instead of being required to pave and improve it, Mountain View was asked to reimburse Card-Key for the current outstanding investment on the money expended for improving it.

13/ Perhaps the refusal may be explained by Exhibit 3, a letter from the City of Los Altos which indicates that approximately one-third of the commuters using the Mountain View depot are residents of Los Altos and Exhibit 8, a survey conducted by the Mountain View Chief of Police which indicated that on February 27, 1964, of the cars using the Card-Key lot and surrounding streets only 35 percent were registered to owners residing in Mountain View, whereas 65 percent were registered to nonresidents of Mountain View.

unjust, unreasonable and improper act by Southern Pacific and the closing has resulted in inadequate and insufficient facilities at the Sunnyvale depot.

The Commission will order the reopening of the Sunnyvale commuter parking lot. The terms under which it is operated must, on this record, be left to the parties involved, subject to appropriate proceedings before this Commission within the scope of its jurisdiction. In this connection, we observe that the fact that the property of a public utility has been included in a parking assessment district does not entitle the utility to withdraw from public use property previously dedicated to parking for its patrons. On the other hand, we have heretofore indicated that a utility has the right to recoup taxes and assessment fees levied against its dedicated parking lot facilities as well as the costs of maintenance and, over a period of time, attempt to recoup money expended for capital improvements.

The San Carlos Complaint

The San Carlos complaint is against the termination of leases for three specified parking lots leased by Southern Pacific to the city and developed and maintained by the city under the leases, and the threatened withdrawal of one of the parking lots for commuter parking.[14/]

The Commission finds that the three San Carlos parking lots have been dedicated to public utility purposes as one of the areas previously referred to.

The Commission has no jurisdiction over the termination of the leases as such. As long as the lots are continued in operation

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14/ At the time of the hearing San Carlos was still operating and maintaining the three lots which were being used for commuter parking.

as commuter parking lots, without discrimination against San Carlos or Southern Pacific patrons using the depot in that city, the Commission cannot require Southern Pacific to lease the lots to the city.[15/] Southern Pacific may operate and maintain the lots if it chooses. Questions relating to the manner of operations can be raised in appropriate proceedings before this Commission.

The Commission does have jurisdiction to inquire into the threatened withdrawal of one parking lot for commuter parking. We find, on the evidence heretofore set forth, that it is necessary for Southern Pacific to reasonably and adequately meet its public requirements for service to continue in operation its three commuter parking lots adjacent to its San Carlos depot. Withdrawing the use of any of these lots for commuter parking would constitute an unjust, unreasonable and improper act by Southern Pacific and result in inadequate and insufficient facilities at its San Carlos depot.

If Southern Pacific desires to use any of its San Carlos commuter parking lot area it must, in an appropriate proceeding before the Commission, indicate that substitute parking facilities have been provided or that there is no longer any public need for the particular area.

Other Matters

The cities presented evidence to support a contention that some of the land upon which the depots in the complaining cities are located was conveyed to Southern Pacific by deeds which contained

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15/ The Commission would have jurisdiction over leases if there were a problem of discrimination. For example, if a railroad leased passenger parking lots to eight cities on substantially similar terms and refused, for no valid reason, to execute a similar lease with a ninth city.

restrictions on the use thereof, and that the elimination of or charge for commuter parking might contravene these deeds. Southern Pacific introduced contrary evidence to support its contention that it owns all of the land in question in fee simple. The Commission has not considered this point in determining these complaints. None of the provisions of any of the deeds involved, if relevant, is for the benefit of the public generally or any portion thereof. If there is a question, it is a private matter between the grantors or their heirs, successors or assigns and Southern Pacific. No other points require discussion. The Commission makes the following findings of fact and conclusions of law.

Findings of Fact

1. Southern Pacific Company is a railroad corporation as defined in Section 230 of the Public Utilities Code.

2. Southern Pacific has never published in its Peninsula service tariff (Local Passenger Tariff D-No. 10) or any other tariff any provisions dealing with parking for its patrons.

3. Southern Pacific has a policy, and is required by law, to provide a seat for each passenger but has never published any provision dealing with this policy and requirement in its Peninsula service tariff (Local Passenger Tariff D-No. 10).

