

BEM

ORIGINAL

Decision No. 74007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF SAN CARLOS, a municipal
corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a
corporation,

Defendant.

Case No. 8697
(Filed October 9, 1967)

Investigation on the Commission's
own motion into the Rates, Charges,
Rules, Operations, Practices,
Contracts, Leases, Service and
Facilities of all the vehicular
parking areas adjacent to railroad
stations between San Francisco and
San Jose, California, owned or
controlled by Southern Pacific
Company.

Case No. 8700
(Filed October 10, 1967)

CITY OF SAN MATEO, a municipal
corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a
corporation,

Defendant.

Case No. 8702
(Filed October 10, 1967)

CITY OF MENLO PARK, a municipal
corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a
corporation,

Defendant.

Case No. 8703
(Filed October 13, 1967)

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CITY OF SUNNYVALE, a municipal
corporation,

Complainant,

vs.

Case No. 8704
(Filed October 13, 1967)

SOUTHERN PACIFIC COMPANY, a
corporation,

Defendant.

CITY OF BURLINGAME, a municipal
corporation,

Complainant,

vs.

Case No. 8706
(Filed October 16, 1967)

SOUTHERN PACIFIC COMPANY, a
corporation,

Defendant.

CITY OF BELMONT, a municipal
corporation,

Complainant,

vs.

Case No. 8707
(Filed October 16, 1967)

SOUTHERN PACIFIC COMPANY, a
corporation,

Defendant.

CITY OF MOUNTAIN VIEW, a municipal
corporation,

Complainant,

vs.

Case No. 8708
(Filed October 16, 1967)

SOUTHERN PACIFIC COMPANY, a
corporation, and Park-UR-Self
System, Inc., a corporation,

Defendants.

C. 8697, et al. bem

CITY OF REDWOOD CITY, a municipal corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

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Case No. 8712
(Filed October 23, 1967)

CITY OF PALO ALTO, a municipal corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

Case No. 8715
(Filed October 25, 1967)

CITY OF SANTA CLARA, a municipal corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

Case No. 8718
(Filed November 2, 1967)

CITY OF MILLBRAE, a municipal corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,

Defendant.

Case No. 8729
(Filed November 27, 1967)

John MacDonald Smith, for Southern Pacific Company, defendant and respondent.
Frank Gillio, for the City of Sunnyvale;
Fred Caploe, for the City of Mountain View; Michael Aaronson, for the City of San Carlos; Burress Karmel, for the City of Burlingame; John D. Jorgenson, for the City of Menlo Park; Kenneth M. Dickerson, for the City of Belmont; David E. Schricker, for the City of Redwood City; Donald C. Meaney, for the City of Palo Alto; Robert Keith Booth, Jr., for the City of Santa Clara; Frank Flombo, for the City of Millbrae; Richard G. Randolph, for the City of San Mateo; complainants.
William C. Taylor, for the City and County of San Francisco; Joseph A. Galligan, for the City of San Bruno; Benjamin H. Parkinson, for the Town of Atherton; John Noonan, for the City of South San Francisco; interested parties.
William C. Bricca, Counsel, for the Commission staff.

O P I N I O N

The above complaints were filed as the result of a parking program recently inaugurated by Southern Pacific Company (hereinafter referred to as SP) whereby a 35 cent parking charge was imposed upon anyone using the parking lot areas adjacent to its stations between San Francisco and San Jose. On October 10, 1967, the Commission issued an order instituting an investigation into the operations of all vehicular parking areas adjacent to the railroad stations between San Francisco and San Jose, owned or controlled by SP for the purpose of determining the reasonableness of parking charges imposed or about to be imposed by SP.^{1/} The Commission investigation and the complaints filed by the various cities were consolidated for the purpose of hearing and decision.

^{1/} The order instituting investigation also restrained SP from charging or collecting parking tolls at any of said parking areas pending further Commission order; however, consideration of this portion of the order has been made the subject of a contempt proceeding and will be considered separately.

Public hearings were held at San Francisco and the matters were submitted on December 7, 1967, following oral argument.

For the most part the complaints allege that the parking lots in question have been dedicated to public utility purposes and are therefore subject to the jurisdiction of the Commission. They further allege that the imposition of a parking charge without a prior finding by the Commission that said charge is just and reasonable violates Section 451 of the Public Utilities Code.^{2/}

SP in its answers to the various complaints denied that the parking lots had been dedicated to a public use. It also denied that it was required to obtain prior approval of this Commission before imposing parking charges.

