FINANCE DOCKET NO. 23800

SOUTHERN PACIFIC CO. DISCONTINUANCE OF TRAINS NOS. 39 AND 40 BETWEEN TUCUMCARI, N. MEX., AND PHOENIX, ARIZ.

Decided January 24, 1966

Upon investigation, found that the continued operation by the Southern Pacific Company of its passenger trains Nos. 39 and 40 between Tucumcari, N. Mex., and Phoenix, Ariz., is required by public convenience and necessity and will not unduly burden interstate or foreign commerce. Such service ordered continued for a period of 1 year from the date hereof. Investigation discontinued.

John MacDonald Smith for Southern Pacific Company.

E. T. "Eddie" Williams, Jr. and *Howard Peterson* for Arizona State Corporation Commission, protestant.

Floyd Cross and *L. C. Cypert* for State Corporation Commission of New Mexico, protestant.

J. Abbey for City of Tucson, Ariz., protestant.

H. N. Smith, Herbert O. Paul, Bill R. Cowan, E. F. Jergins, James J. Corcoran, Charles R. McGown, J. F. Crawford, and *W. W. Witt* for protesting railway labor organizations.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, WEBB, AND TIERNEY

WEBB, *Commissioner:*

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act, the Southern Pacific Company, a common carrier by railroad subject to the provisions of part I of the act, filed a notice and supporting statement on September 2, 1965, in which it proposed to discontinue, effective October 6, 1965, the operation of its passenger trains Nos. 39 and 40, between Tucumcari, N. Mex. and Phoenix Ariz., a distance of 764 miles. Copies of the notice were served and posted in the manner prescribed by section 13a(1) of the act and the regulations of this Commission.

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Upon receipt of petitions and letters of protest filed on behalf of individuals, business establishments, community organizations, labor associations, and by State regulatory commissions, we instituted, by order dated September 23, 1965, an investigation of the proposed discontinuance of service and ordered that the service be continued for a period not exceeding 4 months beyond the effective date of the notice.

Because of the statutory limitation upon the time available for investigation and decision, the order provided for the omission of an examiner's report and recommended order, and for certification of the record to us for initial decision.

Hearings were held at Phoenix, Ariz. Briefs have been filed by Southern Pacific and by the State of Arizona.

Trains Nos. 39 and 40 are part of a through operation between Kansas City, Mo. and Los Angeles, Calif., with the Chicago, Rock Island & Pacific Railroad Company (Rock Island) operating them on a daily schedule in each direction between Kansas City and Tucumcari, and Southern Pacific operating them between Tucumcari and Los Angeles. Phoenix is one of 10 intermediate stops eastbound and one of 11 intermediate stops westbound.[1] These trains are consolidated with Rock Island's trains Nos. 21 and 22 operating between Tucumcari and Memphis, Tenn. Although trains Nos. 39 and 40 are not listed in the published passenger train schedules of the Southern Pacific, the record shows that train No. 39 leaves Tucumcari at 10:15 p.m. and arrives at Phoenix at 2:25 p.m. Train No. 40 leaves Phoenix at 11:40 a.m. and arrives at Tucumcari at 5:10 a.m. The schedules of the trains, the names of the points served, and their respective populations are set forth in appendix A attached.

The equipment of train No. 39 now consists of two diesel units, 7 head-end cars and 1 passenger coach, between Tucumcari and Phoenix. One of the head-end cars is a railway post office (RPO) car. In addition, one mail storage car operates from Tucson, Ariz. to Phoenix; one express car operates between Tucumcari and El Paso; and one storage mail car operates between Tucumcari and Tucson. Train No. 40 consists of three diesel units, five head-end cars, including an RPO car, and one passenger coach between Phoenix and Tucumcari. In addition, one mail storage car operates from Phoenix to El Paso; and one baggage-

[1] The issues in this proceeding are related to those considered in Finance Docket No. 23272, *Southern Pac. Co. Discontinuance of Passenger Trains* 328 I.C.C. 14 (1965), and in Finance Docket No. 23625, *Chicago, R. I. & P.R. Co. Discontinuance of Trains*, 328 I.C.C. 894 (1965).

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mail car operates between Phoenix and Tucson. The crew consists of an engineer, fireman, conductor, brakeman, flagman, and one express-messenger. The carrier pays half of the wages of the express-messenger.

