

Decision: 83 03 027

MAR 11 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Department of Transportation,  
State of California,

Complainant,

vs

Southern Pacific Transportation  
Company, a corporation,

Defendant.

Case 82-08-01  
(Filed August 4, 1982)(For appearances see Decisions 82-10-031,  
82-11-032, and 83-02-079.)Additional Appearances

Messrs. Buchalter, Nemer, Felds, Chrystie,  
& Younger, by Douglas Ring, Attorney  
at Law, for Simi Valley, Oxnard,  
County of Ventura, interested Party.  
Richard Bower, Attorney at Law, for Caltrans,  
complainant.

INTERIM OPINIONSummary of Decision

We authorize Southern Pacific Transportation Company (SP) to temporarily suspend operations of the rail passenger service between Los Angeles and Oxnard (Caltrains) which was established under our direction in Decision (D.) 82-10-041. We will continue to assert our jurisdiction over resolution of the issues that will permit restoration of the service.

Suspension is ordered because the California Department of Transportation (Caltrans) no longer wishes to sponsor the Caltrains operations under the terms and conditions they advocated at the time of service implementation. Present circumstances have precluded reaching an agreement with SP on the amount of public subsidy required for operations and on related public liability and equipment issues. Caltrans is uncertain whether funding provided to it to subsidize Caltrains is sufficient either to meet incurred liabilities or support any continued operations. The Governor's budget before the Legislature does not provide for any additional funding of Caltrains and the California Transportation Commission (CTC) has recommended to the Legislature that no additional funding be allocated for Caltrains for this and next fiscal year. Caltrans has been unable to locate and place in service adequate locomotives and commuter rail cars, and the problem continues to hamper the service. Caltrans believes that the problems associated with the operation of the service have undermined the demonstration goals for which it was initiated.

SP supported the suspension of the service while asserting throughout the proceeding that the amount of public support required for operations has been established in the tariff filed by SP with the Interstate Commerce Commission (ICC). SP questions the adequacy of available funds for continued support of the service. It is concerned about the inadequacies of the equipment used in the Caltrains operations and it desires to remove the asserted impediments to its freight operations created by operation of Caltrains over its single track line between Los Angeles and Oxnard.

No immediate alternative public funding appears to be available to continue operations at this time, nor does there appear to be an alternative public agency willing to undertake the role of

sponsor under the terms and conditions under which Caltrans initiated the service. Supporters of continuance contend that potential alternative funding providers must have reliable information on the amount of subsidy required before support can be considered. The Commission reserves the right to consider in supplemental proceedings, the level of public subsidy and related conditions reasonably required to support the past and potential future operations of Caltrains.

During the period of suspension, SP is directed not to remove or modify the platforms, passenger and parking facilities at Moorpark, Chatsworth, Panorama City, Burbank Airport, and Simi Valley stations pending further order of this Commission.

Background

SP commenced operation of Caltrains on October 18, 1982 under the orders in D.82-10-041, as follows:

1. SP was ordered to operate a commuter rail transportation between Oxnard and Los Angeles with intermediate stops at various communities (the service) beginning on October 18, 1982 on the schedule tendered by SP on October 17, 1982 using the passenger equipment furnished by Caltrans.
2. SP was ordered to execute a "Locomotive Agreement" and a related "Reimbursement Agreement" (copies of which were attached 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.

Service was started with rail cars and engines leased from Amtrak by Caltrans pursuant to Caltrans' request. The Amtrak rail cars were unsuitable for commuter service and they were replaced by commuter rail cars leased by Caltrans from the Chicago Regional Transit Authority (RTA). As Amtrak P-30 engines used to pull the RTA cars assertedly caused derailments at several points on SP's systems, the P-30 engines were removed from service by SP on November 26, 1982.

Caltrans immediately entered into an agreement with SP to replace the P-30 engines with engines used on SP's Peninsula rail commuter service, which is subsidized by Caltrans. As the RTA cars cannot be used with the replacement engines, use of the RTA cars was discontinued, and five gallery cars leased by Caltrans from SP for Peninsula commute service were transferred to the Los Angeles-Oxnard Service.

On November 5, 1982 Caltrans filed a petition for modification of D.82-10-041 to provide for a right-of-entry at Oxnard Station to construct parking facilities and to establish a time for concluding negotiations on and for submitting a subsidy agreement. On December 9, 1982 Caltrans filed a motion for orders further clarifying and implementing prior Commission decisions. Hearings on these matters were held on December 20, 1982, and on January 4 and 5, 1983. These matters were submitted subject to filing proposed findings of fact and conclusions of law, which were received from Caltrans and SP. No decisions have been issued on these matters.

SP filed a tariff with this Commission covering costs to be assessed for operation of the Los Angeles-Oxnard service. Subsequently it filed a similar tariff with the Interstate Commerce Commission (ICC) which contains charges for operation of the Los Angeles-Oxnard service of \$588,200 per month. Caltrans was unable to obtain an order from the ICC suspending the tariff. Caltrans' petition to reopen the suspension proceeding was denied by

the ICC on January 17, 1983. Caltrans intends to file a formal complaint with the ICC. SP contends that the acceptance of its tariff by the ICC removes this Commission's jurisdiction to adjudicate the issues concerning reasonable subsidy levels, and that Caltrans must pursue these issues before the ICC.

D.83-02-079 dated February 17, 1983 in this proceeding adjudged SP to be in contempt of this Commission for violation of D.82-10-041 for failure to operate the commuter train service between Los Angeles and Oxnard on February 7 and 8, 1983. That decision fined SP and certain named officers of SP for violation of the orders in D.82-10-041, and directed SP to continue to provide commuter rail service between Oxnard and Los Angeles as ordered in D.82-10-041 until authorized to discontinue by further order of the Commission.

Caltrans filed a statement in the contempt action, received as Exhibit 51, which raised the question whether it would be in the public interest to continue the service while major issues such as provision of equipment and funding of the service remain unresolved. This matter was reopened to take evidence and testimony on the issues raised in Exhibit 51 on February 28, 1983. D.83-02-079 stated that should SP desire to discontinue or suspend service prior to our decision after hearing in the reopened proceeding, it may file an emergency petition to do so and it will receive our prompt consideration. That decision also stated that we recognize that a dispute exists about the amount of the subsidy owed by Caltrans to SP to provide the service, that it appears that Caltrans no longer enthusiastically supports the service, and that the implications of Caltrans' position would be considered at the further hearings on February 28.

On February 22, 1983, a temporary restraining order (TRO) granted by the Federal District Court (C83 0581 TEH) requiring continued provision of service by SP between Oxnard and Los Angeles was lifted and the proceeding dismissed for lack of federal jurisdiction. That

court indicated that jurisdiction over SP's commute operations lies with the State of California, in particular the California Public Utilities Commission.

On February 22, 1983, Caltrans filed a motion for suspension of service, and SP filed a petition for an emergency order vacating Ordering Paragraph 1 of D.82-10-041 and authorizing suspension of service.