Although the record is replete with evidence indicating the past history of the parking lots in question, most of which had been operated as free, unimproved parking lots pursuant to

2/ Section 451. Just and reasonable charges, service and rules.

"All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

"Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

lease arrangements with the various cities, Exhibit 3, which was introduced by SP, demonstrates that as of October 1, 1967, said lots, with little discrepancy as to areas,^{3/} were under exclusive control of SP and were committed by said company to a program of paid public parking. Counsel for SP admitted that said program constituted a dedication of said property to a public utility use. He also stated for the record that SP was willing to comply with any tariff filings required by the Commission. Therefore, the only issue remaining to be resolved is the reasonableness of the proposed parking charges.

On or about October 1, 1967, all leases affecting the parking areas adjacent to SP stations along the Peninsula were terminated.^{4/} As of the same date SP assumed exclusive control of

^{3/} The property discrepancies heretofore referred to relate to the parking lots located within Santa Clara and Redwood City.

Santa Clara contends that a portion of the parking lot, consisting of approximately 13 car spaces, is located upon a City street. According to the record the area in question had been involved in prior negotiations between the City and SP and is now the subject of a dispute as to title. The matter appears to be one that should be determined in an appropriate civil proceeding to quiet title.

The Redwood City dispute pertains to an area that SP has not included within its offer of service, but which the city contends has through past operations been dedicated to a public utility use for parking purposes. The record, however, indicates that any use of the area, referred to by Redwood City as Lot 4, was made despite the fact that the area was clearly posted against parking. The record fails to demonstrate a dedication of the area in question.

^{4/} The San Francisco parking lot located near the SP depot has been operated by a private concern since 1959 under a lease arrangement. It is presently being so operated and according to the record is not considered as a commuter parking lot.

said properties and commenced a program of grading, paving and striping the areas. According to its offer of service SP proposes a uniform daily charge of 35 cents and a monthly charge of \$5 for each holder of a 5- or 7-day-a-week monthly commute ticket.

It was concluded by SP that the most economical and efficient way of managing the operation of the improved parking lots was through the agency of an experienced commercial parking lot operator. Arrangements were therefore made with a commercial parking lot operator to undertake the management of the lots. For this it was agreed that SP would compensate the manager on the basis of his out-of-pocket costs for field labor and supplies, plus 10 percent of the gross receipts.

It is contemplated that with the exception of the monthly card holders each patron using the lot, whether commuter or noncommuter, will place 35 cents in a ticket machine and receive a numbered ticket receipt which is placed in plain sight on his car.

SP proposes a regular cleaning and maintenance program. Each lot will be visited daily by a parking checker who would remove any immediate hazards, such as broken bottles. Twice a month each lot would be cleaned by a power sweeping unit.

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Based upon an average business day occupancy of 62 percent, SP estimated its annual revenue and expenses as follows:

Gross Revenue		\$147,523
Management Fee to Operator		14,752
Net Revenue		<u>\$132,771</u>
Expenses		
1. Taxes		87,814
2. Amortization of Paving	\$30,200	
Striping	2,149	
Signs	3,180	
Machines	<u>1,277</u>	36,806
3. Machine Maintenance		1,040
4. Lot Sweeping		5,184
5. Labor		28,309
6. Tickets, Envelopes & Collection Books		4,500
7. General Office Expense		<u>5,136</u>
Total Expenses		\$168,789
Net Loss		\$ 36,018

The staff recommended a monthly ticket charge of \$3.00 and a daily charge of 25 cents. Based upon the staff's estimated occupancy of 90 percent with 85 percent of the commuters using the monthly tickets, the total annual revenue would approximate \$124,200.^{5/}

The staff's cost study was on an out-of-pocket, per stall, per day basis and indicates the following:

Construction (paving, etc. - Amortized)	\$ 39,200
Machine Maintenance	1,000
Lot Sweeping	5,200
Checking Labor, etc.	28,300
Supplies - Tickets, Envelopes, etc.	4,700
Subtotal	<u>\$ 78,400</u>
Management Fee	8,700
Total Cost	<u>\$ 87,100</u>

The Cities relied upon the staff's presentation and made no independent showing with respect to costs.

^{5/} The 128,000 figure in the staff exhibit was based upon a total of 3,420 parking stalls. During the course of hearing the Atherton parking lot, consisting of 100 stalls, was sold to the Town of Atherton.