4. Southern Pacific has a policy to provide clean trains equipped with rest rooms but has never published any provisions dealing with this policy in its Peninsula service tariff (Local Passenger Tariff D-No. 10).

5. Since the advent of the automobile Southern Pacific has permitted parking by its patrons, including commuters, on unimproved property which it owns adjacent to its Peninsula stations, where there was such property adjacent to a station.

6. Prior to the filing of the three complaints here involved, Southern Pacific had never posted on any of the unimproved areas which it owned adjacent to its Peninsula stations, upon which it permitted its commuter patrons to park, any signs or notices which indicated that the right to park was subject to any conditions or was pursuant to a revocable license.

7. Some commuters using the service of Southern Pacific examined and relied upon Southern Pacific depot commuter parking facilities before purchasing the homes in which they presently reside.

8. Numerous commuters using the service of Southern Pacific have been and are under the impression and believe that the use of Southern Pacific depot parking lots, on a "first come first serve" basis, is a part of the railroad commute service offered by Southern Pacific.

9. Officials of the Cities of Mountain View, Sunnyvale and San Carlos considered the parking areas owned by Southern Pacific adjacent to its depots in their cities and used by commuter patrons of Southern Pacific for parking as permanent parking facilities within their cities.

10. For a period of years, commencing in at least 1936, Southern Pacific leased parking lot areas which it owned and which were adjacent to its depots in some Peninsula cities to the cities in which the depots were located. These leases provided for a nominal rental and that the city would surface and maintain the lot. Most of the leases provided that the city would be liable for any increased taxes or assessments because of improvements. Some leases provide that the city is liable for all taxes and assessments attributed to the leased parking lot. The purpose of these leases was to shift from Southern Pacific to the cities involved the cost of surfacing and

maintaining the parking lots and, where applicable, provide that Southern Pacific be reimbursed for taxes and assessments levied on the parking lots.

11. Southern Pacific held out to the public or portions thereof that its patrons, including commuter patrons, could use the land owned by it adjacent to its Peninsula stations, where available, for parking.

12. Southern Pacific held out to the public or portions thereof the area which it owns adjacent to its station in Mountain View, more particularly described in Exhibits 1 and 86, as an area which Southern Pacific patrons, including commuters, could use for parking.

13. Southern Pacific held out to the public or portions thereof the area which it owns adjacent to its station in Sunnyvale, more particularly described in Exhibit A attached to the complaint in Case No. 8188, as an area which Southern Pacific patrons, including commuters, could use for parking.

14. Southern Pacific held out to the public or portions thereof the areas which it owns adjacent to its station in San Carlos, more particularly described in Exhibits A and B attached to the complaint in Case No. 8204, as areas which Southern Pacific patrons, including commuters, could use for parking.

15. The following table indicates the average number of daily commuters, using Southern Pacific's commute service between San Francisco and San Jose in October of 1965, the number of parking spaces on property owned by Southern Pacific adjacent to its Peninsula stations, including property leased to cities for parking purposes and the ratio of parking spaces to commuters at the various stations:

Station	Average No. of One-Way Northbound & Southbound Daily Commuters (October, 1965)	Parking Spaces on Southern Pacific Property, including Property Leased to Cities	Ratio Spaces to Commuters
San Jose	1,136	335	29%
College Park	192	0	0%
Santa Clara	599	103	17%
Sunnyvale	1,039	0(171)*	0(16%)*
Mountain View	866	0(241)**	0(28%)**
Castro	66	0	0%
California Avenue	943	282	30%
Palo Alto	757	341	45%
Menlo Park	682	227	33%
Atherton	553	129	23%
Redwood City	1,047	300	29%
San Carlos	742	234	32%
Belmont	513	136	27%
Hillsdale	774	70	9%
Hayward Park	313	0	0%
San Mateo	818	175	21%
Burlingame	645	225	35%
Broadway	400	94	24%
Millbrae	628	66	11%
San Bruno	455	122	27%
South San Francisco	295	135	45%
Butler Road	14	0	0%
Bayshore	155	0	0%
Paul Avenue	92	0	0%
23rd Street	160	0	0%
	13,884	2,974 (3,386)	21% (24%)

* Prior to closure of the lot.