The carrier's general balance sheet as of June 30, 1965, shows total assets of $2.38 billion, including current assets of $239 million, special funds of $5.1 million, investments, less reserve for adjustment of investment in securities, $214.7 million, total properties, less recorded depreciation and amortization, $1.9 billion, and total other assets and deferred charges $17.3 million. Liabilities were: Current liabilities $146 million, long-term debt $768.9 million, including $35.9 million due within 1 year; reserves $36.6 million; other liabilities and deferred credits $21 million; capital stock $424.9 million; and retained income unappropriated $987 million.

Southern Pacific's income statements for the years 1963, 1964, and the first 6 months of 1965, show, respectively, railway operating revenues of $704,488,237, $728,577,557 and $374,903,392 net railway operating income $71,283,705, $60,304,529, and $36,350,794; and net income, after fixed charges and other deductions $67,052,889, $63,898,391, and $36,990,214. Between 1963 and 1964 total passenger revenues declined approximately $3.5 million and freight revenues increased $27.5 million. The carrier's ratio of total operating expenses to total operating revenues for 1963 was 78.53 and for 1964, 79.92. Passenger operating ratios for 1963 and 1964 were 123.35 and 122.28, respectively.

For the years 1963, 1964 and the first half of 1965, train No. 39 carried an average of 44.8, 33.7 and 16.3 revenue passengers per trip, respectively. During those same periods, train No. 40 carried an average of 44.8, 32.0, and 14.7 revenue passengers per tip. Based on these averages, train No. 39 transported approximately 16,352, 12,334, and 2,934 revenue passengers during the periods mentioned, while train No. 40 transported approximately 16,325, 11,712 and 2,646 revenue passengers. An analysis of passengers handled during a 1-year study period from October 1, 1964 to September 30, 1965, developed that out of a total of 6,818 passengers transported on train No. 39, 66.2 percent were received on the carrier's line at Tucumcari, and 30.3 percent detrained at the Los Angeles termination point.

Of the total number of passengers handled both on and off (6,818 x 2), El Paso had 11.2 percent, Tucson 12.2 percent,

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Phoenix 17.2 percent, and the six stops intermediate to Tucumcari and Phoenix 11.1 percent. The remaining 48.3 percent were handled at Los Angeles, Tucumcari, or intermediate stops between Phoenix and Los Angeles. In the reverse direction, of the 5,500 passengers transported on train No. 40, 60.6 percent traveled through to Tucumcari for transportation beyond on the Rock Island's lines. Only 13.6 percent of these passengers originated at Los Angeles with the balance accumulating along the line. Of the total number of passengers handled on train No. 40, both on and off, Phoenix had 18.8 percent, Tucson 13.8 percent, and El Paso 19.6 percent. The remaining boarded and/or detrained at other intermediate stations. In terms of the average number of revenue passengers carried per trip during this study period, train No. 39 had an average of 19 passengers and train No. 40 an average of 15 passengers. The data resulting from this study establishes quite clearly that the involved portion of railroad serves both as a local common carrier for El Paso, Tucson and Phoenix, as well as a "bridge" carrier between the lines of the Rock Island and that portion of the Southern Pacific system lying west of Phoenix serving the Pacific coast area.

The carrier, in demonstrating the financial results of operating the trains between Tucumcari and Phoenix, conducted a 1-week study, from August 1 through August 7, 1965. The revenues and expenses derived from this study were multiplied by 52.14 weeks to arrive at an annual basis. Inasmuch as the consist of the involved trains was materially changed from their composition in 1964, such a costing procedure is basically reasonable. (See appendix B.) However, the carrier does not confine its revenue and expense projections to the change in consist, but computes its expenses on factors such as different mileages, switching, etc., attributable to operations west of Phoenix, that are not used in its computations for 1963, 1964 and the first 6 months of 1965. Hence, no comparison can be made between the anticipated figures for the year 1965 and those of the previous years based on actual experience and confined to the pertinent Tucumcari-Phoenix operation.