Caltrans stated in its motion that allocated subsidy funds may be depleted, assuming the ICC tariff is ultimately sustained, and that further subsidy funding appears unlikely at this time; therefore, it is not in the position to guarantee further State funds for subsidy of the commuter service. Caltrans further stated that it has concluded that it should not continue to be responsible for subsidizing deficits associated with the commute service until costs can be ascertained and that Caltrans can no longer undertake the responsibility for providing rolling stock.

Caltrans requests the Commission to:

1. Take immediate action to order suspension of the service,
2. Issue such order as is appropriate to protect and preserve the station sites and parking facilities, and
3. Take such action as is necessary to expedite the hearing on subsidy issues.

SP argued in its petition that funds do not exist under current State budgetary constraints to adequately fund the train service; and that Caltrans underestimated the amount of the subsidy necessary to provide the service and that subsidy funds already appropriated are exhausted. SP states that Caltrans' Exhibit 51 introduced in the hearing preceding the issuance of D.83-02-079 confirms these facts. SP states that its obligation to run the trains was conditioned upon subsidization by Caltrans with no burden

on SP. As no funds exist for continued subsidization, SP asks that the Commission issue an emergency order suspending the service.

An Administrative Law Judge's (ALJ) Ruling issued February 24, 1983, determined that the evidence to be adduced at the hearing scheduled for February 28, would deal with the ability of Caltrans to provide subsidy funds beyond February 28, 1983, and other issues raised in Caltrans' Exhibit 51.

A further hearing was scheduled March 7, 1983 in Los Angeles to receive evidence from public bodies other than Caltrans concerning their ability to provide future subsidy funding of the Oxnard-Los Angeles rail commute service, including liability for injury, loss or damage resulting from operation of the service. The ALJ ruling stated that there was no need to produce evidence concerning need for the service as the Commission has found in D.91847 and other decisions that public convenience and necessity require the service. The ruling was served on all known public bodies which may be interested in the continued operation of the rail commute service. All were requested to appear at the Los Angeles hearing and to advise the Commission of the present availability of subsidy funds for the continued operation of the service.

#### Public Hearings

At the public hearing on February 28 held before Commissioner Vial and ALJ Mallory in San Francisco evidence was adduced on behalf of Caltrans, SP and Southern California Association of Governments (SCAG).

At the hearing held before Commissioner Vial and ALJ Mallory in Los Angeles on March 7, testimony was received from Caltrans and SP concerning a discontinuance of Caltrains operations on Wednesday, March 2, because of a collapsed railroad trestle resulting from storm damage. The trestle was expected to be repaired and operations resumed on or about March 14. Testimony was also received from Rick Richmond, Executive Director of the Los Angeles County Transportation Commission (LACTC). Statements of position were made on behalf of the County of Ventura, Assemblywoman Cathie Wright (Thirty-seventh Assembly District), Senator Ed Davis (Nineteenth Senate District), and by Robert J. Swan, a member of the public.

The testimony of Caltrans was presented through three witnesses: Glen Rome, Chief of Caltrans' Office of Financial Control; Warren Weber, Chief of the Office of Rail Services in Caltrans' Division of Mass Transportation; and Elmer Hall, Chief of the Rail Operations Maintenance-of-Way and Facilities Branch.

Mr. Rome presented Exhibit 56, which is a comparison of the funds available for subsidy of SP's Los Angeles-Oxnard commute operation with Caltrans' estimates of the costs to date of operating the service, and with the charges to date under SP's tariffs. Capital costs expended by Caltrans for construction of station and parking facilities are not included. The witness explained in detail the assumptions made in connection with Caltrans' estimates of net expenditures.



The following table is a summary of the data contained in Exhibit 56.

TABLE 1

DEPARTMENT OF TRANSPORTATION  
FINANCIAL STATUS REPORT ON THE  
LOS ANGELES-OXNARD COMMUTE SERVICE  
AS OF FEBRUARY 28, 1983  
(Exhibit 56)

Authorized Funds - Operations

Chapter 161/79, Section 7(c)(2)(A), Transportation Planning and Development Account (Held in a Special Deposit Fund Account)	\$1,000,000
1982-83 Budget Act, Item No. 2660- 001-046, Transportation Planning and Development Account CTC Resolution No. MT-83-11 and 13	<u>2,400,000</u>
Total	\$3,400,000

Less:

	<u>Caltrans</u>	<u>SP</u>
Estimated net expenditures through 2/28/83	<u>\$ 847,320</u>	<u>\$3,530.470</u>
Estimated balance or (deficit)	\$2,552,860	\$ (130,470)

According to the witness, payments totaling \$111,000 have been made to date by Caltrans to SP. Other items recognized as due and payable assertedly have not been paid by Caltrans because adequate billing by SP has not been furnished.

The witness testified that if it is assumed that SP's ICC tariff charges are ultimately determined to apply, the expenditures through February 28 exceed the available funds by \$130,470. Caltrans

is not seeking additional funds for operation of the Los Angeles-Oxnard commute service, and the proposed Governor's budget for the 1983-84 fiscal year does not provide for them.

On the other hand, if Caltrans' lesser estimates of operating expenditures ultimately are determined to be correct, there remained on February 28 an unspent balance of authorized funds of \$2,552,860. The funding under California Transportation Commission (CTC) Resolutions MT-83-11 and 13 is available through June 30, 1985.

Mr. Weber testified that Caltrains was originally proposed as a 3-year demonstration project using 11 stations. Los Angeles-Oxnard was one of several corridors in the Los Angeles metropolitan area identified to serve as a demonstration project to ascertain whether travelers would make a choice to leave their cars and ride a commuter rail service. With all stations open, and with the operation of two round trips daily, Caltrans estimated a ridership of 2,600 persons per day. At the present time eight stations are open. Ridership has approximated 360 to 400 persons per day.

Mr. Weber testified that in Caltrans' estimation the service as presently running has not met its initial goals. One factor that has caused ridership to remain low, in Weber's view, has been widespread publicity of the operational and institutional problems which have occurred. Such problems include the frequent substitution of equipment, the disputes between SP and Caltrans concerning train operation and subsidies, and discontinuance of operations for short periods of time. Weber also stated that the trains were operated in an unprofessional manner by SP in that trains were often as much as an hour late and conductors were not required to be in uniform.

Weber testified that Caltrans' inability to obtain and retain proper and adequate equipment is also a major consideration in Caltrans' decision to seek suspension of operations. Equipment suitable to the operations has been sought in a nationwide search, but none is available for acquisition by Caltrans. At present the

Los Angeles-Oxnard service is operated with five gallery cars and three locomotives temporarily transferred from the Peninsula commute service. These cars are not being adequately maintained by Amtrak in Los Angeles, and several cars have been out of service for long periods of time. The Peninsula gallery cars are needed for that service, and must be returned to that service in the near future. Because of its inability to acquire suitable rail cars and locomotives, Caltrans proposed that if the Los Angeles-Oxnard service continues to operate, SP should be required to provide the necessary equipment rather than Caltrans.

In summary, Weber stated that Caltrans' decision to seek suspension was predicated on three factors: the instability of the operation which caused low ridership, Caltrans' inability to secure adequate equipment, and Caltrans' unknown liability for operations conducted to date.

