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ORIGINAL

Decision No. 88750 APR 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern Pacific Transportation Company to Discontinue the Operation of Passenger Trains Between San Francisco and San Jose and Intermediate Points.	Application No. 57289 (Filed May 9, 1977)

(Appearances are listed in Appendix A.)

O P I N I O N

The Southern Pacific Transportation Company (Southern Pacific) filed Application No. 57289 with this Commission on May 9, 1977 seeking authority to discontinue the operation of passenger train service between San Francisco and San Jose and intermediate points. Southern Pacific[1/] asserts in its application that public convenience and necessity do not require the continued operation of that passenger service.

An Order Instituting Investigation, commencing Case No. 10380, was issued July 26, 1977, which proceeding was consolidated with Application No. 57289.

A prehearing conference was held before Administrative Law Judge John B. Weiss on June 10, 1977. Thereafter public hearings were held before that hearing officer on August 1, 2, 3, 4, 5, 8, 9, 10, 11, and 12 in San Francisco; on September 6, 7, and 8 in San Francisco; on September 13 in Mountain View; September 14 in San Mateo; September 15 in Palo Alto; October 5, 6, 17, 18, 20, and 21 in San Francisco; October 27 and 28 in Palo Alto; November 14, 15, and 16 in San Francisco; and February 21, 1978, with Richard D. Gravelle, Commissioner, presiding, in San Francisco.

1/ For background information a summary of Southern Pacific's operations is covered in Appendix B.

On November 21, 1977, the Commission staff (staff) filed a petition for an order dismissing Application No. 57289 on the grounds that upon completion of direct showings by Southern Pacific and protestants California Air Resources Board, Bay Area Air Pollution Control District, California Department of Transportation, Santa Clara County Transportation District, United Transportation Union, City and County of San Francisco, Metropolitan Transportation Commission, and the Brotherhood of Locomotive Engineers, the evidentiary record demonstrated that:

1. Applicant has not met its burden of showing that the public convenience and necessity does not require continuation of passenger train commute service between San Francisco and San Jose and intermediate points.
2. No sufficient showing has been made upon which a determination can be made that applicant's overall intrastate regulated operations are anything but profitable.
3. No showing has been made, nor can it reasonably be inferred, that applicant's overall intrastate regulated operations either are now or would operate at a loss with the continued operation of peninsula passenger commute service.
4. Applicant's total system operations are profitable. It cannot be reasonably inferred or concluded from this record that continuation of peninsula passenger train service could possibly constitute an undue burden on interstate commerce.
5. Applicant's parent, Southern Pacific Company, is a thriving, financially healthy corporation that has recently posted record earnings and is experiencing no difficulty in obtaining resources to finance expansion programs for any of its subsidiaries, including applicant.
6. Applicant has not demonstrated that its claimed loss in operating the peninsula passenger commute service outweighs the public need for the service being provided.

7. Applicant's proposed bus service alternative is based on assumptions which are not practical or realistic. It is not reasonable to assume that the public convenience and necessity now being served by peninsula rail passenger commute service could be served now or in the future by the proposed bus service.

8. Applicant has not demonstrated that its claimed operating losses in providing peninsula commute passenger service cannot be offset through actions short of discontinuance, including the full utilization of applicant's administrative remedy of application for a fare increase.

9. Applicant has failed to aggressively promote and market the peninsula passenger commute service.

10. Applicant's peninsula passenger commute service has not kept pace with the changing pattern of peninsula population and travel characteristics.

11. MTC's PENTAP report to the state legislature, dated January 1977, recommends the improvement of applicant's service as the principal element of West Bay corridor transportation.

12. Assembly Bill No. 1853 expresses clear legislative support for the preservation and enhancement of applicant's service and the concept of support of applicant's service, with public funds.

13. Transit agencies along applicant's commute corridor and MTC are in the process of implementing financial plans that will provide public money for the continuation of applicant's service.

14. Public agencies are prepared to negotiate with applicant for service improvements in the passenger commute service to be paid for by public funds. Applicant has refused to negotiate any purchase of service arrangement, but has demanded a complete buy-out of its entire passenger service, and one-half of its double mainline trackage.