SP introduced an exhibit which compared the revenue produced by the rates recommended by the staff and those proposed by SP predicated upon a 62 percent occupancy and its own estimate of annual expenses. The comparison follows:

	<u>PUC Staff Recommended Rates</u>	<u>SP Co. Proposed Rates</u>
Estimated Gross Annual Revenue	\$112,683	\$147,523
Less Management Fee	11,268	14,752
Estimated Net Annual Revenue	<u>\$101,415</u>	<u>\$132,771</u>
Estimated Annual Expenses	168,789	168,789
Net Loss	<u>\$ 67,374</u>	<u>\$ 36,017</u>

Expense items can reasonably be predicted, but the use factor requires the choice of one estimate as against another. It can be concluded that as against free parking any charge will result in a reduction in use for a period of time. It may also be concluded that the amount of the charge imposed will have a direct bearing upon the extent of the reduction. The 62 percent occupancy estimated by SP of course was based upon the 35 cent daily charge, which it initially proposed. During the course of the hearing, however, SP amended its offer of service and proposed a \$5 monthly ticket, if purchased with a 5-day or 7-day monthly commute ticket.

A 62 percent occupancy estimate is unrealistic. A 90 percent occupancy factor, with 85 percent of commuters using monthly tickets, as estimated by the staff, is supported by the evidence of the staff witnesses, is reasonable and is adopted for this proceeding. Applying the proposed charges of SP to the staff estimates (90 percent occupancy factor of the 3,320 available parking stalls with 85 percent of the parking lot patrons making use of monthly tickets) produces the following:

	<u>PUC Staff</u>	<u>SP Co.</u>
Gross Annual Revenue	\$188,413	\$188,413
Less Management Fee	18,841	18,841
Net Annual Revenue	<u>\$169,572</u>	<u>\$169,572</u>
Annual Expenses	78,400	168,789
	<u>\$ 91,172</u>	<u>\$ 783</u>

Excluding taxes from the calculation of costs reveals that the difference between the cost estimates of SP and the staff is of relatively little import in this proceeding. The amount by which revenues, whether generated by the staff recommended 25 cents per day and \$3.00 per month charge or SP's proposed charge of 35 cents per day and \$5.00 per month, are greater or less than costs, will be determined by the treatment accorded taxes. SP contended that ad valorem taxes allocated to the parking lots by utilizing Board of Equalization appraisals and assessment ratios and the application thereto of average tax rates of the taxing authorities should be included in allowable costs. The staff took the position that allocated ad valorem taxes are not properly included in out-of-pocket costs and should be excluded from any computation of costs here. This record does not contain evidence substantial enough to bottom a resolution of these contentions. Therefore submission will be set aside and these matters reopened for the taking of additional evidence in order to determine whether the ad valorem taxes with which we are here concerned should or should not be included in allowable costs. Pendente lite SP will be authorized to charge 25 cents per day and \$3.00 per month for those who purchase 5-day or 7-day monthly commute tickets or a twenty-ride ticket. Such charges are found to be just and reasonable.

Findings

The Commission finds as follows:

1. SP is a railroad corporation as defined in Section 230 of the Public Utilities Code.
2. As of October 1, 1967, SP held out to the public or portions thereof the areas which it owns or controls adjacent to its stations at South San Francisco, San Bruno, Millbrae, Broadway, Burlingame,

San Mateo, Hillsdale, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, California Avenue, Mountain View, Sunnyvale, Santa Clara and San Jose, more particularly described and set forth in Exhibit 3 in this proceeding, as areas which SP patrons, including commuters, could use for parking.

3. Prior to October 1, 1967, the areas heretofore referred to were in most cases unimproved, many of them had chuckholes and were littered with debris.

4. As of October 1, 1967, SP acquired exclusive control of said parking areas and initiated a program of preparing said areas for paid public parking.

5. SP's program calls for the paving, resurfacing and striping of said parking areas and the installation thereon of automatic coin machines to facilitate self-parking.

6. Management of said areas would be conducted by a company experienced in the operation of parking lots.

7. SP also proposes to maintain said parking areas in a clean and safe manner through a program of daily checks and regular cleanings.

8. SP proposes a uniform daily 35 cent charge and a \$5 monthly charge for commuters if purchased with a 5-day or 7-day monthly commute ticket; the staff proposes 25 cents per day and \$3 per month available to all commuters.

9. SP's estimate of 62 percent occupancy of the parking areas mentioned in finding 2 above is unreasonable.

10. The staff estimate of 90 percent occupancy of the parking areas named in finding 2 above is reasonable and justified for the purposes of this proceeding.

11. Charges of 25 cents per day and \$3.00 a month for those who purchase 5-day or 7-day monthly commute tickets or a twenty-ride ticket are reasonable and justified during the pendency of this proceeding and until the final disposition thereof by the Commission.

