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Decision No. 93211 June 16, 1981
 BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

County of Los Angeles, State of)
 California,)

Complainants,)

v.)

Southern Pacific Transportation)
 Company, a corporation,)

Defendant.)

Case No. 10575
 (Filed May 18, 1978)

(For appearances see Decision No. 91847)

ORDER MODIFYING DECISION 91847
AND DENYING REHEARING OF DECISION 92862 AND DECISION 92863

A petition for rehearing of Decision (D.) 92862 and D. 92863 has been filed by the Southern Pacific Transportation Company (SP), together with a petition for receipt of additional evidence and a petition for stay of D. 92863. In D. 93118, issued May 22, 1981, the Commission issued a stay of the time for compliance with ordering paragraphs 2 and 7 of D. 91847 (incorrectly referred to in D. 93118 as "ordering paragraphs two and seven of D. 92863"). We have carefully considered all the allegations of error contained in SP's petition for rehearing and are of the opinion that good cause for granting rehearing of D. 92862 and D. 92863 has not been shown. However, we shall modify our Discussion, Findings of Fact and Conclusions of Law in D. 91847, as modified in D. 92863 following the limited rehearing of D. 91847 granted in D. 92230, to reflect the further study which has been given to this matter upon consideration of the petition for rehearing and, in particular, the Exhibits attached thereto which were proposed for receipt into evidence by SP.

SP's petition for rehearing contains three claims: (1) findings in D. 91847 and 92863 regarding operational feasibility of the proposed commuter service are not supported by the record; (2) in ordering the service instituted before all operational difficulties have been completely resolved, the Commission abused its discretion and failed to lawfully exercise its powers, and (3) D. 92863 imposes an unreasonable burden on interstate commerce. SP claims these issues can only be resolved through new evidentiary hearings.

We first note that SP's first claim, when closely examined, is not so much a claim that the present factual record is inadequate per se, as it is a claim that the record should be reopened to take account of allegedly changed circumstances which have arisen since 1979, as set forth in the new exhibits attached to the petition for rehearing. As a matter of law, rehearing need not be granted just because the circumstances upon which a Commission order was based have changed, barring, of course, a truly cataclysmic change in circumstances. Public Utilities Code Section 1736 gives the Commission discretion to allow rehearing on the basis of changed circumstances, but does not require it. There is always some change in circumstances between the time of a Commission decision and the time when its practical effect is felt. To grant rehearing simply because the circumstances had changed in some small degree would open the possibility that no order would ever be effectuated, because of continuous petitions for rehearing based on allegedly changed circumstances.

As a matter of fact, however, the Commission is of course sensitive to changes in the world which may undermine its orders or render them impractical or unwise. We have closely scrutinized SP's claims of changed circumstances and the responses filed by complainant Caltrans claiming that no new evidence has been put before the Commission. We conclude, as explained below,

that SP has not demonstrated changed circumstances and that the petition for receipt of additional evidence should be denied. Some of SP's arguments are based upon misunderstandings of the Commission's true intent, due in part to our failure to say what we meant and due in part, we suspect, to a desire on the part of SP to exaggerate the consequences of our order. Accordingly, D. 91847 is modified as provided below.

We begin with the comments which SP has directed toward modified Finding of Fact 17. There it is stated that "Complainant's ... analysis presents the most favorable possible operations, and ignores some of the inevitable conflicts which will arise" between SP freight operations and the commuter trains. It appears SP has interpreted the words "inevitable conflicts" as implying something much, much more than "minor, inconsequential, infrequent and usually costless conflicts," which is the sense in which the finding of fact was made. Simply because some operations must briefly cease on certain portions of the main line during certain portions of the morning and evening "window" noted in Finding 17 does not mean that all SP freight operations must cease or suffer chaos, that SP cannot structure its freight operations to avoid conflicts or that, as SP claims (Petition for Rehearing, p. 23), the commuter trains will have a "devastating impact" on freight operations. This claim, like SP's claim that the Commission has shown "utter indifference" (Petition for Rehearing, p. 10) to freight interference, is an ^{inexcusable} ~~absurd exaggeration~~ and ~~utterly~~ inconsistent with the voluminous record. Further, as explained in greater detail below, those freight delays which are not costless to SP and which are attributable to operation of the commuter trains are a proper subject for compensation from complainant to SP.

Finally, we openly state that institution of the commuter passenger service is in the nature of an experiment (see Finding of Fact 19). It may be, as we believe the evidence

overwhelmingly shows, that commuter trains and freight trains can again successfully be operated on the Coast Line, or it may be that they cannot. We cannot predict all future conditions on that line or whether SP can operate the commuter service without delay. But the experimental (or more properly, the experiential) nature of the orders in Decisions 91847, 92230 and 92863 does not leave them invalid. As the California Supreme Court stated in Southern Pac. Co. v. Public Utilities Co. (1953) 41 Cal. 2d 354, 367, "The fact that the effect of the order ... is to a more or less degree experimental does not destroy it. If it does not work out as contemplated the commission has jurisdiction to entertain a future application concerning the same subject matter." In light of the foregoing discussion, Finding of Fact 17 is modified to read:

17. SP's interference study is a "worst case" analysis of the train conflicts which would result if the proposed commuter service is authorized. It shows a two-hour window in the morning and evening during which time freight operations must cease on the main line while the commuter trains operate. Complainant's similar analysis presents the most favorable possible operations, and ignores some of the inevitable conflicts which will arise. Complainant's study shows a thirty-three minute window in the morning and a forty-five minute window in the evening when freight trains must cease operations on the main line because of commuter operations. Under either analysis, some delays to freight service will occur, but, on balance, the existing line is capable of accommodating both the commuter service and freight service. Such conflicts and delays as do occur will generally be minor and inconsequential and, with experience, more and more infrequent.

We next answer SP's comments regarding possible delay, not of its freight trains, but of the commuter trains. SP states that it is "simply impossible to create delay-free meets between

opposing trains" (Petition for Rehearing, p. 16). This comment again ignores the experimental nature of the service. It is certain that perfect meets between the Amtrak and commuter trains will not always be possible. The fact that the meets are not always delay-free is no reason not to institute the service; the fact that commuters might grow disillusioned with the service due to delays to their train is Caltrans', not SP's concern. Which train has priority can be negotiated; there is no law giving the Amtrak train priority. In some cases, where, for example, the Amtrak train reaches Oxnard on time (with 58 minutes to then travel the short distance from Glendale to Los Angeles), the most sensible thing for SP to do may be to hold the Amtrak train briefly in a given siding until the passenger train has passed. In other cases the passenger train will have to accept delay and wait until the Amtrak train has cleared. Depending on the Amtrak train performance on any given day, many possibilities will arise.

SP claims (Petition for Rehearing, p. 16) there is a "lack of sidings in the territory where the meets are to take place." Again, this is a ~~gross (and apparently deliberate)~~ mischaracterization of the record. There are five sidings, including Hewitt, between Burbank Junction and Oxnard; these sidings are approximately 10 to 15 minutes apart for trains going 50-60 mph. These sidings are adequate and available for meets between the opposing trains, even with the new Amtrak schedule in effect (See SP's proffered Exhibit B and Caltrans' Supplemental Response). In its Exhibit B, SP again projects delays on the basis of a two-hour trip between Los Angeles and Oxnard, rather than the shorter trip we foresee. So again we conclude that only actual experience will tell. We cannot predict whether SP, in operating both the Amtrak and commuter trains, will attempt to make the meets happen with minimum delay. As

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noted below, where the Amtrak train is delayed due to the commuter train and SP accordingly loses incentive payments to which it otherwise would be entitled, those payments are a matter for compensation to be paid to SP by complainant. Finally, we reject as speculative the possibility of an increased number of Amtrak trains. In light of the foregoing discussion, Finding of Fact 35 as it appears in D. 92863 is modified to read as follows:

35. The fact that the afternoon commuter trains may suffer delays due to the oncoming Amtrak train is not cause not to institute the requested passenger service. Schedules can be adjusted to minimize delays. Five sidings between Burbank Junction and Oxnard are adequate for arranging meets between the trains. Even with the new Amtrak schedule, such delays will generally be of minimal duration and, with experience, more and more infrequent.

We next direct our attention to SP's comments regarding Finding of Fact 18, the increase in traffic expected at GEMCO Yard, expanded Anheuser-Busch operations, and allegedly new "time sensitive exempt perishable, trailer-on-flatcar ("TOFC") and contract traffic" on guaranteed schedules on the Coast Line (including the "Golden State" and "Energy Saver" trains). The comments do not truly present changed circumstances.

First, the fact that GM has now returned to two shifts a day is of no significance. Prior to D. 91847, as the parties tried Case (C.) 10575, it was universally assumed that GM would be on two shifts. The record was put together on this basis. The Commission found the trackage and yards adequate in D. 91847. It is still adequate. Second, the expansion of Anheuser-Busch activities is not directly linked in SP's petition and exhibits to any particular delay of either freight or passenger service. Anheuser-Busch itself does not predict such delay in its sworn statement. Third, the GULAP, LAOAT and OALAT trains

referred to by SP were all in operation when the record was put together prior to D. 91847. We have said before and we say again that the evidence convinces us that SP can, if it wishes, schedule its freight operations (such as the "Energy Saver" train to Oakland) around or between the commuter service without significant inconvenience or cost. Delays to GM freight or agricultural produce for the "Golden State" train are at most speculative, based on the degree to which SP can institute, or wishes to institute, new operational efficiencies. We are still at an experimental stage. Further, as explained below, such freight delays as are truly unavoidable despite SP's best efforts and which are truly attributable to the commuter service are a matter for compensation to be paid by complainant to SP. In light of these comments, Finding of Fact 18 in D. 91847, as modified by D. 92863, is modified to read as follows:

18. SP's GEMCO and Taylor Yards pose a potential problem for conflicts with the proposed commuter trains, but a major contributing factor is SP's practice of making up trains on the main tracks adjacent to both yards. Better utilization of GEMCO Yard facilities and less interference with the main line operations can be achieved by construction of a 2-mile long ancillary track within GEMCO Yard. More efficient yard operations, and a stricter discipline in the calling and operation of freight trains would minimize possible delays to passenger and freight trains because of conflicts.

SP also raises questions regarding what we still consider as minor operational difficulties, such as the question of train storage and crew replacement at Oxnard. We believe that our previous comments regarding the experimental nature of the service answer SP's comments.

We come now to SP's claims that D. 92863 imposes an unreasonable burden on interstate commerce. As stated above, we reject absolutely SP's claim that the commuter service will have a "devastating impact" on intrastate and interstate shippers using SP freight service. This exaggeration is not supported even by SP's proffered exhibits. Such disruption of its freight service as occurs will be minimal. Its ability to fulfill contract obligations to shippers and Amtrak will not be significantly impaired, if at all. There will be no interference with SP's exercise of rate and service flexibility under the Staggers Act due to the minor, inconsequential and infrequent delays noted in Finding of Fact 17.

However, we believe other comments made by SP regarding compensation for costs attributable to the commuter service and return on property devoted to the service are well taken and require modification of D. 91847. We believe these modifications resolve SP's claims regarding financial loss as constituting a burden on interstate commerce. In our view, SP must be compensated for all costs and paid the return required by law, whether federal or state statutory or constitutional law, for the property devoted to this service.

Finding of Fact 13 in D. 91847 was based in part on the discussion appearing on pages 65 and 66 in that decision. The finding and the discussion mistakenly provide that SP should be able to bear certain expenses from the commuter service because of its overall financial health. While as a matter of fact this might be true, it certainly is not compatible with due process. Caltrans provided at the start of C. 10575 that it would pay all "actual and reasonable operating deficits of this service." (Exhibit 9, p. 3). We interpret this to mean that Caltrans will pay all costs actually and reasonably attributable to the institution of the commuter service. In light of the foregoing discussion, Finding of Fact 13 is modified to read:

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

Finding of Fact 30 in D. 91847 provides that "No allowance should be made for costs attributable to the interference with SP's freight trains." This finding fails to reflect the discussion appearing at page 65 of D. 91847, which merely provides that no such allowance should be made during the period of negotiations. Our thought was that such a provision might provide SP with an incentive, during the period of negotiations, to tighten up its freight operations so that unnecessary delay would be eliminated. But again, upon reconsideration, we find such a provision inconsistent with due process. SP must be compensated for all costs actually and reasonably attributable to the institution of the commuter service. This includes freight delay costs and any lost incentive payments due to delay of the Amtrak train.

We are sensitive to the possibility that lax operations could result in SP's attempting to recover freight or Amtrak delay costs not truly attributable to the commuter service. Such matters might ultimately require a hearing upon application by SP for an order from the Commission to Caltrans to pay specified freight or Amtrak delay costs. If the facts warranted such an order, we would unhesitatingly issue it. In light of the foregoing discussion, Finding of Fact 30 is modified to read:

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

In Finding of Fact 32 in D. 91847, the Commission stated that the subsidy paid to SP by Caltrans "should provide SP with a 7½ percent rate of return, which we find just and reasonable." In its petition for rehearing, SP indicates that

the ICC has determined that it is entitled to a return of 11.7 percent. Upon the present record, which was developed in 1979, a return of 7.5 percent is reasonable. But it is now 1981 and the rate of return clearly must be brought up to date. This is nothing new in the field of utility regulation. We do not grant continual rehearings of past general rate cases simply because of the passage of time. Instead we provide for new applications asking for offset rate increases or permit new general rate applications to be filed. The same holds true in this case. SP can file an application requesting a higher rate of return and should adduce whatever evidence in support of that application it feels is appropriate, including such evidence as apparently convinced the ICC to grant it an 11.7 percent return. We have no intention of forcing SP to subsidize the commuter service with profits from other areas of its operations, such as its interstate operations. Such a cross-subsidization might well run afoul of the Staggers Rail Act of 1980, P.L. 95-473. We will require Caltrans, not SP, to subsidize the commuter service. We cannot determine now what the actual rate of return will be, but it will be all that federal and state statutory and constitutional law require it to be.

Practically, however, the amount of money to be paid by Caltrans to SP for operating the commuter service is subject to negotiation. The "plus" in a "cost-plus" contract between SP and Caltrans is analogous to the rate of return and must be set through negotiation. We urge SP and Caltrans to enter into negotiations in the same spirit which led to SP's agreement to operate commuter trains for Caltrans on the San Francisco peninsula. Such negotiations can include all costs, such as freight delay costs, operating costs, rentals for SP properties used for stations and parking lots and capital improvement costs for accommodation of the service. In light of the foregoing discussion, Findings of Fact 32 and 33 are modified to read as follows:

32. In addition to meeting all costs actually and reasonably attributable to the commuter service, Caltrans will pay SP a just and reasonable return on the property devoted to the service. Based on a factual record compiled in 1979, we previously determined in D. 91847 that 7.5 percent constituted a just and reasonable rate of return. In light of changed circumstances, this rate is inadequate. SP and Caltrans should negotiate the question of return in negotiating a contract meeting all costs. Alternatively, SP may file a new application asking for a higher rate of return. The Commission will determine a just and reasonable rate of return in light of federal and state statutory and constitutional law, including the return allowed to SP by the ICC.

33. Certain SP properties, upon which station platforms and parking areas would be installed, are presently subject to written leases containing 30-day cancellation clauses or are being held for future industrial or commercial development. Caltrans will pay SP a reasonable rental for all properties used for the commuter service.

Based on all of the foregoing discussion, we further modify D. 91897 to add Finding of Fact 36, reading as follows:

36. Institution of the commuter service will not place an unreasonable burden on interstate commerce.

We next consider SP's understanding of Ordering Paragraph 7(a) as it appears in D. 92863. SP interprets it to provide "that capital improvements would be directed only after SP has endured a year of crippling interference to its coast line operations and deterioration of its freight business, and/or it is established that an acceptable on time commuter service cannot be provided on the existing single track facilities. It further contemplates that SP would be required to bear at least part of the cost of these improvements."

Such colorful language notwithstanding, we do not find that "crippling interference" or "deterioration" of SP's freight service will occur. During the experimental state of this service, it may be that SP will incur freight and Amtrak delay costs attributable to the commuter service which are unavoidable despite all possible operational efficiencies. As modified, our order provides that SP must be compensated for such costs. After one year, all parties, including the Commission, will be in a position to determine what improvements, if any, are required on the Coast Line and whether SP should bear any costs of those improvements based on the benefit it obtains from such improvements. We express no fixed opinion on this matter at this time. There will be time for SP to argue it should bear no costs of such improvements. In light of the foregoing discussion, we do not believe that Ordering Paragraph 7(a) requires further modification.

Finally, SP suggests in Exhibit D, but does not claim in its Petition for Rehearing, that the enactment of the Staggers Rail Act of 1980, P.O. 95-473, divests the Commission of jurisdiction to order the institution of the commuter service because the Commission has not been certified under Section 214 of the Act. (49 U.S. C. Sec. 11501, as amended). We disagree. The legislative history of the Staggers Act is absolutely silent on the question of whether its provisions apply to common carrier passenger service. There is no indication that Congress intended the Staggers Act to apply to passenger service. Its provisions deal entirely with freight service. Its freight rate provisions are entirely inapposite to passenger service. (See, e.g., 49 U.S.C. §§ 10701, 10709 and other sections of Title 49 referred to in Exhibit D). Further, as modified today, our orders provide for a full "cost-plus" contract between SP and Caltrans, so that SP bears no financial loss or responsibility for this service. This will put the Los Angeles-Oxnard service on virtually the same footing as the San Francisco Peninsula passenger service. Finally,

under Article III. Section 3.5 of the California Constitution, we cannot find ourselves divested of jurisdiction by federal legislation in the absence of an appellate court decision to that effect. In these circumstances, we reject the suggestion that we no longer have jurisdiction to order this passenger service instituted.

No further comment is required in support of Decisions 91847, 92230, 92862 and 92863.

O R D E R

It is hereby ordered that Decision 91847, as modified by Decision 92863, is further modified as provided herein.

1. Findings of Fact 13, 17, 18, 30, 32, 33, 35 and 36 are modified and added, to read as follows:

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

17. SP's interference study is a "worst case" analysis of the train conflicts which would result if the proposed commuter service is authorized. It shows a two-hour window in the morning and evening during which time freight operations must cease on the main line while the commuter trains operate. Complainant's similar analysis presents the most favorable possible operations, and ignores some of the inevitable conflicts which will arise. Complainant's study shows a thirty-three minute window in the morning and a forty-five minute window in the evening when freight trains must cease operations on the main line because of commuter operations. Under either analysis, some delays to freight service will occur, but, on balance, the existing line is capable of accommodating both the commuter service and freight service. Such conflicts and delays as do occur will generally be minor and inconsequential and, with experience, more and more infrequent.

18. SP's GEMCO and Taylor Yards pose a potential problem for conflicts with the proposed commuter trains, but a major contributing factor is SP's practice of making up trains on the main tracks adjacent to both yards. Better utilization of GEMCO Yard facilities and less interference with the main line operations can be achieved by construction of a 2-mile long ancillary track within GEMCO Yard. More efficient yard operations, and a stricter discipline in the calling and operation of freight trains would minimize possible delays to passenger and freight trains because of conflicts.

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

32. In addition to meeting all costs actually and reasonably attributable to the commuter service, Caltrans will pay SP a just and reasonable return on the property devoted to the service. Based on a factual record compiled in 1979, we previously determined in D. 91847 that 7.5 percent constituted a just and reasonable rate of return. In light of changed circumstances, this rate is inadequate. SP and Caltrans should negotiate the question of return in negotiating a contract meeting all costs. Alternatively, SP may file a new application asking for a higher rate of return. The Commission will determine a just and reasonable rate of return in light of federal and state statutory and constitutional law, including the return allowed to SP by the ICC.

33. Certain SP properties, upon which station platforms and parking areas would be installed, are presently subject to written leases containing 30-day cancellation clauses or are being held for future industrial or commercial development. Caltrans will pay SP a reasonable rental for all properties used for the commuter service.

35. The fact that the afternoon commuter trains may suffer delays due to the oncoming Amtrak train is not cause not to institute the requested passenger service. Schedules can be adjusted to minimize delays. Five sidings between Burbank Junction and Oxnard are adequate for arranging meets between the trains. Even with the new Amtrak schedule, such delays will generally be of minimal duration and, with experience, more and more infrequent.

36. Institution of the commuter service will not place an unreasonable burden on interstate commerce.


2. The petition for receipt of additional evidence is denied.

3. Rehearing of Decisions 91847, 92862 and 92863 is denied.


4. The stay granted in Decision 93118 shall remain in effect until further order of the Commission.

This order is effective today.

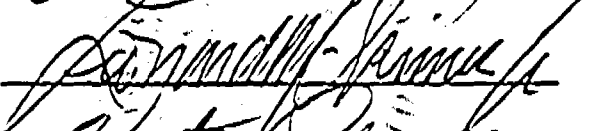
Dated June 16, 1981 at San Francisco, California.



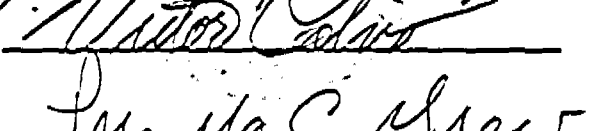
President



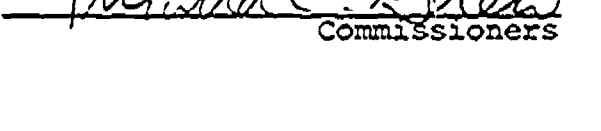
Philip D. Hoyle



Raymond W. Kinnick



Victor Calvo



Commissioners

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Decision No. 92862 April 7, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

County of Los Angeles, State of)
California,)

Complainants,)

vs.)

Southern Pacific Transportation)
Company, a corporation,)

Defendant.)

Case No. 10575
(Filed May 18, 1978)

(For appearances see Decision No. 91847.)

ORDER RULING ON MOTIONS

This is a complaint in which the county of Los Angeles (County) and the State Department of Transportation (Caltrans) seek an order of the Commission directing Southern Pacific Transportation Company (SP) to operate a commuter passenger train service between Los Angeles and Oxnard. Decision No. 90018 issued February 27, 1979 denied SP's motion to dismiss on jurisdictional grounds. Decision No. 90417 dated June 5, 1979 denied SP's petition for rehearing of Decision No. 90018.

Following public hearing, the Commission issued Decision No. 91847 on June 30, 1980. Finding 12 of that decision states that based on the evidence adduced on that record, public convenience and necessity require that SP commence passenger train service between Los Angeles Union Passenger Terminal (LAOPT) and Oxnard consisting of two trains daily, each way, between 6:00 and 8:00 a.m. and

between 4:00 and 6:00 p.m., with intermediate stops at stations or platforms at Camarillo, Moorpark, Santa Susana (Simi Valley), Chatsworth, Northridge, Panorama, Airport, Burbank, and Glendale. The Commission's order in Decision No. 91847 set forth the preliminary steps to be taken by complainants and defendant in order to begin the described commuter service.

SP filed a petition for rehearing of Decision No. 91847.^{1/} Decision No. 92230 issued September 3, 1980 modified the Discussion, Findings of Fact, and Conclusions of Law set forth in Decision No. 91847 and ordered that Case No. 10575 be reopened for the purpose of receiving additional evidence from SP and complainants as more fully described in that order.

Further hearing, as ordered in Decision No. 92230, was held before Administrative Law Judge John Mallory in San Francisco on October 14 and 15 and November 17 and 18, 1980. The matter was again submitted on the receipt of proposed findings of fact and conclusions of law by complainants, SP, and our staff on December 22, 1980.

County's Motion to Withdraw

Subsequent to submission of the rehearing proceeding, County Supervisor Antonovich advised the Commission by letter that the County Supervisors had voted to rescind County's agreement with Caltrans to provide railcars for the proposed service. On February 19, 1981, County filed a formal motion to withdraw from the proceeding.