15. The refusal by applicant's management to negotiate in good faith for available public revenues is inexcusable, and reflects a disregard, or at least a lack of basic understanding of applicant's public responsibility as a regulated carrier of passengers in this State.

The staff requested that Case No. 10380 continue as a forum to investigate measures to improve Southern Pacific's passenger service and explore the various alternatives to obtain public fund subsidies for the passenger service.

Southern Pacific, the city of San Francisco, and the California Department of Transportation filed responses to the staff petition, and the Air Resources Board submitted a letter in support of the staff's petition.

Responses to Staff's Petition to Dismiss

Southern Pacific contends in its response to the staff's petition that, although it completed its direct showing in support of discontinuance, the staff's petition should not be acted on by the Commission because the staff's petition is an attempt to "by-pass" the hearing officer. The hearing officer issued a ruling on October 17, 1977, which expressed his opinion that further evidence of the results of commute service operations should be presented at a later time.

The hearing officer may, as Southern Pacific points out, pursuant to our Rules 63, direct that certain evidence be produced. We respect our hearing officer's personal point of view, but as the decision makers, we conclude that the introduction into the record of the type of cost studies required by the hearing officer would not supply the evidence necessary for Southern Pacific to prove the missing element of its prima facie case, and thus would not aid us in reaching a decision as to the staff's petition. To allow further hearings on such cost studies, with attendant cross-examination by protestants would only further delay a decision on Application No. 57289 and would cause Southern Pacific, the staff, protestants, and other interested parties following this proceeding to incur needless expense.[2/]

Southern Pacific emphasizes in its response that we should not grant the staff's motion because Southern Pacific has not "...been given an opportunity to present any rebuttal evidence." An opportunity

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2/ We are, as discussed in the following portions of this order, interested in considering incremental out-of-pocket or over-the-rails results of operations for Southern Pacific's commuter service in continuing Case No. 10380.

to present rebuttal evidence would only be required by the due process clause if, in considering the staff's petition to dismiss, we relied upon protestants' evidence. As the discussion below will show, we rely only on Southern Pacific's direct showing.

We now wish to issue an opinion, in part, because Southern Pacific has applied to the Interstate Commerce Commission (ICC) to discontinue passenger service. We also feel obliged to issue a decision so that our ruling is before that regulatory agency as it considers the question of whether Southern Pacific's passenger service is a burden on interstate commerce to the extent that it should be discontinued. Most importantly, we believe an opinion on the merits of this case can be made based on the applicant's showing standing by itself and accepting it in its most favorable light.

Administrative Law Judges' Rulings

Before discussing the staff's petition to dismiss Application No. 57289, we will address and clarify issues surrounding the function of our administrative law judges. Southern Pacific, the staff, and the city of San Francisco address these issues in their respective pleadings.

Southern Pacific

Southern Pacific contends that the staff's petition is an indirect appeal of the hearing officer's ruling of October 17, 1977, directing the production of further evidence. Southern Pacific states:

> "...it is submitted that the Commission should not permit the staff to completely bypass the Administrative Law Judge in this manner and should require submission to the Administrative Law Judge for consideration and a possible ruling before considering or permitting any petition made directly to the Commission. Only in this way can the Commission and all of the parties obtain the benefit of being made aware of the views of the presiding officer who is the only independent, non-adversary person fully familiar with the record."

Staff

With respect to Southern Pacific's contention that the staff should have first made a motion to dismiss to the hearing officer for a determination, the staff states:

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> "Rule 63[3] of the Commission's Rules of Practice and Procedure grants authority to the presiding officer to make all rulings which do not involve a final determination of proceedings. While the presiding officer is thus powerless to grant the relief requested by this petition, pursuant to Rule 63 the relief may be denied. Any fair reading of the ALJ's Ruling of October 17, 1977, supports the staff's belief that its present filing may be deemed to be denied by the presiding officer. This matter is now squarely before the Commission."