Witness Hall described in detail the reasons for the five equipment changes made in the Los Angeles-Oxnard service, the difficulties encountered obtaining adequate maintenance of the equipment currently used, and the poor state of that equipment. Hall concluded the Los Angeles-Oxnard service could not be adequately performed with equipment now available, and no arrangements can be made for needed replacement of that equipment.

SP presented evidence in support of its request for an emergency order suspending the Los Angeles-Oxnard commute service. The first point raised by SP is the level of accrued subsidy payments and the impact on SP of the dispute between it and Caltrans over payments for past services. SP stated that it operated at a loss in 1982. SP contends that continued operation of the Los Angeles-Oxnard commute service adversely affects its financial position particularly since only minimal subsidy payments have been made by Caltrans to date. SP also contends that commute operations over the single track line between Oxnard and Los Angeles are an impediment to its freight operations over that line, thus reducing earnings from freight service. Both these contentions were raised by SP in the initial phases of this proceeding.

SP further contends that neither Ventura County or Los Angeles County, the two counties in which Caltrains operates, will agree to fund the operation of Caltrains; Caltrans is no longer able or willing to fund Caltrains; and this Commission has indicated in prior decisions that SP would not be required to subsidize Caltrains from freight operations. Therefore, the only alternative available at this time is to order immediate suspension of the service.

SP believes it is legally obligated to pursue collection from Caltrans of the amounts set forth in the ICC tariff and, if Caltrans does not voluntarily pay, to institute appropriate collection actions in court. SP also believes that it is impossible for both the ICC and this Commission to have concurrent jurisdiction over the question of compensation due from Caltrans, and that the ICC, being a federal agency and having exercised its jurisdiction, is the superior agency under federal law.

SP argued for immediate cessation of operations because risk of harm to third parties and property should have been assumed by Caltrans through an insurance policy, and Caltrans has not obtained such a policy. Caltrans contends D.91847 did not require it to obtain such an insurance policy.

Finally, SP states that the service should be suspended because of equipment problems. Caltrans is responsible for obtaining the rail cars and locomotives used on the Los Angeles-Oxnard route. The SP witness testified as follows with respect to equipment problems:

"The initial equipment obtained by Caltrans for this service consisted of Amtrak P30CH locomotives and Amtrak passenger cars, later replaced with RTA passenger cars. What neither SP nor Caltrans anticipated at that time was that the Amtrak P30CH locomotives would prove to be too heavy, and too stiff, for the light support trackage in the Oxnard yard and at the Montalvo WYE where the train sets were turned each evening. On an emergency, interim basis, SP and Caltrans agreed upon the use of five cars from the San Francisco peninsula commutation service, and three SP locomotives which had been used as backup for the requirements of the Peninsula service, and moved that equipment to Oxnard. Meanwhile, the RTA recalled the equipment which had been leased to Caltrans, and that is no longer available to SP. Likewise, Caltrans has directed that the P30CH locomotives be released and turned back to Amtrak, so as to avoid the rental expense of units which cannot be used.

"SP cannot, however, rely on the borrowed cars from the Peninsula commute fleet to continue in the Oxnard service. They were specifically designed for the climatic conditions on the San Francisco peninsula, and their air conditioning systems are relatively low powered, not equipped to cope with the thermal load generated from cars sitting out in the sun at Los Angeles all day.

"The maintenance forces familiar with the Peninsula cars, and which has available to it the stock of spare parts, are located in San Francisco, San Jose and Oakland, but not Los Angeles. SP does not have passenger coach yard service and maintenance facilities at Los Angeles.

"The problems involved in maintaining this equipment at Los Angeles are illustrated by the

current situation. When SP suspended service February 7 and 8 the commuter cars were moved to San Francisco for long-overdue servicing. Only two of the five cars had been serviced when operations resumed. Those two cars plus three more from the Peninsula fleet, were sent to Oxnard. Within two weeks three of those cars had been taken out of service for repairs. On two days recently, each Los Angeles-Oxnard commute train operated with one car because three of the five commute cars borrowed from the Peninsula service have been inoperable for one reason or another. Presently, one train is operating with one car and one train operates with two cars. In effect, there now is no reserve car available if there are further car failures. One car was out of service because the diesel generator failed. The air-conditioning, lights, and overhead electric heating are powered by this diesel generator. Another car was removed from service because of shelled wheels, defective grease shells and swing hangers rubbing against the truck. The third car also experienced wheel and truck problems. Since these cars were shipped to Los Angeles in late November, Amtrak has turned 14 pairs of wheels. Typically, 14 pairs of wheels is what SP would turn in a year for the entire Peninsula commute fleet. In addition, SP shipped two pairs of wheels to Los Angeles for changeout. SP contends that the maintenance problems described above, including the extent to which the cars have been removed from service, dramatically indicate the need to promptly return this equipment to the Peninsula commute service for repair."

On February 24, 1983, CTC passed Resolution MT-83-18 (Exhibit 59), which contains the following recommendations to the Legislature concerning the Los Angeles-Oxnard commute operations:

"RESOLVED, that the California Transportation Commission has reviewed the Department's 1983 Rail Passenger Development Plan and, pursuant to Section 14036 of the Government Code, gives the following advice:

"Because of the Oxnard Commute Service's very low ridership, its poor farebox performance,

and the continued uncertainty about costs, the Commission recommends that the Legislature not appropriate any additional funds for the service in the current year, or in the State Budget for 1983/84."

Assembly Bill 2523 requires Caltrans to submit a rail passenger development plan to CTC for its advice and consent and, after CTC's review, to submit the plan by March 1 to the Legislature, the Governor, and the Public Utilities Commission. The purpose of the plan is to provide the basic information needed to evaluate the passenger rail program during the annual deliberations on the State Budget.

The comments and recommendations of CTC's staff, as set forth in an attachment to Resolution MT-83-18, are as follows:

"Whether or not it qualifies as an exotic mode of transportation, the Oxnard Commute service certainly is one whose price is exorbitant and performance poor. The plan indicates that ridership over the first eleven weeks of the service averaged about 300 passengers a day, about 25% of projections for the original five station service, and 11.5% of the 2600 the eleven station service was to have achieved. The plan indicates that the farebox will provide only 10% of operating costs, well below the 35% projection in last year's plan, and the 40% level the service must achieve, by statute, within three years.

"The service began after a protracted and bitter legal dispute between Caltrans and the Southern Pacific, and has since endured several changes in operating equipment, the opening of two more stations, and a continuing argument over the costs of the service that prompted the Southern Pacific to unilaterally cancel the service for two days on February 7-8, 1983. The Commission supported the funding of this service in the current Budget, as a demonstration project. It allocated \$6 million to the service in October with considerable reluctance because estimated costs of starting the service skyrocketed from \$4.9 million to \$8.4 - \$17.1 million in less than

a year. The Commission was particularly concerned about the uncertainty of the cost of operating the service. Caltrans claimed the amount of operating subsidies should be \$495,000, while the Southern Pacific claimed 'realistic compensation estimates should be in the \$5 million annual range.'