^{1/} Greyhound Lines, Inc. also filed a petition for rehearing of Decision No. 91847, which was denied in Decision No. 92230.

County's motion states, in part, as follows:

"On February 5, 1981, the Board of Supervisors of the County of Los Angeles adopted a motion to have the County of Los Angeles withdraw as a Complainant in CPUC Case No. 10575."

* * *

"Co-Complainant State of California has advised Complainant that it has no objection to the granting of this Request."

County requests an order of the Commission authorizing and directing the withdrawal of County as a complainant in Case No. 10575.

Caltrans has advised this Commission by letter from Adriana Gianturco, its director, and in its response to SP's motion to dismiss (infra) that Caltrans intends to comply with the Commission's order in Decision No. 91847, that Caltrans will be responsible for operation of the commuter service, and that it has no objection to County's withdrawal as County is not an essential party to the operation of the service.

SP's Motion to Dismiss

On February 13, 1981, SP filed a motion to dismiss the proceeding, asserting that events since the close of the further hearings have made it clear that no finding of public convenience and necessity warranting the operation of the service can now be made, and that there is no point in continuing to litigate a proceeding which should in all fairness be put to rest.

In support of its motion, SP argues that when this proceeding was instituted both County and Caltrans enthusiastically promoted the concept of commuter rail transportation on SP's largely single track line to Oxnard as the panacea for what was perceived as a public demand for improved commuter transportation from the Simi Valley and other points in Ventura County. SP also

asserts that the evidence submitted on behalf of complainants confirms that, while Caltrans may have provided certain technical and other analyses to support the complaint, the popular support, which prompted the Commission to make findings of public convenience and necessity, came not from a state department in Sacramento, but from local government in Los Angeles. That local support is alleged by SP to be determinative of the Commission's findings, as illustrated in the narrative discussion in Decision No. 91847 at mimeo. page 57:

"We also believe that the support for this service from the local public officials, bodies, and organizations is an important element in our determination that the public convenience and necessity require this train service."

SP states that, accordingly, Finding of Fact 9 recited:

"9. Regional and local governmental officials and planning agencies support and encourage commuter rail service in the corridor between Los Angeles and Oxnard."

SP's motion states that the indispensable role of County as the moving force in this complaint is reflected in Ordering Paragraph 5 which provided:

"5. Within 180 days after the effective date hereof SP, CalTrans, and the County of Los Angeles shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom."

SP's motion further argues that the proposed rail service is fatally flawed and is unworthy of popular support and County's withdrawal is for that reason. SP states former County Supervisor Baxter Ward was the initial proponent of the Oxnard-Los Angeles

commuter train plan, and that his defeat by Supervisor Michael D. Antonovich, after the commuter train proposal was placed in issue in the election, was a rejection of the plan by popular vote. SP argues that the rejection of the plan by the electorate and the County Board of Supervisors indicates that there is no longer local government support for the proposal, and that it is apparent that the commuter train proposal, having been rejected by the Board, will play no part in essential regional transit planning.

SP summarizes its arguments as follows:

- "1. Local government does not support the commuter train proposal.
- "2. Local government's active support is indispensable in any attempt to institute a new service such as that initially proposed here.
- "3. With the support of local government withdrawn, there is no longer any assurance that the proposed commuter train services will be integrated into regional transportation planning.
- "4. The proposed commuter trains would require massive infusions of public funds. The general scarcity of public funds for transit rationally dictates that such public funding be expended only for services which have the full support of local government, and that State transit experiments should not be imposed upon local communities which do not want them."

Greyhound Lines, Inc.'s Motion to Dismiss

On March 11, 1981, Greyhound Lines, Inc. (Greyhound) filed its motion to dismiss, advancing the same grounds for dismissal as SP. Greyhound's motion also calls to the Commission's attention the filing on January 28, 1981 of its Application No. 60222 in which it seeks authority to operate a bus service between the junction of Interstate Highway 5 and Camarillo, and between Thousand Oaks and Moorpark (the Simi Valley route). Greyhound asserts that the granting of that application would permit it to serve every point in Simi Valley now on the commuter rail route directed to be established in Decision No. 91847. Greyhound submits that it now has on file an unconditional application to serve between Oxnard-Los Angeles and intermediate points. (See Decision No. 92230, in which Greyhound's petition for rehearing was denied; see also, S.F. No. 24244, in which the California Supreme Court denied Greyhound's petition for a writ of review.)

Disposition of County's Motion

County is no longer an indispensable party to this proceeding. Initially, County was to furnish some of the railcars needed for the service. Agreement has now been reached between Caltrans and Amtrak wherein Amtrak will furnish the cars and engines necessary to perform the service and will service and repair that equipment.

The subsidy funding for the proposed service will come entirely from Caltrans; none will be furnished by County. County will not be responsible in any way for the operation of the proposed service. The only essential parties are SP and Caltrans.

Concerning County's request to withdraw, we make the following findings of fact:

1. County would not be responsible for operation of the proposed service under the plan described in our order in Decision No. 91847.

2. County is not required to furnish any cars, engines, or other facilities to operate the proposed service.

3. County is not responsible for any portion of the funding of the proposed service.

The Commission concludes that:

1. County is not an essential party to the proceeding.

2. County's withdrawal from the proceeding will not affect the ability of Caltrans or SP to conduct the proposed service.

3. County's motion to withdraw should be granted.

Disposition of SP's Motion

The thrust of SP's arguments in support of its motion to dismiss is that the proposal for operation of the Oxnard-Los Angeles rail commuter service originated with the County Board of Supervisors (specifically Supervisor Baxter Ward), that our finding of public convenience in Decision No. 91847 is chiefly based on the evidence by or on behalf of County and that withdrawal by County from the proceeding constitutes repudiation of its prior position, which negates the evidence adduced by it supporting our finding of public convenience and necessity.

On February 26, 1981, Caltrans filed its response to SP's motion to dismiss. Caltrans argued that: (1) County is not legally required to be joined in the complaint; therefore, its withdrawal is not grounds for a motion to dismiss; (2) there is substantial evidence in support of the proposed service from regional and local officials and planning agencies other than County; therefore, there is adequate public support from other entities

than County; and (3) withdrawal of County does not affect the outcome of Decision No. 91847, as indicated in the rehearing, inasmuch as Caltrans has arranged with Amtrak to provide and maintain the necessary cars and locomotives, Caltrans has the responsibility for establishing the stations, and Caltrans stands ready to negotiate an agreement with SP to subsidize deficits.

On the critical issue of support for the service, Caltrans states:

"SP incorrectly credits Los Angeles County with the 'popular support' of the complaint. The record is clear that the popular support for the service is derived also from a number of citizens and officials in Ventura County as well as citizens and planning agencies of Los Angeles City and County. The critical factor is, moreover, the demand for the service as demonstrated by the ridership projections of Caltrans' witness Mr. Browne. This demand was conservatively estimated when he testified.

"Finding No. 9 is not significantly affected by the withdrawal of Los Angeles County. Indeed, the record still supports the finding that '[r]egional and local governmental officials and planning agencies support and encourage commuter rail service in the corridor between Los Angeles and Oxnard.'"

County's motion states only that the current Board of Supervisors adopted a motion to have County withdraw. The motion does not repudiate any evidence previously adduced by County, nor does the motion state a position in opposition to the proposed service. As indicated above, County is not a necessary party to the proceeding; County need not contribute either railcars or funding to the project. It would be entirely speculative for this Commission, in addition, to attempt to read election results as a popular referendum on the service ordered in Decision No. 91847. We are not persuaded by SP's efforts to have us engage in such speculation.

Concerning SP's motion to dismiss, we make the following findings of fact:

1. There is substantial evidence in the record from regional and local officials and planning agencies on the issue of public convenience and necessity.
2. There is adequate public support from entities other than County to show that the proposed service is needed.
3. Withdrawal of County as a complainant does not affect the establishment of the rail commuter service ordered in Decision No. 91847, as Caltrans will be solely responsible for the furnishing and maintenance of the operating equipment and station facilities necessary to perform the service.

We make the following conclusions of law:

1. County's withdrawal is not a basis for dismissal of the complaint.
2. Case No. 10575 should not be dismissed for the reasons set forth in SP's motion.
3. Ordering Paragraph 4 of Decision No. 91847 should be amended to delete reference to County.
4. Ordering Paragraph 5 of Decision No. 91847 should be amended to delete reference to County.

Disposition of Greyhound's Motion

Greyhound's motion to dismiss is posited upon the same grounds as SP's motion to dismiss. Accordingly, it will be denied for the same reasons as SP's motion is denied. Examination of Greyhound's Exhibit 3 ("Proposed Simi Valley Service") shows that Greyhound's application to serve Simi Valley provides no basis for dismissal of the complaint. We note, for example, that a bus scheduled to depart from Oxnard (Schedule 6759 revised) at 7:30 a.m.: (a) does not originate there, but appears to be enroute

from San Luis Obispo and therefore might be delayed; (b) does not arrive in Los Angeles until 10:00 a.m.; and (c) obviously does not meet typical commuter requirements. The return bus in the afternoon (new schedule) leaves Los Angeles at 4:10 p.m. and arrives in Oxnard at 7:40 p.m. This service too obviously does not meet typical commuter requirements. We do not here prejudge whether Greyhound's application will be granted, but it offers service which is not comparable to Caltrans' rail service.

This order should become effective on the date of issuance in order to expedite consideration of SP's request for a writ of review (SF 24220) now pending before the California Supreme Court.

IT IS ORDERED that:

1. The motions to dismiss Case No. 10575 filed February 13, 1981 by Southern Pacific Transportation Company and March 1, 1981 by Greyhound Lines, Inc. are denied.

2. The County of Los Angeles is authorized to withdraw as a co-complainant in Case No. 10575.

3. Ordering Paragraphs 4 and 5 of Decision No. 91847 are revised to read as follows:

4. Within thirty days prior to the commencement of service by SP, Caltrans shall establish to the Commission's satisfaction that:

- a. Two consists of eight rail passenger cars each are available and ready to be used in service.
- b. Arrangements have been made for the maintenance of rail cars and for the sale of tickets.
- c. An escrow account has been established containing deposits of \$1.3 million for the purpose of constructing station platforms and parking facilities and a deposit of at least one-half of the estimated cost of first-year operations as set forth in Exhibit 9.

5. Within one hundred eighty days after the effective date hereof SP and Caltrans shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom.

The effective date of this order is the date hereof.

Dated April 7, 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

ALJ/nb *

Decision No. 92863 April 7, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

County of Los Angeles, State of)
California,)

Complainants,)

vs.)

Southern Pacific Transportation)
Company, a corporation,)

Defendant.)

Case No. 10575
(Filed May 18, 1978)

(For appearances see Decision No. 91847.)

OPINION FOLLOWING LIMITED REHEARING

This is a complaint in which the County of Los Angeles (County) and the State Department of Transportation (Caltrans) seek an order of the Commission directing Southern Pacific Transportation Company (SP) to operate a commuter passenger train service between Los Angeles and Oxnard.^{1/} Decision No. 90018 issued February 27, 1979 denied SP's motion to dismiss on jurisdictional grounds. Decision No. 90417 dated June 5, 1979 denied SP's petition for rehearing of Decision No. 90018.

Following public hearing, the Commission issued Decision No. 91847 on June 30, 1980. That decision ordered as follows:

1. Within thirty days after the effective date hereof, the State of California Department of Transportation (Caltrans) shall submit to Southern Pacific Transportation Company (SP) and file with this Commission locations, plans, and specifications for station platforms and parking facilities.

^{1/} By Decision No. 92862 issued April 7, 1981, the County of Los Angeles was dismissed as a complainant.

2. Within ninety days after receipt of the plans and specifications provided for in Ordering Paragraph 1 hereof, SP shall construct the platforms and parking facilities in accordance with said plans and specifications and shall, upon ten days' notice to the Commission and the public, commence operations of two commuter passenger trains between Los Angeles and Oxnard with intermediate stops at Camarillo, Moorpark, Santa Susana (Simi Valley), Chatsworth, Northridge, Panorama, Airport, Burbank, and Glendale. Said service shall be provided subject to the condition that Caltrans shall subsidize deficits resulting from such operation.
3. SP shall operate the rail service provided for in Ordering Paragraph 2 hereof between the hours of 6 a.m. and 8 a.m. and between 4 p.m. and 6 p.m. daily, Monday through Friday, holidays excepted.
4. Within thirty days prior to the commencement of service by SP, complainants shall establish to the Commission's satisfaction that:
 - a. Two consists of eight rail passenger cars each are available and ready to be used in service.
 - b. Arrangements have been made for the maintenance of rail cars and for the sale of tickets.
 - c. An escrow account has been established containing deposits of \$1.3 million for the purpose of constructing station platforms and parking facilities and a deposit of at least one-half of the estimated cost of first-year operations as set forth in Exhibit 9.
5. Within one hundred eighty days after the effective date hereof SP, Caltrans, and the County of Los Angeles shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom.

6. During the period of negotiations funds deposited in the escrow account provided for in Ordering Paragraph 4(c) hereof, shall be used for the purpose of inaugurating and maintaining the commuter service. When an agreement has been reached and actual costs have been determined adjustments will be made accordingly.
7. Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, SP shall amend its tariffs and timetables on file with the Commission to reflect the service herein authorized and ordered.
8. The petition for a proposed report as well as the motions to set aside submission for the receiving of surrebuttal evidence and the motion for a protective order that a "HY-Rail" tour need not be provided are denied.

SP filed a petition for rehearing of Decision No. 91847.^{2/} Decision No. 92230 issued September 3, 1980 modified the discussion, Findings of Fact, and Conclusions of Law set forth in Decision No. 91847 and ordered that Case No. 10575 be reopened for the following purposes:

1. Exhibits 114, 115, 116, 117, 118 and 126 shall be admitted into evidence. Complainants shall have the right to cross-examine the witnesses whose prepared testimony is contained therein. Pursuant to Rule 57 of the Commission's Rules of Procedure, complainants shall also have the right to close the proceedings through presentation of a sur-surrebuttal case. No further exhibits or witnesses shall be submitted or tendered by defendant.
2. Complainants are hereby directed to present substantial evidence of a reasonable solution to the problem of delays incurred by the afternoon commuter trains due to the arrival of the Amtrak "Coast Starlight". Such evidence

^{2/} Greyhound Lines, Inc. also filed a petition for rehearing of Decision No. 91847, which was denied in Decision No. 92230.

may, but need not necessarily, consist of an agreement with Amtrak for rescheduling the Amtrak train to avoid delays to the afternoon commuter trains.

3. Complainants are hereby directed to present evidence of an agreement with Amtrak regarding servicing and maintenance of the passenger cars.
4. Defendant is hereby put on notice that the Commission stands unimpressed with its insistent efforts to magnify minor operational problems into insurmountable obstacles. The Administrative Law Judge shall have discretion to limit proceedings regarding Exhibits 114-118 and 126 to such major issues of service feasibility as he finds consistent with fairness to all parties.
5. We have carefully reexamined each and every exhibit (Nos. 111-126) offered by Greyhound and SP as part of SP's surrebuttal presentation. In view of the modification of Decision No. 91847 which follows, Exhibits 111 and 112 shall not be admitted into evidence. Exhibits 113 and 119-125 shall not be admitted into evidence, as they are argumentative, repetitive, and merely cumulative of SP's case in chief and Exhibits 114-118 and 126. Except as specifically granted herein, the petitions to set aside submission are denied.

Following a prehearing conference on October 7, 1980, at which the order of presentation of evidence and hearing dates were determined, further hearing, as ordered in Decision No. 92230, was held before Administrative Law Judge Mallory in San Francisco on October 14 and 15 and November 17 and 18, 1980. The matter was again submitted on the receipt of proposed findings of fact and conclusions of law by complainant, defendant, and our staff on December 22, 1980.

Background

The service proposed by Caltrans is the operation of two commuter passenger trains during the morning from Oxnard to Los Angeles, and two passenger trains from Los Angeles to Oxnard in the evening, five days weekly (Monday through Friday). SP's Oxnard-Los Angeles line is a part of SP's coast main line. It is a single track for the greater portion of its length. Amtrak operates passenger service over that route, and its operations southbound (eastbound) in the evening will coincide with the northbound (westbound) commuter train operations. SP operates local and interdivision freight trains over the route. Two major freight yards (GEMCO and Taylor) are located on the route. At times the Oxnard-Los Angeles main line adjacent to those yards is used in making up freight trains. That use would need to be discontinued during the period that commuter trains operate, as would the use of the main line for freight train movements.

It is SP's contention throughout this proceeding that the commuter train operations will usurp its Oxnard-Los Angeles main line to such an extent that its freight train operations will be seriously impeded and that the operation of two first-class passenger trains in opposite directions, at the same time, on the single-track line, will result in safety hazards and operational problems.

SP's Exhibits 114-118, and 126 contain surrebuttal testimony addressing the asserted operational, scheduling, and safety problems described in the preceding paragraph.

Sur-surrebuttal testimony was presented by complainant, which consisted of five exhibits, including the prepared testimony of Witness Brophy (Exhibit 134), an Agreement of Intent between Caltrans and Amtrak (Exhibit-135), an amended schedule for evening commuter trains designed to reduce conflicts with Amtrak trains

(Exhibit 136), a further amended schedule for evening commuter trains (Exhibit 137), and a letter from Amtrak indicating its willingness to maintain the El Camino-type cars of County (Exhibit 143).

Proposed findings of fact and conclusions of law were submitted by complainant, defendant and our staff. The findings and conclusions in Decision No. 91847 and the parties' proposed or new amended findings and conclusions are discussed below.

In Decision No. 91847 we decided three broad categories of issues: (1) whether we have jurisdiction to require SP to provide the proposed commuter service; (2) whether the proposed commuter service is required by public convenience and necessity; and (3) whether a rail service would be feasible under existing conditions.

Categories (1) and (2) are not in issue in the reopened proceeding. Findings 1 through 14 of Decision No. 91847 deal with the issues of jurisdiction (Category 1) and public convenience and necessity (Category 2). Findings 15 through 33 deal with the issue of whether a rail passenger service would be feasible under existing conditions; these are the matters on which further evidence was presented.

No changes were proposed in Findings 1 through 11 by any of the parties. Proposed Findings 12 and 14 of the staff iterate the current findings concerning public convenience and necessity and the need of complainant and defendant to engage in negotiations leading to an agreement to render the service. Those findings were not in issue in the limited rehearing. No further discussion or changes in Findings 12 and 14 are necessary.

Defendant's Surrebuttal Showing

SP's position is that the key findings of Decision No. 91847 dealing with operations of commuter and freight services were based on the surrebuttal testimony of complainant's witnesses Brophy and King, to which SP did not have an opportunity to respond.^{3/} The rehearing granted in Decision No. 92230 permitted SP to present surrebuttal exhibits responding to complainant's rebuttal showing.

Exhibit 114, Witness Giles

The witness identified in his exhibit a number of problems which he believes would prevent the successful operation of the commuter service, as follows:

1. Passenger train operations off the main line for extended periods of time during which operating personnel would be idle.
2. Less time would be available for freight train crews to complete their work.
3. There is a lack of sufficient track space at Oxnard to store two commuter trains overnight.
4. There are no facilities at Oxnard for cleaning and servicing commuter equipment.
5. There will be difficulty replacing temporarily all crew members at Oxnard.
6. There is an absence of parking facilities at Oxnard for crew and servicing personnel.
7. SP does not have experienced supervisory personnel to operate a commuter service on the Oxnard-Los Angeles segment.
8. SP will encounter scheduling difficulties if Oxnard is used as a crew base instead of Los Angeles.

^{3/} Findings 15, 16, 18, 19, 21, and 25 of Decision No. 91847 are the key findings which collectively state (a) that the proposed commuter trains can be operated with no significant adverse effect upon SP's freight service; (b) that certain changes in yard and siding facilities should be made in the interests of improving efficiency; (c) that if these were done, any operational problems could be resolved, and (d) that the passenger cars proposed by complainant are in excellent condition and more than adequate for the proposed service.

Exhibit 115, Witness Baumhufner

The witness explained freight train operating difficulties that he perceived would result if commuter service is operated. He pointed out specific points of disagreement with the testimony of complainant's principal operating witness, Mr. Brophy.

Witness Baumhufner concluded there is no way to operate GEMCO Yard other than the way it was operated during the fall of 1979. The operation of the commuter trains would interfere with the makeup of the outbound automobile trains, the delivery of "hot" auto parts cars to GEMCO, and the operation of local and through freights in the GEMCO Yard vicinity. Witness Baumhufner also sees the need for additional lighting and/or parking facilities at several locations.

Exhibit 116, Witness Thruston

Witness Thruston testified that freight volumes on the Coast Line are increasing and expected to continue to grow and that there is no possible way to handle the proposed commuter trains in conjunction with the existing freight traffic on the line. He also stated that traffic levels at Taylor Yard have not been reduced to any measurable extent by the opening of West Colton Yard although it has reduced some of the traffic in the satellite yards and to and from the satellite yards. Witness Thruston further testified that SP does not have any steam generator locomotives suitable for use in the proposed commuter service and to equip all of SP's freight fleet with steam generator equipment would cost in excess of \$50,000,000. Operation of the commuter trains would, in Witness Thruston's opinion impair the ability of SP to adequately maintain its present level of Amtrak and freight services.

Exhibit 117, Witness Garrett

Witness Garrett states that he disagrees with the testimony and conclusions of complainant's Witness Brophy because Brophy

viewed Taylor Yard at a time of reduced activity. He further states that yarding through trains for crew changes would not increase the flexibility of Taylor Yard. The witness foresees problems in operating the proposed passenger trains past Mission Tower. Witness Garrett states that Brophy identified only one-fourth of the conflicting movements that will be caused by the operation of the passenger trains. Industrial switching between Taylor Yard and Burbank Junction on the double-track segment will be interfered with by the operation of the commuter trains to a greater extent than Brophy anticipates because contrary to Brophy's assumption, the local switchers cannot cross from one double-track segment to the other to clear the passenger trains.

Exhibit 118, Witness Owen

Witness Owen determined that the proposed schedule for the commuter trains set forth in Decision No. 91847 is unworkable and calculated that a reasonable schedule would be 120 minutes eastbound and 128 minutes westbound. Witness Owen further testified that he performed an analysis of the interference that the passenger trains would cause with SP's existing freight operations and that in so doing he adjusted existing schedules and services to create the best fit, minimizing the impact of the passenger trains. He constructed what he considered to be a typical day's operation on the railroad and the typical interference to freight operations that would arise from the creation of the proposed commuter trains. Witness Owen conducted a further analysis involving expected interference with Amtrak's Train No. 12 and the afternoon commuter trains. He believes that the operation of the afternoon commuter trains would have a substantial adverse effect on the performance of Amtrak Train No. 12. He projects that 50 percent of the Amtrak trains will be delayed an average of 15 minutes per trip as a result of the operation of the commuter trains. In addition to the initial interference and delays

identified, there would be secondary delays which could be expected to occur due to the lack of flexibility in the existing SP plant. Moreover, Amtrak has plans to expand passenger service on this line thus increasing the anticipated congestion.

The witness testified that if there were additional traffic on the line and increased congestion this could adversely affect the operation of the commuter trains. Witness Owen disagrees with Witness Brophy's conclusion that the introduction of additional passenger trains would strengthen SP's operation by requiring the imposition of more stringent operating practices on the line.

Exhibit 126, Witness Jochner

Witness Jochner anticipated that the proposed commuter coaches will be inappropriate because: (1) the vestibule doors present operational problems; (2) the heating and cooling systems may be difficult to maintain; (3) some of the equipment may not have ticket clips; (4) the food service cars may be inappropriate for commuter services; (5) the seat configuration may not be optimal; and (6) there may be problems with cleaning and maintaining the equipment. Also, there will be problems arising from inadequate station shelters, information systems at stations, and ticket selling by banks.

The witness also predicted the loss of incentive payments by Amtrak to SP if commuter trains create substantial delays to Amtrak trains.