Furthermore, most of the expense items are predicated on system averages applied to miles operated. The annual statistics of the involved trains, as provided by the carrier, and shown in appendix C cannot be reconciled in all categories. For instance the route miles of 763 for train No. 39 and 764 for train No. 40 are confirmed by reference to the carrier's passenger train

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schedule. Similarly the annual train-miles and chair car-miles reflect correct mathematical computations. (Distance x 365 days.) However, the remaining mileage statistics are irreconcilable with the distance involved. Considering that train No. 39 is powered by 2 diesel locomotive-units, the diesel unit-miles would logically be computed by multiplying the train-miles by 2 or 556,990 miles, instead of 909,215 miles shown by the carrier. No explanation is found in the record to explain this large variance. In addition, some of the trains' annual statistics include mileage operated between Phoenix and Los Angeles. The carrier advances some arguments in support of the consideration of these additional mileage figures, but their effect on expenses incurred on the line of railroad under consideration herein is deemed speculative. Switching expense at the Los Angeles terminal is another cost item for which there is no substantive evidence upon which a proper evaluation can be made. Based on the foregoing criticism, and disregarding fully allocated costs, interest charges, and terminal expenses, no practical evaluation can be made of the cost evidence submitted by the carrier. The carrier recognizes the fact that these trains have a feeder value to its system, but did not include any feeder revenue in its statement of estimated revenues and expenses. It can reasonably be concluded that the net loss claimed by the carrier is greatly overstated, if indeed a deficit exists.

Although the carrier emphasizes the decrease in revenue passengers transported on these trains, it is all the more remarkable, considering the drastic attempts of the carrier to discourage patronage of these trains, that over 12,000 passengers were transported during the October 1, 1964-September 30, 1965 special study period.

Not only has the carrier eliminated these trains from its published passenger train schedules, ostensibly to save potential passengers from the ordeal of riding them, but the carrier's agents deny the existence of these trains to an inquiring public. The Los Angeles ticket office is closed 2 1/2 hours before train No. 40 departure time. Only one passenger coach is provided for each train. When the coach is shopped, passengers at Phoenix and Los Angeles are denied transportation and their fares refunded. If the coach is put out of service between Phoenix and Los Angeles, a caboose is substituted for the passengers to ride in. All employees of the carrier and other pass-carrying passengers are prohibited from using these trains, and

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have been directed to use trains Nos. 3 and 4 which operate over the involved route. Trains Nos. 3 and 4 are in such demand that during several months of the year they operate in two sections. The consist during the remainder of the year is between 18 and 21 cars. Even with that number of cars it has often been necessary to turn passengers away because of capacity loads. Under the circumstances, the carrier's action in discouraging use of trains Nos. 39 and 40 is most unusual.

In *Southern Pac. Co. Discontinuance of Passenger Trains* 328 I.C.C. 14, (1965), the carrier's witnesses testified, in effect, that if the Commission should enter an order requiring the continuance of passenger service on these same trains between Phoenix and Los Angeles, the carrier's legal department would be consulted to ascertain what steps might be taken to discourage use of such service. In our report in that proceeding we found a public need for the continuation of the service. In addition we made it clear that any action by the carrier to undermine the service would weaken any argument that the service is not required by the public convenience and necessity.

The evidence in this proceeding makes it abundantly clear that Southern Pacific has continued to discourage use of these trains by passengers. In fact, it has intensified its efforts in that direction. Whenever it appears, as it does in this proceeding, that a carrier has deliberately downgraded its service in order to justify discontinuance of a train irrespective of the actual or potential needs of the traveling public, the Commission will order the service to be continued. See *Pennsylvania R. Co. Discontinuance of Passenger Service*, 320 I.C.C. 319, 323 (1963). The Commission will not find burdens on interstate commerce within the meaning of section 13a of the act to be "undue" if those burdens are voluntarily created by carriers for the purpose of obtaining a favorable decision from the Commission.

Various employee organizations opposed discontinuance of the trains in question but urged that, in the event discontinuance were permitted, conditions be imposed for the protection of adversely affected employees similar to the conditions prescribed in *Chicago, B. & Q. R. Co. Abandonment*, 257 I.C.C. 700. In view of our findings herein, no further consideration of this matter is necessary.

Contentions of the parties as to fact or law not specifically discussed herein have been given consideration and found to be without material significance or not justified.

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We find that the continued operation by the Southern Pacific Company of passenger trains Nos. 39 and 40 between Tucumcari, N. Mex. and Phoenix, Ariz., is required by public convenience and necessity and that the continued operation thereof has not been shown to constitute an undue burden on interstate or foreign commerce.

An appropriate order will be entered.