Discussion

Southern Pacific and the staff are both in error. Our hearing officers cannot, on their own, rule on the merits of motions to dismiss, to either grant or deny. Our hearing officers preside for the function of insuring that our hearings are properly conducted and an adequate evidentiary record is developed in the absence of the assigned Commissioner, who is the presiding officer. They are acting in lieu of and on behalf of the presiding Commissioner. Substantive motions are to be discussed between the hearing officer and the assigned presiding officer.[4] Either the motion to dismiss results in a Commission

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3/ (Rule 63) Authority. The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. He may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.

4/ The "presiding officer" in our proceedings is always the Commissioner assigned to preside on the particular proceeding by the Commission majority. This assignment of Commissioners as presiding officers occurs at our regularly scheduled public meetings. On occasion we may assign two Commissioners as presiding officers to a proceeding. In this particular proceeding, Commissioners Gravelle and Dedrick are the assigned Commissioners. The presiding officer (Commissioner) may delegate to a hearing officer the function of conducting hearings in the absence of the presiding officer. In that capacity, the hearing officer attends to most evidentiary rulings and other functions attendant to the daily conduct of our administrative hearings on behalf of the presiding officer/Commissioner. Rulings issued by the hearing officer presiding in the absence of the presiding officer are deemed to be rulings ~~on behalf~~ of the presiding officer.

decision (after the matter is presented to the full Commission by the presiding Commissioner), or it is taken under submission and ultimately addressed in the final Commission order. Our hearing officers take such motions under submission, and the motions remain submitted until the presiding Commissioner submits the matter to the Commission for decision. 5A/

The City of San Francisco's Position that Certain Rulings of the Presiding Hearing Officer Should Be Rejected

The hearing officer's ruling of October 17, 1977 is the subject of much discussion in Southern Pacific and the city of San Francisco's responses to the staff's motion.

Southern Pacific states:

> "In his October 17, 1977 ruling, the presiding officer5/ apparently concluded that applicant has, in any event, made a prima facie case of confiscation. While applicant did not include such an allegation in its application, the presiding officer was clearly correct in concluding that at least a prima facie case of confiscation has been made."

and

> "Thus, as concluded by Judge Weiss in his October 17 ruling, at least a prima facie case of confiscation has been presented which could support an order authorizing discontinuance and, as requested in the application, 'such other relief as may be appropriate'."

While Southern Pacific is not disturbed with the hearing officer's ruling, the city of San Francisco states:

> "In support of abandonment of its commute service before the ICC, Southern Pacific has relied on two rulings of the hearing officer in the instant case. (SP Petition, ICC Finance Docket No. 28611, page 16, Items 34 and 35.) These 'rulings' were issued in excess of the hearing officer's authority and were factually and legally erroneous.

5/ Southern Pacific apparently believes the hearing officer or administrative law judge is the presiding officer. From the foregoing discussion, it should be clear that such is not the case.

5A/ The holding herein in no way affects denials of motions to dismiss heretofore made in other commission proceedings by our hearing officers and not overruled by the Commission. The application of this holding is prospective only.

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> Since ICC administrative law judges have greater authority and responsibility than their PUC counterparts, it is possible that the ICC may misinterpret the weight to attach to these rulings. The PUC must reject and reverse these erroneous rulings."

The hearing officer's ruling of October 17, 1977 was improperly issued. With respect to the dicta and discussion surrounding the hearing officer's directive for further evidence, we wish to clarify, so there will be no misunderstanding, that such language and interpretation of law and evidence are not binding. They constitute only the hearing officer's personal view. The hearing officer acted beyond the bounds of his authority in issuing the ruling. Proper procedure for issuing interlocutory procedural rulings is for the hearing officer to discuss a proposed ruling with the presiding officer (Commissioner).[6/] This is particularly true here where the nature of the ruling was more substantive than procedural. That procedure was not followed in this instance. The hearing officer's comments, improperly issued, on the law and the evidence presented should be viewed as his personal expression and should be afforded no more weight than an expression by any of our other staff members.

6/ As such, when parties take exception and seek review of a hearing officer's interlocutory ruling, they are in essence taking issue with the presiding Commissioner's ruling; and the ruling can be changed by either the presiding Commissioner or the majority of the Commission.