Complainant's Sur-surrebuttal Evidence

Complainant's sur-surrebuttal evidence consists of five exhibits: (a) the verified statement of Witness Brophy (Exhibit 134); (b) an "Agreement of Intent" between Caltrans and Amtrak (Exhibit 135); (c) a motion requesting a revised schedule for the afternoon commuter

trains (Exhibit 137); and (d) a letter from Amtrak indicating a willingness to maintain the El Camino Cars (Exhibit 143).

Exhibit 136, Witness Brophy

Witness Brophy addressed various specific issues in response to the decision granting rehearing and to the specific evidence presented in SP's surrebuttal. Witness Brophy noted that the calculations by SP's Witness Owen of the proposed commuter schedules are suspect because Owen used an incorrect weight for the trains, made no study of station dwell times, and failed to address the passenger-freight train conflict so as to mesh the operations and eliminate the problems. The witness testified that the modified schedule requested by complainant purportedly eliminates the conflict problem with Amtrak Train No. 12 and simultaneously eliminates the additional eight-minute delay to the commuter trains assigned by SP Witness Owen.

Witness Brophy examined facilities at Oxnard and found ample track space available for the storage of the commuter equipment overnight at that location. His inspection showed that there was an electric cable laid immediately alongside the House Track No. 4104 and that there was a track at Oxnard where locomotives could be fueled and serviced. In response to SP's concern that there would be a problem with crewmen for the commuter trains suddenly taking ill with no replacements available at Oxnard, the witness' investigation showed that during September 1980, for the two assignments worked in Oxnard, there were only six days out of the 30 in the month when an individual trainman had to be replaced at Oxnard and in all cases the trainman had laid off at least eight hours prior to his next scheduled duty time. The same was true for engineers. The witness concluded that the records showed there was no problem with Oxnard crews suddenly taking ill (Exhibit 134

pp. 8-9). He also pointed out that supervisory personnel could be used in the unlikely event a crew member became suddenly ill.

Witness Brophy examined the rail operations at GEMCO Yard and Taylor Yard on four separate occasions in September and October 1979 and April and October 1980. On none of these occasions have these yards been operating at capacity.

Witness Brophy believes that operation of the proposed commuter service could be accomplished with virtually no impact on existing freight operations simply by modifying existing freight operating practices so as to keep the main line clear for the passenger operation. He determined that the window required for the passenger operation would be 33 minutes in the morning and 45 minutes in the afternoon. He pointed out that the difference between his count of conflicting train movements at Taylor Yard and that of SP's Witness Garrett, is that Garrett counted light engine moves as well as actual train movements. He noted that SP's concern about local freight crews working overtime due to interference from the proposed passenger trains could be alleviated by simply adjusting the duty time of the local switchers.

The witness concluded that the passenger trains can be accommodated in the same manner that seasonal increases in freight traffic are accommodated.

Agreement of Intent, Exhibit 135

This agreement between Amtrak and Caltrans commits Amtrak to lease to Caltrans up to 16 rail-passenger cars for use in the proposed commuter service. It also gives Caltrans the right to lease up to five SDP40 locomotives for the proposed service. Amtrak agrees to maintain the equipment which Caltrans uses in this service including the El Camino cars. Amtrak and Caltrans agree to joint usage of the station facilities at LAUPT, Glendale, and

Oxnard. Amtrak will provide such additional personnel as may be required to provide these functions for Caltrans.

Schedule Modifications, Exhibits 136 and 137

The schedule requested by complainant in Exhibit 136, as modified by Exhibit 137, assertedly alleviates the conflict with Amtrak Train No. 12 and the afternoon commuter train schedules by establishing positive meets for these trains, using the standard procedure for meeting passenger trains throughout the country for the past 100 years.

Discussion

The Commission's order granting rehearing limited the scope of the evidence to be received on rehearing to certain specific issues. SP was permitted to introduce testimony of its operating witnesses addressing specific operating problems. Complainant responded to that evidence. Complainant also was directed to present evidence of an ability to resolve certain expected requirements for the service. This discussion will focus on those specific issues.

The thrust of SP's surrebuttal testimony was directed to the problems associated with the imposition of the new commuter train operating on top of the existing freight train operations.

It is SP's overriding contention that it cannot rearrange its freight operations to accommodate the proposed commuter train operations without causing long periods of delays and disruptions to its freight service. SP also strongly contends that westbound evening commuter operations will conflict with the eastbound Amtrak operations; that Amtrak service should take precedence over the commuter service; and that serious delays to either the Amtrak service or the commuter service will occur, depending on which is the primary service.

Of far lesser importance are the many relatively minor operational problems described by SP in its surrebuttal testimony. Those problems appear to be readily solved with the cooperation of SP and with minor changes in the operational plans proposed by complainant.

Interference with Freight Service

SP attempted to disprove the rebuttal testimony of complainant's principal operating witness relied upon by the Commission in Decision No. 91847. SP attempted to rehabilitate its interference studies which assertedly showed that serious interference with its freight operations would result from the operations of the commuter trains; that its yard operations are efficient and that at various times its main line must be used to make up freight trains; and that the interference would impose added costs upon SP and would inconvenience its freight shippers. Much of such testimony iterated or amplified testimony described in and considered in Decision No. 91847.

There are major disagreements between SP and complainant with respect to the time windows during which freight train operations on the main line must close while commuter operations are performed. Complainant's witness estimates a window of 33 minutes in the morning and 45 minutes in the evening. SP's witness estimates a window of 2 hours in the morning and 2 hours in the evening. The estimates of delays to "hot" cars of auto parts, to through freight trains, and extra crew salaries and car-delay costs are related to these windows.

Some delays to freight service inevitably will occur, as measured by either window. We do not accept SP's window because we believe that its estimate is based on a "worst case" analysis, wherein little effort would be made to adjust freight operations to accommodate commuter operations. On the other hand, complainant's window

presents the best possible case, and ignores some of the operational problems described in SP's testimony. A thorough review of the evidence again convinces us that, on balance, the present Oxnard-Los Angeles line is adequate to accommodate the commuter service and SP's existing freight service.

However, if additional freight or Amtrak service burdens the line, improvements in yards, sidings, and traffic controls probably will be necessary, even in the absence of commuter service. Finding 30 of our original decision stated that SP should not be reimbursed for delays to its freight operations. We reiterate that finding, while keeping in mind the import of the discussion on page 65 (mimeo.) of Decision No. 91847 on which Finding 30 is based. We recognize that other possible steps should now be explored to minimize delays which cannot be eliminated by reasonable operating changes or innovations. The corrective actions which may need to be taken are to: (a) double-track the single-track portion of the Oxnard-Los Angeles line; (b) install centralized traffic control (CTC); and (c) install additional side tracks, improve yard facilities, or lengthen existing side tracks.

The high cost of double-tracking the line makes it an unacceptable solution to the problem. It should only be considered as a last resort.

Installing CTC, while expensive, is less costly than double-tracking. CTC not only would help reduce delays to freight operations, but would materially reduce the problems associated with timetable meets of Amtrak and commuter trains as hereinafter discussed. We are not prepared to direct installation of CTC at this time. We wish to review the performance of commuter and freight services for a reasonable time under actual operating conditions. If, after a reasonable period of operations, circumstances disclose that CTC may be essential, we will consider that issue in a subsequent proceeding.

In the absence of CTC or double-tracking, additional side tracks may need to be installed or made available to minimize delays to freight trains and to ease the problems of meets between Amtrak and commuter trains. An additional side track may need to be made available as indicated in Finding 16 (Hewitt siding). Other sidings may need to be constructed along the single-track portion of the line to permit the passing of the commuter and the Amtrak trains without unnecessarily delaying either. We will not now order construction of new sidings at specific locations as a contingency to beginning the commuter operations, but will consider the issue at a later time after actual commuter operations have begun, if reasonable operational changes and innovations do not alleviate interference or delays.

Finding 16 refers to side tracks and to the use of radio to facilitate meets between commuter trains and inferior trains. The record shows that the use of radio to issue train orders is not a practical solution for minimizing delays. Finding of Fact 16 should be amended to read as follows:

16. A major portion of the SP coastline track facilities between Los Angeles and Ornard is single track with side tracks at four locations. Additional side tracks would greatly facilitate the movement of commuter trains and minimize delays to both passenger and freight trains. Hewitt siding should be returned to operation. Hewitt siding is not required to maintain fluid operations at GEMCO Yard. The use of radio to issue train orders is not a practical solution for minimizing delays to inferior trains.

Based on the foregoing discussion, we will modify Finding of Fact 17 to read as follows:

17. SP's interference study is a "worst case" analysis of the train conflicts which would result if the proposed commuter service is authorized. It shows a two-hour window in the morning and evening during which time freight operations must cease on the main line while the commuter trains operate. Complainant's similar analysis presents the most favorable possible operations, and ignores some of the inevitable conflicts which will arise. Complainant's study shows a thirty-three minute window in the morning and a forty-five minute window in the evening when freight trains must cease operations on the main line because of the commuter operations. Under either analysis, some delays to freight service will occur, but, on balance, the existing line is capable of accommodating both the commuter service and freight service.

The record in the rehearing phase shows that activity at GEMCO has declined because of the reduction in traffic at the General Motors plant as a result of slowing of the sale of new automobiles. The record also shows that the makeup and storage of freight trains adjacent to GEMCO Yard can be accomplished by extending an auxiliary track within GEMCO to accommodate freight trains two miles in length. The main line would clear and would not be used for that purpose. Finding of Fact 18 should be modified to reflect these changes, as follows:

18. SP's GEMCO and Taylor Yards pose a potential problem for conflicts with the proposed commuter trains, but a major contributing factor is SP's practice of making up trains on the

main tracks adjacent to both yards. Traffic has decreased at GEMCO Yard in the period between the initial hearing and the date of rehearing because of reduction of traffic at the General Motors plant. Better utilization of GEMCO Yard facilities and less interference with the main line operations can be achieved by construction of a two-mile-long ancillary track within GEMCO Yard. More efficient yard operations, and stricter discipline in the calling and operation of freight trains would minimize possible delays to passenger and freight trains because of conflicts.

Schedule Conflict with Amtrak Train No. 12

The Commission's order granting rehearing directed complainant to present substantial evidence of a reasonable solution to the problems of delays incurred by the afternoon commuter trains due to the arrival of the Amtrak "Coast Starlight".^{4/}

Complainant attempted to meet that directive by revising the westbound commuter schedules (Exhibit 139) so that the first evening train (No. 301) meets Amtrak No. 12 at Moorpark and the second train (No. 303) meets Amtrak No. 12 at Santa Susana. In order to facilitate timetable meets, complainant suggests that Amtrak No. 12's schedule be revised between Oxnard and Los Angeles (there would be no change at Oxnard or Los Angeles).

In its testimony, SP disputed the ability of the commuter trains to meet the schedules proposed by complainant. SP's evidence was designed to show that actual station dwell times are greater than those incorporated into complainant's schedule, and that serious delays will occur when Amtrak No. 12 is late or early and scheduled meets cannot take place. SP's estimate of station dwell times assertedly takes into consideration its experience operating

^{4/} Ordering Paragraph 2 of Decision No. 92230.

commuter trains on the San Francisco peninsula, the difficulties in boarding or alighting from the Amtrak cars which have narrow doors and steps at other than platform heights, and the need for brakemen to manually open and close car doors. SP compared the rapid operation of automatic center double doors on its bilevel cars used on its peninsula operations with the manually operated doors at either end of the Amtrak cars.

The greatest problem foreseen by SP concerns the delays resulting when Amtrak No. 12 is not on time. SP presented evidence to show that the time schedule for that train provides extra time in the last leg of its run from Oxnard to Los Angeles to make up for earlier delays. SP showed that Amtrak No. 12 was late at Oxnard 60 percent of the time, and that even with the added schedule time, that train was also often late at Los Angeles.

SP assumed that Amtrak No. 12 would take precedence over the commuter trains, and that the commuter trains would be sidetracked if timetable meets cannot be accomplished. SP points out that there are a limited number of sidings available for the commuter train to use while it waits for Amtrak No. 12 to clear. SP also pointed out it is penalized under its contract with Amtrak for late operations. It argued that because of that penalty provision it must give precedence to the Amtrak train over the commuter trains.

It is complainant's position that when two first-class trains are involved (such as here) the westbound train takes precedence over the eastbound train under standard railroad operating rules. Therefore, under the operating rules, Amtrak No. 12 should be sidetracked rather than the commuter trains whenever timetable meets cannot be accomplished.

It is not our purpose to resolve in this order which train has precedence in the event of a failed timetable meet. However, we recognize that Amtrak No. 12 has had a very poor on-time performance, which makes it probable that scheduled timetable meets of Amtrak No. 12 and the commuter trains will be the exception

rather than the rule. We also recognize that there are limited side tracks available in the area between Chatsworth and Oxnard where the delays will occur. We have discussed above the fact that CTC could mitigate some of the freight train delays. Installation of an interlock CTC system between Chatsworth and Oxnard would materially facilitate the meets of the two first-class trains. As heretofore indicated, we will explore whether CTC or additional sidings are needed based on the experience gained through actual operations. Preliminary to that review we expect SP and Caltrans to make schedule adjustments during the initial period of operations that will reduce delays to the maximum degree possible.

Based on the foregoing discussion, Finding of Fact 19 should be revised to read as follows:

19. The proposed rail commuter service is feasible. Initially certain operational problems will be experienced but these can and should be resolved following a reasonable period for operational and public adjustment. After that adjustment period we will review the operational problems with a view to ordering CTC, new sidings, or other means of avoiding conflicts, should those measures be needed.

Locomotives

Finding 20 of Decision No. 91847 provides that SP shall furnish locomotives to operate the commuter service. Subparagraphs (a) and (b) of Ordering Paragraph 4 require Caltrans to establish to the Commission's satisfaction that it has sufficient passenger cars to provide the service and that arrangements have been made for equipment maintenance and ticket sales. Caltrans and Amtrak have reached an agreement that Amtrak will supply the passenger cars and locomotives necessary to provide the proposed service and that Amtrak will maintain and service that equipment. Amtrak also will handle ticket sales for Caltrans.

Finding of Fact 20 should be amended to read as follows:

20. Caltrans has established to the Commission's satisfaction that:

- a. It has two consists of eight rail passenger cars and sufficient locomotives available and ready to be used in the proposed service;
- b. Arrangements have been made for the maintenance of passenger cars and locomotives and for sale of tickets.

Ordering Paragraphs 4(a) and 4(b) of Decision No. 91847 have been complied with and should be deleted.

Finding 25 should be deleted inasmuch as it is moot since Amtrak has agreed to furnish the passenger cars to be used in the proposed service.

Commuter Operating Schedule

SP challenges the 1-hour and 30-minute schedules proposed by Caltrans. SP asserts that at least 2 hours eastbound, 2 hours and 8 minutes westbound must be allowed for a realistic schedule for commuter trains. SP bases this on its contention that additional time is necessary on its estimates that station dwell time is understated, and that insufficient time is allowed for acceleration and deceleration of the heavy conventional rail equipment. SP states that the low-density single-vestibule cars will require more time for loading and unloading. The SP witness would increase station dwell times at low-volume stations by one-half minute and by two minutes at high-volume stations. The witness also made an extra allowance of 3 minutes per schedule for saving by nonclearing freight trains. He also added a standard 5 percent recovery for ordering random delays. Eight additional minutes were added to the westbound schedule to allow for meeting Amtrak.

As indicated in the testimony of the witnesses for Caltrans and SP, the schedule times proposed by them are based on their informed judgment. Caltrans' witness presented a schedule that reflects the most optimistic operating conditions. SP's assumptions are that delays will be encountered daily, and those delays are built into its schedule. Again, only after actual operations are commenced and some experience is gained can an accurate and realistic schedule be developed.

Delays can and will be minimized through timetable meets of the commuter trains and Amtrak No. 12. Finding 35 should be added to clearly indicate to the parties that it is essential that commuter-train schedule adjustments be made as often as necessary in order to facilitate timetable meets of the commuter trains with Amtrak No. 12.

35. The adjustment of the afternoon commuter schedules to create timetable meets with Amtrak Train No. 12 will minimize delays.

Service of Equipment and
Crew Assignments at Oxnard

SP contends that it has no facilities at Oxnard at which to store or service the two commuter trains, nor any personnel at Oxnard to service the trains. SP also contends that as its nearest extra board for enginemen, conductors, and brakemen is located at Los Angeles, it will have difficulty supplying temporary crew replacements on morning runs from Oxnard.

Caltrans urges that certain tracks at Oxnard that are not now in use or are seldom used can be made available by SP; that electricity and water are now available at such tracks or can be made easily available; and that crew replacements can be supplied from Los Angeles with sufficient lead time, or supervisory personnel can fill in as needed.

Again, it appears that these problems are not insurmountable and need only to be worked out between SP and Caltrans. These are relatively minor operational problems and the feasibility of the commuter operations is not contingent upon their immediate resolution. We direct SP and Caltrans to engage in good faith negotiations to arrive at solutions to those problems which are equitable to both. No changes in our other findings are required.

ORDER FOLLOWING LIMITED REHEARING

IT IS ORDERED that Decisions Nos. 91847, 92364, and the decision concurrently issued in this proceeding are modified as follows:

1. Finding 16 is modified to read as follows:
 16. A major portion of the SP coast line track facilities between Los Angeles and Oxnard is a single track with side tracks at four locations. Additional side tracks would greatly facilitate the movement of commuter trains and minimize delays to both passenger and freight trains. Hewitt siding should be returned to operation. Hewitt siding is not required to maintain fluid operations at GEMCO Yard. The use of radio to issue train orders is not a practical solution for minimizing delays to inferior trains.
2. Finding 17 is modified to read as follows:
 17. SP's interference study is a "worst case" analysis of the train conflicts which would result if the proposed commuter service is authorized. It shows a two-hour window in the morning and evening during which time freight operations must cease on the main line while the commuter trains operate. Complainant's similar analysis presents the most favorable possible operations, and ignores some of the inevitable conflicts which will arise.

Complainant's study shows a thirty-three minute window in the morning and a forty-five minute window in the evening when freight trains must cease operations on the main line because of the commuter operations. Under either analysis, some delays to freight service will occur, but, on balance, the existing line is capable of accommodating both the commuter service and freight service.

3. Finding 18 is modified to read as follows:

18. SP's GEMCO and Taylor Yards pose a potential problem for conflicts with the proposed commuter trains, but a major contributing factor is SP's practice of making up trains on the main tracks adjacent to both yards. Traffic has decreased at GEMCO Yard in the period between the initial hearing and the date of rehearing because of reduction of traffic at the General Motors plant. Better utilization of GEMCO Yard facilities and less interference with the main line operations can be achieved by construction of a 2-mile long ancillary track within GEMCO Yard. More efficient yard operations, and a stricter discipline in the calling and operation of freight trains would minimize possible delays to passenger and freight trains because of conflicts.

4. Finding 19 is modified to read as follows:

19. The proposed rail commuter service is feasible. Initially certain operational problems will be experienced but these can and should be resolved following a reasonable period for operational and public adjustment. After that adjustment period we will review the operational problems with a view to ordering CTC, new sidings, or other means of avoiding conflicts, should those measures be needed.

5. Finding 20 is modified to read as follows:
 20. Caltrans has established to the Commission's satisfaction that it has:
 - a. Two consists of eight rail passenger cars and sufficient locomotives available and ready to be used in the proposed service;
 - b. Arrangements have been made for the maintenance of passenger cars and locomotives and for sale of tickets.
6. Finding 25 is moot and is deleted.
7. Finding 35 is added as follows:
 35. The adjustment of the afternoon commuter schedules to create a timetable meet with Amtrak Train No. 12 will minimize delays.
8. Ordering Paragraph 4 is amended to read as follows:
 4. Within thirty days prior to the commencement of service by SP, Caltrans shall establish to the Commission's satisfaction that an escrow account has been established containing deposits of \$1.3 million for the purpose of constructing station platforms and parking facilities and a deposit of at least one-half of the estimated costs of the first year operations as set forth in Exhibit 9.
9. Ordering Paragraph 7(a) is added as follows:
 - 7(a) One year after commencement of the proposed service, SP or Caltrans may petition for the establishment of Centralized Traffic Control and/or construction of additional sidings or extension of existing sidings, in order to expedite passenger service or reduce delays to freight train operations. Said petition should set forth the facilities proposed to be constructed, the estimated construction costs, and a proposed division of such costs between Caltrans and SP based on the benefits accruing to each from such construction.

10. In all other respects, Decisions Nos.91847, 92230, and the decision concurrently issued in this proceeding shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated April 7, 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

FORMAL FILE COPY

Decision No. 91847

June 3, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA,

Complainants,

v.

SOUTHERN PACIFIC
TRANSPORTATION COMPANY,
a corporation,

Defendant.

Case No. 10575
(Filed May 18, 1978)

Owen L. Gallagher and Douglas Ring, Attorneys at Law, for County of Los Angeles; and Robert A. Munroe, O. J. Solander, and Robert B. Patterson, Attorneys at Law, for State of California, Department of Transportation; complainants.

John MacDonald Smith and Carol A. Harris, Attorneys at Law, for Southern Pacific Transportation Company, defendant.

D. H. Brey and Paul E. Morrison, for Brotherhood of Locomotive Engineers; James P. Jones, for United Transportation Union, California Legislative Board; and Eugene C. Given and Lat J. Celmins, Attorney at Law, for Greysound Lines, Inc.; intervenors.

K. D. Walbert, for Department of Transportation, City of Los Angeles; Dana Reed, Attorney at Law, for Los Angeles Taxpayers Association; Thomas E. Malley, Attorney at Law, for Ventura County Bar Association; and Benson T. Buck, Attorney at Law, for General Motors Corporation; interested parties.

Vincent MacKenzie, Attorney at Law, for the Commission staff.

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O P I N I O N

By their complaint filed May 18, 1978, the County of Los Angeles (County) and the State of California Department of Transportation (Caltrans) request an order of the Commission directing Southern Pacific Transportation Company, (SP) to operate passenger train service between Los Angeles and Oxnard.

On October 6, 1978 SP filed a motion to dismiss the complaint for lack of jurisdiction. Following oral argument on November 13, 1978 the motion was denied by Decision No. 90012 dated February 27, 1979. By Decision No. 90412 dated June 5, 1979 rehearing on the motion was denied.

Public hearing on the complaint was held before Administrative Law Judge Daly at Simi Valley, Los Angeles, and San Francisco and was submitted on January 22, 1980 upon concurrent briefs, which were filed on March 12, 1980.

Reasons for Filing Complaint

Los Angeles County Board of Supervisors member Baxter Ward and Ms. Adriana Gianturco, Director of Caltrans, testified on behalf of complainants.

Supervisor Ward testified that in June 1974, County allocated \$4,125,000 for developing a pilot commuter rail service in three corridors: (1) San Fernando Valley, (2) San Bernardino, and (3) Santa Ana. He further testified that following a meeting with Amtrak's president, County was advised that Amtrak would provide service only in the Santa Ana corridor and only upon the condition that service was extended to San Diego and County purchased the equipment. County thereupon purchased and refurbished eight passenger cars and The Atchison, Topeka and Santa Fe Railway Company agreed to operate the service for Amtrak with Caltrans as the prime contractor. Following a six-month trial period, Caltrans agreed to undertake full responsibility for financing the service. This freed the eight rail cars, which were replaced by Amtrak fleet coaches.

On March 9, 1978 representatives of the County met with SP and requested that it "haul" the County's railroad cars or initiate the sought train service. SP refused and the instant complaint followed.