Conclusions

1. As of October 1, 1967, SP dedicated the land, which it owns or controls adjacent to its stations at South San Francisco, San Bruno, Millbrae, Broadway, Burlingame, San Mateo, Hillsdale, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, California Avenue, Mountain View, Sunnyvale, Santa Clara, and San Jose, more particularly described and set forth in Exhibit 3 in this proceeding, where it has permitted its patrons including commuters to park, to public utility purposes.

2. SP should be authorized to establish a daily charge of 25 cents and monthly charge of \$3.00 a month for those who purchase 5-day or 7-day monthly commute tickets or a twenty-ride ticket until further order of the Commission.

3. The submission of Cases Nos. 8697, 8702, 8703, 8704, 8706, 8707, 8708, 8712, 8715, 8718 and 8729 should be set aside and the matters reopened for the taking of additional evidence.

Commissioner Bennett has heretofore presented to the Commission a recommended decision. Revisions and modifications thereof have been made by the Commission. In order that the Commissioner's proposed decision be available to the parties, a copy thereof is attached hereto (Attachment "A").

O R D E R

IT IS ORDERED that:

1. The submission of Cases Nos. 8697, 8702, 8703, 8704, 8706, 8707, 8708, 8712, 8715, 8718 and 8729 is set aside and such matters are reopened for the further taking of evidence at such time and place and before such Commissioner and Examiner as the Commission shall designate.

2. After the effective date hereof Southern Pacific Company shall inaugurate its proposed public parking program at South San Francisco, San Bruno, Millbrae, Broadway, Burlingame, San Mateo, Hillsdale, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, California Avenue, Mountain View, Sunnyvale, Santa Clara, and San Jose, in the areas more specifically set forth in Exhibit 3 in this proceeding and until further order of the Commission may establish charges therefor of 25 cents a day or \$3 a month for those who purchase a 5-day or 7-day monthly commute ticket or a twenty-ride ticket.

3. Southern Pacific Company shall keep in operation and shall not withdraw from use for the parking of its patrons, including commuter patrons, the parking areas which it owns or controls adjacent to its stations as described in ordering paragraph 2 hereof, until such time as it may receive authority to do otherwise by an appropriate order of this Commission.

4. Within sixty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public Southern Pacific Company shall file with this Commission an

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appropriate tariff covering the service and charges as authorized in ordering paragraph 2 hereof.

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

Dated at San Francisco, California, this 16th day of APRIL, 1968.

John E. ...
President

William ...
Jack B. ...
Commissioners

BEM

ATTACHMENT "A"

Decision No. _____

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O P I N I O N

The above complaints were filed as the result of a parking program recently inaugurated by Southern Pacific Company (hereinafter referred to as SP) whereby a 35 cent parking charge was imposed upon anyone using the parking lot areas adjacent to its stations between San Francisco and San Jose. On October 10, 1967, the Commission issued an order instituting an investigation into the operations of all vehicular parking areas adjacent to the railroad stations between San Francisco and San Jose, owned or controlled by SP for the purpose of determining the reasonableness of parking charges imposed or about to be imposed by SP.^{1/} The Commission investigation and the complaints filed by the various cities were consolidated for the purpose of hearing and decision.

^{1/} The order instituting investigation also restrained SP from charging or collecting parking tolls at any of said parking areas pending further Commission order; however, consideration of this portion of the order has been made the subject of a contempt proceeding and will be considered separately.

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Public hearings were held before Commissioner Bennett and Examiner Daly at San Francisco and the matters were submitted on December 7, 1967, following oral argument.

For the most part the complaints allege that the parking lots in question have been dedicated to public utility purposes and are therefore subject to the jurisdiction of the Commission. They further allege that the imposition of a parking charge without a prior finding by the Commission that said charge is just and reasonable violates Section 451 of the Public Utilities Code, which reads as follows:

Section 451. Just and reasonable charges, service and rules.

"All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

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"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

SP in its answers to the various complaints denied that the parking lots had been dedicated to a public use. It also denied that it was required to obtain prior approval of this Commission before imposing parking charges.

Dedication

Although the record is replete with evidence indicating the past history of the parking lots in question, most of which had been operated as free, unimproved parking lots pursuant to

ATTACHMENT "A"

lease arrangements with the various cities, Exhibit 3, which was introduced by SP, demonstrates that as of October 1, 1967, said lots, with little discrepancy as to areas, were under exclusive control of SP and were committed by said company to a program of paid public parking. Counsel for SP admitted that said program constituted a dedication of said property to a public utility use. He also stated for the record that SP was willing to comply with any tariff filings required by the Commission. In view of the fact that the Commission found in Decision No. 72615, dated June 20, 1967, in Cases Nos. 8087, 8188, and 8204 that SP is entitled to recoup taxes, assessments, improvements and maintenance of parking lots, the only issue to be herein determined is the reasonableness of the proposed parking charges.