APPENDIX A

Present schedule trains Nos. 39-40

Eastbound Train number 40	Stations	Westbound Train number 39	Population
11:30 p.m.	Lv--Los Angeles---Ar	3:00 a.m.	2,479.015
f 1:05 a.m.	Lv--Colton--------Lv	f 12:30 a.m.	18,666
3:25 a.m.	Lv--Indio---------Lv	10:30 p.m.	9,745
5:55 a.m. (PT)	Ar--Yuma --------Lv	8:20 p.m. (PT)	28,974
7:05 a.m. (MT)	Lv--Yuma --------Ar	9:10 p.m. (MT)	----------
10:30 a.m.	Ar--Phoenix ------Lv	6:00 p.m.	439,170
11:40 a.m.	Lv--Phoenix ------Ar	2:25 p.m.	----------
2:10 p.m.	Ar--Tucson -------Lv	11:45 a.m.	212,892
2:40 p.m.	Lv--Tucson -------Ar	11:15 a.m.	----------
	Lv--Willcox -------Lv	9:05 a.m.	2,441
6:20 p.m.	Ar--Lordsburg-----Lv	7:50 a.m.	3,486
6:30 p.m.	Lv--Lordsburg-----Ar	7:40 a.m.	----------
7:40 p.m.	Lv--Deming -------Lv	6:50 a.m.	6,764
9:30 p.m.	Ar--El Paso ------Lv	5:20 a.m.	276,687
10:30 p.m.	Lv--El Paso ------Ar	4:20 a.m.	----------
12:07 a.m.	Lv--Alamogordo ---Lv	2:35 a.m.	21,723
1:05 a.m.	Ar--Carrizozo -----Lv	1:38 a.m.	1,546
1:15 a.m.	Lv--Carrizozo -----Ar	1:15 a.m.	----------
2:56 a.m.	Lv--Vaughn -------Lv	11:52 p.m.	1,170
5:10 a.m. (MT)	Ar--Tucumcari ----Lv	10:15 p.m. (MT)	8,143

f - Flag Stop
PT - Pacific Standard Time
MT - Mountain Standard Time

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APPENDIX B

SOUTHERN PACIFIC COMPANY

Estimated revenues and expenses of trains Nos. 39-40 between Phoenix, Arizona, and Tucumcari, New Mexico, based on current conditions

Line no.	Description (a)	12 months (b)
1	Revenues:	
1	Passenger	$239,400
2	Mail	2,022,900
3	Express	73,800
4	Other passenger train	1,200
5	Total revenues	$2,337,300
	Expenses:	
6	Express messenger	
7	Wages—train and enginemen	549,500
8	Servicing—diesel locomotives	180,100
9	Servicing—passenger cars	111,500
10	Repairs—diesel locomotives	488,300
11	Repairs—passenger cars	493,200
12	Casualties	18,800
13	Switching	58,900
14	Station employees	29,100
15	Increased wages and benefits for lines 8-13	17,500
16	Health and welfare for lines 7-15	49,000
17	Payroll taxes for lines 7-15	113,500
18	Train fuel	161,800
19	Depreciation—diesel locomotives	219,600
20	Depreciation—passenger cars	79,300
21	Rents for passenger cars	3,900
22	Terminal companies	82,300
23	Subtotal expenses on lines 6-22	2,606,300
24	Net profit or (loss) before expenses on lines 25-36	(269,000)
25	Interest—diesel locomotives	20,100
26	Interest—passenger cars	38,900
27	Maintenance of way and structures	237,200
28	Station Supplies and expenses	5,000
29	All other transportation	23,200
30	All other maintenance of equipment	33,700
31	Traffic	29,600
32	General	34,100
33	Haul of company material	30,900
34	Increased wages and benefits for lines 27-33	5,300
35	Health and welfare for lines 27-34	10,300
36	Payroll taxes for lines 27-34	23,900
37	Subtotal expenses on lines 25-36	492,200
38	Total net profit or (loss)	(791,200)

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APPENDIX C

Annual statistics of trains Nos. 39-40[1]

Line no.	Description (a)	Train 39 (b)	Train 40 (c)	Total (d)
1	Train-miles	278,495	278,860	557,355
2	Diesel unit-miles	909,215	1,148,655	2,057,870
3	Passenger car-miles:			
4	Baggage car-miles	2,892,625	3,374,790	6,267,415
5	Refrigerator car-miles	173,010	17,155	190,165
6	Chair car-miles	278,495	278,860	557,355
7	Total car-miles	3,344,130	3,670,805	7,014,935
8	Gross ton-miles (thousands)	291,095	339,313	630,408
9	Switching hour	852	973	1,825
10	Route-miles	763	764	1,527

[1]Purported to be based on actual operations during 7-day period August 1 to 7, 1965, inclusive.

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