Ms. Gianturco testified that approximately 86 percent of all travel is by automobile and less than one percent is by train. According to Ms. Gianturco, the extensive use of the automobile has placed large costs on the general public in terms of environmental deterioration, traffic congestion, energy consumption, and the use of large amounts of land for roads and parking. As a result, Caltrans now has second thoughts about the desirability of unrestrained auto use, particularly in urban areas. The goal of Caltrans is to develop a balanced transportation system that considers all transportation modes within realistic funding levels. Caltrans contends that there is an existing need for commuter rail service between Oxnard and Los Angeles Union Terminal and that inauguration of such a service would be responsive to the Legislature's support for alternative rail service as expressed in Chapter 1130, Statutes of 1975, as amended by Chapter 1067, Statutes of 1977, wherein it stated:

"It is the policy of the state to encourage rail passenger service as an alternative to the automobile because of such services' high fuel efficiency and in order to relieve heavily traveled highways."

History

On October 29, 1901, the Pacific Electric Railroad System (PE), consisting of eight interurban street railroads, was organized for the purpose of providing local and commuter rail service within the Los Angeles Basin. Mr. Henry E. Huntington, who was the largest single shareholder, was also a vice president of SP. On September 11, 1911 PE became a wholly owned subsidiary of SP and was used as a feeder service to SP's transcontinental and San Francisco Bay Area trains.

Service by PE from Los Angeles to the San Fernando Valley was commenced in 1911. By 1937 SP operated five daily passenger trains between Los Angeles and Oxnard over the Coast Line, three of which served numerous stations between those points.

The peak of the PE service was between 1923 and 1927 when it carried as many as 109,185,650 passengers annually and operated over 1,164 miles of track, exclusively in the Los Angeles Basin.

In 1904 SP completed dedication of the final portions of its "Coast Line" south of Santa Barbara through Oxnard and the Santa Susana Tunnel to Los Angeles as part of its mainline passenger service. Prior thereto train service between Los Angeles and Oxnard was served via Saugus over the "Santa Paula Branch" along the Santa Clara River.^{1/} SP had operated various trains in local service between Santa Barbara and Los Angeles and between Oxnard and Los Angeles over the Santa Paula Branch until 1934 and through the Santa Susana Tunnel route subsequently.

With the advent of the freeway system, PE service was gradually discontinued pursuant to Commission authorization and was completely discontinued in 1967. By the same token, SP passenger train service over the Coast Line was in large part discontinued pursuant to various Commission decisions or tariff filings from 1934 to 1968. The last trains operated by SP over the Coast Line were the Coast Daylight Trains Nos. 98 and 99, which were taken over on May 1, 1971 by Amtrak pursuant to Section 401 of the Federal Rail Passenger Service Act of 1970.

Proposed Service

In addition to the eight "El Camino" passenger cars owned by County, eight additional passenger cars for the second train would be acquired by Caltrans. Both trains would be operated on weekdays between Los Angeles and Oxnard in accordance with the following schedules, each would have a running time of one hour and thirty minutes:

^{1/} See Appendix A.

<u>Train</u> 302 <u>a.m.</u>	<u>Train</u> 300 <u>a.m.</u>	<u>Mile</u>	<u>Station</u>	<u>Train</u> 301 <u>p.m.</u>	<u>Train</u> 303 <u>p.m.</u>
6:20	6:00	407.8	Oxnard	6:30	7:00
6:29	6:09	416.6	Camarillo	6:21	6:51
6:40	6:20	427.1	Moorpark	6:10	6:40
6:52	6:32	437.5	Santa Susana	5:58	6:28
7:04	6:44	445.5	Chatsworth	5:46	6:16
7:10	6:50	449.9	Northridge	5:40	6:10
7:17	6:57	455.0	Panorama	5:33	6:03
7:24	7:04	460.5	Airport	5:26	5:56
7:29	7:09	471.6	Burbank	5:21	5:51
7:36	7:16	477.1	Glendale	5:14	5:44
7:50	7:30	482.8	Los Angeles	5:00	5:30

According to a senior marketing consultant for the Division of Mass Transportation of Caltrans, the running time results in an average speed of 44 mph based upon the assumption of a 30-second dwell-time at each station with reasonable assumptions for acceleration and deceleration. In the event that the proposed running time cannot be met, it is the intention of complainants to protect the Los Angeles Union Terminal arrival and departure times.

The proposed zone fares are as follows:

	<u>Between Los Angeles And</u>	<u>(5-Day) Monthly Commutation</u>	<u>20-Ride "Family" Ticket 60-Day Limit</u>	<u>Single Ride One-Way Fare</u>
Red Zone 1	Glendale Burbank Airport	\$33.75	\$24.40	\$1.45
Green Zone 2	Panorama	39.40	27.90	1.70
Orange Zone 3	Northridge	45.00	31.45	2.10
Blue Zone 4	Chatsworth	50.60	36.60	2.55
Yellow Zone 5	Santa Susana (Simi Valley)	56.25	41.25	3.00
Brown Zone 6	Moorpark	60.60	46.05	3.20
Purple Zone 7	Camarillo Oxnard	80.00	60.60	4.20

It is estimated that less than 20 percent of the tickets sold would be one-way tickets. Monthly tickets would be sold at both the Los Angeles and Oxnard stations and vending machines would be used at intermediate stations. Tickets would also be sold on the trains and could be purchased by mail or at banks as well as at places of employment.

Complainants presented evidence supporting a significant current demand for the proposed passenger service. This demand was based on complainants' forecast of ridership, future anticipated problems and costs related to fuel, the success of the current rail passenger service between Los Angeles and San Diego, and current State and local planning policies directing and urging rail transit service. Complainants estimate that between 1,100 and

1,400 riders would use the proposed commuter service daily in each direction if two trains are operated. The estimate is based upon the regional travel computerized model developed by the Los Angeles Regional Transportation Study (LARTS), which was used for projecting transit ridership for the Southern California Association of Governments' (SCAG) regional transportation plan.

The model projected potential demand of 1,825 riders for a 24-hour home-to-work transit service. The projection was reduced to reflect the service of two trains operating at a 30-minute interval. This was done by assuming that the proposed service would attract 60 percent to 75 percent of the peak-hour patronage for each station served.

Cost and Subsidization of Proposed Service

Senate Bill 620, which was approved by the Governor of California on June 28, 1979, provides a total of \$36 million to be allocated over a three-year period for the payment of actual and reasonable deficits resulting from rail passenger service within the State. Of this amount \$21 million may be used to meet operating expenses and \$15 million may be used for capital improvements.

The chief of the Division of Mass Transportation for Caltrans estimates that the first year costs for operating the proposed service would be \$3.54 million and \$5.25 million for the three years covered by the legislation.

A breakdown of his estimates is as follows:

FIRST-YEAR COSTS

Start-up (Stations-parking)	\$1.10 million
Equipment	.44 million*
Operations	<u>2.00 million</u>
Subtotal	\$3.54 million
Less income from fares	<u>-.60 million</u>
Total	\$2.94 million

SECOND-YEAR COSTS

Equipment	\$.44 million
Operations	<u>2.00 million</u>
Subtotal	\$2.44 million
Less federal support	-.18 million**
Less income from fares	<u>-.60 million</u>
Total	\$1.66 million

*Cost for one train. No cost included for the cost of County passenger cars.

**Estimated federal funds that the service would qualify for under Section 5 of the Urban Mass Transportation Act of 1964, as amended.

Caltrans' estimate of capital costs gave no consideration to extensions of sidings, improvement of switches, dispatching, signalized traffic control, nor additional traffic.

Of the 11 stations to be served, only the Los Angeles, Oxnard, and Glendale stations are presently in use as passenger stations. The remaining eight stations would have to be provided with platforms and parking lot facilities.

The cost of constructing a platform, parking facilities for one-half of the patrons expected to board, and installing of automatic ticket machines at each station is as follows:

	<u>Cost Without Shelter</u>
Burbank	\$ 164,800
Airport	140,900
Panorama City	178,000
Northridge	182,500
Chatsworth	158,300
Santa Susana	166,000
Moorpark	150,000
Camarillo	<u>159,000</u>
Rounded Total	1,300,000

No cost was provided for the acquisition of property because all proposed sites are on public or SP property. Shelters were excluded because Caltrans estimated that each shelter would cost \$68,000. No provision was made for restrooms, fencing, or lighting at the parking lots; however, lighting would be provided at all station platforms.

Public Witnesses

A total of 96 individuals expressed support for the proposed service, 16 under oath and the rest in the form of statements of position. Included were a number of public officials as well as representatives of public and private agencies.^{2/}

^{2/} (a) Congressman James Corman; (b) Assemblyman Robert Cline; (c) Mayor Cathie Wright, Simi Valley; (d) Board of Supervisors, Ventura County; (e) City of Oxnard; (f) City of Los Angeles; (g) Ventura County Air Pollution Control District; (h) Simi Valley Chamber of Commerce; (i) Advocates for Disabled Inc.; (j) City of Camarillo; (k) Southern California Rapid Transit District; (l) City of Burbank; (m) Los Angeles County Transportation Committee; (n) Los Angeles Area Chamber of Commerce - Public Transportation Committee; (o) West County Committee for Commuter Rail Service; (p) Senior Citizens - Simi Valley; and (q) Citizens for Rail California.

The majority are residents of Simi Valley, a few reside in Camarillo, Claremont, and Moorpark. In general, they indicated that they would use the proposed service to and from work in the Los Angeles area primarily because of the high cost of gasoline and to avoid those problems experienced during gas shortages. Others indicated that rail service offered a more convenient and comfortable mode of travel than the freeway and that use of the trains would help to reduce smog.

Many of those who attended the hearings work for Lockheed in Burbank and several were concerned because the schedules as proposed would arrive too late for employees who must be at their jobs by 7:00 a.m.

Representatives of public agencies also emphasized the environmental impact that rail passenger service would have in reducing the use of the private automobile. They pointed out the need to reduce traffic congestion in the densely populated southern California area as well as the pressing need to conserve energy.

A representative of Southern California Rapid Transit District (RTD) testified that RTD does not have enough equipment to meet the demands for local metropolitan bus service, much less the number and type of buses that would be required to provide extended service to and from points in Ventura County; however, he stated that the district would be ready, willing, and able to provide bus service that would interface with the proposed rail service at the Los Angeles Union Terminal station.

Testifying in opposition to the proposed service were representatives of General Motors Corporation (General Motors), Weyerhaeuser Company, Anheuser-Busch Inc., and Northridge Company. All expressed concern that the proposed passenger service would interrupt and delay rail freight shipments moving to and from their respective plants.

General Motors operates an assembly plant at Van Nuys, which is equipped with 10 industrial tracks used for the purpose of receiving rail cars via SP consisting of components shipped from eastern points. The plant, which was built in 1946, has grown to the point where it presently employs 5,500 individuals and is capable of producing 1,080 cars a day.

The general manager of the plant testified that SP acts as an extension of the production line and any delay in the delivery of freight cars could adversely affect production.

Anheuser-Busch Inc. also operates a plant in Van Nuys that has 1,000 employees and is served by SP. In addition to inbound rail shipments and approximately 40 outbound rail shipments, the plant also receives one switch movement a day. A proposed expansion program, which is scheduled for completion in 1981, will result in an additional 1,000 employees and tripled capacity.

The assistant traffic manager for Anheuser-Busch Inc. testified that any delay in the switch movement would result in higher labor costs.

The manager of Weyerhaeuser Company, which is located at Sepulveda in the San Fernando Valley, testified that the company receives 60 to 70 rail car shipments per month of lumber and plywood via SP as well as two switch movements a day, and if the mid-day switch is late for any reason, it would have an adverse affect on production and would result in additional overtime to unload the cars.

The president of Northridge Lumber Company, a retail lumberyard located at Northridge, testified that SP provides a switch service at approximately 2:00 p.m. daily and any delay to the switch would result in overtime because it takes two hours to unload and his crew works from 7:00 a.m. to 4:00 p.m.

Defendant's Showing

SP contends that, if authorized, the rail commuter service would seriously interfere with and disrupt its freight operations. Defendant also contends that a dependable rail commuter service cannot be provided between Los Angeles and Oxnard.

The proposed operation falls within SP's Santa Barbara subdivision which extends from Los Angeles to San Luis Obispo. The track facilities between Los Angeles and Oxnard, a distance of 66.1 miles, consist of double tracks for 11.2 miles between Los Angeles and Burbank Junction and single tracks for 54.9 miles between Burbank Junction and Oxnard. The tracks, both double and single, are protected by automatic block signals which warn of the presence of a train ahead but do not instruct the engineer. Trains meet and pass according to timetable schedules, rule book, and train orders issued by the dispatcher. In contrast to other subdivisions where Central Traffic Control (CTC) has been installed and communications are almost instantaneous, operations over the proposed tracks are less flexible because of the lag-time between the dispatcher's train movement decision and its execution by the train crew. The basic points at which trains can be contacted are:

Los Angeles Yard	4.3 miles
Burbank Junction	11.2 miles
Gemco	18.4 miles
Oxnard	66.1 miles

The Los Angeles Union Pacific Station (LAUPT) is a train order station for Amtrak and does not issue orders to the Santa Barbara subdivision. Los Angeles Yard is a train order station for freight operating to and from Taylor Yard. Gemco is used only for trains or engines originating or terminating at Gemco and is not staffed to handle train orders for through trains. At the present time the only points that could be used for providing train orders along the single track would be Burbank Junction and Oxnard. Side track facilities that are available for the purpose

of meets and passes on the single-track segment between these points are located at the following locations:

<u>Miles</u>	<u>Station</u>	<u>Capacity</u>
11.2	Burbank Junction	5,300 feet
28.4	Chatsworth	5,544 feet
36.4	Santa Susana	4,912 feet
46.8	Moorpark	4,056 feet
57.3	Camarillo	7,108 feet

Another siding is located at Hewitt 15.5 miles from Los Angeles, but it has been taken out of use as a siding and is presently used as a makeup track in connection with operations at Gemco.

Amtrak trains range up to 200 feet. local haulers and switchers 200 feet to 6,000 feet. and freight trains from 8,000 feet to 10,000 feet.

According to defendant, the effective lengths of track for Chatsworth, Santa Susana, and Moorpark are substantially reduced because said rail facilities are intersected by busy public streets and roads. This requires trains to be cut so that the intersections are not blocked.

When a siding is not long enough to accommodate a train, "saw-by" and "back-saw" activities are then employed. A "saw-by" requires the inferior train to pull into the siding leaving its rear cars on the main tracks, while the superior train moves along the main tracks up to the rear cars. The inferior train then pulls the rear car clear allowing the superior train to pass. A "back-saw" results from one train overtaking another on a single track and requires the inferior train to pull through the siding until the rear cars clear the main tracks. After the superior train clears one end of the siding, the inferior train backs up until the head end is in the siding allowing the superior

train to proceed. Such movements can take from 10 to 45 minutes to complete, but apparently are not too frequently used on this segment of track. During the month of June 1979 no "back-saw" movements were employed and "saw-by" activities were used on only four occasions.

(1) Interference Study

To determine the extent of possible conflicts SP conducted an interference study covering the period July 1, 1978 to and including June 30, 1979. (Exhibits 46 and 47.) The study was prepared by superimposing the proposed commuter schedules over train operations actually conducted between Los Angeles and Oxnard during that period.

Before considering the interference problems or the feasibility of the proposed operation, it is necessary to have some understanding of the Gemco and Taylor Yards and the part they play in SP's overall operation in serving the area between Los Angeles and Oxnard.

Gemco

Gemco is the heart of SP's freight operations serving the San Fernando and Simi valleys. Freight cars are brought to Gemco from Taylor Yard by trains known as the Chatsworth Haulers. Upon arrival at Gemco the cars are switched for delivery to local industries by industrial switchers.

The yard consists of nine yard tracks, which are supported by a drill track and two ladder tracks. Track 109 with a length of 4,300 feet is the longest in the yard. The west end of the yard adjoins a drill track known as Budweiser Extension.

The major movement into Gemco consists of freight cars loaded with auto parts for General Motors. On the return trip to Taylor Yard the haulers take empty auto parts cars destined to eastern suppliers, multilevel rail carloads of new automobiles, and carloads of general commodities loaded by local industries for out-of-state distribution.

The 12:30 a.m. hauler leaves Taylor Yard between 2:00 a.m. and 4:00 a.m. and arrives at Gemco between 3:00 a.m. and 5:00 a.m. It then occupies the main track for approximately 90 minutes in order to switch out the train. About 9:00 a.m. it departs Gemco for the return to Taylor Yard with a consist of empty auto parts cars.

The 10:00 a.m. hauler departs Taylor Yard at approximately 1:30 p.m. and arrives at Gemco between 2:30 p.m. and 3:00 p.m. Again, switching operations take about 90 minutes. In preparation for its return the hauler begins to build its train of tri-level cars loaded with new automobiles at approximately 6:00 p.m., which would be after the east commuter train had passed. Because of the length of such trains, this activity is done on the main track.

An extra Chatsworth Hauler operates five days a week to handle loaded auto parts cars from the east and its on-duty time is dependent upon the arrival time of an inbound auto parts train at Los Angeles. There are occasions when it is necessary to operate as many as four or five extra haulers a day in order to bring urgently needed loaded auto parts cars (hot cars) to Gemco and their arrival at Gemco could be any time during the night or day.

Taylor Yard

Taylor is the principal freight yard for general commodity traffic serving the Los Angeles area and is located west of SP's main line between Los Angeles and Burbank Junction. Five major arteries of SP's operations in the Los Angeles Basin converge on the yard, i.e., the Santa Barbara Subdivision, the Bakersfield/Mojave

Subdivision, the Colton Subdivisions (Alhambra Line and State Street Line), and the Los Angeles Terminal District.

Trains are received in "A" yard, inspected and then brought over the "hump" and allowed to roll down to a series of classification tracks, where outbound trains are made up.

The yard contains engine repair and servicing facilities, car shops, car repair facilities, scales, load-shifting tracks, and cleaning tracks.

On those occasions when the yard's capacity has been reached, tracks not normally used for the receipt of inbound trains are used by trains that are waiting to be yarded. The main tracks are also used for the purpose of making up of trains.

All movements into, out of, and within the yard are subject to the control of the yardmaster who may hold them out or within the yard to facilitate operations. A dispatcher is, therefore, unable to exercise complete control over the times that freight and passenger trains leave the yard.

Enlarging the capacity of the Taylor Yard's existing bypass tracks poses a problem because the yard extends up to the river. SP estimates that it would cost approximately \$43,379,000 to construct a bypass track on a cantilever structure that would extend out over the river for a distance of 4,000 feet.

With existing facilities SP contends that all through freight trains and many Los Angeles Basin locals could possibly conflict with the commuter trains.

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The current schedule for trains arriving and departing Taylor Yard is as follows:

<u>Arrivals</u>		<u>Departures</u>	
<u>Train</u>	<u>Time</u>	<u>Train</u>	<u>Time</u>
BSMFF	0200	LABRT	0001
BSMFZ	0200	LAEUZ	0200
GULAP	0500	LAEST	0400
AVLAT	0800	LAEUE	0400
CILAY	0900	LABKY	0530
OALAY	1230	LADAT	0530
BSMFY	1300	LARIP	0545
WCLAY	1300	LAOAF	0600
BRLAT	1345	LAHOT	0630
RUCTY	1400	LAAUT	0700
RVLAY	1430	LAPXT	0900
OALAT	1500	AMTRAK #13	1015
OAEPY	1530	LAWCY	1230
WCOAY	1700	LAESH	1300
EULAY	1745	LAOAY	1400
PTCTY	1800	LAPKY	1400
AMTRAK #12	1830	RUCTY	1430
WJLAP	2200	LASSH	1645
PTLAY	2300	OAEPY	1700
WCLAZ	2300	WCOAY	1730
HOLAT	2330	LAWCY	1830
MBSMF	2330	PTCTY	1930
APLAA	2359	LAWCZ	2000
		WCWJZ	2105
		LAWJZ	2200
		LABRF	2330

Amtrak Trains

The afternoon commuter trains would conflict with the Amtrak Coast Starlight train which is due in Los Angeles at 6:55 p.m. Although the actual performance of the Coast Starlight train is unpredictable on a daily basis, it is scheduled to leave Oxnard at 5:11 p.m. and is due at Burbank Junction and double track facilities at 6:17 p.m. The commuter trains would leave Los Angeles at 5:00 p.m.

and 5:30 p.m. and are due at Burbank Junction at 5:21 p.m. and 5:51. If on schedule, the commuter trains and the Coast Starlight would meet on the single track. The last point that the dispatcher could control the commuter trains would be Burbank Junction. Based upon past operations of the southbound Amtrak train, the dispatcher would probably allow timetable needs to take place.

Chatsworth Haulers

According to SP, the Chatsworth Haulers would have the following number of delays if the commuter trains had operated during the 149 service days covered by the period from January through July 1979:

<u>Month</u> <u>1979</u>	<u>Train Movements</u>		<u>Delays Attributable to</u> <u>Commuter Trains</u>	
	<u>Eastbound</u>	<u>Westbound</u>	<u>Eastbound</u>	<u>Westbound</u>
January	86	87	7	10
February	81	85	4	4
March	94	97	13	8
April	84	82	8	14
May	88	93	8	12
June	87	85	8	14
July	82	78	3	13
Total	602	607	51	75

Industrial and Plant Switchers

Five regular plant switchers are used to serve General Motors and SP's subsidiary Pacific Motor Trucking Company at Gemco. Also, operating out of Gemco are four regular industrial switchers that serve industries within the Gemco area. Two additional industrial switchers, operating out of Taylor Yard, are used to serve industries in the Glendale and Burbank areas.

Operating out of Gemco are: the Van Nuys Local, the 8:00 a.m. Industrial Switcher, the Northridge Local, and the Vega Switcher. Operating out of Taylor Yard are the Glendale Switcher and the Burbank Switcher.

Van Nuys Local

The Van Nuys Local leaves Gemco at 8:30 a.m. and returns at 5:00 p.m. It serves Adolph Food Products, Aetna Lumber, American Forest Products, Apollo Tire Co., Georgia-Pacific, Gold Key Furniture, Hendricks Builders Supplies, Hull Lumber Co., MacKay Lumber Co., Neiman-Reed Lumber Co., North Hollywood Glass, Oroweat Baking Co., Tarzana Lumber Co., Terry Building Center, and team tracks at North Hollywood, Van Nuys, Encino, Tarzana, and Canoga Park.

If the Chatsworth Hauler is delayed as a result of a meet with one of the morning commuter trains, then such customers as Adolph Food Products, Aetna Lumber, American Forest Products, Georgia-Pacific, Corp., Oroweat Baking Co., and Tarzana Lumber would lose 24 hours transit time on inbound traffic because their cars would not make connection with the Van Nuys Local.

8:30 a.m. Industrial Switcher

This switcher usually takes about an hour and a half to line up its work and is ready to go out on the main track at 8:30 a.m. after Antrak goes by. It serves Anheuser-Busch, Bell Brand Foods, Chandler Lumber, Continental Can, Joseph Schlitz, Safeway Stores, McMabans Warehouse, Department of Water & Power, East Valley Distributors, Weyerhaeuser, and the team tracks at Raymer.

It normally switches Weyerhaeuser in Sepulveda at 11:00 a.m.; Safeway, Bell Brand, and Continental Can at approximately 11:15 a.m.; East Valley Distributors (Coors) at approximately 11:30 a.m., and Anheuser-Busch at 11:45 a.m. to 12:00 noon. Because of coordinated activities relating to supervision, loading and unloading crews, and connecting tracks, these customers depend upon timely switches. Any delay to the Chatsworth Hauler could delay their switches.

Northridge Local

The Northridge Local goes on duty at 9:10 a.m. and serves Andrew Lumber, Joseph Schlitz Container Division, Morse Electric Products, Waadt Appliance, Serv-a-Portion, Sears Roebuck, Rekir Laboratories, Levitz Furniture, A. M. Lewis, Frye Copying System, Northridge Lumber, Far West Plywood, Terry Building Center, Scriptor Mfg., Simi Valley Lumber, Southern Standard, and the team tracks at Northridge, Chatsworth, Santa Susana, and Simi.

