

FINANCE DOCKET NO. 23272

**SOUTHERN PACIFIC CO. DISCONTINUANCE OF PASSENGER
TRAINS NOS. 39 AND 40 BETWEEN LOS ANGELES, CALIF.,
AND PHOENIX, ARIZ.**

Decided January 26, 1965

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

John MacDonald Smith and Warren C. Ridge, Jr., for Southern Pacific Company.

E. T. "Eddie" Williams, Jr., Robert S. Murlless, John P. Clark, L. C. Cypert, and Elmer Sjostrom for protesting States or State regulatory commissions.

L. M. Griffin, James F. Crawford, H. W. Taggart, James E. Howe, William V. Cunningham, Stanley H. Cardwell, Robert E. Powers, Jr., Joseph M. Hoffman, and Frank L. Shattuck for protesting railway labor organizations.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, MURPHY, AND WALRATH

WALRATH, *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 1, 1964, in which it proposed to discontinue, effective October 2, 1964, passenger

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service on its trains 39 and 40 between Phoenix, Ariz., and Los Angeles, Calif., a distance of 425 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.

The Arizona Corporation Commission and the Railway Labor Executives' Association filed protests in opposition to the proposed discontinuance. By order of September 17, 1964, we instituted an investigation of the proposed discontinuance of service and ordered that the service be continued for a period not to exceed 4 months beyond the effective date of the notice. Because of the statutory limitation upon the time available for such 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.

Public hearings were held at Phoenix and Los Angeles, and appearances in opposition to the proposed discontinuance of service were entered by representatives of the State of Arizona, the Arizona Corporation Commission, the New Mexico State Corporation Commission, the California Public Utilities Commission, and various railway labor organizations. Testimony was adduced by managerial and operating officials of the Southern Pacific, shippers and consignees of freight, and by representatives of the State of Arizona, the Arizona Corporation Commission, and railway labor organizations. Briefs have been filed by Southern Pacific, the State of Arizona, and Arizona Corporation Commission.¹

Before treating the merits of this case, there is a preliminary question raised by the motion of Southern Pacific to strike portions of the brief submitted by the Arizona Corporation Commission. The essential basis for the carrier's request is that the portions of the brief to which it objects are not based on evidence of record. Indeed, much of the matter in question was specifically and properly rejected by the examiner at the hearing. Accordingly, we shall grant the motion to strike.

PRESENT OPERATION OF TRAINS NOS. 39 AND 40

Trains Nos. 39 and 40 are operated daily between Kansas City, Mo., and Los Angeles by the Southern Pacific and Chicago, Rock Island & Pacific Railroad Company (Rock Island). East of

¹The California Public Utilities Commission filed a statement of position opposing the proposed discontinuance.

Tucumcari, N. Mex., the trains are operated by, and under tariffs of the Rock Island. Between Santa Rosa, N. Mex., and Tucumcari, the passenger service is subject to tariffs of the Rock Island over a line of railroad owned by it but the operations are conducted by the Southern Pacific as agent for the Rock Island. Operations over the segment between Santa Rosa and Los Angeles are pursuant to tariffs of the Southern Pacific and over a line of railroad owned and operated by that carrier.

The trains are primarily designed to transport mail, express traffic, and baggage and freight moving under baggage tariffs. Passenger accommodations consisting of one or more coaches are provided but no food or sleeping car service is available. As of August 31, 1964, an overnight merchandise service was inaugurated on the trains between Phoenix and Los Angeles, handling trailer-on-flatcar traffic, the movement of automobiles in multilevel cars, and merchandise or less-than-carload shipments.

Westbound, train No. 39 arrives in Phoenix at 2:25 p.m. m.s.t. Prior to its hauling the merchandise car traffic, the train departed from Phoenix at 2:55 p.m. and arrived in Los Angeles at 11 p.m. p.s.t. but its departure is now delayed until 6 p.m., with arrival at 3 a.m. The departure delay from Phoenix was effected to provide an overnight schedule and to increase the mail and express traffic accumulated by the close of the business day at that point. The eastbound train, No. 40, formerly left Los Angeles at 1 a.m. p.s.t. and arrived in Phoenix at 11:10 a.m. m.s.t. Presently the departure and arrival times have been advanced to 11:30 p.m. and 10:30 a.m., respectively. From Phoenix, however, the 11:40 a.m. departure time remains unchanged.²

Normally the trains carry only one passenger car while other equipment between Phoenix and Los Angeles varies throughout the week. Generally, train No. 39 has 5 head-end cars (mail, baggage and express cars) on Saturday, Sunday, and Monday, and 6 such cars on the remaining days. Train No. 40 hauls 8 head-end cars from Los Angeles to Phoenix on Saturday and Monday, 6 such cars on Sunday, and 11 cars on other days. Since the inception of the merchandise service, the number of merchandise cars moved westbound has ranged from 0 to a high of 18 and eastbound from 0 to as high as 12 cars. Frequently no trailer-on-flatcar

²The schedule of the trains between Phoenix and Los Angeles, with the population of the cities served, is set forth in appendix A.

equipment is moved on either train on Saturday or Sunday. Both trains are also used for hauling deadhead equipment.