** Card-Key 25¢ lot.

16. The taxes on the Mountain View parking lot for the 1964-65 tax year were approximately $2,399.

17. The taxes on the Sunnyvale parking lot for the 1964-65 tax year were approximately $3,881.

18. The taxes on the San Carlos parking lots for the 1964-65 tax year were $5,937.

19. Southern Pacific, or a lessee thereof, is entitled to at least recoup taxes and assessments attributed to station parking lots,

costs of maintenance of these lots, and attempt over a period of years to recoup the costs of surfacing and improving these lots.

20. The overwhelming majority of persons who park on the parking lots which Southern Pacific owns adjacent to its stations are patrons of Southern Pacific, but there are persons who park on these lots who are not patrons of Southern Pacific or who do not use the service of Southern Pacific while so parked.

21. There are not sufficient parking spaces on the Southern Pacific parking lots adjacent to its Peninsula stations to permit parking on these lots by all the commuters at all the stations or all the commuters at any station.

22. Southern Pacific competes for passenger commute traffic on the Peninsula with Western Greyhound Lines. Greyhound does not provide space for commuter parking adjacent to its Peninsula depots. No part of the fare paid by Greyhound patrons contributes to expenses for Peninsula commuter parking.

23. It would be unjust, inequitable, unfair and discriminatory to permit Southern Pacific, or a lessee thereof, to recoup taxes and assessments attributed to station parking lots, costs of maintenance, costs of surfacing and improvements and other amounts which may be allowable from Southern Pacific patrons generally.

24. Taxes, assessments attributed to Southern Pacific station parking lots, costs of maintenance, costs of surfacing and improvements and other amounts which may be allowable should be recouped by Southern Pacific, or a lessee thereof, from the users of the station parking lots.

25. Except for the case of San Bruno, Southern Pacific itself has never substantially improved or surfaced the parking lots which it owns adjacent to its Peninsula stations. The improvements to

Peninsula station parking lots, except in the case of San Bruno and the Card-Key lot in Mountain View, have been made by cities which were operating the lots under leases from Southern Pacific.

26. Southern Pacific filed Application No. 44396 with this Commission on April 30, 1962. In the application Southern Pacific sought authority to discontinue its stations and facilities designated as San Bruno and Lomita Park and establish in their stead a new nonagency station known as San Bruno. Southern Pacific had permitted certain of its property adjacent to the two stations for which discontinuance was sought to be used for commuter parking. In Decision No. 64166, entered on August 28, 1962, Southern Pacific was authorized to discontinue the two old stations and authority was granted to establish the new one. Decision No. 64116 provided that "Acceptable ingress and egress to the new San Bruno station with adequate parking facilities should be provided." In connection with the establishment of the new station, the City of San Bruno leased from the City and County of San Francisco some land adjacent to the new station for a commuter parking lot. The remainder of the commuter parking area is owned by Southern Pacific. Southern Pacific paid half the cost of paving the entire commuter parking area at the new station, which was approximately $1,650. Thereafter, Southern Pacific leased for commercial purposes the land formerly used for commuter parking adjacent to the old stations.

27. Prior to 1959, the condition of the unimproved parking area adjacent to the Mountain View depot was bad. The area had many chuckholes and was littered with debris. During the winter, portions of the lot were unusable.

28. For many years prior to 1959, Southern Pacific permitted its commute customers to park all day without charge on unimproved land owned by Southern Pacific adjacent to its Mountain View depot.

29. Prior to 1959, Mountain View attempted to get Southern Pacific to improve the parking lot area. Numerous meetings were held between representatives of Mountain View and Southern Pacific in connection with the Mountain View parking lot situation. At some point in the negotiations Southern Pacific represented to Mountain View that it was planning to establish pay parking on numerous lots throughout its system; that Southern Pacific proposed to institute pay parking at the Mountain View depot and that if pay parking were instituted the condition and maintenance of the parking lot would be improved. In the light of these representations, Mountain View granted a use permit for the construction and operation of a pay parking lot.