The cars for the Northridge Local are switched out by the 8:30 a.m. Industrial Switcher at Gemco. If they cannot be switched out because of a delay to the Chatsworth Hauler, the departure of the Northridge Local from Gemco would also be delayed.

Vega Switcher

The Vega Switcher goes on duty at 6:30 p.m. serving Bestway Distributors, Joseph Schlitz, Neckerson Lumber, Frontier Building Supply, Container Service, Forest Plywood, Purified Down, Mullen Lumber, Bohemian Distributors, J. J. Newberry, Wates Lumber, and the team track at Hewitt.

Glendale Switcher

The Glendale Switcher goes on duty at Taylor Yard at 3:59 p.m. and departs between 4:30 p.m. and 5:00 p.m. to serve Van De Kamps Bakeries, Freight Distributors Corp., Glendale Depot Team Track, West Glendale Team Track, Transco Envelope Co., Empire Tire Co., Pride Products, Rail Chemical Co., and the Burbank team track.

One of its customers, Freight Distributors, has to have all freight cars removed before 6:00 p.m. so that the company's own trucks can be loaded with the freight that had just been delivered.

Van De Kamps Bakeries also requires an early switch so that its own trucks can be spotted and loaded for distribution of its products.

Burbank Switcher

The Burbank Switcher commences at 11:59 p.m. and covers the same district as the Glendale Switcher carrying new inbound cars to various customers. At about 6:00 a.m. this switcher reverses directions and serves Burbank Lumber, Swaner Lumber, Dietel Lumber, Terminal Refrigeration, Borman Steel, Andrew Jergens Co., American Can Co., Economy Packaging, Levitz Furniture, Glass Insulators Co., Jack Isbell Co., Glendale Ready Mix Co., Ceuch Products, Ralph's Grocery, Sanetek Products, and Interpace, Inc.

If this switcher is held at Burbank for the morning commuter trains, all switching on the return trip to Taylor Yard would be delayed accordingly.

According to SP's interference study, train and switcher movements would have experienced the following delays for the period January through July 1979 if the commute trains had been operating:

<u>Train</u>	<u>No.</u> <u>Delays</u>	<u>Total</u>	<u>Minutes</u> <u>Average</u>
APLAA	19	313	16
AVLAT	9	197	22
BKLAKLY	4	86	22
BSMF/K/Z	29	393	14
BRLAT	21	448	21
CILAY	15	313	21
DOWCK/Y	3	40	13
ECWJS	23	1,023	44
DOLAY	22	389	18
DOLLOL	9	145	16
ERWCK/Y	5	170	34
EULAK/Y	4	195	49
FRLAY	1	17	17
GUWCP	6	107	18
EUWCY	1	8	8
LAAVT	7	49	7
LAOAK/Y	55	2,981	54
LANCK/Y	21	266	13
LAMJY	14	389	28
LAWJK/Y/Z	30	1,249	42
LASKY	1	40	40
LAEUY	4	59	15
LACIZ	8	106	13
LAPXK/Y/T	13	178	14
LAASY	2	25	13
LADOK/Y	29	306	11
LAESH	1	26	26
LAOAF	60	1,715	29
LAHOT	6	48	8
LAEUE	6	305	50
LABRT	1	22	11
MJLAM	10	177	18
HOLAK/T	9	156	17
MPLAY	2	22	11
MPLAK	2	65	33
OAWCK	13	426	33
OAWCY	54	2,517	47
OALAK	9	600	67
OALAT	47	2,988	64
OALAY	19	1,042	55
OAASY	1	42	42
PTCIK	1	106	106
PTCIY	1	26	26
PTLAY/K	21	866	41
PXIAK	2	37	19
TULAY/K	8	154	19
TPLAK	2	31	16
RVLAY	3	111	37
WCRVY/K	2	55	27
WCOAY/K	2	31	15
WJECQ	19	473	25
WJLAP/Y/X	3	132	44
WCERY	40	1,709	43
WCLAM	17	376	22
WJLAY	6	216	36

The APLAA (auto parts train), which originates in East St. Louis, is handled on an expedited basis and in reality is part of the General Motors assembly operation. General Motors has limited storage at the plant and any delay of this train could result in a shutdown.

The LABRT departs Taylor Yard at 12:01 a.m. daily except Saturday carrying new automobiles as well as other highway competitive traffic for points in the Pacific Northwest. To protect the scheduled departure, the new automobiles from General Motors should leave Gemco by 8:00 p.m. and arrive at Taylor Yard no later than 9:00 p.m. for transfer, blocking, mechanical inspection, and train makeup. It takes an hour and a half to make up the Chatsworth Hauler on the main track, and this could not be commenced until the second commuter train had passed Gemco about 6:00 p.m. If Amtrak #13 were running late, the makeup of the hauler would be further delayed, and it is quite possible that the new automobiles could miss the 9:00 p.m. deadline.

The highest priority coastline freight train is the LAOAF, comprised primarily of Bay Area trailer-on-flat car and container-on-flat car merchandise and auto parts. This train is scheduled out of Taylor Yard at 6:00 a.m. If held until 8:00 a.m. to avoid conflict with the commuter trains, it would risk poor meets with the Amtrak train which would further delay its arrival in the Bay Area.

The LAOAF makes two important connections at San Jose. The first is the Permanent Local, which is scheduled out of San Jose at 12:30 a.m. carrying freight forwarder traffic which must be spotted at the freight forwarders in San Francisco by 2:00 a.m. The second is with the SJOAF, which leaves San Jose by 1:00 a.m. carrying automobile parts to assembly plants in Warm Springs and Milpitas.

In addition, the LAOAF handles time-sensitive traffic to the Port of Oakland that must be placed prior to 7:00 a.m. According to SP, it is presently working close to the limit in making scheduled connections and delivery times, and any further delay to the performance of the LAOAF would assertedly have extremely serious consequences.

The OALAT carries high priority trailer-on-flat car, container-on-flat car, and automobile traffic from the Bay Area to Los Angeles. It is scheduled to connect with expedited trains scheduled to depart Los Angeles between 4:00 a.m. and 6:30 a.m. with automobiles and other high priority traffic for St. Louis, Dallas, Houston, New Orleans, and connecting railroads at these points. It must arrive at Taylor Yard by 6:00 p.m. so that cars destined for eastern cities and southern cities can be switched out and blocked, mechanically inspected, and placed in the proper connecting schedule such as LAEST, LAHOT, LAAVT, and LAPXT. If the OALAT is delayed, its traffic will miss the expedited trains from Los Angeles, which cannot be held because they carry other high priority traffic.

The OAWCY carries traffic for City of Industry and connecting schedules at West Colton. It must arrive at City of Industry before 8:00 p.m. so that cars destined to the Buena Park and Anaheim areas can be humped and switched to connecting local service. Traffic on the OAWCY destined to eastern and southern points must arrive at West Colton before 10:00 p.m. to make necessary connecting schedules.

The OALAY carries general freight from Oakland to points in Los Angeles Basin. Cars on this train are transferred to satellite yards which cover the various industrial areas surrounding Taylor Yard. They must be transferred by 12:00 midnight in order to be placed on local switchers that will be going out on the day shift.

Another expedited train is the ECWJS which seasonally carries sugar beets from the Imperial Valley to the sugar beet factory at Betteravia near Guadalupe. Sugar beets have little or no storage life and must be handled promptly.

The LAWJ trains operate along the coastline serving customers at outlying points. SP claims that it has received complaints from customers located between San Luis Obispo and Burbank Junction concerning service by this train and is trying to improve its performance. Additional delays will aggravate the problem.

WCERY trains carry traffic for points on the Northwestern Pacific Railroad. Interference with these trains could result in service delay to such points as San Rafael, Santa Rosa, and Ukiah.

(2) Reliability of Proposed Service

SP contends that the proposed commuter service would be extremely unreliable because of the inherent problems relating to the nature of the track facilities, the type of equipment to be used, the lack of station facilities, and complainants' failure to adequately plan for the sale and collection of tickets as well as the personnel necessary to conduct the overall operation.

Schedules

A study prepared on behalf of SP by Reimer Associates concluded that the public need and support for the rail commuter service should be substantiated before commencement and that an alternative analysis should be made.

According to the SP study, an additional 24 minutes should be added to the schedule because of the nine commuter stops and the amount of dwell-time that would be related to each stop.

SP argues that if the public witnesses had been told that the running time would be closer to one hour and 54 minutes, without any conflict delays, the enthusiasm voiced would have been markedly dampened.

The modified schedule, taking into account acceleration and deceleration factors and station dwell-time, is as follows:

<u>#301</u> <u>Leave</u>	<u>#303</u> <u>Leave</u>	<u>Station</u>	<u>#300</u> <u>Arrive</u>	<u>#302</u> <u>Arrive</u>
5:00 p.m.	5:30 p.m.	Los Angeles	7:30 a.m.	7:50 a.m.
5:17	5:47	Glendale	7:12	7:32
5:26	5:56	Burbank	7:03	7:23
5:33	6:03	Airport	6:56	7:16
5:43	6:13	Panorama	6:46	7:06
5:51	6:21	Northridge	6:38	6:58
5:58	6:28	Chatsworth	6:31	6:51
6:15	6:45	Simi-Santa Susana	6:14	6:34
6:29	6:59	Moorpark	6:00	6:20
6:44	7:14	Camarillo	5:45	6:05
<u>6:54 p.m.</u>	<u>7:24 p.m.</u>	Oxnard	<u>5:36 a.m.</u>	<u>5:56 a.m.</u>
Arrive	Arrive	(66.1 miles)	Leave	Leave

Because of possible freight and Amtrak conflicts, the study concluded that the modified schedule could be prolonged another 45 minutes resulting in an overall running time of two hours and 39 minutes.

SP contends that the longer running time would substantially reduce complainants' estimated patronage because the LARTS estimates assume a high quality rail service that is reliable and dependable day in and day out. Erratic performance, serious delays, and unavailability of back-up transportation would, according to SP, be intolerable to prospective commuters.

SP further contends that complainants' patronage estimates are overstated by at least one-half because complainants erroneously assumed that peak hour service could be provided at all points on the line. It claims that complainants designed the proposed schedules to accommodate patrons working in the Los Angeles central business district and failed to consider the commuter requirements of those working in the areas of intermediate stations. According to the SP study only 516 of potential riders as identified by the LARTS model would work in the downtown Los Angeles area.

Equipment

The basic difference between complainants' proposed schedule and the modified schedule set forth in the SP study is in station dwell-time or the time allowed for the purpose of picking up and discharging passengers. The proposed schedule allows for a 30-second dwell-time and the SP study concludes that a 3-minute dwell-time will be necessary at each intermediate station.

According to SP the major factor contributing to the longer dwell-time is attributable to the type of equipment to be used. Although the second train has not as yet been acquired, the El Camino set consists of cars built in the 1940's for long-distance passenger service having conventional narrow doors of the era. Modern commutation equipment has not only wide doors, but also low-slung steps so that passengers can step directly onto the platform. Although the modern commutation car is used chiefly in most rail commutation service, the El Camino type is still used to a limited extent in commuter service on the San Francisco Peninsula and in the Chicago area.

SP claims that each doorway on the El Camino train would require a train employee to raise the vestibule trap, lower the swinging stair, and position a step-box on the platform. If three train employees are used as proposed by complainants, then only three doors will be opened; and with passengers getting on single file, the traffic flow will be reduced, resulting in a longer dwell-time. All eight of the El Camino cars are Waukesha-equipped. SP claims that repair parts for Waukesha units are no longer available.

Fare System

The proposed fare system appears to be modeled after SP's San Francisco Peninsula commuter operation, but SP contends that the El Camino train is not compatible with the inspection and collection system used on the peninsula. Because five of the eight cars are medium density intercity coaches with reclining seats, two are buffet lounge cars, and one is a vista-dome observation car, SP claims they would not facilitate an expeditious inspection of passes or fare cards nor the punching of tickets. This would require a system of holders for multiple-ride tickets, passes, and fare cards to be installed at a uniform height so that the fare collector could move quickly throughout the car.

Under the proposed plan, 20 percent, or approximately 140 passengers, would purchase their tickets from the conductor on the train. This, SP contends, is unrealistic because it would take anywhere from 70 to 140 minutes of the conductor's time because each cash fare delays the conductor or helper conductor from 30 seconds to one minute.

Except for the terminal stations, all intermediate stations would be unattended and tickets would be sold by way of automatic ticketing machines, which SP believes is not feasible because the machines do not have a high reliability factor. Based upon an earlier review of available automatic ticketing machines for possible use at peninsula commutation stations, SP was led to conclude that the automatic ticketing machines would require frequent service, frequent collection of funds, and a human agent nearby to adjust patron complaints, retrieve torn bills or bent coins, and post the "out-of-order" signs when necessary.

Station Facilities

All SP station operations between Los Angeles and Oxnard have been discontinued pursuant to Commission procedure or as a result of service instituted by Amtrak. All station facilities at Los Angeles, Glendale, and Oxnard are operated by Amtrak personnel.

Although complainants propose to enter a contractual arrangement with Amtrak to provide station facilities and services, including the sale of tickets, at Los Angeles, Glendale, and Oxnard, SP is of the opinion that the proposal to construct platforms equipped only with lights at all other intermediate stops is too bare-boned and lacks the amenities that should be provided to passengers waiting for the trains.

According to SP, the proposal contains nothing for the passengers' comfort and convenience, such as shelters, waiting rooms, toilets, and drinking fountains. No provision is made for lighting and security for cars left in the parking lots. Nor does complainants' proposal make any provision for police protection against pickpockets, offensive panhandlers, aggressive inebriates, bullying, and violence.

SP points out that complainants' proposal is further deficient because the stations will be unattended and no provision has been made for informing waiting passengers when a train is running late or when a train can be expected. Provision would also have to be made for providing the public with information as to schedules, rates, fares, and lost property.

SP further points out that complainants failed to take into consideration that many of the old station properties, as well as properties designated by complainants as possible parking areas, are presently under lease to tenants who have made substantial alterations and improvements at their own expense.

Locomotives

In their proposal complainants envisioned the use of three locomotives in the range of 2,500 to 3,000 horsepower. Based upon its experience in pulling the Amtrak Coast Starlight, which has equipment similar to the El Camino train, SP believes that at least six horsepower per ton is needed to operate at maximum speeds required by the schedule. SP contends that a large locomotive would be required to pull the one percent grade leaving Simi Valley and also to provide the necessary acceleration after leaving stations and restricted curves. SP believes that even a 3,000 horsepower locomotive would fall short of maximum and that a 3,600 horsepower unit would be required.

SP also believes that four locomotives would be required rather than three. Although a third locomotive at Oxnard would provide a backup if the regular locomotive could not start in the morning, it would not provide a solution to a problem of breakdown en route or a failure on the return from Los Angeles in the evening.

Another problem which SP calls attention to is the fact that the El Camino cars require a steam line for heating purposes and for hot water in the lavatories. At one time this was provided by steam locomotives. With the advent of the electric diesel locomotives an auxiliary steam generator was installed in each locomotive. With normal retirements and rebuilding programs, the steam-generator-equipped units have virtually all been removed from SP's service, with the exception of units which are assigned to the San Francisco Peninsula commutation fleet.

Because of the heavy demands on its own operations, SP claims that it cannot lease any of its own locomotives. As of August 31, 1979, it assertedly was leasing 141 units from other railroads.

Home Terminal

SP believes that Oxnard would probably be the home terminal for the commuter trains. If so, SP claims that it not only has no track facilities to accommodate the trains overnight, but it has no extra board at Oxnard. If a crew member calls in sick, his replacement would have to come from the Los Angeles extra board. Because a reasonable time to report is provided after a call has been received, a last-minute sick call or layoff would assertedly cause a delay to the train.

Equipment Maintenance

At one time SP had an extensive passenger coach yard in Los Angeles where periodic heavy repairs were made and it maintained a large force for the purpose of sweeping and vacuuming the interior of cars, dusting, washing windows, mopping floor, cleaning lavatories, restocking paper towels, and washing the exterior of cars.

All of the repair facilities have since been dismantled and the maintenance forces have since been disbanded. According to SP it has no such forces at Los Angeles nor at Oxnard.

Supervision

The commutation service and all supporting services would have to be coordinated and supervised. SP claims that it has no passenger service supervisors in the Los Angeles area.

(3) Growth of Area and Expansion of Conflict Problem

The Los Angeles sales district manager testified that during the past 30 years he had seen a rapid growth and development of manufacturing, merchandising, and service industries along the right-of-way from Los Angeles and extending through the San Fernando Valley to Ventura County. With the growth of industry there was a corresponding development of new homes.

According to the witness, SP's traffic volume for the years 1974 through 1979 also experienced a substantial growth which he expected would continue in the foreseeable future. With increases in carload business, he testified, there has been a constant service problem because of the physical limitations of the railroad plant. Because a number of industries on the coastline receive a switch every working day and plan their operations around the rail deliveries, a delay of even one or two hours in switching would, according to the witness, lead to a flood of customer complaints.

The witness expressed the opinion that freight service demands on the railroad will increase and the proposed commuter trains would seriously impair SP's efforts to provide efficient rail transportation which is vitally needed to meet the requirements of existing timetables and the future economic needs of the area.

(4) Estimated Costs for Providing Service

A transportation analyst in the Bureau of Transportation Research of SP prepared an estimate of costs for operating the proposed service including an estimate for interference with SP's freight trains, but excluding locomotive and car costs, and it is as follows:

Estimated Costs

Interference	\$ 243,961
Supervision and support	107,484
Station forces	341,916
Insurance	500,000
Property rents	200,000
Breakdowns	24,417
Banking	5,280
Crew expense	1,059,873
Uniforms	3,600
Locker rooms	1,000
Deadhead lodging	5,060
Transportation	7,557
Train and engine crew expense	839,461
Replacement training expense	59,667
Relief crew training expense	4,580
Fringe benefit expense, replacement employees	107,614
Extra board costs	31,334
Police and security	557,259
Patrolman positions	313,329
Police and security to guard train at Oxnard	243,920

Estimated annual fuel consumption
would be 216,734 gallons.

The estimate is based upon long-run variable costs and makes no provision for maintenance of ways, because of incomplete data. No allowance was made for a possible Caltrans subsidy.

The interference cost of \$243,961 was based upon SP's interference study, which showed that January through July 1979, 55 through trains would experience 23,975 train minutes of delay waiting for the commuter trains, or 685 hours per year, on an annualized basis. It also indicated that there would be 28,814 minutes of delay to 19 identified local and yard engine movements, or approximately 823 hours 15 minutes on an annualized basis. The estimated cost per minute is as follows:

<u>Through Train</u>	<u>Component Cost per Minute</u>
Locomotive ownership cost	\$.000293/h.p. minute
Car ownership cost	.0361/car minute
Caboose ownership cost	.218/cab. minute
<u>Local Train Delay Costs</u>	
Locomotive ownership cost	\$.000293/h.p. minute
Car ownership cost	.0361/car minute
Caboose ownership cost	.0218/cab. minute
Labor cost	1.0482/minute

Delay costs made no attempt to measure traffic losses that would result from missed connections.

The estimated cost of \$500,000 for insurance was based upon a quotation given by the London brokerage firm of Cedrick, Forbes, Beard & Paine, which gave a range of \$435,000 to \$535,000 on a \$1.5 million deductible.

SP's present coverage, including its San Francisco commuter operation, provides for a \$5 million deductible and covers up to \$46 million per occurrence. The premium is \$3.5 million annually. It is possible that complainants could be added to the existing policy at a cost less than \$500,000 annually, but SP contends that it would be better to have a lower deductible on a new operation where no past experience is available for the purpose of comparing prior commuter operations on the same tracks.

The \$200,000 cost for property rents covers incomes that SP would lose on that property upon which proposed stations, platforms, and parking lots would be located and which is presently under lease to others or being held for future commercial lease.

(5) SP's Current Financial Condition

SP contends that it cannot afford to provide the proposed service because of its poor financial condition. It claims that its financial condition at the end of 1978 was weaker than it was in 1969 and, although 1979 showed improved financial results, they are still, assertedly, below a satisfactory level. According to SP's manager of financial services in its Treasury Department, the company's financial deterioration during the past ten years has resulted from an erosion of earnings accompanied by increasing capital requirements. Inflation, he testified, has had an impact not only with respect to higher wages, material, fuel, and equipment costs, but through increased interest rates on borrowed money. According to the witness, SP's rate of return has been inadequate over the past ten years and will continue to be below its cost of borrowing. SP, he testified, cannot afford to see its line capacity reduced with a resulting loss of future freight profits.

The witness further testified that SP is presently experiencing difficulty in raising new capital at reasonable rates because of inadequate earnings; over the last ten years SP had to raise \$826 million through the issue of debt securities and approximately \$230 million of new debt will be issued to finance its 1979 capital program; SP's rate of return during the past ten years has fluctuated at depressed levels; in 1978 the rate of return was 1.62 percent and during the best year it was only 3.22 percent, with an average of 2.36 percent; and before SP would inaugurate any new service, including the proposed commuter service, the new service would have to make a contribution to the company's financial standing.

SP also introduced as an exhibit "Result of California Intrastate Freight Traffic". Exhibit 85 was prepared and introduced in an unrelated proceeding to show that a general freight increase, as applied for, would result in an increase in revenues that was not unreasonably high. The exhibit claims that SP's California freight operations were earning less than a break-even amount.

Complainants' Rebuttal Showing

In rebuttal to SP's presentation, complainants introduced the testimony of four witnesses. Their testimony is summarized as follows:

1. Laurence A. Brophy

Mr. Brophy is presently employed by A. T. Kearney, Inc., a management consultant firm located in Chicago, Illinois. For twenty-five years he was associated with the Illinois Central and the Elgin Joliet and Eastern Railway in various capacities including Assistant Trainmaster, Trainmaster, Assistant Superintendent and Superintendent. For a period of time he was responsible for the operational supervision of yard switch engines and industrial switch engines working inside a large steel plant, U. S. Steel South Works in Chicago, Illinois. He was also vice-president and chief operating officer of the Chicago Railroad Terminal Information System, which was founded in 1972 by the 24 railroads of Chicago for the purpose of providing all carriers with freight train and car movement information within the Chicago rail terminal.

He testified that after reviewing the testimony of SP witnesses and inspecting the proposed facilities he concluded that:

- (1) Two additional trains would not adversely affect operations at Taylor Yard and within the Los Angeles Terminal.
- (2) The proposed commuter trains would not represent a potential congestion problem between LAUPT, Dayton Tower, Los Angeles Transportation Center, and Mission Tower.
- (3) The proposed commuter trains would not interfere with operations at Gemco.

With respect to specific operations Mr. Brophy made the following observations:

(a) Taylor Yard

Operations at Taylor Yard are controlled by the Dayton Avenue interlocking station operator. Crossover tracks into A yard from the west to the east main are also controlled by the Dayton Avenue tower and switches from the eastward main to the lead as well as switches to tracks in A and C yards are controlled by the main

line tower. There was little or no delay to freight trains entering A yard or departing C yard because most of these switches are electronically controlled.

Trains were frequently left on the westward main for train crew changes, even though yard tracks were available for such purposes. This practice reduces yard operation flexibility. The main tracks should be kept clear at all times. If for any reason a train is on the westward main, two yard tracks immediately adjacent to the eastward main can be used to run westward trains around the blocking train.

Checked Assistant General Yard Master's turnover at Taylor Yard to determine the number of Coast and Valley Division trains departing west (north) from C yard during the week of July 1979. Out of 37 trains 21 experienced terminal delay. (Terminal delay occurs when a train does not leave the yard within 75 minutes from the time the crew is called.) Checked to determine the method used to call trains and the time when trains departed. Trains frequently didn't depart until two hours after being called. This is because SP does not yard trains properly and fails to use its yard facilities as dictated by operating conditions. The flexibility of yard operations is greatly hampered by the practice of main lining trains instead of yarding them.