"Because of the service's very low ridership, its poor farebox performance, and the continued uncertainty about costs, with the risks that creates, the Commission recommends that the Legislature not appropriate any additional funds for the service in the current year, or in the State Budget for 1983/84."

Rick Richmond testifying on behalf of LACTC indicated the following: LACTC has supported the Los Angeles-Oxnard service in the past on the understanding that it was to be operated for a demonstration period to determine its success and desirability as a part of LACTC's overall transportation strategy, and on the understanding that the service was to be state funded.

LACTC has not taken a position on whether the service should be continued with state funding beyond the original demonstration, or with local resources. It has, however, encouraged Caltrans to pursue its efforts to achieve a fair and reasonable charge from SP for operating this service.

LACTC further stated that the only feasible source of potential local funding is the Los Angeles County 1/2% transit sales tax which went into effect in July 1982. LACTC placed this issue on the ballot in 1980 and is responsible for administering it under the terms of a Los Angeles County ordinance adopted at that time. Part of the program for use of the funds is the construction of a rail transit system which appeared on the ballot (Exhibit 65). For local sales tax funds to be expended on the Los Angeles-Oxnard service, three basic determinations would have to be



made: First, whether providing operation subsidies for that service is consistent with the system corridors approved by the voters; second, the priority for that corridor relative to other corridors in the countywide network; and third, the desirability of subsidizing the operation of that particular service over construction of alternative routes serving the same corridor.

LACTC has begun the process for determining priorities for the countywide rail transit system. An initial screening of all alternatives should be done this spring and a strategic plan for implementing specific routes should be adopted by late this year.

LACTC staff would need approximately three to six months to prepare an analysis of the Los Angeles-Oxnard corridor to determine whether the staff would recommend funding of the Los Angeles-Oxnard rail commuter service, or would recommend a different rail transit operation in that corridor.

LACTC has expressed the relative priority of this service in connection with two other funding programs: the development of a State transit guideway program by CTC and the proposed fiscal year 1984 State Transportation Budget. First, in transmitting county priorities for the State Transit Guideway Program, the LACTC has placed top priority on the use of available State funds on the Wilshire Metro Rail Line and the Los Angeles-Long Beach Rail Transit Project, both of which will serve high priority local transit needs. Second, in seeking modification to the proposed State Transportation Budget for the coming year, LACTC has placed relative priorities for restoration of proposed funding cuts as follows:

1. State transit guideway funding (for Wilshire Metro Rail Construction).
2. State Transit assistance (primarily for bus operating assistance).
3. Ridesharing support.
4. Commuter/Intercity rail.
  - a. Los Angeles-Oxnard commuter rail service.
  - b. Other commuter/intercity services proposed for elimination.

Discussion

Based on all the evidence we conclude that the present Los Angeles-Oxnard commute service should be immediately suspended because of inadequate equipment and lack of funding. This is without prejudice to restoration of the service at some future date should adequate public funding become available.

Equipment

It is clear that despite Caltrans' extensive efforts to secure adequate equipment for the Los Angeles-Oxnard commute service, it has been unable to do so. It is also clear that equipment now in use, which has been borrowed from SP's Peninsula commute service is unsatisfactory for continued adequate, safe, and comfortable operation of the Los Angeles-Oxnard commute service. The fact that adequate equipment currently cannot be made available by Caltrans is further supportive of our order to suspend the service. In evaluating a request for restoration of service, we would consider requiring SP to provide equipment, as we originally ordered in D.91847.

Funding by Caltrans

Additional state funding for the Los Angeles-Oxnard commute service does not appear to be forthcoming. The Governor's Budget for 1983-84 provides no additional funds, Caltrans seeks no additional funds, and CTC recommends that no additional state-provided funding be made in the current fiscal year or in subsequent periods.

Caltrans submitted in Exhibit 56 its analyses of current funding versus expenditures to date. Based on its estimates of operational costs, sufficient funds have been provided for continued operation through an extended period; under SP's ICC tariff charges the total available funds have been exhausted. SP is insistent that its ICC tariff charges are applicable and SP intends to pursue collection through the courts. Caltrans' assessment is that prudence requires it to assume SP will prevail, so that it will not overspend allocated funds. Regardless of the merits of this position, it is clear that Caltrans no longer desires to assume the responsibility of subsidizing the service until the cost issue is settled.

#### Funding by Other Agencies

No local agencies appear willing or able to commit funds for continued operation of the Los Angeles-Oxnard commute service at this time. This is understandable in light of the impossibility of determining the precise level of funding needed when that issue is still in dispute, the need of the agency to supply operating equipment for the service, and the need to assume primary responsibility for injuries and damage occurring as a result of the operation. This Commission does not have sufficient factual information at this time to advise the local agencies of the level of required support because the Commission deferred to Caltrans' request that it be permitted to negotiate the level of funding and related issues when the service was ordered.

As indicated earlier in this opinion, issues of public convenience and necessity are not an issue in this phase of the

proceeding as those issues have been decided. Those issues having been decided, if we order suspension or termination of service for lack of funding, we can order restoration of the service when it has been shown that funding is available. Should a local or state agency decide to provide funding for the Los Angeles-Oxnard commute service at some future date, application may be made to this Commission for resumption of the service.

#### Resolution of Charges for Past Services

The issues of charges for services performed to date were reserved for later consideration. The evidence indicates a wide disparity between the SP and Caltrans on these issues. Caltrans' intention is to file a complaint with the ICC. SP's intention is to collect the charges in its ICC tariff through court action, if necessary. The Commission reserves the right to consider, in supplemental proceedings, the level of public subsidy and related conditions reasonably required to support the past and potential future operation of Caltrains.

#### Suspension or Termination

SP and Caltrans seek suspension of the service for an unspecified period. The record is clear that it is unlikely that equipment adequate for the service or adequate funds to meet the operating costs of the service will be available in the near future. However, should the resolution of the dispute between Caltrans and SP provide a lower level of funding than claimed by SP, funding may be available from local sources, and Caltrans and CTC may wish to reconsider their current positions. We conclude that the service should be temporarily suspended with the proviso that service can be restored upon a showing that adequate funding and equipment are available.

Preservation of Stations

In view of our conclusion to suspend, rather than terminate the service, we will exercise our jurisdiction to order SP to preserve intact the passenger station and parking facilities constructed by Caltrans and turned over to SP. Public agencies are concerned with the preservation of station and parking facilities should funding become available for the train operation. The record indicates that the costs of maintaining the station, platform, and parking facilities will be minimal, and that parking facilities may be a source of revenue to SP.

Findings of Fact

Commission Orders

1. D.91847 found that public convenience and necessity exists for the operation of a rail commuter service between Oxnard and Los Angeles over SP tracks (Caltrain). That decision contains several findings and conclusions concerning the operation of that service.

2. D.93118 modified key findings in D.91847, pertinent here as follows:

"13. Complainant (Caltrans) will reimburse SP for all costs actually and reasonably attributable to the commuter service.

"30. SP will be compensated for all freight and Amtrak delay costs actually and reasonably attributable to the commuter service."

3. D.82-10-041 directed institution of Caltrain service on October 18, 1982. Service began on that date.

4. D.82-10-041 directed Caltrans to provide the equipment required to operate the Caltrain service. Caltrans has provided equipment for the service.