San Francisco takes exception with the facts and law on which the hearing officer based his ruling. However, in view of our disposition of the staff's petition, a discussion of the personal expressions in the ruling is not necessary. We trust we have put the ruling in proper context to avoid any misunderstanding. The following portions of this opinion will address the staff's petition to dismiss Southern Pacific's application to discontinue service.

The Staff's Petition for An Order Dismissing Application No. 57289

A summary of the staff's petition appears above, and thus the discussion which follows will address Southern Pacific's arguments in opposition thereto.

In its response to the staff's petition, Southern Pacific alleges that it has presented a prima facie case on the question of public convenience and necessity and contends that "to establish a prima facie case it is sufficient to simply show that the service is being provided at a loss and that there are possible alternatives." (Response, p. 15.) However, the California Supreme Court has held that:

> "Whether public convenience and necessity exist cannot turn on the question of deficits in the operations of some particular segment of the company's intrastate business." (Southern Pac. Co. v Public Util. Com. (1953) 41 C 2d 354, 365.)

Thus, in determining whether Southern Pacific has introduced sufficient evidence in its direct showing to require the denial of the staff's petition to dismiss the company's application, it is not enough that there is evidence in the record of deficits resulting from the company's San Francisco-San Jose passenger operation. There must also be evidence that the company's entire intrastate service is unprofitable. As the court held in Southern Pacific Co. v Public Util. Com., supra:

> "... Where the overall operations of the railroad's intrastate service is profitable it has been rightly stated that the commission may compel the continuation of a portion of such services at a financial loss and that such requirement raises no issue under the federal constitution..." (41 C 2d at 366.)

In Southern R. Co. v North Carolina (1964) 376 US 93, 11 L ed 2d 541, 84 S Ct 564, a case cited by Southern Pacific to support its summary of the elements of a prima facie case, the United States Supreme Court stated that:

> "In cases...involving vital commuter services in large metropolitan areas where the demands of public convenience and necessity are large, it is of course obvious that the Commission would err if it did not give great weight to the ability of the carrier to absorb even large deficits resulting from such services..." (11 L ed 2d at 550.)

It is established, therefore, that in a discontinuation proceeding before this Commission one of the elements of the applicant's case is the overall profitability of its intrastate operations. However, before examining the record to determine if there is evidence of the profitability of the company's intrastate rail operations in general, it is appropriate to discuss the standard against which such evidence, if any, should be measured.

The staff petition for an order dismissing Application No. 57289 is by its nature similar to a motion for nonsuit made to a trial court upon completion of the plaintiff's direct case, and thus the standard which the Commission should observe in considering such a petition should be the one observed by California's trial courts when faced with such motions. That standard was explained by the court in Bunch v Henderson (1959) 167 CA 2d 112, 113, as follows:

> "When considering a motion for a nonsuit it is the duty of a trial court to give plaintiff's evidence its full legal weight, to disregard all evidence conflicting therewith, and to give plaintiff the advantage of every legitimate inference that may be drawn therefrom. After having done so, if there is any evidence of sufficiently substantial character to support a verdict for plaintiff the motion must be denied."

Although Southern Pacific argues that "an evidentiary showing of overall operating results is not an essential part of a prima facie case" (a conclusion with which we and the Supreme Court do not agree), it nevertheless contends that it has produced evidence on the point. It cites Exhibits 1A and 1B which, by its own characterization, pertain to interstate operating results, and Decision No. 87063 dated March 9, 1977 in Application No. 56999, of which the hearing officer took official notice at Tr. Vol. 17, pp. 1968-1969. By Southern Pacific's own listing then the only item of evidence that purports to deal with its intrastate operating results is Decision No. 87063. (Response, pp. 20-21.)

It should be noted that Decision No. 87063 was an ex parte decision. No hearings were held and the allegations of Application No. 56999 are, and remain, untested. In Application No. 56999 Pacific Southcoast Freight Bureau, on behalf of 35 California common carriers participating in its tariffs, requested authority to make effective on California intrastate traffic the same freight rate increases which became effective January 7, 1977, on interstate traffic in Tariff of Increased Rates and Charges X - 336. The rate increase sought would produce approximately a 4 percent increase in gross revenues. In discussing the application the Commission recited certain of its allegations, as follows:

> "Though it is anticipated that approximately $4,884,000 in yearly gross would accrue to the 35 common carriers involved, Exhibits T through T-9 and U, attached to the application, indicate that the carriers would still experience losses in excess of $1,604,000 on California intrastate traffic for the ensuing year under the proposed rates." (Decision No. 87063, p. 2.)