The main line tracks and the auxiliary tracks in A and C yards between the west and east end of Taylor Yard are under the direct control of operators and switchtenders, which should, and does, expedite passenger, freight trains, and light engines over this portion of the terminal tracks.

The problem of trains being held out on the main tracks is one of SP's making and would not be attributable to the operation of the proposed commuter trains.

(b) Operations Between Dayton Tower, Los Angeles Transportation Center, Mission Tower and LAUPT

Train movements to and from Dayton Tower and Los Angeles Transportation Center are controlled at the west end by Dayton Tower and at the east end by Mission Tower. Movements into and out of LAUPT are controlled by Mission Tower. Although the traffic was heavy, no unusual delays were noted. The movements to and from Taylor Yard by the Alhambra Switcher, Torrance Switcher, City of Industry Assignment, Junction Hauler, the Yard Hauler, and the UP Hauler would not be affected by the addition of two passenger trains in the morning and afternoon hours. These yard transfer movements are controlled between Dayton and Mission Towers.

During June 4, 1979, and June 8, 1979, there were 54 train and light engine movements between Dayton and Mission Towers between the hours of 5:30 and 7:30 a.m., and 4:30 and 6:00 p.m. Only eight movements could have possibly been delayed by operation of the commuter trains.

SP's problem in this area is one of coordination. The scheduling of two first-class trains will force a certain amount of discipline in the matter in which SP conducts its freight train operations.

(c) Burbank Switcher

Industries located between Taylor Yard and Burbank Junction, which are served by the Burbank Switcher, would not be adversely affected by the operation of the proposed commuter trains. There are ten different locations on the double track segment in which the Burbank Switcher can clear for other trains and still do its job. It will not be delayed for an hour each day as SP claims. A review of the Burbank Junction Station records for the first week of June 1979 indicates that Burbank Switcher had returned each day to Taylor Yard in time for the same engine to be used on the midnight Burbank Switcher assignment. The records also indicate that during the same period the Burbank Switcher spent from 22 minutes to two hours daily at Burbank.

(d) Gemco Yard

Gemco has a total of 31,309 feet of track room, which is equivalent to approximately 150-89 feet 9 inch auto rack, freight cars and over 300-32 feet 6 inch box cars. Auto rack and box cars constitute the major types of freight equipment used at Gemco. During the month of June 1979 (Saturdays and Sundays excepted) the consist of inbound trains averaged 131 cars with an average train length of 9,976 feet. The daily average of cars outbound, excluding the automobiles, was 180 with an average train length of 13,036 feet. There is sufficient yard room to accommodate the freight cars originating at and destined to Gemco.

The yard tracks are presently underutilized because cars from Taylor Yard are usually yarded on Track 109, which is the longest track in the Gemco facility. Track 109 and its extension (Budweiser Lead) can hold 10,000 feet of train length.

SP presently pulls cars from the Gemco Yard and makes up trains on the main line. These trains could be made up on Track 109 and the Budweiser Lead, thereby leaving the main line clear.

A check of train movements for the month of June 1979 indicates that there were 94 inbound trains and 7 of them would have been using the railroad during the commuter hours. During the same period there were 109 trains departing Gemco. Only 8 would have had any possible conflict with the commuter trains.

SP's Gemco Yard records indicate that during the month of June 1979 not one of the regular Chatsworth haulers nor any of the extra Chatsworth haulers carrying automobiles departed Gemco before 8:00 p.m.

Based upon a review of SP records and personal observations the commuter trains would not have delayed freight train movements, nor would they have delayed freight trains moving in and out of Gemco, nor would they have interfered with the make up automobile trains if they were made upon Track 109 and the Budweiser Lead.

Empty auto parts cars are taken from Gemco and placed on the Hewitt siding and the engine returns to Gemco. A subsequent movement of empties are taken from Gemco to Hewitt where they are connected with the first consist and all are then hauled to Taylor Yard. This not only results in double handling, but it ties up the Hewitt siding for 12 to 14 hours daily. It places a restriction upon the dispatcher because the siding could be used for the meeting and passing of trains.

(e) "Hot" Auto Parts Cars For Gemco

Observed movements of extra Chatsworth assignment from Taylor Yard to Gemco, but they moved during time periods when the commuter trains would not be operating.

"Hot" cars are those that have been delayed somewhere on the SP system and must be expedited. A search of SP's records indicated that such movements were not frequent. Gemco is only seven miles from Burbank Junction, the start of the double track segment. Any "hot" car movement conflicting with the commuter trains would result in only minimal delay because of the short distance involved.

(f) Yard Operations at Gemco

Yard operations at Gemco primarily consist of switching for the General Motors plant. There is a considerable amount of "slack time" or "spot time". (The engine remains stationary for more than two hours.) There is plenty of time to switch and line up cars that are to be set in auto part Tracks 5, 6, 7, and 8. There is also time to classify the loaded automobile cars off Tracks 1, 2, 3, and 4.

The yard provides a great deal of flexibility, which if properly used would eliminate the need for tying up the Hewitt siding and would eliminate the need for making up trains on the main line.

Siding Capacity Between Burbank Junction and Oxnard

During June 1979, 50 freight trains operated between Burbank Junction and Oxnard and only 8 of them would not have fit in the sidings at Camarillo, Moorpark, Santa Susana, Chatsworth, or Hewitt.

To ascribe the possibility of delays to eastern bound trains to the operation of the commuter trains is without merit. Such delays are occurring at the present time and are attributable to SP's operating personnel. The introduction of the proposed commuter trains would impose a discipline in SP's practice of calling and operation of freight trains and thereby minimize any possible delay to passenger or freight trains.

2. Donald H. King

Mr. King retired as Regional Vice President of the Burlington Northern Railroad (BN) on December 1, 1977. At the time of his retirement he was in charge of the Chicago Region, which included 4,400 miles of track with approximately 9,600 employees. He was in charge of all commuter trains operating between Chicago and Aurora, a distance of 38 miles, and all freight movements. In addition, 4 Amtrak trains operated daily within the region. The region also included an important classification freight yard located at Cicero, which is approximately 28 miles east of Aurora. He made an inspection of the El Camino car, the terminals at Los Angeles and Oxnard, and the proposed intermediate station sites. As a result thereof he is of the opinion that the proposed service is feasible. Mr. King's observations and opinions are as follows:

(a) Equipment

The eight El Camino cars are in excellent condition and there is no reason why they cannot be operated successfully in commuter service. Railroads have used conventional coaches with single vestibule openings in commuter service for over 50 years; however, BN now uses gallery-type coaches with double vestibule doors that are automatically controlled.

Because of California's favorable weather conditions there would be no heating problems if the locomotives could not provide steam for heating the cars and hot water for the lavatories.

He believes that the installation of ticket holders or chips in the El Camino cars would facilitate the collection of tickets.

(b) Home Terminal

Believes that the home terminal should be Los Angeles, because it is an existing source of supply for crews. Crews could make the run to Oxnard, lay over and return to Los Angeles in the morning. Although this would require meals and lodging at Oxnard, it would eliminate the need for an extra board for engineers and firemen at Oxnard. In the case of illness a replacement could be taken from a switch engine assignment at Oxnard, Los Angeles, or if necessary a supervising officer could be used.

(c) Cleaning and Handling

There appears to be sufficient space for storing the trains overnight on a house track next to SP's station at Oxnard or they could be stored on the nearby Ventura Railroad.

The cleaning at Oxnard would be minimal and would not require the services of more than one person to do a fast sweep of floors and to pick up debris. More extensive cleaning could be done at Los Angeles.

Ticketing

BN's experience on the sale of tickets has been:

- (1) 50 percent purchased at station.
- (2) 40 percent purchased by mail.
- (3) 7 percent cash fares, sold on train.

Daily cash sales on the BN totaled 3,200 for 72 trains or 56 cash sales per train. Using the same ratio the proposed trains would average approximately 21 cash fares per train, which can be handled with minimum difficulty. In any event the crew can always be increased to meet any problem, whether it be passenger loading or collecting tickets or fares.

(d) Passenger Loading

As the pattern of passenger boarding and unboarding develops management will determine the most efficient way of accommodating them by way of spotting cars at the platform stations and the number of coaches to be opened.

The BN No. 244 departs Aurora at 8:05 a.m. and stops at 20 intermediate stations before arriving at Chicago at 9:18 a.m., a distance of 38 miles. The dwell-time averages less than one minute per station. By prespotting cars at each station a minimum of coaches would have to be opened.

Crews could advise passengers what coaches to use to detrain. The El Camino train is also equipped with a public address system, which could be used to direct passengers to the proper cars.

In any event commuter passengers soon learn where cars will be spotted and what doors will be opened.

(e) Station Facilities

BN has 26 stations on its commuter line, 13 of which are manned and 13 are unmanned. Shelters are provided at most stations, but of a windbreak type. There is no public address system at any of them. Most commuters wait in their cars and arrive at the platform just before train time. Very few use the stations or shelters. With California's nice weather, standing on the platform would be no problem. No toilet facilities are available at unmanned stations. The BN operates through populated areas, which are serviced with adequate street lights. The proposed area is quite similar.

BN does not provide parking on its property, except at Aurora. This can be provided by local authorities.

3. Donald Church

Mr. Church is Chief of Special Services Division of Los Angeles County, Chief Administration Office.

Mr. Church testified that El Camino cars were purchased by the County of Los Angeles for \$200,000; that each car had traveled approximately 40,000 miles at the time of acquisition; that pursuant to public bid the El Camino cars were completely refurbished according to the specifications set forth in Exhibit 98, and that the El Camino train is in a good and operable condition.

4. William W. Whitehurst, Jr.

Mr. Whitehurst is Executive Vice-President of L. E. Peabody & Associates, Inc., economic consultants, Landover, Maryland.

When the Railroad Revitalization and Regulatory Reform Act of 1976 was passed the Rail Services Planning Office (RSPO), which was required under the Act to issue standards for the determination of subsidies necessary for the continuation of rail commuter passenger service, commissioned the firm of L. E. Peabody and Associates, Inc. to make a study.

The firm also assisted in developing and negotiating the costing concepts and methodology by which the New Jersey Department of Transportation reimbursed various railroads for operating rail passenger service in New Jersey.

Mr. Whitehurst gave an historical account of the development of subsidy agreements between railroads and commuter authorities, the problems relating thereto and the methods explored to resolve them.

In general, the major items of revenue are solely related to either passenger or freight service and pose no serious problem; however, problems do arise in apportioning railroad costs for activities which are common to both freight and passenger services.

Items such as train and engine crew wages, fuel, maintenance, and servicing of equipment can usually be determined and will be essentially the same under any reasonable analytical approach, but items such as Maintenance of Ways costs and General and Administrative expenses can vary widely.

One approach is to determine costs on an avoidable basis by determining which costs would no longer exist or be reduced in the absence of a given service.

In each instance the railroad and public agencies had to deal with various components of cost including:

- (a) Operating expenses chargeable to passenger service;
- (b) Return on investment for rolling stock and fixed facilities;
- (c) Responsibility for liability;
- (d) Impact on other rail operations.

Amtrak operates over the lines of various railroads which are part of the Amtrak system under a basic agreement and amendments thereto. The basic agreement was entered into on April 16, 1971, and provides for reimbursement of railroad costs which are solely for the benefit of the passenger service plus avoidable costs reasonably and necessarily incurred.

In the case of insurance, Amtrak indemnifies the railroad from liability for Amtrak employees, passengers, rolling stock, other property, and Amtrak train accidents at highway crossings. The railroad indemnifies Amtrak for railroad employees, equipment, and property. In consideration Amtrak pays the railroad \$0.0367 per Amtrak train-mile.

None of the Amtrak agreements include provision for payment of claims arising from interference with freight operations.

The RSPO commuter standards (49 CFR 1127) provide for an interpretation of the standards by the filing of a written petition.

The RSPO standards rely primarily on a Facilities Utilization Plan and a Manpower Utilization Plan for determining costs chargeable to a commuter service. The facilities plan identifies and itemizes the road and equipment properties used in the commuter service and also identifies the road properties that are avoidable upon discontinuance of the commuter service. The manpower plan identifies the railroad forces used in providing the service. The methodology for apportioning the variable portion of common costs is also provided.

In determining a return on investment for rolling stock and fixed facilities, the RSPO standards identify and establish values for avoidable properties. The total value is determined by taking the net book value as of April 1976, plus a value of additions and betterments for the commuter service, less the accrued depreciation from that date and all cost of modifying the remaining property so that noncommuter operations can be continued. Property owned by public bodies is not included. RSPO commuter standards provide for 7.5 percent per annum as a reasonable return.

In the case of liability the RSPO standards merely indicate that the subsidizer is responsible for any loss, damage, or personal injury resulting from the commuter service, but does not specify how such costs should be determined.

Greyhound's Showing

The purpose of Greyhound's presentation was to urge Caltrans to consider and implement a balanced transportation policy with due consideration of the inherent transportation advantages of all modes. According to Greyhound's Director of Operations, Programs, Greyhound is ready and willing to make an offer for a purchase service contract to Los Angeles County and Caltrans for a commuter bus service between Oxnard and Los Angeles.

According to the Greyhound witness, the United States' intercity bus industry is the largest and possibly the best public bus transportation system in the world; it is the most energy-efficient, least polluting, and most cost-effective; because of its flexibility, routing and capacity can be changed with minimal investment and equipment; and Greyhound has the range of resources to provide reliable and high-quality service between Oxnard and Los Angeles.

Pursuant to a written agreement, similar to one that Greyhound has with SamTrans in San Mateo County, Greyhound would provide the equipment, drivers, vehicle maintenance, and management that is required to operate the service.

The points to be served and the equipment to be provided based upon the LARTS ridership projections are as follows:

<u>Station</u>	<u>LARTS Ridership Projection</u>	<u>Number of Buses Required</u>	<u>Capacity 47-Pass/Bus</u>
Oxnard	173	4	188
Camarillo	89	2	94
Moorpark	101	3	141
Santa Susana (Simi Valley)	264	5	235
Chatsworth	74	2	94
Northridge	64	2	94
Panorama	92	1	47
Burbank Airport	167	4	188
Burbank	70	1	47
Glendale	0	-	-
Los Angeles	<u>0</u>	<u>-</u>	<u>-</u>
	1,094	24	1,128

The travel time in the morning would be 1-1/2 hours from Oxnard to Los Angeles and the evening travel time would be a maximum of 2 hours.

Greyhound estimates the annual cost to provide the service would be \$63,657 per bus or a total of \$1,528,000 annually for 24 buses. Deducting an estimated revenue of \$600,000 the annual subsidy as of the time of hearing would be approximately \$928,000, which according to Greyhound, would be substantially less than Caltrans would have to pay to subsidize the rail commuter service as proposed. Based upon an inflation factor of 15 percent per year the projected cost would be \$1,757,000 with a net cost of \$1,157,000, which Greyhound claims compares favorably with Caltrans' estimate of \$1,844,000 and SP's estimate of \$2,400,000 for annual operating cost. In addition to the financial savings, Greyhound also points to the substantial fuel savings that could be realized by using buses rather than rail service. Greyhound estimates that the buses would use only 85,584 gallons of fuel annually as opposed to the 217,000 gallons of diesel fuel that SP estimated would be required to operate the locomotives.

George Woodman Hilton, professor of economics at the University of California at Los Angeles, who appeared on behalf of SP, cited authorities supporting Greyhound's position that buses can move people more cheaply than rail systems because operation of lighter vehicles require smaller fuel and labor inputs. According to the professor, the proposed rail service might take 900 cars off the highways daily, but this, he concluded, would only shorten the peak commuter period. He testified that people evaluate the convenience of an automobile in a fashion that can be quantified and believes that the expenditure on freeways could better be used by stretching out the commuter period by variable user charges. The professor claims that this would alleviate congestion moving in and out of metropolitan areas and could be accomplished by the installation of a technologically available metering process, which would require a highway user to pay a higher fee during the rush hours.

Discussion

Just as southern California generally has experienced a phenomenal growth in population and industrial development over the past thirty years so too has the area along the proposed rail route between Los Angeles and Oxnard. With the advent of freeways, two-car garages, and cheap gasoline the automobile has become the workingman's first love in the field of transportation. Resulting freeway congestion, pollution, recent fuel shortages, and skyrocketing gasoline prices have slowly, but surely, turned that beautiful romance into a nightmare. This unhappy transformation was strongly evidenced by the large number of public witnesses, as well as public officials, who appeared in support of the proposed commuter service.

With hindsight one can only wish that the "Big Red Cars" were still in operation in Southern California, but they are a thing of the past and the only solution to the problem is that suggested by Professor Spencer Crump, who testified that the same imagination that was used 75 years ago to build the Pacific Electric system should be used to build a new transit system for the Los Angeles Area in the 1980's.

In the meantime, alternate modes of public transportation are necessary, particularly to meet the needs and requirements of commuters between home and work. Unfortunately, this Commission cannot conduct the type of study that was suggested for assessing alternatives that a community might consider prior to filing an application for funds with the federal government.^{3/} Nor can we

^{3/} According to Assistant Director and Transportation Policy specialist with the Senate Office of Research of the California State Senate, Senate Bill No. 620 does not require an alternative analysis before funds can be issued and none was ever intended.

decide whether a county, a transit district, or Caltrans should enter into a purchase service contract with Greyhound or with Mr. Nathanael Walter Anderson, Sr., General Manager of GLH Tours, Inc., who testified that his minority-owned charter-party carrier company would be willing to provide a commuter service between Los Angeles and Oxnard if subsidized.

Greyhound may be in earnest in seeking to operate buses in this corridor under a subsidy similar to that offered to SP. However, at the present time Greyhound is not authorized to serve all of the points along the proposed route. If Greyhound had filed an unconditional request for such certificated authority as a passenger stage corporation we could have considered the merits of both bus and rail services in detail before reaching a final decision. Since that is not the case, the only things we must decide are: (1) whether we have jurisdiction to require SP to provide the proposed commuter service; (2) whether the proposed commuter service is required by public convenience and necessity; and (3) whether a rail service would be feasible under existing conditions.

Jurisdiction

SP has maintained throughout this proceeding that we have no jurisdiction to grant the relief sought by this complaint. This argument was first formally presented in a motion to dismiss the proceeding, which SP filed on October 6, 1978. We determined that SP's argument had no merit and denied its motion on February 27, 1979, in Decision No. 90018. SP did not pursue its right to seek judicial review of this determination and it thereby became final by operation of law. (Public Utilities Code Sections 1709 and 1756.)

However, SP reiterates its argument herein on the grounds that a jurisdictional challenge can be raised at any time; moreover, one of SP's witnesses claims that SP has subsequently developed additional facts supporting its position. SP's primary contentions are that it is not a common carrier of passengers in the southern California area and that it has never dedicated its facilities to the provision of commutation service on the line in question; therefore, the Commission lacks jurisdiction to order it to provide such service. While we disagree with these arguments, we will address the issue again herein for the purposes of clarifying the rationale underlying our assertion of jurisdiction.

First, under its own certificate of incorporation on file with this Commission, there can be no doubt that SP is a common carrier of both passengers and freight in the State as a whole. That certificate states that the nature of SP's business and the objects and purposes thereof, are to:

"...do a general transportation business; to transport, carry, haul, distribute, deliver and handle passengers, freight, baggage, mail, express, goods, wares, merchandise and other property of every kind and nature by railroad, steamship, airplane, truck, bus, pipeline, and other means of transportation or by any thereof..."

Section 2169 of the Civil Code sets forth SP's common carrier responsibilities:

"[A common carrier such as SP] must, if able to do so, accept and carry what is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry."

In the course of this proceeding, County and Caltrans have offered evidence concerning the public's need for passenger service along SP's monopoly rail corridor and the ability of such agencies to provide the necessary train equipment and to reimburse SP for expenses incurred in running the trains. Moreover, much evidence has been presented concerning the degree to which SP's present freight operations would or would not be impeded if SP began hauling County's trains. Under these circumstances, we believe we have the authority to examine whether or not under Section 2169 of the Civil Code SP has a duty to accept County's proposal.

Secondly, we do not dispute the basic principle that dedication is a necessary element in this case. However, we disagree with SP's argument that the requisite dedication is not present.

From the onset of State regulation over railroads as public utilities, the scope of their dedication has been primarily defined in terms of the rights-of-way over which they provide railroad service with no distinction made between passenger and freight service. Moreover, the record is clear that not only does SP still use the Los Angeles-Oxnard right-of-way and attendant structures and facilities for freight service, it formerly used that right-of-way to operate both local and long-haul passenger trains. While it

received Commission authorization to discontinue certain trains^{4/} and was relieved from the operation of others by the federal Amtrak legislation, we do not consider this to be tantamount to authorizing abandonment of its dedication to provide passenger service along this route should we determine that public convenience and necessity so require.

Concerning local service along the coast route, historical records indicated that SP as of March 20, 1904 completed the final link in what was termed the "Coast Line" by construction of the track, ties, ballast, and attendant structures on its right-of-way south of Santa Barbara through Oxnard and the Santa Susana Tunnel to Los Angeles. Local passenger service between Oxnard and Los Angeles was begun sometime thereafter. In 1934 the Commission permitted SP to discontinue local train service operating between Oxnard and Los Angeles via Saugus over the Santa Paula Branch. The order granting discontinuance specifically reserved to the Commission the right to "revoke the authority" to discontinue and "the right to make such further orders, relative to the matter, as to [sic] it may seem right and proper...if in its judgment, public convenience and necessity demand such action." (Decision No. 27612, Application No. 19352 (1934) 39 CRC 873 (unpublished); see Appendix B.) In this "reservation" the Commission clearly indicated its intent to authorize discontinuance only for that period of time in the future that public convenience and necessity so permitted. If in the future public convenience and necessity required passenger service, restoration would be ordered. We have not found any record of SP's

^{4/} Public Utilities Code Section 7532, which gives the Commission discretion to discontinue certain specific lines, says nothing about irrevocable abandonment of service, nor do any of the Commission's decisions authorizing SP to discontinue certain lines.

having appealed this decision. Coupled with the authority cited below, this decision fully affords the Commission the right and obligation to consider the question of whether public convenience and necessity presently require the reinstatement of local, i.e., commute, passenger train service between Los Angeles and Oxnard.

It cannot reasonably be disputed that the Commission has the responsibility of ensuring that SP is properly carrying out its public utility^{5/} and common carrier duties. Section 761 provides in relevant part that whenever the Commission, after a hearing:

"...finds that the...service of any public utility...[is] inadequate, or insufficient, the commission shall determine and, by order ...fix the...service...to be...employed. The commission shall prescribe rules for the performance of any service..., and, on proper demand and tender of rates, such public utility shall...render such service within the time and upon the conditions provided in such rules."

Section 763 further provides that when the Commission, after a hearing:

"..., finds that any railroad corporation... does not run a sufficient number of trains or cars,...reasonably to accommodate the traffic, passenger or freight, transported by or offered for transportation to it, ... the commission may make an order directing such corporation to increase the number of its trains or cars or...may make any other order that it determines to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation."

^{5/} See Sections 211(a), 216(a), and 451.

We know of no cases restricting the application of this section to service presently being provided. The Commission may also, after hearing, order additions, extensions to, or changes in existing equipment or facilities, "to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, ..." (Section 762.) In City of Oakland (1935) 39 CRC 308, the Commission held that it had jurisdiction under the predecessor of this section to consider a request for reinstatement of electric railway service that had been discontinued pursuant to Commission authorization.

We consider the above authority to be fully consistent with our position that public convenience and necessity cannot reasonably be measured for all time on the basis of conditions existing in 1904, 1934, or 1965. The concept of public convenience and necessity is necessarily fluid. The factors which determine the level of service and the equipment adequate to serve the public will necessarily differ as populations grow or diminish and as other forms of transportation become more or less dominant. It is our opinion that if the right-of-way in question remains intact, if service similar to that proposed was once offered, and if no abandonment of either the right-of-way or of the duty to provide service along it has been authorized, SP's obligation to render both common carrier freight and passenger service remains and the Commission has the authority to reconsider whether or not public convenience and necessity require changes to present service.