Background to proposal to discontinue passenger service between Phoenix and Los Angeles—Southern Pacific contemplates continuation of the operation of trains Nos. 39 and 40 after the elimination of the passenger service between Phoenix and Los Angeles. The passenger curtailment plan stems from a request by the carrier's traffic department to make the trains available for the handling of certain types of freight between those cities. The carrier was providing second-morning delivery only because its principal east-west train route bypasses Phoenix, being keyed to transporting freight to Texas and the southeastern United States and operating over the more direct route between Gila and Tucson, Ariz. To compete with overnight service furnished by truckers, proprietary carriers, and a new over-the-highway movement of the Atchison, Topeka and Santa Fe Railway Company, the traffic department concluded that a similar service must be offered shippers. Studies showed that traffic was insufficient to warrant a separate train but that addition of merchandise service to trains Nos. 39 and 40 would be very rewarding financially. Thus, the carrier estimates that operation of a separate freight train would result in an annual loss of \$63,000. On the other hand, it estimates that utilization of trains Nos. 39 and 40 in merchandise service will produce an annual profit of \$498,000 from such service.

From the three classes of freight traffic moving on trains Nos. 39 and 40, trailer-on-flatcar, automobiles in multilevel cars, and less-than-carload, the carrier anticipates revenues of \$945,000, \$270,000, and \$64,000, respectively, per year. The multilevel and less-than-carload traffic is not new but constitutes freight which the carrier has handled in the past. The prime virtue of the overnight service in relation to the multilevel cars is that it reduces the turnaround time for this scarce equipment. The trailer-on-flatcar traffic is also not new to Southern Pacific but the carrier expects the overnight service to bring about a substantial growth in this traffic—30 percent over its September 1964 experience.

Southern Pacific finds a drawback to use of trains Nos. 39 and 40 for freight service. The obstacle is the carrier's policy against operating mixed trains on its main line. The carrier says that it has waived this policy for an interim period in the expectation that it will be successful in achieving elimination of the passenger service obligation on the trains west of Phoenix.

The policy against mixed main-line trains arises from the inferior service provided on such trains as compared with that on a straight passenger train. On the mixed train, the passengers are subject to substantial inconvenience and delay at both Phoenix and Los Angeles while the freight cars are added to or taken from the trains. Straight passenger trains are permitted to run at approximately 80 miles per hour while the mixed train can operate at a speed no greater than 60 miles per hour. Moreover, because the draft gears on the freight cars have more slack than on passenger cars, the ride may be much more uncomfortable for passengers on mixed trains.

The carrier is also concerned that the mixed passenger service on trains Nos. 39 and 40 lacks flexibility. Under section 7676 of the California Public Utilities Code, it is a crime to place a freight car to the rear of a passenger car. Therefore, the merchandise cars moving as part of the consist of trains Nos. 39 and 40 must be located in front of the passenger car. Consequently, no steam or air signal line connection is available between the passenger coach and the locomotive units. In order to provide heat and hot water in the passenger coach, Southern Pacific has added special facilities to two passenger cars at a cost of \$9,000 per car.³ Communications between the passenger coach and the locomotive units are now provided by two-way radio. No other coaches on Southern Pacific are similarly equipped and the carrier claims that, therefore, extra cars could not be added if the traffic should require, and that there is a possibility that a schedule might require cancellation if one of the coaches should become inoperative. Since the merchandise cars do not move east of Phoenix, neither do the specially equipped passenger cars travel east of that city. Therefore, the passengers passing through Phoenix in either direction must physically vacate the train at that point and board a different passenger car.

Southern Pacific fears that the inadequacies of the passenger service in the mixed trains will damage its public image. Since the carrier believes that the merchandise service is of greater importance to the general public, it has decided to remove the passenger service.

