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JUN 17 1978

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the rail passenger
 commute operations, service, rates,
 rules, regulations, facilities,
 equipment, contracts, and practices
 of SOUTHERN PACIFIC TRANSPORTATION
 COMPANY, a corporation, within the
 State of California.

Case No. 10380
 (Filed July 26, 1977)

(Appearances are listed in Appendix A.)

O P I N I O N

This proceeding was commenced for the purpose of broadening the issues which the Commission could consider in connection with the application of Southern Pacific Transportation Company (SP) to discontinue the operation of passenger trains between San Francisco and San Jose. (Application No. 57289, filed May 9, 1977.)

Application No. 57289 was dismissed by Decision No. 88750, dated April 19, 1978, but Case No. 10380 remained open as a vehicle to consider such issues as "reduction of service proposals by Southern Pacific, further rate increases, and subsidies." (Ibid., p. 13.)

In Decision No. 88750 the Commission encouraged SP to negotiate with local, state, and federal agencies to obtain funds to compensate SP for legitimate operating losses.

After Decision No. 88750 was issued SP entered into negotiations with the State of California through its Department of Transportation (Caltrans). Under Public Utilities Code Section 99234.7, Caltrans:

"...is authorized to negotiate and, if feasible, contract with the Southern Pacific Transportation Company to provide passenger rail service between the City and County of San Francisco and the City of San Jose, and points in between...."

These negotiations are in furtherance of the policy of the State as expressed by the Legislature in Stats. 1977, Ch. 1216, as follows:

"Section 1. The Legislature finds and declares that:

- "(a) Interurban railway passenger service is an important component of the passenger transportation systems within this state.
- "(b) It is the policy of this state to preserve and enhance existing railway passenger services.
- "(c) Public subsidies and other forms of support may be required to advance this policy."

Recent legislation has conferred additional authority upon Caltrans. Government Code Section 14035 provides:

"The department may enter into contracts with railroad corporations to provide commuter and intercity passenger rail services.

"Such contracts may include, but are not limited to, ...the upgrading of other commuter rail services, or the acquisition and improvement by the department of rail terminals for passenger service as the department determines will best encourage usage thereof...."

Section 14038 of the Government Code provides:

"The department may purchase and lease rail passenger cars and locomotives and other self-propelled rail vehicles and may acquire, lease, design, construct, and improve track lines and related facilities."

Acting under the statutory authorities cited above, Caltrans has reached an agreement with SP which has been embodied in writing. The agreement consists of three documents, which have been made exhibits in this proceeding. Exhibit A, entitled "Agreement to Provide Passenger Rail Service", is the master contract between Caltrans and SP. Exhibit B, entitled "Cooperative Agreement", is an agreement between Caltrans, the city and county of San Francisco, San Mateo County Transit District, and Santa Clara County Transit District to contribute financial assistance in various proportions in order to maintain the rail passenger service under the master contract. Exhibit C contains a series of amendments to the master contract.

A public hearing was held June 5, 1980 in San Francisco before the assigned Commissioner Richard D. Gravelle and Administrative Law Judge Robert T. Baer. Exhibits A, B, and C were received into evidence and the parties to this proceeding were given an opportunity to question the contracting parties concerning the contents of those exhibits. In addition, Caltrans and SP filed a joint statement and petition for approval of the proposed contract and for dismissal of this investigatory proceeding. We will now discuss the issues raised by the exhibits and the petition.

The joint petition points out that the master contract contains a proposed new schedule. However, the petitioners allege:

"This schedule is being modified at this time and will not take effect on the commencement date of the contract, July 1, 1980. Caltrans and SP will make an appropriate joint filing with the Commission at a later date for implementation of a new schedule." (Petition, p. 5.)