We do not consider the Amtrak legislation to be relevant to the question of the scope of SP's dedication under State law. Until October of 1978, that statute involved exclusively what is

termed "intercity" rail passenger service.^{6/} The distinction between "intercity" and "commuter" services is germane to the scope of federal jurisdiction, but not to the issue of SP's dedication under State law. We acknowledge that where a railroad has contracted with Amtrak for the latter to take over intercity passenger service, the railroad is relieved of its responsibilities under State law as a common carrier of passengers, but in intercity service only (45 U.S.C.A. § 561(a)(1)). This does not affect any responsibilities SP may have to provide commuter service, nor does it affect the Commission's jurisdiction to determine the extent of such responsibilities.

Public Convenience and Necessity

We are convinced that the extensive use of the private automobile has placed large costs on the general public in terms of traffic congestion, environmental deterioration, energy consumption, the use of land required for roads and parking, and other socio-economic impacts. The Legislature has clearly announced its policy and intent to develop and encourage a balanced transportation system within realistic funding levels. Congress and the President support expanded rail transit. The transportation officials and regional planning agencies support

^{6/} In October 1978 an amendment to the statute gave states the option of requesting that Amtrak run commuter trains pursuant to contract, as long as the state would pay a certain percentage of the operating costs. (45 U.S.C.A. § 563(d).)

the need to encourage and begin rail passenger service in this corridor. Caltrans' estimates of 1,100 to 1,400 passengers per day for the proposed train service, based on the regional transportation studies and plans, appear reasonable, if not conservative, measured against the success of other local passenger service in southern California and on the San Francisco Peninsula. Increased gasoline costs and potential fuel supply difficulties are also important elements in our decision that public convenience and necessity require this service to be instituted. Several passenger stations remain along the route and other points to be served can be accommodated by platforms and parking lot facilities. A sizable number of public witnesses support and urge the proposed service. We also believe that the support for this service from the local public officials, bodies, and organizations is an important element in our determination that the public convenience and necessity require this train service.

Adequacy of Existing Track Facilities

The single track segment of track between Burbank Junction and Oxnard does pose certain operational problems, but they are the same problems that railroads in the United States have dealt with for many years.

From Chatsworth south there are numerous support sidings on either side of the tracks that could be used if clear. Santa Susana with a length of 7,108 feet is obviously a dispatcher's best siding. Camarillo, Moorpark, and Chatsworth range from 4,056 feet to 5,544 feet. Although SP made frequent reference to the long freight train, a review of train activities during the month

of June 1979, which SP indicated was an active and representative month, discloses that no freight trains were operated in excess of 7,108 feet and only eight exceeded 6,000 feet.

The movements of trains could be further facilitated if the Hewitt siding were returned to operation and if Chatsworth and Santa Susana were made train order stations. Another factor that would facilitate the movement of trains would be the more extensive use of radio for giving train orders. SP claims that use of its radio raises certain labor-related cost problems when a train conductor performs the function of a train order operator. The important thing should be the movement of the trains and in a subsidized operation such as this, the additional cost for use of the radio should be the concern of Caltrans and not SP's.

Train Conflicts

SP's interference study was prepared by Michael R. Chavez, who is employed as Train Dispatcher, Los Angeles Division. He has worked as coast dispatcher on both day and night shifts, dispatching trains between Los Angeles, Burbank Junction, Oxnard, Santa Barbara, and San Luis Obispo and also serves as Relief Chief Train Dispatcher. Mr. Chavez was instructed to superimpose the schedules of the proposed commuter trains over the rail operations actually conducted between Oxnard and Los Angeles during the period covered by the study, noting the delays that would have been incurred had those trains been operating. He was not authorized to reschedule or redispach trains to avoid conflicts, but was told to designate all train operations within the period of 5:00 a.m. to 7:30 a.m. and 4:00 p.m. to 7:00 p.m. as conflicts attributable to the commuter trains. Mr. Chavez admitted that if SP were ordered to operate the commuter trains they would be meshed with the freight operations so as to reduce the possibility of delays as much as possible.

As a consequence SP's interference study does not provide a true picture of what its coast line operations would be like if the commuter trains were authorized and it is of little or no value for the purposes of this proceeding.

If SP were so concerned about the potential of train interference it had the best possible source available to demonstrate the realities of the problem. If a study had been made of the actual operations of the Amtrak Coast Daylight Trains Nos. 12 and 13 for a one-year or six-month period we would have had before us far more helpful information in determining the merits of SP's contention. The Amtrak trains not only operate between the same points daily, but they are first-class trains that raise the same operational problems for SP that the commuter trains would raise. They operate over the same single track segment and past the same Gemco and Taylor yards. They have the same potential for conflict with the Chatsworth haulers, the "hot-cars", the eastern and north-western trains, and the various switchers and locals. If the study had been prepared, actual conflicts could have been tabulated and evaluated. From the very fact that such a study was not prepared we can only assume that SP, by appropriate dispatching, has operated the Amtrak trains over its coast line routes without any significant problem of conflicts with other trains.

The morning commuter trains would pose no problem for the morning Amtrak train leaving Los Angeles, but if on schedule the evening Amtrak train would meet the commuter trains on the single track. SP's contract with Amtrak provides that the trains will be considered "on-time" if the performance between Portland and Los Angeles is within 14 minutes of the schedule time. Since its new agreement was entered into in July 1977, SP has complied 75.4 percent of the time.

In the preparation of its interference study SP held the commuter trains in a siding to allow the Amtrak train to proceed claiming that it is a common railroad operational practice in the case of first-class trains to give priority to long-distance passenger trains over local passenger trains. Rule S-72 of the Operating Department Handbook provides that westward trains (in this case the commuter trains) are superior to trains of the same class if operating in the opposite direction. But, regardless of which train is given priority it is important to note that Mr. Chavez was of the opinion that it may be possible to arrange for a scheduled meet between the first commuter train and the Amtrak train at Chatsworth and if a siding is available a scheduled meet between the second train at Gemco.

The potential conflicts with the Chatsworth haulers appear to result more from the hour and a half that each handler spends on the main track at Gemco making up or switching out cars. We do not believe that this practice lends itself to an efficient operation, particularly if yard facilities for such purposes are available.

We are also of the opinion that there is merit in Mr. Brophy's observation that the inauguration of the commuter service would impose a discipline that would have a beneficial effect upon SP's overall coast line operation. It was not so long ago that SP operated a number of passenger trains and a vast number of freight trains over these same tracks with efficiency and a high standard for "on-time" performance.

Reliability of Service

A major portion of SP's presentation was introduced for the purpose of pinpointing deficiencies in the proposed commuter service. This included a detailed analysis of schedules, equipment, fares, station facilities, locomotives, home terminal,

equipment maintenance, repairs, and supervision. The slightest operational problem was highlighted and magnified. A close review of this evidence discloses that it is primarily directed towards the quality of the proposed service rather than its feasibility. Admittedly, the quality of a service can have a material effect upon patronage, but in the final analysis public acceptance or rejection can be determined only after a reasonable period of time has been allowed for necessary adjustments to be made by both the railroad and the commuting public.

Equipment

The El Camino cars have been completely reconditioned and refurbished. For all practical purposes their condition is the same as when they were first placed into service. By way of design they may not lend themselves to the high capacity nor expeditious means of loading and unloading passengers as the more modern type of commuter rail cars, but they would afford passengers a very comfortable means of commuting between home and work.

Locomotives

If the success of the proposed service requires the operation of four 3,600 horsepower locomotives then it will be SP's responsibility to see that they are made available. Whether the locomotives are equipped with steam generators is not essential. Steam-heated cars and hot water in the lavatories during certain periods of the winter months would be desirable, but not absolutely necessary.

Schedules

The estimated range of 1,100 to 1,400 potential patrons appears to be reasonable. Although SP questioned the reliability of the LARTS trip estimates because of assertedly erroneous assumptions as to train schedules, headway, and performance, it did not question the accuracy or methodology of the study. In fact, the SP study adopted for its purposes the LARTS forecast of 1,825 passengers on a 24-hour basis. Although a longer schedule could reduce the estimated patronage the feasibility of the proposed schedules can only be determined from actual operations.

Whether it takes 30 seconds or three minutes at each station to load and unload passengers remains to be seen. To achieve the 30-second dwell-time it may be necessary to use a larger train crew so that more doors can be opened, or it may be accomplished by opening fewer doors and spotting cars at station platforms. As in all new operations, there undoubtedly will be a number of procedural and operational problems that will have to be tried and tested before the best methods are finally adopted. Hopefully, the testing period will be of short duration.

Ticket Sales

By an arrangement with Amtrak, tickets will be sold at the Los Angeles, Glendale, and Oxnard stations. Except for the occasional rider it is safe to assume that most passengers will purchase the discount tickets and it is further safe to assume that most of the commuter passengers will purchase their tickets by mail or at one of the attended stations.

A problem could arise for the commuter who has not had an opportunity to purchase a ticket by mail, and boards and unboards at unattended stations. The effectiveness of automatic ticket machines is questionable because of problems relating to break-downs and change. Under the present proposal the alternative for the commuter would be to purchase one-way tickets on the train until a discount ticket could be acquired by mail.

The sale of cash fares by conductors presents no problem that cannot be solved by adding conductor-helpers to the crew as needed. If the number of cash fares should exceed the 20 estimated for each train, the helpers could be used not only for the sale and collection of tickets, but also to open additional doors at intermediate stations.

Station Facilities

An adequately lighted station platform and an easily accessible parking area should be sufficient to meet the needs of most commuters. The convenience of an enclosed station equipped with restroom facilities would be desirable but is not necessary. As a practical matter most commuters drive, or are driven to the station and remain in their cars until their train arrives. If any time is spent waiting on the station platform it is usually minimal and on most occasions a pleasant experience, particularly in Southern California with its favorable weather.

Police protection can be provided by local authorities and if the support for the proposed service as evidenced by local governmental authorities is any criterion, security should be no problem.

Home Terminal

Establishment of a home terminal is strictly an operational matter with which SP is fully familiar. On the surface it would appear that Los Angeles would be the logical choice because it would alleviate the need for establishing an extra board for enginemen and trainmen at Oxnard. The only additional costs would be for meals and lodging for crews laying over at Oxnard and replacements could be made from switch engine assignments at Oxnard or by supervising personnel. In any event, we feel sure that SP's decision will be operationally practical and cost-efficient.

Equipment Maintenance

SP may have substantially reduced its passenger maintenance facilities and personnel with the inauguration of the Amtrak service but it did not completely eliminate them. Pursuant to a contract with Amtrak the Southwest Limited trains which operate between New Orleans and Los Angeles and the Coast Daylight trains, are presently serviced by Amtrak at Los Angeles. Before leaving Los Angeles the trains receive a turn-around inspection and cleaning. All heavy maintenance and repair work for these same trains is done at SP's Oakland facilities, which are equipped with a drop-pit, Joyce electric jacks, and elevator tracks that are used for minute inspections.

There is no reason why a similar arrangement cannot be made for the cleaning and repair of the proposed commuter trains. Except for picking up discarded papers and debris at Oxnard, the major inspection, cleaning, and maintenance could be done at Los Angeles, while heavy repairs could be done at SP's Oakland facilities.

Supervision

Whether the successful operation of the commuter trains requires someone to supervise and coordinate the proposed service is an operational matter that can best be answered by SP. It would appear, however, that if necessary it could be performed by the same person or persons who performs these functions in SP's operation of the Amtrak trains.

Costs

There is no dispute that the proposed commuter service, if authorized, would be operated at a deficit. Since state subsidy funds are available there is no merit to SP's contention that the proposed service would constitute a financial burden. The only question is how the deficit is to be calculated. This can best be decided by SP, Caltrans, and County after a period of negotiations. We believe that a period of six months should be sufficient for such purposes. If not, additional time will be provided. During this period a subsidy account should be established and payments made as necessary to inaugurate and maintain service. Adjustments can be made after an agreement has been reached and actual costs are known.

We are of the opinion that SP should be compensated for those costs that are a direct result of the commuter service in addition to common costs as well as fixed costs that are a direct result of such service. The parties should use an avoidable or incremental cost methodology in determining cost of operations and subsidies.

During the period of negotiations we do not believe that any allowance should be made for costs attributable to the interference with freight trains. It is possible that a more disciplined effort will be made to coordinate the movements of the commuter and freight trains if there is no monetary cushion to soften the effects of conflicts to freight trains. By the same token this period of service will provide a more accurate account of the coordinated operations as well as a basis upon which such costs can be determined and paid if justified.

With respect to insurance we believe that until a claims history can be developed a new policy with a \$1.5 million deductible would be prudent. At a future date it may be advisable and more economical to have Caltrans and County added to SP's system policy.

In addition to costs we believe that SP is also entitled to a reasonable rate of return. This should satisfy SP's requirement that a new service must have a contributing effect on its financial standing. We are of the opinion that a 7-1/2 percent return would not only be reasonable, but, according to figures presented in this proceeding, exceed SP's rate of return on net investment in transportation property for the past ten years.

Finally, while Caltrans does appear willing and able to reimburse SP for all reasonable deficits resulting from the operation of this needed service, it may be the case that SP will incur certain expenses that are not anticipated by the parties during negotiations. Should this circumstance arise, we will require that subsequent recognition be given to such expenses and that reimbursement be made. However, because of the sound overall financial health of SP, as well as its holding company, Southern Pacific Company, we believe SP is fully capable of absorbing a reasonable portion of such unanticipated expenses, if for some justifiable reason they should remain unreimbursed or if reimbursement is delayed.

SP should also be paid a reasonable rental for any of its properties used for parking or station platform purposes.

Complainants' Motion to Strike SP's Surrebuttal Showing

In accordance with Rule 57 of the Commission's Rules of Practice and Procedure the complainants were entitled to open and close. In this proceeding, however; the ALJ in the exercise of his discretionary authority (Rule 63) agreed to a surrebuttal presentation on the part of SP and upon completion of complainants' rebuttal presentation on December 5, 1979, continued the matter for a four-day presentation by SP commencing January 22, 1980.

In conformity with the established hearing procedure SP served copies of prepared testimony and related exhibits upon all parties ten days prior to the January 22 hearing. In addition, Greyhound Lines, Inc. and General Motors Corporation also served copies of prepared surrebuttal testimony and related exhibits on all parties, even though no provision had been extended to either party to make a surrebuttal presentation.

In reply to complainants' rebuttal presentation, which covered a period of two and a half days and called for the testimony of four witnesses, SP proposed to call eleven witnesses. The testimony of several of SP's surrebuttal witnesses would have covered as many as forty or fifty pages of prepared testimony. If taken with the testimony and exhibits that Greyhound and General Motors proposed to introduce, the total time that would have been necessary to complete the surrebuttal showing would have required an additional two or three weeks of hearing.

On January 21, 1980, complainants filed a motion requesting that all surrebuttal exhibits be set aside and the matter taken under submission. On January 22, 1980, following argument on the motion the ALJ sustained the motion.

On January 31, 1980, February 11, 1980, and March 6, 1980, General Motors, Greyhound, and SB respectively, filed petitions to set aside submission for the purpose of receiving surrebuttal exhibits.

The petitions will be denied. No authority was ever extended to either Greyhound or General Motors to make a surrebuttal presentation. A review of SP's exhibits indicates that a substantial portion of its surrebuttal presentation would have been repetitious, argumentative, and rehabilitative of SP's case in chief.

We find no abuse of discretion on the part of the ALJ in sustaining the motion and we affirm his decision. All parties were afforded a full opportunity to be heard.

SP's Motion for a Protective Order

During the course of hearing, by letter dated October 25, 1979, staff counsel requested that the ALJ direct SP to provide a guided Hy-Rail inspection of SP's railroad properties between the Los Angeles station and Montebello, commencing at 9:30 a.m., Tuesday, November 6, 1979, for the purpose of transporting staff members on the requested inspection tour.

The tour was never provided because SP claimed that the ruling was not received by SP's counsel until 12:00 p.m., November 6, 1979. On November 9, 1979 SP filed a motion for a protective order that it not be required to provide the Commission staff and staff counsel with the requested inspection. Because the staff never renewed its request, the issue is now moot; and the motion will be denied. However, SP is placed upon notice that had such a tour been necessary for the staff to have a better understanding of SP operations and had the staff pursued its request for a tour the motion for a protective order would have been denied on the merits. SP's motion appears to be inconsistent when one considers that it was SP which raised the issue relating to the adequacy of its track facilities. More importantly, we wish to stress that it is essential that the Commission staff have full access to public utility property and facilities in order to conduct examinations and tests pertaining to the powers afforded the Commission and its staff in the Public Utilities Act. Public Utilities Code Section 771, as well as other sections, provides that authority. SP will not be permitted to frustrate our staff's exercise of the Commission's powers and functions by suggesting that the proposed inspection was not legitimate. We expect SP to recognize and cooperate with our staff's reasonable requests for inspection and examination of common carrier properties devoted to public utility purposes.

SP's Motion for an Environmental Impact Report

On August 8, 1979 SP filed a motion pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure requesting an order of the Commission directing complainants to either submit a negative declaration or an environmental data statement in compliance with the California Environmental Quality Act (CEQA).

Senate Bill 849, Chapter 791 of the Statutes of 1978 (Pub. Resources Code Section 2108.5) provided for the following exemption from CEQA:

"A project for the installation or increase of passenger or commuter service on rail lines in use, including modernization of existing stations and parking facilities, shall be exempt from this decision."

Although the exemption applies only to existing stations and parking facilities the type of construction proposed by Caltrans (i.e., open platforms and paved parking areas) is categorically exempt from the Environmental Impact Report requirements of CEQA.

"(C) Class 3 Exemptions

"3. Accessory (appurtenant) structures to utility structures including garages, carports, patios and fences." (Rule 17.1(h)(1)(C)3.)

The motion will be denied.

Findings of Fact

1. SP completed construction of the final portion of its main line over its right-of-way known as the "Coast Line" between Santa Barbara and Los Angeles, through Oxnard and the Santa Susana Tunnel, in 1904, which right-of-way, with attendant trackage structures and facilities, continues to be used for common carrier purposes.

2. SP has never been authorized to abandon its "Coast Line" right-of-way between Los Angeles and Oxnard by the ICC or by this Commission.

3. SP has operated various trains over the years since 1904 which provided local passenger train service between Oxnard and Los Angeles over the Santa Paula line until 1934, as well as through the Santa Susana Tunnel until at least 1937.

4. The Commission in 1934 in Decision No. 27612 permitted discontinuance of certain local train service between Oxnard and Los Angeles, but reserved the right to revoke the authority to discontinue such service if public convenience and necessity so demanded, and said decision and order was not appealed by SP.

5. SP has never been authorized by the ICC or this Commission to abandon or discontinue all passenger train service in the State.

6. SP refused a formal request to haul certain passenger cars owned by County between Los Angeles and Oxnard.

7. Extensive use of the private automobile has helped to cause traffic congestion, environmental deterioration, energy consumption, and the use of land for roads and parking, as well as other detrimental socio-economic impacts.

8. A policy of the State Legislature, as well as that of the U.S. Congress and the President, is to encourage and develop a balanced transportation system, including expanded rail transit service.

9. Regional and local governmental officials and planning agencies support and encourage commuter rail service in the corridor between Los Angeles and Oxnard.

10. A significant segment of the public witnesses supports commuter rail passenger service between Los Angeles and Oxnard.

11. It is reasonable to expect that from 1,100 to 1,400, or more, passengers per day will use the proposed commuter train service.

12. We find that based on the evidence adduced on this record, public convenience and necessity require that SP commence passenger train service between LAUPT and Oxnard consisting of two trains daily, each way, between 6:00 - 8:00 a.m. and between 4:00 - 6:00 p.m., with intermediate stops at stations or platforms at Camarillo, Moorpark, Santa Susana (Simi Valley), Chatsworth, Northridge, Panorama, Airport, Burbank, and Glendale.

13. SP's overall financial condition, as well as that of its holding company, will enable it to bear any reasonable expenses of the service not fully reimbursed by Caltrans.

14. The complainants and SP should engage in negotiations leading to an agreement to render the service ordered herein.

15. SP can accommodate its existing freight service offered along the coast line between Oxnard and Los Angeles with the proposed commuter trains with minimal impact with the adoption of reasonable measures by SP to eliminate conflicts and impose greater discipline in its overall coast line operation.

16. A major portion of the SP coastline track facilities between Los Angeles and Oxnard is single track with side tracks at four locations. The movement of trains, including the commuter trains, could be greatly facilitated if the Hewitt siding were returned to operation and Chatsworth and Santa Susana were made train order stations. The use of radio for the purpose of issuing train orders would also be a factor in facilitating the movement of trains over the single-track segment.

17. SP's interference study does not accurately reflect the train conflicts that would result if the proposed commuter service was authorized because the study was prepared by superimposing the commuter operation over past freight operations without any attempt to avoid conflicts by redispersing trains. A more accurate and helpful study would have been an account of the conflicts resulting from the operation of the Amtrak Coast Daylight trains, which also operate daily over the same track facilities.

18. SP's Genco and Taylor yards pose a potential problem for conflicts with the proposed commuter trains, but a major contributing factor is SP's practice of making up trains on the main tracks adjacent to both yards. Better utilization of yard facilities, more efficient yard operations, and a stricter discipline in the calling and operation of freight trains would minimize possible delays to passenger and freight trains because of conflicts.

19. The proposed rail commuter service is feasible. Initially certain operational problems will be experienced but these can and should be resolved following a reasonable period for operational and public adjustment.

20. It will be the responsibility of SP to provide adequate locomotives. If it is necessary to use four 3,600 horsepower locomotives to assure a dependable on-time service and an adequate source of backup power, then this requirement will have to be met if public use and confidence are to be established and maintained.

21. To achieve and maintain a 30-second station dwell-time may require a larger train crew in order that more train doors can be opened for the loading and unloading passengers. As an alternative cars may be strategically spotted along the platform and fewer opened, but this is a procedure that could be tried during the period of adjustment.

22. Discount tickets may be purchased at the Los Angeles, Glendale, and Oxnard stations; they may also be purchased by mail, and one-way tickets may be purchased from the train conductor. This should provide a reasonable opportunity for all who are interested in using the proposed service. The proposed use of automatic ticket machines at unattended stations may pose some problems, but if so the other methods of purchasing tickets should be sufficient.

23. Adequately lighted station platforms with access to parking areas will meet the needs of most commuters. Construction of enclosed shelters equipped with restroom facilities is not necessary.

24. Selection of a home terminal for the proposed commuter trains is an operational matter that will have to be determined in accordance with practical and economic considerations.

25. Complainants have eight passenger cars available for service, which have been reconstructed and refurbished. They are in excellent condition and are more than adequate for use in the proposed service. Complainants will provide eight additional passenger cars to make up the consist of the second train and they will be made available prior to the commencement of service.

26. All heavy maintenance and repair of the passenger cars will be the responsibility of complainants. Heavy repairs and major cleaning can be performed pursuant to an agreement with Amtrak.

27. All light cleaning and running repairs of the passenger cars will be the responsibility of SP and can be performed by SP personnel at its Los Angeles facilities.

28. Operating deficits resulting from the service are to be subsidized by state funds pursuant to an agreement to be negotiated by the parties. The agreement should compensate SP for direct out-of-pocket costs. During the course of negotiations consideration should be given to the RSPD Commuter Standards, which provide a reasonable method for determining direct, indirect, and common costs. A period of six months would be required to negotiate such an agreement. In the event the parties desire this Commission's assistance by way of interpretation it will be available.