Use made of passenger service.—The single coach car normally used on trains Nos. 39 and 40 has a seating capacity of 50. Prior to

³ These cars are modern lightweight equipment constructed in 1949, and have reclining seats, air conditioning, vestibules, drinking fountains, and rest rooms. They were refurbished in September 1964.

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August 24, 1964, it was occupied chiefly by railroad employees riding on free passes or reduced rate orders not honored on the Southern Pacific's Sunset-Golden State trains, Nos. 2 and 3. As demonstrated by the following statistical patronage, the estimated average number of revenue passengers carried to and from stations west of Phoenix during 1962, 1963 and the first 6 months of 1964 was less than 40 percent of the capacity of the trains.

Train	1962	1963	January-June 1964
39-----	19	21	14
40-----	17	15	12
Average for both trains-----	18	18	13

During the summer months and Christmas holidays there were days when the large number of passengers to be accommodated required the operation of more than one coach car on train No. 39. Data for each day of the week were not presented but the daily average number of passengers by months is set forth in appendix B. The fewer number of passengers shown for the 6-month period is partially traceable to the loss of passengers caused by the Rock Island's elimination, on April 5, 1964, of the Chicago, Ill.-Kansas City portion of the train which had been operated in earlier years.

In anticipation of the inauguration of the merchandise service on trains Nos. 39 and 40, Southern Pacific took steps to solicit passenger traffic away from those trains. On August 24, 1964, railroad employees riding on passes and reduced rate orders were permitted to utilize the Sunset-Golden State trains and forbidden to use trains Nos. 39 and 40. Furthermore, with the timetable change of August 29, 1964, Southern Pacific ticket personnel were instructed to take affirmative steps to discourage passengers from using trains Nos. 39 and 40 between Phoenix and Los Angeles and endeavor to have such persons travel on the Sunset-Golden State trains.

Southern Pacific compiled the number of revenue passengers entraining and detraining at Phoenix and stations west thereof for the month of September 1964, the first month of mixed-train service. The data are set forth in appendix C and show that train No. 39 carried a daily average of 16 revenue passengers west of Phoenix and that train No. 40 transported only 5 revenue

passengers daily between Los Angeles and Phoenix. It is apparent from scanning the data that the great bulk of the revenue passengers riding trains Nos. 39 and 40 between Phoenix and Los Angeles originate at or are destined for points east of Phoenix. The testimony of the carrier's passenger traffic witness establishes that many of the passengers come from or are going to points on the Rock Island east of Tucumcari.

The carrier considers its experience in September 1964 representative of the current level of business as well as the business which it could expect to handle in the future if it were required to continue operation of the passenger coach between Phoenix and Los Angeles. Although it is true that prior periods do not reflect the effect of the mixed-train service on passenger loads, analysis of the data for previous years discloses that the average number of passengers carried by Southern Pacific on trains Nos. 39 and 40 in the month of September has been less than the annual average. There is nothing in this record which establishes that in the future a different result should obtain or that September traffic experience is representative of the average annual traffic carried. Therefore, in this respect, we cannot consider the September traffic data representative.

The daily average of 16 revenue passengers traveling on train No. 39 west of Phoenix is in accord with the carrier's September 1963 experience. However, the 5 revenue passengers carried daily on train No. 40 between Los Angeles and Phoenix is considerably fewer than in prior years. It may be that westbound passengers, originating at points on the Rock Island, are unaware of the poor service rendered on train No. 39 west of Phoenix and are continuing to use the service, while Southern Pacific, which has greater influence over the eastbound passengers, has been successful in dissuading potential passengers from journeying on train No. 40.

Operating results of providing service.—An exhibit reflecting the net results of providing passenger service on trains Nos. 39 and 40 during September 1964 shows a net profit of \$3,356. On an annual basis this profit, based on revenue and expense data regarded as representative by the carrier, produces a gain of \$40,272. Use of the September data may result in an underestimate of annual earnings, for, as indicated earlier, the traffic for a year would be higher than is reflected by the September experience.