The Commission then observed that no objection to the granting of the application had been received and went on to find that "applicant's proposal is reasonable and justified to the extent indicated in the ensuing order." (Decision No. 87063, p. 2.)

It is significant that the Commission made no finding of fact with respect to the alleged losses resulting from California intrastate traffic. It is equally crucial that the rate increase authorized by Decision No. 87063 went into effect subject to a condition to which Southern Pacific agreed. That condition is that Southern Pacific "will never urge before the Commission in any proceeding under Section 734 of the Public Utilities Code, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the reasonableness of any particular rate or charge." (Decision No. 87063, p. 3.) Southern Pacific, in disregard of its agreement, is now alleging that not only are the rates established by Decision No. 87063 reasonable, but that the Commission must infer the existence of overall intrastate operating losses from an ex parte decision that merely recited what the application indicated. We know of no rule of law that compels us to that conclusion.

Applying the test suggested by Bunch v Henderson, supra, to this record, we conclude that Decision No. 87063 does not constitute legal evidence of the overall profitability of Southern Pacific's intrastate operations to which the Commission is required to give weight; and that, in any event, no legitimate inferences flow from Decision No. 87063 of which Southern Pacific is entitled to claim the advantage.7/

It follows from the foregoing conclusions that Southern Pacific has not presented a prima facie case and that the Commission should grant the petition of the staff to dismiss the application. By dismissing the application, we do not deprive Southern Pacific of an opportunity to introduce evidence of its overall intrastate operation in Case No. 10380. From the outset of this proceeding the staff has insisted upon the necessity of a showing on overall intrastate operations. In his opening statement, the staff counsel stated:

7/ Southern Pacific is estopped by its own agreement from attempting to make an evidentiary use of Decision No. 87063 in another proceeding.

> "...costs are not and cannot be considered in a vacuum. It is well settled law that costs in an abandonment proceeding are relevant only in relationship to the utility's overall profits. Failure to make a showing on overall operations makes any cost data totally meaningless." (Tr. Vol. 1, p. 36.)

Southern Pacific, on the other hand, has flatly refused to present such evidence. In answer to a question by staff counsel on the subject of intrastate operating results, counsel for Southern Pacific replied:

> "MR. WILSON: I do not intend to put any intrastate figures in, if that is what you are asking. The answer is no, I do not. The Commission has that data already available." (Tr. Vol. 2, p. 147.)

The excuse that the Commission has data on intrastate operating results,[8/] even if true, is not persuasive. Southern Pacific is the moving party in this proceeding and has the burden of proof. It cannot expect to so easily shift the burden of producing essential evidence to the Commission staff. Our decision to dismiss the application does not, of course, mean that the Commission will ignore the other issues raised in these consolidated proceedings. It is appropriate to consider within the scope of the Commission's investigation proceeding (Case No. 10380) which is still pending before us, such issues as reduction of service proposals by Southern Pacific, further rate increases, and subsidies.[9/]

8/ It should be noted that determining intrastate operating results from combined interstate and intrastate rail operations is an extremely complex undertaking. For example, much of Southern Pacific's intrastate movement of rail cars is done to position cars for long-haul interstate movements. This is not unlike interstate passenger air carriers, also subject to our jurisdiction, who primarily use two or more intrastate landing points to fill aircraft and position them for longer interstate flights. Many costing methodologies depict operating losses for intrastate operations without recognizing this practical facet of combined interstate-intrastate transportation utility operations.

9/ The Commission's order of July 26, 1977 instituted an investigation into the rail passenger commute operations, service, rates, rules, regulations, facilities, equipment, contracts, and practices of the company for the purpose of determining the reasonableness or adequacy thereof.

