

Decision 83 02 038 FEB 11 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION,  
STATE OF CALIFORNIA,

Complainant,

v.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY, a corporation,

Defendant.

ORIGINAL

Case 82-08-01  
(Filed August 4, 1982)

ORDER TO SHOW CAUSE RE CONTEMPT UPON THE  
COMMISSION'S OWN MOTION AND NOTICE OF HEARING

The creation and operation of a commuter rail transportation service between Oxnard and Los Angeles with intermediate stops at various communities (the service) is a matter that has long been before this Commission and in various courts. Case 82-08-01 was instituted by the Department of Transportation (Caltrans) to compel the Southern Pacific Transportation Company (SP) to construct necessary facilities and to operate the service.

On October 18, 1982, we issued D.82-10-041. That decision ordered three things:

1. SP was ordered to operate the service commencing October 18, 1982 on the schedule tendered by SP on October 17, 1982, utilizing the passenger equipment furnished by Caltrans.
2. SP was ordered to execute a "Locomotive Agreement" and a related "Reimbursement Agreement" (copies of which are appended to the decision).

3. Caltrans was given the right of immediate entry to SP property and SP was ordered to make the property available, to construct station and parking facilities at Northridge, Moorpark, Camarillo, Burbank, Burbank Airport and Chatsworth in accordance with plans on file with the Commission.

The Commission has been informed that on or about Friday, February 4, 1983, SP ceased operation of the service. We have received a copy of an SP press release admitting the "suspension" of the service, quoting SP President Robert D. Krebs as to the SP's claimed basis for the discontinuance.

We have also received a sworn affidavit of Harvey Morris, Senior Counsel in the Commission's Legal Division, that he was present in the United States District Court for the Northern District of California on February 7, 1983 at which time an attorney appearing on behalf of SP admitted that the service in question had been discontinued without approval of this Commission, that the train equipment used in the service was removed to another part of the state, and that a lack of adequate compensation from Caltrans was alleged as the basis for the discontinuance.

This Commission has not issued any order either directing or authorizing the discontinuance of service established by D.82-10-041.

It therefore appears that such discontinuance is in violation of D.82-10-041 and subject to punishment for contempt pursuant to Sections 312 and 2113 of the Public Utilities Code.

THEREFORE IT IS ORDERED that SP shall appear and show cause before Commissioner Leonard M. Grimes and/or such Administrative Law Judge as the Commission may designate in the Commission Courtroom, 350 McAllister Street, San Francisco, California on Tuesday, February 15, 1983 at 10:00 a.m., if any cause there be why SP, D.K. McNear, Chairman of the Southern

Pacific Transportation Company, R.D. Krebs, President of the Southern Pacific Transportation Company, W.J. Lacy, Vice President of the Southern Pacific Transportation Company, or such other officer of SP under whose direction and control the service ceased on February 7 and 8, 1983 should not be adjudged in contempt of this Commission for violation of the orders contained in D.82-10-041. At this hearing SP shall make available D.K. McNear, R.D. Krebs, W.J. Lacy, or such other officer of SP under whose direction and control the service ceased on February 7 and 8, 1983 to answer under oath questions concerning the discontinuance.

IT IS FURTHER ORDERED that the Executive Director of this Commission shall cause a true copy of the Affidavit of Harvey Morris and the Southern Pacific press release along with a copy of this order to be personally served upon SP, the above named officers, and Caltrans. Service by mail, and telephone to the extent feasible, shall be undertaken for all other parties.

Because of the urgency with which this hearing must be held due to the extreme inconvenience to the public if service is not available, the normal ten day notice for hearings required by Section 1704 of the Public Utilities Code and Rule 52 of the Commission's Rules of Practice and Procedure is waived. Pursuant to Section 306 of the Public Utilities Code, this order has been issued at a Commission Conference without prior announcement due to the fact that an unforeseen emergency exists.

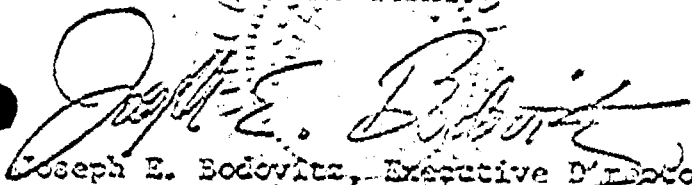
This order is effective today.

Dated February 11, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

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AFFIDAVIT OF HARVEY Y. MORRIS

STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

ss.

Harvey Y. Morris, being first duly sworn, deposes and says  
that:

1) I am employed as a Senior Counsel by the Public Utilities  
Commission of the State of California (hereinafter "Commission")  
and my business address is 5066 State Building, San Francisco,  
California 94102.

I have been a member of the State Bar of California and  
the Bar of the United States District Court for the Northern  
District of California since 1979 and have represented the  
Commission before federal courts and administrative agencies since  
1981.

2) The Commission decision D.82-10-041 ordered Southern  
Pacific Transportation Company ("SP") to operate commuter train  
service between Los Angeles and Oxnard commencing on October 18,  
1982 and on every weekday thereafter, except Saturdays, Sundays  
and holidays.

3) The purpose of this affidavit is to provide a factual recital to the Commission that SP counsel in open federal court did in fact state that SP did not operate the said commute train service on February 7, 1983 and could not operate said service on February 8, 1983.