On April 21, 1959, Southern Pacific entered into a lease with Card-Key. The lease was for a term of five years commencing May 27, 1959. It provided in part that Card-Key would, at its own expense, fill, grade and pave the Mountain View depot parking area and install automatic coin and card operated toll gates thereon. The lease required Card-Key to pay all taxes and assessments on the leased property. It provided that the gross receipts from parking should be applied first, to Card-Key's operating expenses; second, to interest on Card-Key's investment; third, to cover reimbursement to Southern Pacific for taxes and fourth, to amortize Card-Key's investment for improvements. The lease provided that after Card-Key's investment was fully amortized the gross revenue should be divided, after first deducting Card-Key's operating expenses and taxes paid by Southern Pacific, 70 percent to Southern Pacific and 30 percent to Card-Key.

The lease also provided that Card-Key would charge for parking 25 cents per day or $4.00 per month, and that any changes in parking fees required the consent of Southern Pacific.

30. Card-Key originally charged for parking at the rate of $4.00 per month per car or 25 cents per car per day. In December of 1963, Card-Key discontinued the monthly $4.00 per car rate and has since that time charged 25 cents per car per day for parking at the Mountain View lot.

31. The Mountain View station parking lot is the only lot owned by Southern Pacific on the Peninsula at which commuters using Southern Pacific commute service must pay to park. Southern Pacific has a pay parking lot on its property adjacent to its San Francisco station, and Southern Pacific patrons, including commuters, must pay to park thereon.

32. The following is a recapitulation of Card-Key's operations under the lease of the Mountain View parking lot from July 1, 1959 to July 31, 1965:

Total Receipts		$35,933.90
Total Operating Expenses	$10,950.00	
Total Interest on Capital Investment	4,758.22	
Total Tax Reimbursement to Southern Pacific	11,577.05	
Total Amount Applied to Capital Investment	8,943.75	
Total Losses		295.12
	$36,229.02	$36,229.02
Capital Investment	$18,451.17	
Less Amount Applied	8,943.75	
Capital Investment Balance	$ 9,507.42	

33. On February 17, 1964, Southern Pacific sent a letter to Mountain View proposing to eliminate the parking fee at the Mountain View depot under the following conditions: (1) Mountain View would

reimburse Card-Key for its current outstanding investment in improvements, which was stated to be approximately $14,000 on that date; (2) Mountain View would be given a 10-year lease on the parking lot at a rental equal to Southern Pacific's city taxes upon the leased area. The taxes at that time were said to be $368 per annum; (3) Southern Pacific would reserve the right to terminate the lease on 60 days' notice. However, if the lease were terminated prior to the expiration of 10 years, Mountain View would be reimbursed for its unamortized balance based on a write-off of 10 years; (4) Mountain View would bear the expense of maintaining and policing the parking lot. Mountain View rejected the Southern Pacific offer.

34. There has been no unlawful discrimination by Southern Pacific or Card-Key against Mountain View or Southern Pacific patrons using its depot at Mountain View nor have Mountain View or such patrons been subjected to any unjust, unreasonable or improper practices by Southern Pacific or Card-Key.

35. For many years prior to 1965, Southern Pacific permitted its commute customers to park without charge in the area adjacent to its Sunnyvale depot as set forth in Exhibit A attached to the complaint in Case No. 8188. This parking area had been in poor condition for many years prior to 1965.

36. The Southern Pacific Sunnyvale depot is located in the downtown district of that city. On January 5, 1954, Sunnyvale, by ordinance, formed an off-street parking district known as District 1. The Sunnyvale commuter parking lot was not included within the boundaries of District 1. On January 19, 1957, other property, including the commuter parking lot and other property owned by Southern Pacific was included in District 1. On January 14, 1958, another off-street parking district was formed. It is known as

District 2 and includes all the property in District 1. On June 16, 1964, a third off-street parking district was formed known as District 3. District 3 includes all the property in Districts 1 and 2. The total investment in parking district lots and improvements for the three districts from January 5, 1954 to June 30, 1965 was $3,060,613.56. The total amount of ad valorem assessments paid by the three districts from January 5, 1954 to June 30, 1965 was $973,419.52. The total amount paid by Southern Pacific in ad valorem assessments to the three districts from January 5, 1954 to June 30, 1965 was $19,840.