The property discrepancies heretofore referred to relate to the parking lots located within Santa Clara and Redwood City.

Santa Clara contends that a portion of the parking lot, consisting of approximately 13 car spaces, is located upon a City street. According to the record the area in question had been involved in prior negotiations between the City and SP and is now the subject of a dispute as to title. The matter appears to be one that should be determined in an appropriate civil proceeding to quiet title.

The Redwood City dispute pertains to an area that SP has not included within its offer of service, but which the city contends has through past operations been dedicated to a public utility use for parking purposes. The record, however, indicates that any use of the area, referred to by Redwood City as Lot 4, was made despite the fact that the area was clearly posted against parking. The record fails to demonstrate a dedication of the area in question.

ATTACHMENT "A"

Proposal of SP

On or about October 1, 1967, all leases affecting the parking areas adjacent to SP Stations along the Peninsula were terminated.^{2/} As of the same date SP assumed exclusive control of said properties and commenced a program of grading, paving and striping the areas. According to its offer of service SP proposes a uniform daily charge of 35 cents and a monthly charge of \$5 for each holder of a 5- or 7-day-a-week monthly commute ticket.

It was concluded by SP that the most economical and efficient way of managing the operation of the improved parking lots was through the agency of an experienced commercial parking lot operator. Arrangements were therefore made with a commercial parking lot operator to undertake the management of the lots. For this it was agreed that SP would compensate the manager on the basis of his out-of-pocket costs for field labor and supplies, plus 10 percent of the gross receipts.

It is contemplated that with the exception of the monthly card holders each patron using the lot, whether commuter or noncommuter, will place 35 cents in a ticket machine and receive a numbered ticket receipt which is placed in plain sight on his car.

SP proposes a regular cleaning and maintenance program. Each lot will be visited daily by a parking checker who would remove any immediate hazards, such as broken bottles. Twice a month each lot would be cleaned by a power sweeping unit.

^{2/} The San Francisco parking lot located near the SP depot has been operated by a private concern since 1959 under a lease arrangement. It is presently being so operated and according to the record is not considered as a commuter parking lot.

ATTACHMENT "A"

The land value based upon present market value as determined by the State Board of Equalization is \$2,548,975. Total improvements are estimated at \$116,384, which according to SP would be amortized on the following bases:

Pavement	10 years
Striping	2 years
Machines	15 years
Signs	5 years

ESTIMATED COST OF OPERATION BY SP

Based upon a total of 3,320 parking stalls and an average business day occupancy of 62 percent, SP estimates its annual revenue and expenses as follows: (Exhibit 3)

Gross Revenue		\$147,523
Management Fee to Operator		14,752
Net Revenue		<u>\$132,771</u>
Expenses		
1. Taxes		87,814
2. Amortization of Paving	\$30,200	
Striping	2,149	
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Machines	<u>1,277</u>	36,806
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6. Tickets, Envelopes & Collection Books		4,500
7. General Office Expense		<u>5,136</u>
Total Expenses		\$168,789
Net Loss		\$ 36,018

ATTACHMENT "A"

ESTIMATED COST OF OPERATIONS BY STAFF

The staff recommended a monthly ticket charge of \$3.00 and a daily charge of 25 cents. Based upon an estimated occupancy of 90 percent with 85 percent of the commuters using the monthly tickets the staff was of the opinion that the total annual revenue would approximate \$128,000.^{3/}

The staff's cost study was on an out-of-pocket, per stall, per day basis and indicates the following (Exhibit 75):

Construction (paving, etc. - Amortized)	\$ 39,200
Machine Maintenance	1,000
Lot Sweeping	5,200
Checking Labor, etc.	28,300
Supplies - Tickets, Envelopes, etc.	4,700
Subtotal	\$ 78,400
Management Fee	8,700
Total Cost	\$ 87,100
Annual Revenue producing stall-days	775,700
Cost per stall-day	\$ 0.11

The Cities relied upon the staff's presentation and made no independent showing with respect to costs.