Southern Pacific's calculation includes items which the Commission has not recognized in the past as savable expenses and which

do not warrant a different treatment on this record.⁴ These items are costs allocable to joint facilities, maintenance of way and structures, all other maintenance of equipment, all other transportation, haul of company material, and health and welfare benefits and payroll taxes attributable thereto.⁵ They total \$1,667 for the month and \$20,004 for the year. Their elimination increases the recognized annual profit to \$60,276.⁶

Southern Pacific has presented an exhibit indicating that, if permitted to discontinue the passenger service on trains Nos. 39 and 40, it would enjoy a net benefit of \$17,309 a year. In reaching this result it has estimated that it would retain 60 percent of the long-haul passengers and lose the remainder. It has also made provision for the effects of its labor agreements which would result in increased crew wages and require a caboose to be added to the consist of the trains. When the net benefit data are adjusted to eliminate costs which the Commission does not recognize as savable, as previously discussed, the net benefit drops to a nominal \$625.⁷

Alternate transportation facilities.—The primary alternate service is furnished by Southern Pacific's extra-fare⁸ Sunset-Golden State trains which stop at all the stations served by trains Nos. 39 and 40 and provide advance reservation, dining and lounge car, chair car, and Pullman sleeping car service.⁹ In addition, Southern Pacific has an agreement with Greyhound Lines whereby Southern Pacific tickets are honored by Greyhound with no additional collection from passengers. Under this arrangement, a person could use trains Nos. 39 or 40 between Phoenix and points to the east thereof and Greyhound bus west of Phoenix. For example, a person arriving in Phoenix on train No. 39 at 2:25 p.m. could transfer to a Greyhound bus leaving Phoenix at 2:50 p.m. m.s.t. and arriving in Los Angeles at 10:35 p.m. p.s.t.

⁴None of the protestants has challenged the bases used by Southern Pacific for deriving revenue and expense levels. We find it unnecessary for purposes of this case to assess the reasonableness of the methods used by the carrier.

⁵See *Southern Pac. Co. Partial Discont. of Passenger Service*, 320 I.C.C. 740.

⁶The carrier's data for September 1964 and the adjustments thereto are set forth in appendix D.

⁷The figures are detailed in appendix E.

⁸The extra fare is not charged for intrastate travel in Arizona or California.

⁹The schedules of these trains between Phoenix and Los Angeles are contained in appendix F.

or a bus departing Phoenix at 5:35 p.m. and reaching Los Angeles at 1:25 a.m. The passenger could leave checked baggage on the train and pick it up in Los Angeles. The transfer between the railroad station and the bus depot would involve a taxi fare totaling \$0.90 for up to four passengers.

There are substantial other transportation facilities available. Greyhound operates 10 round trips per day and Continental Trailway Bus System three round trips per day between Phoenix and Los Angeles and intermediate points. There is service to Yuma and there is a host of trips between Indio and Los Angeles. In addition, a number of transcontinental bus schedules serve such points as Memphis, Tenn., New Orleans, La., El Paso and Dallas, Tex., and Chicago, Ill. There is considerable scheduled air service between Los Angeles, Palm Springs,¹⁰ Yuma, and Phoenix, as well as service to and from major traffic points to the east. Furthermore, large increases have occurred in private automobile transportation over the public highways in the area involved.

Positions taken in briefs.—Petitioner urges that the continued provision of passenger service on trains Nos. 39 and 40 between Phoenix and Los Angeles will cause an undue burden on interstate or foreign commerce and is no longer required by the public convenience and necessity. Its policy against operating mixed trains on its main line purportedly is founded on considerations of both public convenience and operational requirements. The carrier claims that a dual mail-merchandise service represents the best use of the trains in terms of convenience and necessity to the general public and that growth of such service will be inhibited by any obligation to continue to operate the passenger coach. The few passengers who use the trains between Phoenix and Los Angeles will be subject to little inconvenience, the carrier feels, by requesting them to use the Sunset-Golden State trains instead. Moreover, the carrier will enjoy greater operational flexibility because the schedules of the trains will be under management's control without the necessity of observing the fixed times inherent in holding out scheduled passenger service.

The State of Arizona and the Arizona Corporation Commission request that Southern Pacific be required to continue the passenger service on trains Nos. 39 and 40 between Phoenix and Los Angeles. The State contends that the burden of proof in this proceeding is

¹⁰Service to and from Indio is through Palm Springs.

on Southern Pacific to show a confiscatory deficit operation or that public convenience and necessity has deteriorated to the point that the passenger service in question is no longer needed, and maintains that such burden has not been met. It points out that the passenger service continues to be profitable and it argues that the passenger count data do not manifest the public convenience and necessity because they are the effect of a concerted effort by Southern Pacific to downgrade its passenger service and persuade passengers not to use it. The Corporation Commission asks that Southern Pacific be required to reestablish the service it provided prior to August 29, 1964, and, further, to improve its service by providing clean coaches and at least one Pullman accommodation.