37. On June 21, 1965, Southern Pacific erected physical barriers around the parking lot and prevented its use by commuters.

38. For at least ten years prior to the closing of the Southern Pacific Sunnyvale commuter parking lot Southern Pacific and Sunnyvale had been negotiating over the improvement of the parking lot. Some of the proposals contemplated the charging of a fee for parking on the lot after it was improved. At one point the Sunnyvale planning staff, as part of an overall proposal, indicated it would recommend to the City Council the imposition of a parking fee if Sunnyvale were to take over the lot in accordance with the proposal. The negotiations broke down when Sunnyvale rejected a Southern Pacific proposal to lease it the lot for a period of five years, with no provision for renewal, at a rental of $550 per month plus reimbursement to Southern Pacific for all taxes and ad valorem parking district assessments.

39. At one time Sunnyvale installed parking meters for on-street and off-street parking within the boundaries of Parking Districts 1 and 2 (District 2 was not in existence during this period) but the meters were removed on November 16, 1960. The reason for removal was

the petition of local merchants asking that the meters be removed so that the area could be competitive with regional shopping centers, which did not charge for parking. Prior to the closure of the Southern Pacific Sunnyvale commuter parking area Districts 1, 2 and 3 provided spaces for two types of free parking: spaces were designated for 30-minute parking and 3-hour parking. No provision was made for all-day parking. On July 1, 1965, after the closing of the Southern Pacific parking lot, the Districts designated certain areas for 21-hour a day parking and instituted a parking permit system for parking in these areas. The charge for a parking permit is $5.00 per month and permits are sold for periods of two months.

40. It is necessary for Southern Pacific to reasonably and adequately meet its public requirements for service at Sunnyvale, California, to reopen and continue in operation its Sunnyvale station commuter parking lot.

41. The closing by Southern Pacific of its Sunnyvale station commuter parking lot was an unjust, unreasonable and improper act by Southern Pacific and has resulted in inadequate and insufficient facilities at the Sunnyvale station.

42. Prior to 1939, Southern Pacific's commuter customers using its San Carlos depot parked their cars on unimproved property belonging to Southern Pacific adjacent to the depot. On March 21, 1939, Southern Pacific entered into a lease with San Carlos whereby, for the rental of one dollar a year, San Carlos was given the right to maintain and operate a free parking lot on specified Southern Pacific property adjacent to the San Carlos depot. On May 3, 1943, Southern Pacific and San Carlos entered into another lease which superseded the 1939 lease and provided that San Carlos could maintain and operate a specified area belonging to Southern Pacific as a free

parking lot adjacent to the San Carlos depot. This lease was amended on June 23, 1950, to include an additional specified area. The area covered by the lease of May 3, 1943, as amended, is known as the Central Parking Lot, which can accommodate approximately 48 automobiles and the Northerly Parking Lot, which can accommodate 118 automobiles. On May 13, 1952, Southern Pacific and San Carlos entered into another lease, similar to the 1943 lease, which provided for the lease to San Carlos of additional specified Southern Pacific property to provide an additional area for commuter parking. This area is known as the Southerly Parking Lot and can accommodate approximately 109 automobiles. The areas encompassed by the Central, Northerly and Southerly parking lots are more particularly described in Exhibits A and B attached to the complaint in Case No. 8204.

43. San Carlos, pursuant to the various leases set forth in Finding 42, surfaced, maintained and operated the three parking lots. Some time prior to May of 1965 Southern Pacific and one Ronald Lambert entered into an agreement whereby Lambert would develop a portion of the San Carlos commuter parking lot area for commercial purposes. Lambert applied to San Carlos for a use permit to carry out the agreement. The planning commission granted the use permit, but inserted a condition which provided that no existing commuter parking could be eliminated. Shortly thereafter, Southern Pacific took steps to terminate the 1943 lease, as amended, and the 1952 lease. Southern Pacific also notified San Carlos that effective June 25, 1965, it would permanently close the Central Parking Lot. San Carlos subsequently filed the complaint here under consideration. At the time of hearing, Southern Pacific had not closed the Central Parking Lot nor prevented commuters from using any of the three San Carlos parking lots.