From the petition, the exhibits, and the statements of counsel at the hearing it is apparent that the contracting parties do not now propose any changes to the existing levels of service provided by SP. Moreover, no increases in fares over those last authorized by the Commission are now proposed. In short, no actions are now being taken by the contracting parties with respect to SP's passenger train service which require the Commission's approval or authority. When such actions are proposed to be taken, Caltrans and SP will first seek the Commission's authority by joint application filed with the Commission. Nothing in our Rules of Practice and Procedure or in our customs or practices militates against the use of the joint application procedure proposed by the petitioners. (Petition, p. 5.)

The master contract (Exhibit A) at p. 6 provides:

"The approval prior to July 1, 1980, by any regulatory agency which has jurisdiction over such terms and conditions contained in this Agreement, which are the subject of their regulatory powers, shall be a condition precedent to this Agreement."

In accordance with this provision of the master contract the petitioners ask that the "Commission authorize passenger rail service between San Francisco and San Jose and points in between on the terms and conditions as set forth in the agreement between Caltrans and SP..." (Petition, pp. 7-8.)

Since the agreement does not modify SP's present service in any respect and since the fares charged by SP will not be increased over those last determined by the Commission to be reasonable, the Commission's approval of the master contract is not required. Caltrans has full legal authority to negotiate such contracts, and SP may continue to operate its passenger

service upon the terms and conditions set forth in the master contract, so long as no change is made in the operations of SP over which this Commission has jurisdiction. Since our approval is not required by law, such approval is not a condition precedent to the effectiveness of the master contract.

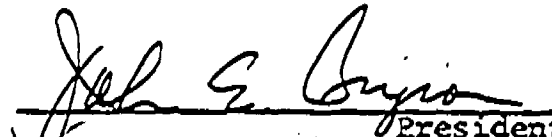
Only one issue remains to be addressed. The petitioners request that the Commission dismiss this proceeding. The master contract has resolved the issues the Commission intended to investigate when it instituted this proceeding. The continuation of the commute service is assured, the level of service will remain the same, and the fares will be as authorized by the Commission. Future changes in service or fares will be subject to the approval of the Commission, which may be obtained in the manner described in the Commission's Rules of Practice and Procedure and General Orders. There is, thus, no present need to keep this proceeding open, and no party has objected to the requested order dismissing the proceeding. Accordingly, the proceeding should be discontinued.

Conclusions of Law

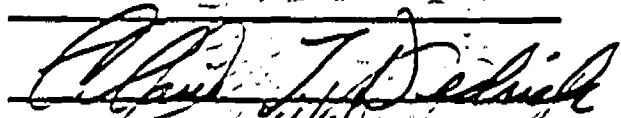
1. The Commission's approval of SP's passenger rail service between San Francisco and San Jose on the terms and conditions contained in the master contract, as amended to continue service as present levels and to charge fares as presently authorized, is not required by law.
2. The Commission's approval of such service is not a condition precedent to the effectiveness of the master contract.
3. There is no present need to continue this proceeding.
4. This proceeding should be discontinued.
5. Since SP is scheduled to operate under the master contract commencing July 1, 1980, this order should be effective the date of issuance.

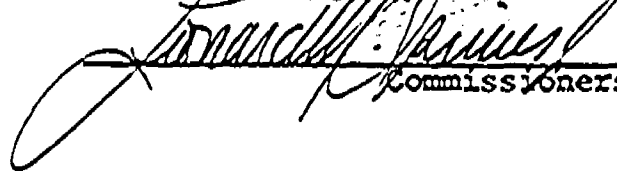
O R D E R

IT IS ORDERED that Case No. 10380 is discontinued.
The effective date of this order is the date hereof.
Dated JUN 17 1986, at San Francisco, California.



President





Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Respondent: W. Harney Wilson, Harold S. Lentz, John Mac Donald Smith, and Madeleine E. Sloane, 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 Mober, for Metropolitan Transportation Commission; Donald H. Mavnor, 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. Sodergren, for themselves.

Commission Staff: Vincent MacKenzie, Attorney at Law, and William Roe.