5. D.82-10-41 gave Caltrans the right of immediate entry on SP property to construct station and parking facilities at Moorpark, Camarillo, Burbank, Burbank Airport, and Chatsworth stations. The facilities were constructed by Caltrans. Such properties are now under lease by Caltrans from SP.

Requests for Suspension

6. Caltrans has advised the Commission that as a consequence of the fiscal and equipment uncertainties and the unresolved issue of third-party liability and that in view of the much lower than expected patronage for the Caltrain service, suspension would be in the

public interest (Ex. 51). By motion dated February 18, 1983, Caltrans has requested that this Commission take immediate action to order suspension of the Caltrains. On February 22, 1983, SP filed its petition requesting authority to immediately suspend service.

Available Subsidy Funds

7. D.91847 and subsequent decisions ordered SP to negotiate with Caltrans concerning a subsidy agreement for Caltrains.

8. SP and Caltrans have not agreed upon the compensation to which SP shall be entitled for operating the service. SP is demanding the sum of \$588,200 per month as set forth in its tariff filed with the ICC. Caltrans disputes this amount and believes that a significantly lesser amount is reasonable compensation.

9. Table 1 compares the present state funding provided for Caltrains operations with the Caltrans' estimate of net expenditures through February 28, 1983 and with the charges resulting under SP's tariff. Under Caltrans' estimate of expenditures, there remains a balance of authorized funds of \$2,552,860, sufficient to continue Caltrains operations beyond the end of the current fiscal year.

10. Under SP's tariff charges, there is a deficit of state authorized funds to continue Caltrains operations, as shown in Table 1.

11. Although Caltrans objected to the ICC's receipt of the SP tariff, the ICC did accept SP tariff SP-P-9003, effective December 2, 1982, specifying the compensation which SP is to be paid for operating the Oxnard Caltrains. On January 17, 1983, the ICC refused to reconsider its vote which declined to reject, suspend, or investigate the SP tariff.

12. SP asserts that, with the acceptance by the ICC of its tariff, it is required to pursue, and will pursue, collection of the amounts named in the ICC tariff, unless and until the ICC modifies such amounts, or the ICC tariff is held by a federal court of appeals to be inapplicable.

13. Should the ICC tariff ultimately be upheld, Caltrans' operating funds for Caltrains service were exhausted on January 26, 1983.

14. Inasmuch as funding for Caltrains is exhausted if SP prevails, and as Caltrans cannot lawfully provide funding for Caltrains in excess of that authorized, Caltrans and SP ask that Caltrains operation be suspended.

15. No funding for Caltrains has been proposed in the Governor's fiscal year 1983-84 budget, and the CTC, at a meeting held February 24, 1983, recommended to the legislature that no funding be allocated for Caltrain.

16. Cities, counties, and local transit districts in areas where Caltrains operates were requested to advise this Commission whether funding of Caltrains was available other than through the State.

17. LACTC advised that its only known source of alternative funding is from Los Angeles County's  $\frac{1}{2}$ % sales tax. Several months will be required for LACTC to study the Los Angeles-Oxnard corridor to determine whether Caltrains or some other rail transit system should be supported by Los Angeles' sales tax revenues.

18. Ventura County and the Cities of Simi Valley and Oxnard are unwilling to commit funds for Caltrains at the level set forth in SP's tariff, and will consider funding only when the dispute between Caltrans and SP over the reasonable level of funding necessary to operate Caltrains is settled.



19. No city, county, or local agency has offered to provide funding for to continue Caltrain operations.

20. Prudent fiscal management mandates that the service be suspended until the fiscal contingency is removed, and the full extent of Caltrans' financial obligations are clarified.

Equipment

21. Caltrans undertook to provide locomotives and passenger cars for the Caltrains. Caltrans initially sought to use Amtrak P30CH locomotives and Amtrak passenger cars for the service and later substituted RTA cars for the Amtrak cars. This Commission ordered SP to execute a lease with Amtrak for the P30CH locomotives in order to permit the service to start (D.82-10-041, Ordering Paragraph 2).

22. After a series of derailments with P30CH Amtrak locomotives at Oxnard and at various locations along SP's Sunset route, SP removed the P30CH locomotives from service for safety reasons pending full investigation. As a result of that investigation, SP has concluded that Amtrak P30CH locomotives cannot be used on the Montalvo Wye or on the Oxnard team track where the Caltrains are stored overnight, unless a substantial track rebuilding program which could cost in excess of \$500,000 is undertaken. Caltrans has asked SP to cancel the Amtrak locomotive lease and return the locomotives to Amtrak (Ex. 62).

23. Caltrans was advised by RTA that it required the RTA cars to be returned, and Caltrans' lease for the cars from RTA was canceled. Caltrans returned the RTA cars, and they are no longer available for service in Caltrain operations.

24. Caltrans and SP agreed to substitute, on an emergency basis, Peninsula commuter equipment and locomotives to operate Caltrains. This arrangement has proven to be unsatisfactory, as the cars are needed for reserve service in the Peninsula commute operations.

25. Caltrans has been unable to locate and obtain suitable equipment for Caltrain operations.

26. Caltrans asks that SP, rather than Caltrans, be directed to provide equipment, if Caltrain service is resumed.

Third-party Liability

27. SP and Caltrans disagree as to the type of risks which should be borne by Caltrans.

28. As of February 28, 1983, neither SP nor Caltrans has procured insurance for the protection of the public, State of California, and SP with respect to the operation of Caltrain nor has Caltrans agreed to accept full liability costs as its responsibility.

Subsidy payments for Prior Operations

29. SP and Caltrans have not agreed upon the compensation to which SP shall be entitled for operating the service through February 28, 1983. The disputed amounts include concern over freight and Amtrak delay costs (D.93211, Finding 30), a just and reasonable return on the property devoted to the service (D.93211, Finding 32), and a reasonable rental for properties used for the commuter service (D.93211, Finding 33).

30. Caltrans seeks a directive from this Commission to SP to supply cost data for Caltrain operations to date. SP is willing to furnish such data 30 days after suspension of the Caltrain operations.

31. Caltrans seeks an order from this Commission directing SP not to assess the charges in its ICC tariff.

32. Caltrans has announced its intention to file a complaint with the ICC concerning the charges in SP's ICC tariff.

Conclusions of Law

1. The Caltrains service between Oxnard and Los Angeles should be temporarily suspended.

2. SP and Caltrans should be permitted to terminate the locomotive agreement with Amtrak to allow the P30CH locomotives to be returned to Amtrak.

3. An emergency exists which requires that SP and Caltrans be exempted from the notice requirements of General Order 27-B to allow suspension on two days' notice.

4. While Caltrans has announced its intention to file a complaint with the ICC concerning the issues of compensation due SP for past operations and the applicability of SP's ICC tariff, this Commission should retain its jurisdiction over the issue of public subsidy levels and related conditions reasonably required to support the past and future potential operation of Caltrains.