44. It is necessary for Southern Pacific to reasonably and adequately meet its public requirements at San Carlos, California, to continue in operation at its San Carlos station the commuter parking lots known as the Central, Northerly and Southerly parking lots.

45. Withdrawal by Southern Pacific of the commuter parking lots adjacent to its San Carlos station, known as the Central, Northerly and Southerly parking lots, for use by its patrons, including commuters, would constitute an unjust, unreasonable and improper act and as a result Southern Pacific would have inadequate and insufficient facilities at its San Carlos station.

Conclusions of Law

1. Customer parking facilities, including those used for commuter parking, owned by a railroad adjacent to a station of the railroad, are part of a service in connection with or incidental to the safety, comfort or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage as set forth in Section 208 of the Public Utilities Code.

2. Customer parking facilities, including those used for commuter parking, owned by a railroad adjacent to a station of the railroad, are parts of the stations or depots of the railroad and are grounds and terminal facilities as set forth in Section 229 of the Public Utilities Code.

3. The Commission has jurisdiction over Southern Pacific and Card-Key and the subject matter of the complaints in Cases Nos. 8087, 8188 and 8204, pursuant to Article XII, Sections 21 and 22 of the California Constitution and Sections 208, 229, 451, 453, 454, 486, 487, 491, 494, 532, 701, 730, 761, 762, 763 and 768 of the Public Utilities Code.

4. Southern Pacific dedicated the land which it owns adjacent to its Peninsula stations where it has permitted its patrons, including commuters, to park to public utility purposes.

5. Southern Pacific dedicated the land which it owns in Mountain View adjacent to its station, more particularly described in Exhibits 1 and 86, where it has permitted its patrons, including commuters, to park to public utility purposes.

6. Southern Pacific dedicated the land which it owns in Sunnyvale adjacent to its station, more particularly described in Exhibit A attached to the complaint in Case No. 8188, where it has permitted its patrons, including commuters, to park to public utility purposes.

7. Southern Pacific dedicated the land which it owns in San Carlos adjacent to its station, more particularly described in Exhibits A and B attached to the complaint in Case No. 8204, where it has permitted its patrons, including commuters, to park to public utility purposes.

8. Mountain View is entitled to no relief against Southern Pacific and Card-Key in Case No. 8087.

9. Sunnyvale is entitled to an order requiring Southern Pacific to reopen and continue to keep open, until further order of this Commission, the commuter parking lot adjacent to the Sunnyvale station.

10. San Carlos is entitled to an order requiring Southern Pacific to continue in operation and not withdraw from use the Central, Northerly and Southerly commuter parking lots adjacent to its San Carlos station.

11. The motions to dismiss the complaints in Cases Nos. 8087, 8188 and 8204 should be denied.

O R D E R

IT IS ORDERED that:

1. The City of Mountain View, complainant in Case No. 8087, is not entitled to any relief therein and the City of Mountain View is denied any relief in Case No. 8087.

2. Within ten days after the effective date of this order, Southern Pacific Company shall reopen the parking lot which it owns adjacent to its Sunnyvale, California, station, more particularly described in Exhibit A attached to the complaint in Case No. 8188, and make that parking lot available for the parking of its patrons, including commuter patrons. Southern Pacific shall continue said parking lot in operation until such time as it may receive authority to do otherwise by an appropriate order of this Commission.

3. Southern Pacific Company shall keep in operation and shall not withdraw from use for the parking of its patrons, including commuter patrons, the three parking areas which it owns adjacent to its San Carlos station, which areas are more particularly described in Exhibits A and B attached to the complaint in Case No. 8204, until such time as it may receive authority to do otherwise by an appropriate order of this Commission.

4. The motions to dismiss the complaints in Cases Nos. 8087, 8188 and 8204 are denied.

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

Dated at San Francisco, California, this 20th day of JUNE, 1967.

President

Commissioners

I dissent
Thos. P. Mowsey -