SP Rebuttal

In rebuttal to the staff's showing SP introduced Exhibit 86, which is a comparison of return between the rates recommended by the staff and those proposed by SP predicated upon a 62 percent occupancy. The comparison is as follows:

	<u>PUC Staff Recommended Rates</u>	<u>SP Co. Proposed Rates</u>
Estimated Gross Annual Revenue	\$112,683	\$147,523
Less Management Fee	11,268	14,752
Estimated Net Annual Revenue	\$101,415	\$132,771
Estimated Annual Expenses	168,789	168,789
Net Loss	\$ 67,374	\$ 36,017

^{3/} The \$128,000 figure was based upon a total of 3,420 parking stalls. During the course of hearing the Atherton parking lot, consisting of 100 stalls, was sold to the Town of Atherton.

ATTACHMENT "A"

Although SP used its own expense figures in the above comparison, it was pointed out during oral argument that the staff made no allowance for taxes and if the tax expense, amounting to \$87,814, had been added to the staff's estimated expense figure of \$78,400, then the total amount of \$166,214 would be close to SP's estimate of \$168,789.

Analysis

At most, the estimates of record are educated guesses. Expense items can reasonably be predicted, but the use factor presents a problem. One may safely conclude that as against free parking any charge will result in a reduction in use for a period of time. One may also conclude that the extent of the reduction will have a direct relation to the amount of the charge imposed. The 62 percent occupancy estimated by SP of course was based upon the 35 cent daily charge, which it initially proposed. During the course of the hearing, however, SP amended its offer of service and proposed a \$5 monthly ticket, if purchased with a 5-day or 7-day monthly commute ticket. Based upon a 22-day month this would average approximately 22½ cents a day for most commuters.

By taking an extreme situation and applying the proposed charges of SP to the assumptions of the staff, i.e., that there would be a 90 percent use factor and that 85 percent of the parking lot patrons would make use of the monthly tickets, we have the following:

Gross Annual Revenue	\$188,413
Less Management fee	18,841
Net Annual Revenue	\$169,572
* Annual Expenses	166,214
Net Profit	\$ 3,358

(* Staff estimate of expenses, plus SP's expense figure for taxes. In the opinion of the Commission, taxes are a legitimate expense item.)

ATTACHMENT "A"

Findings

After consideration the Commission finds as follows:

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

2. As of October 1, 1967, SP held out to the public or portions thereof the areas which it owns or controls adjacent to its stations at South San Francisco, San Bruno, Millbrae, Broadway, Burlingame, San Mateo, Hillsdale, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, California Avenue, Mountain View, Sunnyvale, Santa Clara and San Jose, more particularly described and set forth in Exhibit 3 in this proceeding, as areas which SP patrons, including commuters, could use for parking.

3. Prior to October 1, 1967, the areas heretofore referred to were in most cases unimproved, many of them had chuckholes and were littered with debris.

4. As of October 1, 1967, SP acquired exclusive control of said parking areas and initiated a program of preparing said areas for paid public parking.

5. SP's program calls for the paving, resurfacing and striping of said parking areas and the installation thereon of automatic coin machines to facilitate self-parking.

6. Management of said areas would be conducted by a company experienced in the operation of parking lots.

7. SP also proposes to maintain said parking areas in a clean and safe manner through a program of daily checks and regular cleanings.

8. SP proposes a uniform daily 35 cent charge and a \$5 monthly charge for commuters if purchased with a 5-day or 7-day monthly commute ticket; the staff proposes 25 cents per day and \$3 per month available to all commuters.

ATTACHMENT "A"

Conclusions

1. As of October 1, 1967, SP dedicated the land which it owns or controls adjacent to its stations at South San Francisco, San Bruno, Millbrae, Broadway, Burlingame, San Mateo, Hillsdale, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, California Avenue, Mountain View, Sunnyvale, Santa Clara, and San Jose, more particularly described and set forth in Exhibit 3 in this proceeding, where it has permitted its patrons, including commuters, to park to public utility purposes.

2. A daily charge of 35 cents and monthly charge of \$5 a month for those who purchase 5-day or 7-day monthly commute tickets are just and reasonable.

3. The complaint cases should be dismissed and the investigation proceeding discontinued.

O R D E R

IT IS ORDERED that:

1. After the effective date hereof Southern Pacific Company shall inaugurate its proposed public parking program at South San Francisco, San Bruno, Millbrae, Broadway, Burlingame, San Mateo, Hillsdale, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, California Avenue, Mountain View, Sunnyvale, Santa Clara, and San Jose, in the areas more specifically set forth in Exhibit 3 in this proceeding and may establish a charge therefor of 35 cents a day or \$5 a month for those who purchase a 5-day or 7-day monthly commute ticket.

2. Southern Pacific Company shall keep in operation and shall not withdraw from use for the parking of its patrons, including commuter patrons, the parking areas which it owns or

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ATTACHMENT "A"

controls adjacent to its stations as described in ordering paragraph 1 hereof, until such time as it may receive authority to do otherwise by an appropriate order of this Commission.