DISCUSSION AND CONCLUSIONS

At the outset it should be noted that our decision herein is not premised on any procedural concept regarding burden of proof. Rather, it is based upon consideration of a record which we are satisfied is adequate to permit making the statutory findings on public convenience and necessity and on burden to interstate commerce without regard to questions of procedural obligations. Finance Docket No. 22783, *New York, N. H. & H. R. Co. Discontinuance of Service*, 320 I.C.C. 544.

A significant factor underlying enactment of section 13a(1) was the desire to alleviate the financial difficulties of the railroad industry and to strengthen the national transportation system by removing the obstacles that railroads face in attempting to obtain economies and efficiencies through the discontinuance of uneconomic and duplicative services. *Chicago & N. W. Ry. Co. Discontinuance of Passenger Trains*, 320 I.C.C. 648, 656. However, we do not find here a railroad in financial difficulties or the conduct of an uneconomic service. To the contrary, it is clear that Southern Pacific is a financially sound railroad company experiencing favorable trends in operating results and that its financial position would be affected adversely, not benefited, by discontinuance of the passenger service on trains Nos. 39 and 40 between Phoenix and Los Angeles. In these circumstances, permitting Southern Pacific to discontinue the passenger service in question would not fulfill the objectives of section 13a(1).

The general financial health of Southern Pacific is obvious. As of June 30, 1964, its assets totaled \$2,353 million, including 328 I.C.C.

\$1,842 million in physical properties. It had more than \$117 million in working capital (excess of current assets over current liabilities), and unappropriated retained income totaled over \$966 million. Net railway operating income for 1962, 1963, and the first 6 months of 1964 amounted to over \$60 million, \$71 million, and \$40 million, respectively. The carrier's rate of return on investment has risen steadily from 2.68 percent in 1960 to 3.93 percent in 1963.

The carrier stresses its capital expenditure program and its need to economize whenever feasible to accomplish this program successfully. It contends that it is in no position to provide losing services and at the same time meet its obligations to the public. With respect to these contentions the carrier's own evidence demonstrates that it is able to finance capital expenditure programs at reasonable cost. Further, the premise that the subject passenger service is conducted at a loss is completely at variance with the evidence the carrier itself has supplied.

The record is amply clear that Southern Pacific's decision to seek authority to discontinue the passenger service between Phoenix and Los Angeles on trains Nos. 39 and 40 flows not from any economic burden thrust upon the carrier by these operations, but rather that the proposal to eliminate the passenger service would not have been advanced except for its decision to add merchandise cars to the consist of the train.

The data are unequivocal that the current passenger service provides Southern Pacific with an excess of revenues over expenses of \$40,272 per year. And when these data are adjusted to conform with Commission standards, the excess of revenues is \$60,276.¹¹ These are not inconsequential amounts, particularly in light of the limited service provided.

In its brief, Southern Pacific argues that it is a logical conclusion that, if the passenger revenues had been prorated east and west of Phoenix according to the number of miles which each of the passengers road east and west of Phoenix, the allocation of revenues to the operation west of Phoenix would yield revenues substantially below the out-of-pocket expenses of operating the car west of Phoenix.

¹¹ As discussed earlier herein, the use of September 1964 experience as a basis tends to understate revenues. Furthermore, employees represented by the Order of Railway Conductors and Brakeman have offered to extend their run on trains Nos. 39 and 40 so that they would serve between Los Angeles and Yuma rather than Los Angeles and Indio. This would save the carrier initial and final terminal delay pay at Indio which could amount to as much as 10 percent of the combined wages of the two conductors for each trip.

Southern Pacific's argument fails because of two major flaws. It rests on a so-called "logical conclusion" rather than substantial and probative evidence which the carrier could readily have supplied but did not. However, an even more fundamental deficiency is that it ignores the crucial question, which is what effect does the furnishing of the passenger service have on the carrier's system. This information Southern Pacific did supply, and as we have seen, it has been a propitious result.

It is contended by Southern Pacific that elimination of the passenger coach from trains Nos. 39 and 40 would enable it to achieve an additional saving of \$17,309 annually. But it is manifest from the data heretofore discussed that the carrier has much more to gain by retaining the passenger service, for, on its own basis of computation, the excess of revenues over expenses from operating the passenger service is \$40,272 per year. Furthermore, when Southern Pacific's net benefit data are adjusted to eliminate costs which the Commission does not recognize as savable, as previously discussed, the net benefit drops to a scant \$625 as compared with the net gain from operating the trains of \$60,276.

Southern Pacific alleges that there is no longer a need for the passenger service on trains Nos. 39 and 40 between Phoenix and Los Angeles, as indicated by the low passenger loads and alternate facilities available, and that operation of the mixed service is burdensome.