On February 22, 1978 Southern Pacific mailed to all appearances proposed testimony and exhibits in compliance with the hearing officer's October 17, 1977 ruling. That proposed testimony addresses scheduling alternatives to reduce expenses and provide needed service to the public. We are keeping Case No. 10380 open to explore scheduling and service alternatives. We welcome constructive proposals from Southern Pacific, the staff, or other parties that address means whereby Southern Pacific's passenger operations expense can be reduced while still serving the continuing public convenience and necessity.

We believe there is considerable merit to proposals for scheduling changes to maximize passenger revenues or to cut Southern Pacific's expenses. Various partial service alternatives should be extensively explored in our continuing investigation.

As expeditiously as possible, we intend to resume hearings in Case No. 10380 to consider such matters. Likewise, we intend to expeditiously address, in Case No. 10380, Southern Pacific's need for additional revenue for the commute service. If we determine that higher fares are in order, we may direct that fares be increased (Case No. 10380 provides the jurisdictional latitude to order a fare increase). Although it is extremely unusual, if not unprecedented, to raise fares as a result of a Commission investigation, we are of the opinion that measure warrants serious consideration. Southern Pacific may be willing to absorb losses for providing commute services and not seek increases on its own if the utility believes the allegation of sustained operating losses will enable it to discontinue passenger service. We note that Southern Pacific did not avail itself of the review process of the last fare increase order (Decision No. 87583 dated July 12, 1977) and it has not filed a new application for a fare increase. Ordinarily, when a utility thinks we make ratemaking errors or believes the award too low, it petitions for rehearing or reconsideration; and we welcome the opportunity for a review of our decision

making, for it insures that our decisions are fair and in the overall public interest. We trust that Southern Pacific will not adopt a recalcitrant position in the hope that the long-range benefit of not pursuing rate relief and alleging sustained losses will be that it can discontinue the passenger operations that the public it is franchised to serve so vitally needs. However, we also expect Southern Pacific to aggressively engage in negotiations with CalTrans, SamTrans, SCCTD, MTC, et al., and federal governmental agencies to pursue all avenues of funds available to compensate for legitimate losses. A company policy against subsidies is not consistent with an earnest desire to seek all avenues to defray legitimate costs.

We recognize that this is a matter where this Commission may have to be a more active partner with a utility than usual to insure that rate relief remedies and the instituting of operating efficiencies are pursued so as to continue passenger service in the San Francisco-San Jose corridor.

Findings

1. There is no evidence of Southern Pacific's overall intrastate operating results in the record of this proceeding.

2. Southern Pacific had ample opportunity to introduce such evidence, but declined to do so.

3. Southern Pacific has not demonstrated that public convenience and necessity no longer require passenger service between San Francisco and San Jose and intermediate points.

4. The record indicates that public convenience and necessity for the peninsula passenger service provided by Southern Pacific continues to exist.

Conclusions

1. Evidence of overall intrastate operating results is an essential element of a prima facie case in a discontinuance proceeding.

2. Decision No. 87063 does not constitute evidence of Southern Pacific's overall intrastate operating results.

3. Southern Pacific has failed to prove a prima facie case that public convenience and necessity no longer require the operation of its San Jose-San Francisco passenger commute train.

4. The petition of the staff for an order dismissing Application No. 57289 should be granted.

5. The Commission's investigation proceeding, Case No. 10380, should continue for the purpose of exploring such issues as service reductions, subsidies, and further rate increases.

O R D E R

IT IS ORDERED that Application No. 57289 is dismissed.

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

Dated at San Francisco, California, this 19th day of APRIL, 1978.

Robert Batinovich
President

Vernon L. Sturgeon

Leonard D. Grimes, Jr.

Clair T. Dedrick
Commissioners

I concur
Vernon L. Sturgeon

I dissent
William Symons Jr.

APPENDIX A

LIST OF APPEARANCES

Applicant: W. Harney Wilson and Harold S. Lentz, Attorneys at Law, for Southern Pacific Transportation Company.