3. Within sixty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public Southern Pacific Company shall file with this Commission an appropriate tariff covering the service and charges as authorized in ordering paragraph 1 hereof.

4. Cases Nos. 8697, 8702, 8703, 8704, 8706, 8707, 8708, 8712, 8715, 8718 and 8729 are dismissed. Case No. 8700 is discontinued.

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

Dated at _____, California, this
_____ day of _____, 1968.

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WILLIAM M. BENNETT, COMMISSIONER, DISSENTING OPINION

This case had its genesis in proceedings before this Commission concerned with establishing a reasonable fee applicable to Peninsula parking lots owned and operated by the Southern Pacific Company. On November 6, 1967, counsel for Southern Pacific in public hearing before this Commission in Case 8697 was candid in stating on the record that the Southern Pacific Company would not comply with a restraining order previously issued by this Commission on October 10, 1967, and signed by Commissioners Mitchell, Gatov and Symons. Southern Pacific took the position at that time and even during the proceedings herein that the restraining order of the Commission was invalid. Even repeated refusals by the Supreme Court of the State of California to nullify such order was disregarded by the Southern Pacific.

The refusal of the Southern Pacific Company was so notorious that undoubtedly this explains the failure of that company to present any testimony whatsoever by way of a defense to the proceedings initiated or by way of mitigation for its contemptuous action. Southern Pacific conducted itself with an air of certainty almost as though it had suddenly become immune to the jurisdiction and process of this Commission.

But for the candor of Southern Pacific counsel in freely admitting to violation of the Commission's orders, this matter would not have come to the Commission. It is most curious, perplexing and beyond explanation that neither the staff of this Commission, the Director of Transportation nor the Chief Counsel brought to our attention the disregard by Southern Pacific of a Commission order. Only the frankness of Southern Pacific counsel in the public proceedings apprised us that a lawful order of the Commission was being disobeyed. This is hardly in keeping with the concept of a vigorous, independent staff acting in the public interest. And it is so unlike staff action of recent years when it did exhibit initiative, independence and simply performed statutory duty. We

can well ask why staff personnel knowing of Southern Pacific's disregard for a Commission order chose to remain silent. I think it correct to state that but for the information supplied by Southern Pacific counsel as to the railroad's disregard for a lawful order that there never would have been knowledge of contempt let alone proceedings to impose punishment for contempt.

That the Southern Pacific Company considers itself beyond the reach of this Commission and the Supreme Court of this state is plain. It makes its own determination as to that which is binding upon it and obeys or disobeys accordingly.

The interests of its commuters, the authority of this Commission, the public service obligations of this corporation, all are seemingly of little or no concern to the management of Southern Pacific Company. This corporation should realize as should all other California public utilities that if regulation is to be ignored, if a permissive regulatory climate is to inhibit the vigor of this Commission, then the public will not be served or protected by this Commission, and the raison d'etre for its being will be gone. And when the public realization becomes widespread and if the historical process repeats itself then the only answer toward control of a public service corporation as here lies in public ownership. And shortsighted management enraptured with profit and indifferent to public need can only hasten that day.

The convenient story of the President of Southern Pacific that he believed counsel's advice that the restraining order was not valid discloses a woeful inadequacy upon the part of Southern Pacific counsel and Southern Pacific management. Obviously this was the testimony that had to be given. Merely giving it does not make it credible. Southern Pacific was here testing the Commission and almost got away with it. The difficulty was however that the contempt was so open and flagrant that it could not be disregarded. The distressing thing here is the spectacle of management totally callous toward public responsibilities and indifferent to the obligations of law.

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Some comments are in order. The order of my brethren ruling upon my qualifications is irrelevant, unnecessary and beyond their power. As a Commissioner I take my authority from the constitution-- not from my colleagues. Further, I had thought that the California Supreme Court had clearly determined this matter when they denied the efforts of the Southern Pacific Company to disqualify me from the case.