29. Pending final agreement between the parties a subsidy account in the amount of \$1.3 million should be established for the purpose of inaugurating the proposed service and for construction by SP of station platforms and parking facilities in accordance with plans and specifications to be prepared by Caltrans and filed with this Commission for its approval.

30. No allowance should be made for costs attributable to the interference with SP's freight trains.

31. Until a reasonable claims history can be developed a new insurance policy with a \$1.5 million deductible should be obtained to cover the proposed service.

32. In addition to meeting deficit costs, the subsidy should provide SP with a 7-1/2 percent rate of return, which we find to be just and reasonable.

33. Certain SP properties, upon which station platforms and parking areas would be installed, are presently subject to written leases containing 30-day cancellation clauses. SP should be paid a reasonable rental for any properties that are used for such purposes.

Conclusions of Law

1. SP is a common carrier of freight and passengers between Los Angeles and Oxnard and subject to the jurisdiction of this Commission.

2. SP completed legal dedication of its right-of-way with attendant structures and facilities to common carrier purposes between Oxnard and Los Angeles following completion of said construction in 1904.

3. SP is a common carrier of passengers and freight over its dedicated rights-of-way. The obligation remains for SP to render that service which the Commission finds is required by public convenience and necessity.

4. The authority granted SP to discontinue certain local passenger trains in service between Los Angeles and Oxnard was not an irrevocable grant of the right to cease all passenger train service thereafter nor was such authority to discontinue specific trains an acknowledgment that SP had "retracted" its dedication to passenger service.

5. If the Commission subsequent to discontinuance of certain train service finds that public convenience and necessity require reinstatement of passenger train service along a railroad's right-of-way dedicated to common carrier service, it may order that train service be operated.

6. The passage of the National Rail Passenger Service Act of 1970 did not authorize SP to refuse to render commuter passenger train service thereafter.

7. Civil Code Section 2169 sets forth, in part, SP's common carrier duties and provides a statutory basis for the Commission to consider the merits of the complaint filed herein.

8. Public Utilities Code Sections 761 through 763 provide additional statutory authority for the Commission to consider the merits of County's and Caltrans' complaint.

9. Pursuant to the conditional grant of authority to discontinue passenger train service in Decision No. 27612, the right to revoke such authority if public convenience and necessity so require remains with the Commission. SP's failure to seek review of said decision renders the matter final on the merits.

10. The evidence in this public record indicates that public convenience and necessity require that SP commence operation of rail passenger service between Los Angeles and Oxnard as proposed by complainants.

11. We affirm the conclusion reached in Decision No. 90018 that SP is a common carrier of freight and passengers between Los Angeles and Oxnard and subject to the jurisdiction of this Commission. A copy of Decision No. 90018 is attached hereto as Exhibit A.

12. This Commission has no statutory or constitutional authority to determine how subsidy funds available under Senate Bill 620 should be distributed or apportioned.

13. Inauguration of a rail commuter service between Los Angeles and Oxnard requires no alternative analysis study nor environmental impact report. Construction of station platforms and parking lot facilities is exempt from the provisions of CEQA.

14. SP should be required to operate the proposed commuter trains in accordance with the requirements of the ensuing order.

O R D E R

IT IS ORDERED that:

1. Within thirty days after the effective date hereof, the State of California Department of Transportation (Caltrans) shall submit to Southern Pacific Transportation Company (SP) and file with this Commission locations, plans, and specifications for station platforms and parking facilities.

2. Within ninety days after receipt of the plans and specifications provided for in Ordering Paragraph 1 hereof, SP shall construct the platforms and parking facilities in accordance with said plans and specifications and shall, upon ten days' notice to the Commission and the public, commence operations of two commuter passenger trains between Los Angeles and Oxnard with intermediate stops at Camarillo, Moorpark, Santa Susana (Simi Valley), Chatsworth, Northridge, Panorama, Airport, Burbank, and Glendale. Said service shall be provided subject to the condition that Caltrans shall subsidize deficits resulting from such operation.

3. SP shall operate the rail service provided for in Ordering Paragraph 2 hereof between the hours of 6:00 a.m. and 8:00 a.m. and between 4:00 p.m. and 6:00 p.m. daily, Monday through Friday, holidays excepted.

4. Within thirty days prior to the commencement of service by SP, complainants shall establish to the Commission's satisfaction that:

- (a) Two consists of eight rail passenger cars each are available and ready to be used in service.
- (b) Arrangements have been made for the maintenance of rail cars and for the sale of tickets.
- (c) An escrow account has been established containing deposits of \$1.3 million for the purpose of constructing station platforms and parking facilities and a deposit of at least one-half of the estimated cost of first-year operations as set forth in Exhibit 9.

5. Within one hundred eighty days after the effective date hereof SP, Caltrans, and the County of Los Angeles shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom.

6. During the period of negotiations funds deposited in the escrow account provided for in Ordering Paragraph 4(c) hereof, shall be used for the purpose of inaugurating and maintaining the commuter service. When an agreement has been reached and actual costs have been determined adjustments will be made accordingly.

7. Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, SP shall amend its tariffs and timetables on file with the Commission to reflect the service herein authorized and ordered.

8. The petition for a proposed report as well as the motions to set aside submission for the receiving of surrebuttal evidence and the motion for a protective order that a "Hy-Rail" tour need not be provided are denied.

9. All objections, motions, and petitions filed in this proceeding and not specifically ruled upon are denied.

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

Dated June 3, 1980, at San Francisco, California.

JOHN E. BRYSON
President
VERNON L. STURGEON
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
Commissioners

Commissioner Claire T. Dedrick,
being necessarily absent, did not
participate in the disposition of
this proceeding.

Certified as a True Copy
of the Original

KD

EXHIBIT A

Decision No. 90018 February 27, 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA,

Complainants,

vs.

SOUTHERN PACIFIC TRANSPORTATION
CO., a Corporation,

Defendant.

Case No. 10575
(Filed May 18, 1978)

Owen L. Gallagher and Douglas Ring, Attorneys
at Law, for County of Los Angeles; and
Robert A. Munroe and O. J. Solander,
Attorneys at Law, for State Department of
Transportation; complainants.
Charles W. Burkett and Carol A. Harris,
Attorneys at Law, for Southern Pacific
Transportation Company, defendant.
J. H. Brey, for Brotherhood of Locomotive
Engineers; James P. Jones, for United
Transportation Union, California Legis-
lative Board; and Eugene C. Given, for
Greyhound Lines, Inc.; intervenors.
William J. Jennings, Attorney at Law, and
Richard C. Collins, for the Commission staff.

ORDER DENYING MOTION TO DISMISS

By this complaint filed May 18, 1978, County of Los Angeles and State of California Department of Transportation request an order of the Commission directing Southern Pacific Transportation Company (SP) to operate passenger train service between Los Angeles and Oxnard.

On October 6, 1978, SP filed a motion requesting that the complaint be dismissed for lack of jurisdiction to grant the relief sought.

EXHIBIT A

Oral argument on the motion was heard before Administrative Law Judge Daly on November 13, 1978, at San Francisco at which time and place the motion was taken under submission.

Based upon the following jurisdictional facts, which were introduced as Exhibits 1 and 2, SP contends that the Commission is without jurisdiction to require SP to provide a passenger commute service on its Coast Route between Oxnard and Los Angeles:

Exhibit 1

C. H. Howard
Manager, Regional Sales Administration
Southern Pacific Transportation Company

Occupied various positions, including Assistant General Freight and Passenger Agent and Assistant Traffic Manager, in the Passenger Department, Los Angeles Division. All southern California passenger operations on SP Coast Route between Oxnard and Los Angeles involved intercity trains, and commute passenger trains were never operated between said points. With the passage of the Rail Passenger Service Act of 1970, SP entered into contracts with the National Rail Passenger Corporation (Amtrak). As of that time SP's passenger trains in California were intercity passenger trains with the exception of its peninsula commute trains which operate between San Francisco and San Jose. Exhibit A, attached to Exhibit 1, is a copy of SP's "Cancellation Supplement" issued March 22, 1971, canceling its local, interdivision, and joint passenger tariffs pursuant to the Rail Passenger Service Act of 1970. All local, interdivision, and joint California intrastate tariffs issued by SP as shown in Exhibit A were canceled effective May 1, 1971. SP's participation in joint tariffs issued by the Transcontinental Railroad Passenger Association, the Western Railroad Passenger Association, and the Southwestern Railroad Passenger Association was canceled effective September 1, 1971, for intrastate passenger traffic. By order served April 12, 1972, the Interstate Commerce Commission ordered that all joint passenger tariffs in which SP participated and all individually issued passenger tariffs of SP relating to passenger service terminated under the

EXHIBIT A

authority of the Rail Passenger Service Act of 1970 be stricken from its files. As of May 1, 1971, SP has not furnished any rail service between Oxnard and Los Angeles or on any line in the Los Angeles Metropolitan Area. Amtrak presently operates "The Coast Starlight" daily over SP's Coast Route main line to and from Los Angeles Union Passenger Terminal with stops at Oxnard and Glendale. SP has leased to Amtrak its former passenger-related space at all three stations.

Exhibit 2

A. M. Cole
Special Assistant to the Superintendent
of the Operating Division, Los Angeles
Division

Was employed by Pacific Electric, a wholly owned subsidiary of SP, which operated an electric interurban railroad service for the commutation of passengers and some freight in the Los Angeles basin from 1911 until its merger into SP in 1965. Pacific Electric never furnished any passenger commutation services between Los Angeles and Glendale or Oxnard over the rail lines of Southern Pacific.

SP argues that when it canceled its tariffs and discontinued all passenger operations in Los Angeles and Ventura Counties, it was no longer a common carrier of passengers in that area, and the Commission lacks jurisdiction to compel it to provide service as requested in the complaint.

SP takes the position that, although it is a common carrier of freight between Los Angeles and Oxnard, it no longer is a common carrier of passengers between said points; and in the absence of a finding of rededication, the Commission cannot require SP to provide the service requested.

Exhibits 1 and 2 clearly establish that SP was engaged in the transportation of persons and property within the meaning of Article XII, Section 3 of the California Constitution and Section 211(a) of the California Public Utilities Code between Los Angeles and Oxnard until 1971. When SP entered into contracts with Amtrak,

EXHIBIT A

it assertedly was relieved of all of its responsibilities as a common carrier of passengers by rail in intercity rail passenger service under Part 1 of the Interstate Commerce Act or any state or other law relating to the provisions of intercity passenger service. Although it emphasizes the fact that its passenger service between Los Angeles and Oxnard was intercity as opposed to commute, it provided no statutory or case authority for the distinction insofar as dedication is concerned.

SP also failed to cite any authority from this Commission to abandon its responsibility and obligation to provide passenger service between Oxnard and Los Angeles, and such prior authorization is required. (Marin Co. Elec. Rwy. (1914) 4 CRC 503; Key System Transit Co. (1924) 25 CRC 363; and Lennon et al. v Bayside Lumber Co. (1916) 10 CRC 116.) In the latter decision the Commission specifically held that:

"If defendant was a common carrier, it could not legally escape its obligations to the public by the simple expedient of leasing its line of railroad and part of its equipment. Furthermore, defendant, if it was a common carrier, could not cease operations as such carrier unless the Railroad Commission's consent had first been secured. No application for such consent was ever made by defendant."

Applications for the discontinuance of specific trains operating between San Francisco and Los Angeles over the Coast Route were granted, but the last train that SP operated over its Coast Route between said points was "The Coast Daylight" and it was discontinued on May 1, 1971, by a tariff filing, as evidenced by Exhibit A attached to Exhibit 1. No application was ever filed with this Commission requesting authority to abandon passenger service.

We are not prepared to say whether the Rail Passenger Service Act of 1970 constitutes a preemption by the Federal government of the Commission's jurisdiction to regulate intrastate rail passenger service because of the recent amendment to the California Constitution

EXHIBIT A

(Article 3, Section 3^{1/2}), which states that a state agency has no power to declare a statute unenforceable or to refuse to enforce a statute on the basis of preemption by a federal law unless such a determination has been made by an appellate court.

We are unaware of any appellate court determination of this issue and will therefore pursue our constitutional and statutory authority with respect to the regulation of intrastate rail passenger service.

For the above-discussed reasons, the motion to dismiss for lack of jurisdiction will be denied.

1/ "(1) Sec. 3.5 An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

"(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of its being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

"(2) To declare a statute unconstitutional;

"(3) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulation."

C.10575 ka

EXHIBIT A

IT IS ORDERED that the motion of Southern Pacific Transportation Company to dismiss the complaint filed in this proceeding for lack of jurisdiction is denied.

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

Dated at San Francisco, California, this 27th day of February, 1979.

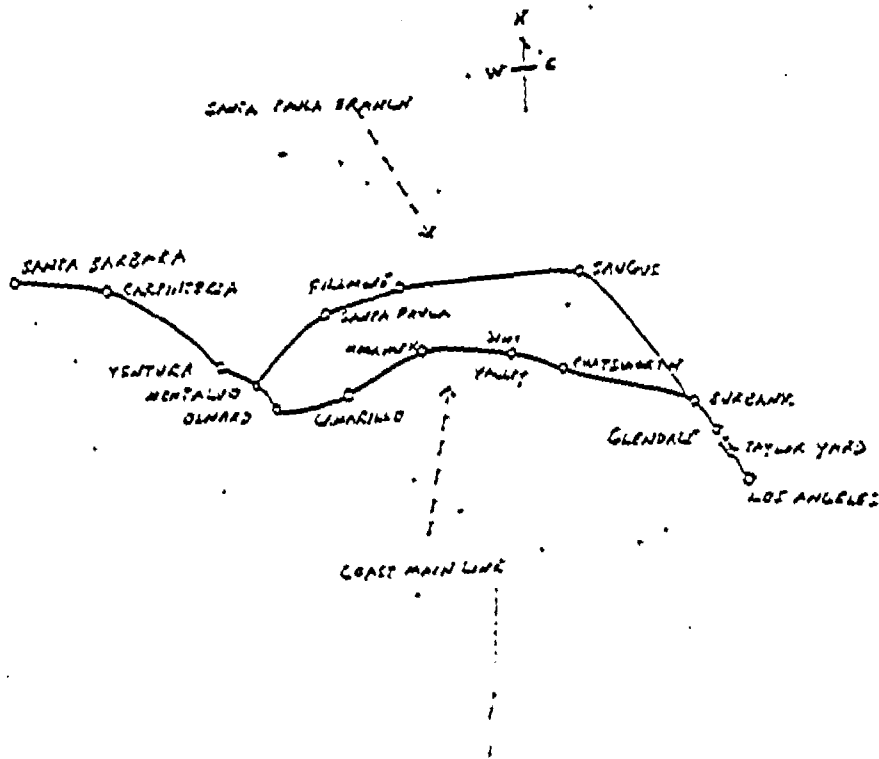
JOHN E. BRYSON
President
VERNON L. STURGEON
RICHARD D. GRAVELLE
CLAIRE T. DEDRICK
LEONARD M. GRIMES, JR.
Commissioners

APPENDIX A*

Map A

Rail Trackage Routes

Los Angeles - Santa Barbara



Los Angeles - Santa Barbara:

103.2 miles via Coast Main Line

110.2 miles via Santa Paula Branch

* Source: Exhibit 106

APPENDIX B

Decision No. 27812

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN PACIFIC COMPANY - First: To discontinue the operations of trains Nos. 351-352 and 353-354 operating between Los Angeles and Oxnard, California; and, Second: To maintain its so-called Santa Paula Branch between Montalvo and Saugus, California, under less than full operation as defined by Section 408 of the California Civil Code.

Application No. 19352.

- R. S. Myers and E. J. Foulds, by R. S. Myers, for Applicant.
- Don R. Holt, Chief Deputy District Attorney of Ventura County, for Ventura County, Protestant.
- W. Mark Dunley, for Ventura County Chamber of Commerce, Protestant.
- Jack C. Miller, for Oxnard Chamber of Commerce.
- R. E. Blanchard, City Attorney, for the City of Santa Paula.
- Harry See, for Brotherhood of Railroad Trainmen.
- W. K. Glover, for Ventura County Chamber of Commerce, Protestant.
- M. E. Cobb, for the City of Willmore, Protestant.
- F. M. Brakins, for Willmore Chamber of Commerce, Protestant.
- G. A. Koechig, for Santa Paula Chamber of Commerce, Protestant.
- Fred Pidduck, for Law and Utilities Committee, Ventura Farm Bureau.

BY THE COMMISSION:

O P I N I O N

In this proceeding, Southern Pacific Company seeks authority to discontinue the operation of its passenger trains numbered 351-352 and 353-354 between Los Angeles and Oxnard. These trains are operated over applicant's main line between Los Angeles and Saugus, over its so-called Santa Paula Branch

APPENDIX B

between Saugus and Montalvo and over its main line between Montalvo and Oxnard.

Public hearings were conducted in this matter by Examiner Corman at Santa Paula on April 5th and September 19th and at Los Angeles on October 19th, 1934, on the latter date the matter having been duly submitted.

Applicant seeks authority to discontinue the operation of passenger train service between Los Angeles and Oxnard via the Santa Paula Branch and alleges that such authority is sought on account of the fact that the revenue derived from such passenger service is insufficient to meet the out-of-pocket cost of operation; that the financial condition of the company has made it imperative that all reasonable economies be effected; that other passenger common carrier service is being afforded the territory; and that the discontinuance of said service will not constitute an unreasonable inconvenience to the travelling public.

Passenger service, consisting of one round trip daily, is now provided by applicant's motor trains, designated as trains Nos. 351-352 and 353-354, between Los Angeles and Oxnard, a distance of 63.2 miles.

Exhibit No. 4 shows the direct service expense and revenue per annum, applicable to operation of the trains involved herein, which are as follows:

	<u>Total Revenue</u>	<u>Revenue per Car Mile</u>
Passengers	34,535.	
Mail	2,663.	
Express	1,195.	
Baggage	<u>43.</u>	
Total	\$8,461.	13.93¢

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<u>OUT-OF-POCKET OPERATING EXPENSE</u>	<u>Total Cost</u>	<u>Cost per Car Mile</u>
Wages, Engineers & Trainmen	\$8,709.	
Fuel	2,496.	
Motor Car Repairs	5,539.	
Motor Car Supplies & Lubricants	304.	
Train Supplies & Expenses	507.	
Baggage Car Repairs	656.	
Wages, Express Messenger	1,000.	
Total Out-of-Pocket Expense	\$19,291.	31.76¢
Out-of-pocket Loss in Operation	\$10,530.	17.83¢

The actual out-of-pocket cost of operating said passenger service for 1933 was considerably higher than shown above, since during a part of that period distillate was used as fuel previous to the introduction of the butane gas, which substantially reduced the fuel cost and, in addition, steam trains were used when the motor cars were out of service for repairs. The out-of-pocket cost of operation, as set forth above, is 31.76 cents per car mile; however, the total cost of operation was approximately 52 cents per car mile.

A traffic check (Exhibit No. 9), taken on said trains during the period April 1st, 1933 to March 31st, 1934, shows an average of approximately eight passengers per trip.

Pacific Greyhound Lines, Inc. operates a passenger motor coach service between Los Angeles and Ventura, which practically parallels the route of the rail service proposed to be abandoned and serves all the communities of any consequence now being served by said rail line. A comparison of the rail schedule of trains Nos. 351-352 and 353-354 with that of the Pacific Greyhound is as follows:

	<u>Train 351-352</u>	<u>Pacific Greyhound</u>	
		VENTURA	
Lv. Oxnard	6:45 A.M.	7:15 A.M.	4:20 P.M.
Lv. Santa Paula	7:16	7:43	4:50
Lv. Fillmore	7:34	8:03	5:10
Lv. Saugus	8:20	9:00	6:07
Ar. Los Angeles	9:35	10:40	7:30

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	<u>Train 353-354</u>	<u>Pacific Greyhound</u>	
Lv. Los Angeles	7:05 P.M.	7:15 A.M.	5:15 P.M.
Lv. Saugus	8:19	9:10	6:55
Lv. Fillmore	9:07	9:57	7:40
Lv. Santa Paula	9:22	10:22	8:02
Ar. Oxnard	9:53	(Venture) 11:00	9:00

The above tabulation shows that the scheduled time for the bus service is more or less comparable with the rail service. It may be noted that the running time for the rail service between Los Angeles and Santa Paula is two hours and seventeen minutes, while the running time for the bus service between the same points varies from two hours and forty minutes to three hours and seven minutes. At the present time the busses operating through the Santa Paula Valley require a transfer to main line busses at Saugus, involving a layover at said point of from three to thirty-eight minutes.

A witness for Pacific Greyhound testified that during the past few months passenger traffic has shown a substantial increase; that it was hoped that business would continue to increase sufficiently to warrant the operation of through motor coach service between Los Angeles and Oxnard via Santa Paula, as was formerly operated; and that his company is equipped to handle any increased business which may result from the discontinuance of the train service involved herein.

The bus schedules through the Santa Paula Valley are so arranged that practically direct connections are made with both northbound and southbound Southern Pacific main line trains at Ventura or Oxnard.

A representative of Railway Express Agency, Inc. testified that in the event the train service involved herein is abandoned, his company would provide at least an equivalent service at rates identical with existing rates.

Resolutions filed by the Ventura County Chamber of Commerce and Santa Paula Chamber of Commerce protested the granting

of this application, on the grounds that the discontinuance of passenger train service through the Santa Paula Valley would result in delay to express and mail service and remove the station of Santa Paula from the passenger railroad time-tables, thereby breaking rail passenger contact with other communities. The protestants who appeared at the hearing presented no evidence in support of the allegation that public convenience and necessity justified the continued operation of said passenger train service.

Protestants also averred that the earnings of the passenger service on the Santa Paula Branch should not be considered independently of the freight earnings (both intra and interstate), derived from the operations of said branch line. This information was introduced in evidence by applicant; however, it does not appear necessary to set forth same, inasmuch as the Commission held in a previous case (Decision No. 23474, dated October 30th, 1933, on Application No. 19000), that the freight earnings were not the determining factor in deciding whether or not passenger service should be continued, as it did not appear to be in the public interest to require passenger trains to be operated over a line where a substantial out-of-pocket loss is incurred, which must be borne by the carrier or made up through other forms of revenue, if the public can be provided with reasonably adequate and efficient service by other means of transportation.

This application does not in any way involve freight operation or agency service.

After carefully considering the record in this proceeding, it is concluded that this application should be granted. This conclusion is supported by the fact that existing bus lines are able to take care of passengers and baggage and an equivalent express service will be provided. This substitute service, under

prevailing conditions, will be reasonably adequate to meet public convenience and necessity.

O R D E R

Public hearings having been held in the above entitled proceeding and the matter being now under submission and ready for decision;

IT IS HEREBY ORDERED that Southern Pacific Company be and it is hereby authorized to discontinue operation of its passenger trains numbered 351-352 and 353-354 between Los Angeles and Oxnard via its so-called Santa Paula Branch, subject, however, to the following conditions:

- (1) The public shall be given not less than ten (10) days' advance notice of the proposed discontinuance of passenger service, by posting notices in all passenger trains operated over the Santa Paula Branch and at all stations affected.
- (2) Applicant shall advise this Commission, in writing, within thirty (30) days thereafter, of the discontinuance of the passenger service authorized herein.
- (3) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof, unless further time is granted by subsequent order.
- (4) Applicant shall make any necessary changes in its tariffs and station lists on not less than five (5) days' notice to the Commission and the public.
- (5) The Commission reserves the right to make such further orders, relative to this matter, as to it may seem right and proper and to revoke the authority granted herein if, in its judgment, public convenience and necessity demand such action.

For all other purposes, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 22nd day of December, 1934.

Certified as a True Copy

R. J. ...
 SECRETARY, RAILROAD COMMISSION
 STATE OF CALIFORNIA

LEON O. WHITSELL
 W. J. CARR
 M. B. HARRIS
 WALLACE L. WARE
 FRANK R. DEVLIN
 COMMISSIONERS