5. SP should be directed not to modify, change, or remove existing Caltrain stations, platforms, and parking facilities at Moorpark, Chatsworth, Panorama City, Burbank Airport, and Simi Valley stations. ✓

6. In view of the emergency that exists, this order should be considered immediately, without public notice of the Commission's public meeting agenda, under provisions of Public Utilities Code § 306(b).

INTERIM ORDER

IT IS ORDERED that:

1. Caltrans' "Motion for Order Suspending Service" is granted to the extent described in this Interim Opinion. To the limited extent SP's "Petition for Emergency Order Vacating Ordering Paragraph 1 of Decision 82-10-041 and Authorizing Suspension of Service (Special Appearance)" seeks the same relief sought by Caltrans herein, it is hereby granted. The remaining portions of SP's Petition are denied.

2. Southern Pacific Transportation Company (SP) may temporarily suspend the operation of the rail commute service between Oxnard and Los Angeles directed in Ordering Paragraph 1 of D.82-10-041 upon two days' notice to the Commission and the public.

3. SP shall not modify, change, or remove the station and parking facilities at Moorpark, Chatsworth, Panorama City, Burbank Airport, and Simi Valley stations. \*

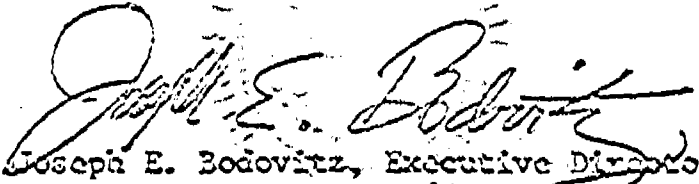
This order is effective today.

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

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

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

  
Joseph E. Bodovitz, Executive Director

SS sponsor under the terms and conditions under which Caltrans initiated the service. Supporters of continuance contend that potential alternative funding providers must have reliable information on the amount of subsidy required before support can be considered. The Commission reserves the right to consider in supplemental proceedings, the level of public subsidy and related conditions reasonably required to support the past and potential future operations of Caltrains.

During the period of suspension, SP is directed not to remove or modify the platforms, passenger and parking facilities at Northridge, Moorpark, Camarillo, Burbank, Burbank Airport, and Chatsworth stations pending further order of this Commission.

Background

SP commenced operation of Caltrains on October 18, 1982 under the orders in D.82-10-041, as follows:

1. SP was ordered to operate a commuter rail transportation between Oxnard and Los Angeles with intermediate stops at various communities (the service) beginning on October 18, 1982 on the schedule tendered by SP on October 17, 1982 using the passenger equipment furnished by Caltrans.
2. SP was ordered to execute a "Locomotive Agreement" and a related "Reimbursement Agreement" (copies of which were attached 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.

Conclusions of Law

1. The Caltrains service between Oxnard and Los Angeles should be temporarily suspended.

2. SP and Caltrans should be permitted to terminate the locomotive agreement with Amtrak to allow the P30CH locomotives to be returned to Amtrak.

3. An emergency exists which requires that SP and Caltrans be exempted from the notice requirements of General Order 27-B to allow suspension on two days' notice.

4. While Caltrans has announced its intention to file a complaint with the ICC concerning the issues of compensation due SP for past operations and the applicability of SP's ICC tariff, this Commission should retain its jurisdiction over the issue of public subsidy levels and related conditions reasonably required to support the past and future potential operation of Caltrains.

5. SP should be directed not to modify, change, or remove existing Caltrain stations, platforms, and parking facilities at Northridge, Moorpark, Camarillo, Burbank, <sup>Burbank Airport</sup> and ~~Chatsworth~~ stations. S

6. In view of the emergency that exists, this order should be considered immediately, without public notice of the Commission's public meeting agenda, under provisions of Public Utilities Code § 306(b).

INTERIM ORDER

IT IS ORDERED that:

1. Caltrans' "Motion for Order Suspending Service" is granted to the extent described in this Interim Opinion. To the limited extent SP's "Petition for Emergency Order Vacating Ordering Paragraph 1 of Decision 82-10-041 and Authorizing Suspension of Service (Special Appearance)" seeks the same relief sought by Caltrans herein, it ~~is~~ hereby granted. The remaining portions of SP's Petition are denied.

2. Southern Pacific Transportation Company (SP) may temporarily suspend the operation of the rail commute service between Oxnard and Los Angeles directed in Ordering Paragraph 1 of D.82-10-041 upon two days' notice to the Commission and the public.

SS 3. SP shall not modify, change, or remove the station and parking facilities at Northridge, Moorpark, Camarillo, Burbank, <sup>Burbank</sup> and <sup>airport</sup> Chateworth stations.

This order is effective today.

Dated MAR 11 1983, at San Francisco, California.

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

Decision \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Department of Transportation, )  
State of California, )

Complainant, )

vs )

Southern Pacific Transportation )  
Company, a corporation, )

Defendant. )

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

(For appearances see Decisions 82-10-031,  
82-11-032, and 83-02-079.)

Additional Appearances

Messrs. Buchalter, Nemer, Felds, Chrystie,  
& Younger, by Douglas Ring, Attorney  
at Law, for Simi Valley, Oxnard,  
County of Ventura, interested Party.  
Richard Bower, Attorney at Law, for Caltrans,  
complainant.

O P I N I O N

Summary of Decision

We authorize Southern Pacific Transportation Company (SP) to temporarily suspend operation of the commuter rail service between Los Angeles and Oxnard (Caltrains) which was established under our directive in Decision (D.) 82-10-041.

Suspension is ordered because the California Department of Transportation (Caltrans) no longer wishes to sponsor the Caltrains operations. Caltrans is uncertain whether funding provided to it to subsidize Caltrains is sufficient to continue operation of that service, Caltrans is unable to locate and place in service adequate



locomotives and commuter rail cars, and Caltrans believes that the Caltrains demonstration project has not achieved the goals expected before service was initiated.

SP supported the temporary discontinuance of the operation, as SP is uncertain whether adequate subsidy funds exist for continued operations, SP is concerned about the inadequacies of the equipment used in the Caltrains operations, and SP desires to remove the asserted impediments to its freight operations created by operation of Caltrains over its single track line between Los Angeles and Oxnard.

SP is directed not to remove the platforms and passenger and parking facilities at Northridge, Moorpark, Camarillo, Burbank, Burbank Airport, and Chatsworth stations pending further order of this Commission.

Background

SP commenced operation of Caltrains on October 18, 1982 under the orders in D.82-10-041, as follows:

1. SP was ordered to operate a commuter rail transportation between Oxnard and Los Angeles with intermediate stops at various communities (the service) beginning on October 18, 1982 on the schedule tendered by SP on October 17, 1982 using the passenger equipment furnished by Caltrans.
2. SP was ordered to execute a "Locomotive Agreement" and a related "Reimbursement Agreement" (copies of which were attached 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.

court indicated that jurisdiction over SP's commute operations lies with the State of California, in particular the California Public Utilities Commission.

On February 22, 1983, Caltrans filed a motion for suspension of service, and SP filed a petition for an emergency order vacating Ordering Paragraph 1 of D.82-10-041 and authorizing suspension of service.