Concerning the parking lot decision the majority embarks upon a most curious discussion concerning the tax liability of California railroads. The record is quite clear that Southern Pacific has a tax expense associated with each parking lot which is the subject of today's order. Heretofore the Commission has always recognized that a public utility whether it be a railroad corporation or other is entitled in the rate fixing process to compensation for taxes paid. And further in the parking lot decision in this Commission dated June 20, 1967, Decision No. 72615 the majority which is now reversing itself found specifically that SP is entitled to recoup taxes, assessments, improvements and maintenance of parking lots. Not only is the Commission disregarding its recently enunciated parking lot order but it is disregarding all of the regulatory concepts which heretofore have been considered well established, as part of the rate fixing process of this Commission. We are prompted to wonder why. Today's order insofar as it relates to the parking lots merely sets aside the decision of an impartial examiner who heard the fresh testimony and who judged the credibility of witnesses and the majority arbitrarily rewrites the decision. In seeking to reach some unformulated goal or objective the majority of necessity does violence to basic regulatory principles and law. Does the majority actually hold by this decision that there is question as to whether taxes are an operating expense in a rate proceeding? So far as the staff position is concerned there is no evidence whatsoever from the staff rebutting in any wise the hard fact that Southern Pacific has a tax liability upon each parking lot.

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Turning to the contempt proceeding the Commission has mixed two cases terribly. There is nothing whatsoever even by employment of the single word "refund"--about refunds in the contempt case. The opinion in the contempt case which is judicial in nature is supposed to be based upon the order to show cause, the allegations of contempt associated therewith and only the evidence pertaining to these matters adduced at public hearing. There is nothing in the contempt proceedings about refunds and therefore it is improper for the Commission to be mixing parking charges, refunds, and a punitive fine in one composite order. The staff has advised us that the contempt order is erroneous in presenting for the first time and in the ultimate majority decision discussion of refunds.

There is, however, a sly benefit to the Southern Pacific by the intrusion of the irrelevancy of refunds. Southern Pacific well knows that refunds are not part of a contempt order. And all today's majority order does is to defer and to place in doubt a specific fine of \$22,000. Southern Pacific is required to set up some type of plan detailing the manner in which it shall refund parking charges. And the logical question arises at this point whether or not Southern Pacific is to base a refund plan upon Examiner Daly's original decision which provides for a 35 cent daily parking charge or whether the refund plan is to be based upon the majority's tentative daily charge of 25 cents. Standing plain in all of this is the fact that the 25 cent daily charge of the majority is not final in that the majority parking lot decision sets the matter down for further testimony to decide the tax issue and upon resolution of that issue conceivably the parking lot charge will, unless we abandon all past regulatory precedent, revert to the 35 cent charge which includes taxes as proposed by the examiner herein originally.

There is nothing in the majority order which covers the period of refunds by way of termination and all today's majority orders do is to defer any real decision either on parking lot charges or by way of imposing a \$22,000 fine now for perhaps the most flagrant contempt ever visited upon this body. Further, the confusion contained in today's contempt order whether deliberate and calculated by way of deliberate error to constitute reversal error on an appeal or whether coming from lack of expertise in the regulatory field has the same end result. And that end result is that nothing is being done to Southern Pacific. The Commission has given the Southern Pacific a beautiful error as the basis for rehearing--indeed the majority being placed upon notice of the deliberate error were quick to point out that Southern Pacific could ask for a rehearing.

One wonders whether or not the contempt order as it has been doctored and diluted by the extraneous element of refunds and as it has been rewritten has in fact given the Southern Pacific due process. My brethren do not seem to realize that contempt is a judicial proceeding and because of the penalties involved rights are to be scrupulously observed. The handling of today's orders is unique. Apparently now parties before us are to be treated to the copycat decision. And the Commission at least to its credit advertises the pure results of an impartial examiner and then illustrates its absolute power by arbitrarily assigning a decision to an examiner who never heard a line of testimony and to a commissioner who did not set on even one day's hearing. Southern Pacific is to be congratulated. A friendly Commission can achieve its ends either by an outright bold favor or if they be too much for public consumption then it can write a decision and place in it very carefully and deliberately a finding and a procedure here concerning refunds which constitutes in my opinion the basis of a successful appeal. Better then a friend of the court utilities now are served by friends at the court.

The decisions proposed by Examiner Daly were the ones which should be signed. In short, Southern Pacific should be ordered to pay and at once a \$22,000 fine. Their contempt was notorious, flagrant, self-serving and illustrative of a consistent public be damned attitude. As to the parking lot charges if the Commission does not know that since 1912 we have allowed taxes as an operating expense, they are free to wend their way through that concept and to arrive inevitably at the result contained in the examiner's original report. Southern Pacific today by the gentle treatment accorded them now has a license to be indifferent, arrogant and, if necessary, contemptuous.



/s/ WILLIAM M. BENNETT

WILLIAM M. BENNETT
Commissioner

Dated: San Francisco, California
April 16, 1968

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Decision No. 74007

COMMISSIONER GATOV DISSENTING:

I do not concur in the order of the majority of the
Commission in this case.



Commissioner

Dated: San Francisco, California,
April 16, 1968.