Protestants: Thomas M. O'Connor, City Attorney, Robert R. Laughead, P.E., and Leonard L. Snaider, Deputy City Attorney, for the City and County of San Francisco; Arthur Harris, Attorney at Law, Alva Johnson, and Sy Mouber, for Metropolitan Transportation Commission; Donald H. Maynor, Assistant City Attorney, for the City of Palo Alto; O. J. Solander, Attorney at Law, for the State of California, Department of Transportation; Joel N. Klevens, Attorney at Law, James P. Jones, Donald Q. Miller, George P. Lechner, and Dennis D. Di Salvo, for United Transportation Union; Hanson, Bridgett, Marcus, Milne & Vlahos, by John J. Vlahos and Duane B. Garrett, Attorneys at Law, and John T. Mauro, for San Mateo Transit District; Leslie M. Krinsk, Attorney at Law, and Carolyn L. Green, for California Air Resources Board; Donald J. Baker, Assistant County Counsel, for the County of Santa Clara; Thomas H. Crawford, Assistant Counsel, for Bay Area Pollution Control District; D. H. Brey, James R. Davis, and Robert M. Bongiorno, for Brotherhood of Locomotive Engineers; George W. Falltrick, and Jennings, Gartland & Tilly, by John Paul Jennings, Attorney at Law, for Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Station & Express Employees; Alfons Puishes, Attorney at Law, for himself and Peninsula Commuters' Union; and Antonia Levi, for herself.

Interested Parties: John R. Phillips, Attorney at Law, for the Planning and Conservation League; Richard M. Hannon, Attorney at Law, for Greyhound Lines, Inc.; Anthony C. Bennetti, Deputy City Attorney, for Mayor Janet Gray Hayes and City of San Jose; and Michael Rothenburg and Harold G. Soderggren, for themselves.

Commission Staff: William N. Foley, Rod Pinto, and Sara S. Myers, Attorneys as Law, and William Roe.

APPENDIX B

As background, we set forth the structure of the Southern Pacific Company network of holdings and utility operations.[1/]

Southern Pacific Transportation Company (the applicant herein) is one of 12 companies owned by Southern Pacific Company. The other 11 companies are:

	Principal Business Activity
Bankers Leasing Corp.	Leasing Services
Bravo Oil Co.	Oil & Natural Resources
Pacific Petroleum Pipe Line	Transporting Petroleum Prod.
Southern Pacific Communications	Communications
Southern Pacific Development Co.	Real Estate
Southern Pacific Land Co.	Industrial Development
Southern Pacific Pipe Lines, Inc.	Transporting Petroleum Prod.
Southern Pacific Industrial Development Co.	Real Estate
Sunset Communications Co.	Communications
Tops On-Line Service, Inc.	Data Processing Services
One Market Street Properties	Real Estate

In turn, Southern Pacific Transportation Company controls 20 other companies as follows:

	Principal Business Activity
El Paso Union Passenger Depot	Passenger Depot Operations
Evergreen Freight Car Corp.	Equipment Leasing
Evergreen Leasing Corp.	"
Holton Inter-Urban Ry.	Transportation
Los Angeles Union Terminal Inc.	"
Northwestern Pacific R.R.	"
Pacific Fruit Express	"
Pacific Motor Transport Co.	"
Pacific Motor Trucking Co.	"
Portland Traction Co.	"
San Diego & Arizona Eastern Ry.	"
Southern Pacific Air Freight	Air Freight Frowarding
Southern Pacific Equipment Co.	Equipment Leasing
Southern Pacific Marine Transport, Inc.	Transportation
Southern Pacific Transport Co. of T&L	"
St. Louis Southwestern Ry.	"
Southern Pacific Warehouse Co.	Inactive
Sunset Ry. Co.	Transportation
The Ogden Union Ry. & Depot Co.	"
Visalia Electric R.R.	"

1/ Taken from the 1976 Annual Report of the Southern Pacific Transportation Company.