Caltrans alleged in its motion that allocated subsidy funds have been used up and further subsidy funding looks unlikely at this time; therefore, it is not in the position to guarantee further State funds for subsidy of the commuter service. Caltrans further stated that it has concluded that it should not continue to be responsible for subsidizing deficits associated with the commute service until costs can be ascertained and that Caltrans can no longer undertake the responsibility for providing rolling stock.

Caltrans requests the Commission to:

1. Take immediate action to order suspension of the service,
2. Issue such order as is appropriate to protect and preserve the station sites and parking facilities, and
3. Take such action as is necessary to expedite the hearing on subsidy issues.

SP argued in its petition that adequate funds do not exist under current state budgetary constraints to fund the train service; and that Caltrans underestimated the amount of the subsidy necessary to provide the service and that subsidy funds already appropriated are exhausted. SP states that Caltrans' Exhibit 51 introduced in the hearing preceding the issuance of D.83-02-079 confirms these facts. SP states that its obligation to run the trains was conditioned upon subsidization by Caltrans with no burden

on SP. As no funds exist for continued subsidization, SP asks that the Commission issue an emergency order suspending the service.

An Administrative Law Judge's (ALJ) Ruling issued February 24, 1983, determined that the evidence to be adduced at the hearing scheduled for February 28, would deal with the ability of Caltrans to provide subsidy funds beyond February 28, 1983, and other issues raised in Caltrans' Exhibit 51. No evidence would be received concerning the reasonable level of subsidy payments for the service performed during the period October 18, 1982 to the end of February 1983.

A further hearing was scheduled March 7, 1983 in Los Angeles to receive evidence from public bodies other than Caltrans concerning their ability to provide future subsidy funding of the Oxnard-Los Angeles rail commute service, including liability for injury, loss or damage resulting from operation of the service. The ALJ ruling stated that there was no need to produce evidence concerning need for the service as the Commission has found in D.91847 and other decisions that public convenience and necessity require the service. The ruling was served on all known public bodies which may be interested in the continued operation of the rail commute service. All were requested to appear at the Los Angeles hearing and to advise the Commission of the present availability of subsidy funds for the continued operation of the service.

#### Public Hearings

At the public hearing on February 28 held before Commissioner Vial and ALJ Mallory in San Francisco evidence was adduced on behalf of Caltrans, SP and Southern California Association of Governments (SCAG). SCAG stated that it could not commit funds for continued operations as it could not determine the reasonable level of funding required.

SP further contends that neither Ventura County nor Los Angeles County, the two counties in which Caltrains operates, will agree to fund the operation of Caltrains, Caltrans is no longer able or willing to fund Caltrains, and this Commission has indicated in prior decisions that SP would not be required to subsidize Caltrains from freight operations. Therefore, the only alternative available at this point is to order immediate suspension of the service.

SP believes it is legally obligated to pursue collection from Caltrans of the amounts set forth in the ICC tariff and, if Caltrans does not voluntarily pay, to institute appropriate collection actions in court. SP also believes that it is impossible for both the ICC and this Commission to have concurrent jurisdiction over the question of compensation due from Caltrans, and that the ICC, being a federal agency and having exercised its jurisdiction, is the superior agency under federal law.

SP argued for immediate cessation of operations because risk of harm to persons and property should have been assumed by Caltrans through an insurance policy, and Caltrans has not obtained such a policy. Caltrans contends that it is self-insured for its own activities, and that self-insurance should extend to its responsibilities with respect to the Los Angeles-Oxnard commute service. Caltrans has not sought or received approval as a self-insurer for Caltrains operations. It has provided insurance against some of the risks described above in connection with its subsidization of Peninsula commute operations.

Finally, SP states that the service should be suspended because of equipment problems. Caltrans is responsible for obtaining the rail cars and locomotives used on the Los Angeles-Oxnard route. The SP witness testified as follows with respect to equipment problems:

"The initial equipment obtained by Caltrans for this service consisted of Amtrak P30CH locomotives and Amtrak passenger cars, later replaced with RTA passenger cars. What neither SP nor Caltrans anticipated at that time was that the Amtrak P30CH locomotives would prove to be too heavy, and too stiff, for the light support trackage in the Oxnard yard and at the Montalvo WYE where the train sets were turned each evening. On an emergency, interim basis, SP and Caltrans agreed upon the use of five cars from the San Francisco Peninsula commutation service, and three SP locomotives which had been used as backup for the requirements of the Peninsula service, and moved that equipment to Oxnard. Meanwhile, the RTA recalled the equipment which had been leased to Caltrans, and that is no longer available to SP. Likewise, Caltrans has directed that the P30CH locomotives be released and turned back to Amtrak, so as to avoid the rental expense of units which cannot be used.

"SP cannot, however, rely on the borrowed cars from the Peninsula commute fleet to continue in the Oxnard service. They were specifically designed for the climatic conditions on the San Francisco Peninsula, and their air-conditioning systems are relatively low-powered, not equipped to cope with the thermal load generated from cars sitting out in the sun at Los Angeles all day.

"The maintenance forces familiar with the Peninsula cars, and which has available to it the stock of spare parts, are located in San Francisco, San Jose and Oakland, but not Los Angeles. SP does not have passenger coach yard service and maintenance facilities at Los Angeles.

"The problems involved in maintaining this equipment at Los Angeles are illustrated by the

Discussion

Based on all the evidence we conclude that the present Los Angeles-Oxnard commute service should be immediately suspended because of inadequate equipment and lack of funding. This is without prejudice to restoration of the service at some future date should adequate public funding become available.

Equipment

It is clear that despite Caltrans' extensive efforts to secure adequate equipment for the Los Angeles-Oxnard commute service, it has been unable to do so. It is also clear that equipment now in use, which has been borrowed from SP's Peninsula commute service, is unsatisfactory for continued adequate, safe, and comfortable operation of the Los Angeles-Oxnard commute service. The fact that adequate equipment is not available is sufficient to order suspension of the service until such equipment is available.

Funding by Caltrans

Additional state funding for the Los Angeles-Oxnard commute service does not appear to be forthcoming. The Governor's Budget for 1983-84 provides no additional funds, Caltrans seeks no additional funds, and CTC recommends that no additional state-provided funding be made in the current fiscal year or in subsequent periods.

Caltrans submitted in Exhibit 56 its analyses of current funding versus expenditures to date. Based on its estimates of operational costs, sufficient funds have been provided for continued operation through an extended period; under SP's ICC tariff charges the total available funds have been exhausted. SP insists that its ICC tariff charges are applicable and SP intends to pursue collection through the courts. Caltrans's assessment is that prudence requires it to assume SP will prevail, so that it will not overspend allocated funds. We concur that it is prudent to assume that present allocated state funds for operation of the Los Angeles-Oxnard service have been exhausted, absent resolution of the dispute on this issue between Caltrans and SP.

Funding by Other Agencies

No local agencies appear willing or able to commit funds for continued operation of the Los Angeles-Oxnard commute service at this time. This is understandable in light of the impossibility of determining the precise level of funding needed when that issue is still in dispute, the need of the agency to supply operating equipment for the service, and the need to assume primary responsibility for injuries and damage occurring as a result of the operation. This Commission is not in a position to advise the local agencies in this respect. The agencies would need to negotiate with SP on these issues to achieve a subsidy agreement containing lower costs than SP's ICC tariff charges. Because of SP's stance on this issue, it would appear that such negotiations would be unfruitful. Under the circumstances, we must conclude that funding of the commute service by local agencies is not immediately available in a time frame which would warrant our directing the continued operation of the commute service.

