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Decision No. 89596 OCT 31 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY, a Corporation,

Defendant.

Case No. 10296
(Filed March 23, 1977)

COUNTY OF LOS ANGELES,

Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY, a Corporation,

Defendant.

Case No. 10349
(Filed June 10, 1977)

ORDER OF DISMISSAL

By the above complaints, the County of Los Angeles (County) seeks an order of the Commission directing The Atchison, Topeka and Santa Fe Railway Company (AT&SF) to operate passenger train service between Los Angeles and San Diego.

A motion to dismiss for lack of jurisdiction was set to be heard on January 11, 1978, at which time counsel for AT&SF advised that Amtrak had requested AT&SF to begin operations of Train No. 781, departing San Diego at 5:45 a.m. and arriving at Los Angeles at 8:20 a.m.; and of Train No. 780, leaving Los Angeles at 5:30 p.m. daily, arriving at San Diego at 8:10 p.m., making the usual stops, namely, Oceanside, San Clemente, San Juan Capistrano, Santa Ana, and Fullerton. The eight passenger cars being used are owned by County.

At the request of staff counsel the matters were thereupon taken off calendar. On May 4, 1978, AT&SF filed a motion to dismiss alleging that the matters are now moot, because the service requested by County is presently being provided by Amtrak. On May 18, 1978, County filed a response in opposition to the motion claiming that although its request to have Amtrak haul its eight passenger cars may be moot, the issues as to whether a commuter system should be established and whether the Commission has jurisdiction over defendant to order such a service remain totally unresolved.

With respect to County's request, we will clarify the options available for establishing commute passenger service between points not now served by passenger rail operations. There are several alternatives.

First, cities, counties, or other local entities can request that railroads subject to our jurisdiction provide the service of pulling passengers cars owned by such local entities. This would be similar to the service provided for freight shippers who own their own rolling stock. Under this arrangement, the railroads would not be dedicating their facilities to providing passenger service as a utility; rather, they would be operating as a public utility assessing a charge for moving a shipper's (e.g., a local governmental entity's) rail cars. If railroads refused to reach an accommodation with shippers to provide such rail service, the matter would be formally brought before this Commission as discussed under the second option. The first option is the most expedient, convenient way for governmental entities to initiate passenger service.

Second, the Commission could pursue an investigation into whether, pursuant to Sections 761 and 762 of the Public Utilities Code or other relevant statutory provisions, public convenience and necessity require the expansion of rail service to

provide passenger service. See Greyhound v PUC (1968) 68 C 2d 406.^{1/} This course--attempting to direct a recalcitrant railroad utility to initiate passenger rail service--is a cumbersome path fraught with lengthy proceedings and legal appeals. Further, railroads may raise the argument that such service would constitute an undue burden on interstate commerce before the Interstate Commerce Commission, forever alleging revenue requirement inadequacy.

Third, local governmental entities may pursue a contract with Amtrak, as was done in this instance.

^{1/} Although Greyhound involved directing a public utility to provide passenger service to extend existing routes and establish new routes within a service territory, the case is on point with the question we address herein. The franchise for public utility rail service carries with it the obligation to serve the public, where need, public interest, and public convenience and necessity dictate, be it for the movement of freight or passengers. Public utility railroads have dedicated their facilities to providing rail service, and "rail service" means, if the Commission finds conditions so warrant, the providing of passenger service. The fact that this Commission has authorized discontinuance of passenger service between intrastate points in the past does not mean that railroads must somehow voluntarily reinstitute or rededicate themselves to such service before they can be found by the Commission to have an obligation to provide passenger service.

Therefore, IT IS ORDERED that Cases Nos. 10296 and 10349 are hereby dismissed without prejudice.

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

Dated at San Francisco, California, this 31st day of OCTOBER, 1978.

I dissent:
William Lyons Jr.

I abstain
Vernon L. Sturgeon

Robert Buttrick
President

Robert D. Good
Clair L. DeWitt
Commissioners