Indirectly, Southern Pacific Transportation Company controls the following companies:

	Principal Business Activity
Alton & Southern Ry. Co.	Transportation
Dallas Terminal Ry. & Union Depot Co.	"
Louis Heller Inc.	"
Main Street Warehouse Co.	Inactive
Petaluma & Santa Rosa R.R.	Transportation
Southwestern Transportation Co.	"
St. Louis S.W. Ry. Co. of Texas	"
The Southwestern Town Lot Corp.	Real Estate

The Southern Pacific Company is a holding company for numerous affiliated interstate and intrastate utility operations in the areas of rail transportation, highway carrier transportation, warehousing, pipeline transportation, and telecommunication services. Now before us is the question of whether public convenience and necessity no longer exist for the passenger services between San Jose and San Francisco. Clearly this passenger operation is a small part of the Southern Pacific Company's overall network of utility operations.

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Application of Southern Pacific Transportation Company
to Discontinue Commute Passenger Trains

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

Applicant Southern Pacific Transportation Company is a large corporate enterprise and thus makes a big target for populist demagogues. But our duty is just treatment for all petitioners who come before the Commission, large or small. Pressure and passion have been intense in this passenger matter and resulted in the grossly unfair order of eight months ago. There, after three long years of processing, the applicant's petition for a rate increase to recover cost of operations was rejected: A pittance in increased rates was extended. (See 3-2 Commission Decision 87583, Minority Opinion p. 1 and 2.) Today, the concern expressed in that minority opinion, page 5, has become a frightening future possibility:

> "The strained result in the decision of the majority is a travesty of justice. Ironically, it is so bad it is likely to even jeopardize the interest of the one group who seems to benefit -- the present SP commuters who are being so heavily subsidized by others. Danger to commuter interests comes from the real possibility that the ICC may require the abandonment of train commute service because it finds the present intolerable situation constitutes an 'undue burden on interstate commerce'."

Such unfair regulatory treatment did indeed precipitate abandonment filings to be instituted before both this Commission and the Interstate Commerce Commission. Today's Commission order abruptly snuffs out applicant's opportunity for hearing before the CPUC. It makes even more likely the outcome that the Interstate Commerce Commission alone will decide the

issue. Parochial and arbitrary actions by the California Commission are an open invitation to federal pre-emption.

This Commission continues to play games in the Southern Pacific Case -- it adopts a "know-nothing" attitude about the loss situation of Southern Pacific's overall intrastate operations, refusing to acknowledge its own data files or the evidence of continuing loss in California underpinning its freight rate increase decision of 13 months ago, Decision 87063 of March 9, 1977. Often such behavior is not brought to task, but in this case the results of oppression spill beyond California's borders and adversely affect shippers of goods interstate, and ultimately consumers across the nation. In the precincts of the Interstate Commerce Commission in Washington, serious attention will be paid to their duty to balance the interests of Burlingame commuters with those of citizens in our sister states.

A remainder of our investigation is kept open. I am skeptical as to its fruitfulness. It dangles out the hope of increased rates to the railroad. I doubt that the Commission will have a sudden change of heart in this regard. The majority pondered over six months before issuing last year's inadequate order. I am also dubious that we have the authority to force our railroads to accept government subsidy and strings, instead of straightforward rate relief. I find no legal authority for staff's assertion that it is inexcusable of applicant to resist this road. Subsidies at the hand of government can take many a capricious turn. To agree to operate as a public utility does

not carry with it the obligation to become a suppliant at the public trough.

On an internal administrative point, I do not agree with the discussion in this decision which recasts and denigrates the role of our Administrative Law Judges. It is true the majority has totally overridden the opinions of the present law judge, as well as the decision prepared by the law judge in Decision 87583 Supra. However, this is no reason to hamstring these professionals in the manner proposed today. Rather than redefine their role in a footnote of a controversial case, a more careful and studied administrative review should be undertaken.

San Francisco, California
April 19, 1978

William Symons Jr.
WILLIAM SYMONS, JR.
Commissioner

COMMISSIONER VERNON L. STURGEON, Concurring

While I concur in the expressly stated findings and conclusions of today's order, my concurrence should not be viewed as an acceptance of all the contentions raised by the staff in its petition for order of dismissal. Those contentions are listed on pages 2 and 3 of today's order. I specifically reject and do not concur in staff contentions 2, 3, 4, 8, 9, 10, 13, 14, and 15.

Vernon L. Sturgeon

VERNON L. STURGEON
Commissioner

San Francisco, California
April 19, 1978