As indicated earlier in this opinion, issues of public convenience and necessity are not an issue in this phase of the

proceeding as those issues have been decided. Those issues having been decided, if we order suspension or termination of service for lack of funding, we can order restoration of the service when it has been shown that funding is available. Should a local or state agency decide to provide funding for the Los Angeles-Oxnard commute service at some future date, application may be made to this Commission for resumption of the service.

#### Resolution of Charges for Past Services

The appropriate charges for services performed to date are issues reserved for later consideration. The evidence indicates a wide disparity between SP and Caltrans on these issues. Caltrans' intention is to file a complaint with the ICC. SP's intention is to collect the charges in its ICC tariff through court action, if necessary. No purpose would be served by our attempted resolution of those issues before such ICC and civil court actions are completed. In the event the ICC or civil court actions do not resolve the dispute between Caltrans and SP, those issues may be referred to this Commission through the filing of an appropriate proceeding. Any attempt by us to resolve those issues in this proceeding would be premature.

#### Suspension or Termination

SP and Caltrans seek suspension of the service for an unspecified period. The record is clear that it is unlikely that equipment adequate for the service or adequate funds to meet the operating costs of the service will be available in the near future. However, should the resolution of the dispute between Caltrans and SP provide a lower level of funding than now required by SP, funding may be available from local sources, in particular LACTC. We conclude that the service should be suspended for a period not exceeding one year, with the proviso that service can be restored upon a showing that adequate equipment can be made available and long-term funding will be provided.



19. State legislators urge this Commission to promptly resolve the funding dispute.

20. No city, county, or local agency has offered to provide funding to continue Caltrains operations.

21. Prudent fiscal management mandates that the service be suspended until the fiscal contingency is removed, and the full extent of Caltrans' financial obligations are clarified.

Equipment

22. Caltrans undertook to provide locomotives and passenger cars for Caltrains. Caltrans initially sought to use Amtrak P30CH locomotives and Amtrak passenger cars for the service and later substituted RTA cars for the Amtrak cars. This Commission ordered SP to execute a lease with Amtrak for the P30CH locomotives in order to permit the service to start (D.82-10-041, Ordering Paragraph 2).

23. After a series of derailments with P30CH Amtrak locomotives at Oxnard and at various locations along SP's Sunset route, SP removed the P30CH locomotives from service for safety reasons pending full investigation. As a result of that investigation, SP has concluded that Amtrak P30CH locomotives cannot be used on the Montalvo Wye or on the Oxnard team track where the Caltrains are stored overnight, unless a substantial track rebuilding program which could cost in excess of \$500,000 is undertaken. Caltrans has asked SP to cancel the Amtrak locomotive lease and return the locomotives to Amtrak (Ex. 62).

24. Caltrans was advised by RTA that it require the RTA cars to be returned, and Caltrans' lease for the cars from RTA was canceled. Caltrans returned the RTA cars, and they are no longer available for service in Caltrain operations.

25. Caltrans and SP agreed to substitute, on an emergency basis, Peninsula commuter equipment and locomotives to operate Caltrains. This arrangement has proven to be unsatisfactory, as the cars are needed for reserve service in the Peninsula commute operations and to protect programmed maintenance, and their absence adversely affects maintenance programs and equipment assignments which are important to the integrity of the existing Peninsula commutation service.

26. Under this Commission's orders all heavy maintenance and repair of passenger equipment is to be performed by Amtrak under an agreement with Caltrans (D.91847, Finding 20, as modified by D.92863, and Finding 26). Amtrak is currently maintaining the Peninsula commuter cars which were sent to southern California for the Caltrains service.

27. Amtrak is unfamiliar with SP's Peninsula commute equipment and has encountered unusually high maintenance problems.

28. The public interest requires a return of the commuter equipment to the Peninsula commute service at this time.

29. Caltrans has been unable to locate and obtain suitable equipment for Caltrains' operations.

30. Caltrans asks that if Caltrains service is resumed or continued, that SP, rather than Caltrans, be directed to provide suitable equipment.

Third-party Liability

31. SP and Caltrans disagree as to the type of risks which should be borne by Caltrans.

32. As of February 28, 1983, neither SP nor Caltrans has procured insurance for the protection of the public, State of California, and SP with respect to the operation of Caltrains nor has Caltrans agreed to accept full liability costs as its responsibility.

33. It is contrary to the public interest to allow a commuter rail service to operate without a clear understanding as to the party which shall be responsible to the public for the adjustment of liability claims.

Subsidy Payments for Prior Operations

34. SP and Caltrans have not agreed upon the compensation to which SP shall be entitled for operating the service through February 28, 1983. The disputed amounts concern freight and Amtrak delay costs (D.93211, Finding 30), a just and reasonable return on the property devoted to the service (D.93211, Finding 32), and a reasonable rental cost for properties used for the commuter service (D.93211, Finding 33).

35. Caltrans seeks a directive from this Commission to SP to supply cost data for Caltrains operations to date. SP is willing to furnish such data within 30 days after suspension of Caltrains operations.

36. Caltrans seeks an order from this Commission directing SP not to assess the charges in its ICC tariff.

37. Caltrans has announced its intention to file a complaint with the ICC concerning the charges in SP's ICC tariff.

Conclusions of Law

1. The Caltrains service between Oxnard and Los Angeles should be immediately suspended.

2. SP and Caltrans should be permitted to terminate the locomotive agreement with Amtrak and thus allow the P30CH locomotives to be returned to Amtrak.

3. An emergency exists which requires that SP and Caltrans be exempted from the notice requirements of General Order 27-B to allow suspension on two days' notice.

4. In view of Caltrans' announced intention to file a complaint with the ICC concerning the issues of compensation due SP for past operations and the applicability of SP's ICC tariff, this Commission should attempt to resolve those issues only if they are not resolved at the federal level.

5. SP should be directed not to modify, change, or remove existing Caltrans stations, platforms, and parking facilities at Northridge, Moorpark, Camarillo, Burbank, and Chatsworth stations.

6. In view of the emergency that exists, this order should be considered immediately, without public notice of the Commission's public meeting agenda, under provisions of Public Utilities Code § 306(b).

O R D E R

IT IS ORDERED that:

1. Southern Pacific Transportation Company (SP) may temporarily suspend the operation of the rail commute service between Oxnard and Los Angeles directed in Ordering Paragraph 1 of D.82-10-041 upon two days' notice to the Commission and the public.

2. SP shall not modify, change, or remove the station and parking facilities at Northridge, Moorpark, Camarillo, Burbank, and Chatsworth stations.

3. The directive in Ordering Paragraph 2 above is lifted one year after the effective date of this order unless the service is reinstated within that period, or Ordering Paragraph 2 is changed, modified, or extended by further order of the Commission.

This order is effective today.

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