4) That on February 7, 1983, I was present in the Courtroom of the Honorable Judge T. E. Henderson of the United States District Court for the Northern District of California (C-83-051-TEH) at which time SP as a Defendant in the named action, through its counsel of record, Malcolm T. Dungan, stated and admitted on the formal record that the SP did not in fact operate commute train service between Oxnard and Los Angeles known as the "Caltrain" on February 7, 1983. SP counsel stated that the basis, in general, for not operating said train service was that SP's tariff filed with the Interstate Commerce Commission ("ICC") contained a section affording SP authority to "suspend" said train service if the California Department of Transportation ("Caltrans") did not make payment to SP of certain funds for operating the said train service and SP had not received said funds from Caltrans as stated in the tariff. SP's counsel also stated that on Friday evening, February 4, 1983, SP transported the trains, which had been used for this commute train service, to northern California. SP's counsel stated that it was therefore impossible to resume this commute service on February 8, 1983.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 9th day of February, 1983, at San Francisco, California.

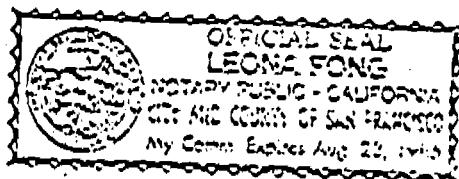
Harvey Y. Morris  
Harvey Y. Morris

Subscribed and sworn before me  
this 9th day of February, 1983.

Leona Fong  
NOTARY PUBLIC

Notary Public in and for the  
City and County of San Francisco

My Commission expires: Aug. 23, 1985



# NEWS FROM SOUTHERN PACIFIC

SOUTHERN PACIFIC PUBLIC RELATIONS  
610 South Main Street  
Los Angeles, California 90014  
(213) 629-6145 or 629-6149



February 4, 1983

Southern Pacific Transportation Company has filed notice that it plans to suspend operation on Monday of the Oxnard-Los Angeles experimental commuter service because it has not been paid for three months' operation of the train. Caltrans, the state agency that contracted with SP to provide the rail service, has refused to pay more than \$2.4 million of bills accumulated since service began.

Robert D. Krebs, president of Southern Pacific, said that SP "cannot afford to continue operation of this service without being paid."

Krebs also said that SP plans to file petitions on Monday with the Interstate Commerce Commission to discontinue the service permanently. The ICC is expected to hold public hearings on the matter later this year.

"This experiment has been bad for the taxpayers of California, bad for the industries served along our line, and bad for Southern Pacific," Krebs said. "While each individual commuter pays only a few dollars per round trip, the state's taxpayers are contributing about \$170 for each commuter each day. That just doesn't make sense."

(more)

REC'D LAW DEPT.

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Southern Pacific opposes the rail experiment because it runs over a single-track railroad for most of the 66 mile trip between Oxnard and Los Angeles. "This portion of our railroad just isn't designed to handle commuter rail operations. When we run commuter trains it interferes with the essential freight service we operate on the same line," Krebs said.

Krebs said "SP is entirely willing to work with the State and with local governments to plan needed passenger service over our lines where it's feasible. We've cooperated with CalTrans on service in the San Francisco Bay Area, and with the State of Oregon. But these trains, on this track, simply can't work. It's like trying to run traffic both ways at the same time on a one-lane road."

Some critics have alleged that SP is charging CalTrans too much to operate the commuter service. "The facts speak otherwise," Krebs said. "When CalTrans described the service it wished to have operated, Southern Pacific calculated its costs to provide that service based on compensation principles established by federal law. We filed a tariff with the Interstate Commerce Commission, which has jurisdiction over railroad rates, even for rail service provided entirely within the State of California."

"CalTrans objected, but the ICC was not persuaded by CalTrans' complaints, and allowed the tariff to become effective, including SP's rate of \$588,000 a month."

"CalTrans' earlier top offer to SP, \$41,250 a month, would cover only one fourth of the train crew pay, to say nothing of costs for fuel, security forces, maintenance personnel,

(more)



liability insurance, the exclusive use of our railroad for four prime-time hours a day, and other very real costs," Krebs said. "We also have a legal right (in fact, an obligation to our shareholders) to 'mark up' our out-of-pocket costs to cover overhead and create a reasonable profit on this operation, as we do for all transportation services we provide."

Some parties have suggested that if SP would reduce its tariff the CalTrain could become successful. Krebs disputed that claim. "CalTrans is paying other parties, such as Amtrak and the Chicago Regional Transit Authority, about \$1.8 million for the first year of operation for locomotive and passenger car rental, and maintenance. That alone comes to more than \$35 a day per commuter," he said.

"When you add Southern Pacific's expenses to what others are charging CalTrans, you begin to get a picture of a tremendously expensive service that is benefiting very few people," Krebs said. "It would be far cheaper for the State to give each CalTrain commuter a brand new car or a taxi ride to and from work each day absolutely free."

# # # #

Pacific Transportation Company, R.D. Krebs, President of the Southern Pacific Transportation Company or W.J. Lacy, Vice President of the Southern Pacific Transportation Company should not be adjudged in contempt of this Commission for violation of the orders contained in D.82-10-041. At this hearing SP shall make available D.K. McNear, R.D. Krebs or W.J. Lacy to answer under oath questions concerning the discontinuance.

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This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.