There is no gainsaying that the revenue passenger traffic on trains Nos. 39 and 40 between Phoenix and Los Angeles is not substantial and that there are considerable alternate facilities available. However, there is much merit in the contention of the State of Arizona that the raw passenger data must be weighed in light of the downgrading of service on the trains. Certainly, it is freely admitted by the carrier that it has taken extraordinary steps to solicit traffic away from the passenger service in connection with the inauguration and operation of mixed-train service.¹² And prior to the mixed-train operation, the carrier had so downgraded the passenger service over the years that in its brief it describes the accommodations as "spartan." The last regular operation of a grill car, lounge car, or sleeper

¹² For practically the entire month of September no passenger coach operated on the trains between Phoenix and Los Angeles had provisions for heating. Since heating facilities have been furnished, the carrier has not taken adequate steps to instruct the train crews in proper operation of such equipment so as to assure that sufficient heat actually is provided.

on the train was in October 1958. Although the record does not reveal whether these facilities were operated at a loss when removed from service, it does establish that the operation of the trains as a whole was profitable. The record also shows that the absence of lounge and dining car facilities on the trains led to much dissatisfaction among passengers who boarded without knowledge that these facilities were not available. The carrier did continue to provide a snack and beverage service for the trains until the conclusion of the summer of 1963. No explanation was offered for the elimination of this service, and the data of record indicate that it was not unprofitable. In 1963, Southern Pacific received revenues of \$5,825 from food service attributable to operations between Phoenix and Los Angeles. The cost of the service was \$4,279. Similarly, in 1962 the revenues were \$6,333 and the cost \$4,337. It may be that the expense data do not include costs such as health and welfare benefits and payroll taxes, but it does not appear that even if such expenses were added the service was conducted at a loss. There is testimony from a passenger and from train crew members that the passenger-seating portion, as well as the restrooms, of the cars are dirty. The rebuttal evidence presented by the carrier provides no information as to what measures the carrier takes to furnish its passengers clean facilities.

Despite the alternate transportation facilities available and the important shortcomings in the passenger service provided, revenue passengers, particularly long-haul travelers, use trains Nos. 39 and 40 between Phoenix and Los Angeles. Whether it is the standard fare, the time of operation, or the facility of boarding the trains without advance reservations that induces passengers to utilize trains Nos. 39 and 40 cannot be determined from the record. But there has been a steady patronage of these trains in the face of the circumstances of their operation indicating that these trains satisfy a particular need for transportation.

Southern Pacific maintains that its Sunset-Golden State trains have the capacity to absorb the passengers traveling on trains Nos. 39 and 40. Yet, it was conceded that during one-third of the year—approximately the 3 summer months and a month embracing the Christmas-New Year period—the carrier is unable to handle all of the traffic demand for these trains although every available piece of equipment is in use. This has occurred also on train No. 39 and there have been days when

one and even two passenger coaches have been added to accommodate the overflow traffic.¹³

Great weight has been placed by the Southern Pacific on the fact that the predominant users of trains Nos. 39 and 40 have been railroad employees traveling on passes or reduced rate orders. Compelling these passengers to use the Sunset-Golden State trains, however, will accentuate the problem of full-fare passengers in obtaining reservations on these trains, for once a reservation is granted to a railroad employee, such space would no longer be available to a full-fare passenger. It is evident that this situation will only lead to further discouragement of use of rail transportation by the traveling public.

We are unable to accept Southern Pacific's contention that the passenger service on trains Nos. 39 and 40 is an undue burden on interstate commerce. This contention is founded on the claims that the mixed-train operation burdens both the passenger and the merchandise service, and that the latter service fulfills a greater public need.

While adding merchandise service to trains Nos. 39 and 40 may enable Southern Pacific to achieve economies and efficiencies and may be regarded as a sign of alert and aggressive management, the evidence is not convincing that no other alternative is available to the carrier or that the need for such service is so overwhelming that other services must be discarded.

The carrier estimates that the result of operating a separate expedited freight train between Phoenix and Los Angeles for a year would involve a loss of \$63,000 on total revenues of \$1,279,000. This estimate tends rather to indicate that the economic feasibility of operating such a train profitably is not remote. Actually, the estimate of revenues was made on a conservative basis.¹⁴ Multilevel car and less-than-carload revenues were based on experienced results with no projection for growth. Traller-on-flatcar revenues were projected on the basis of a 30 percent growth over September experience although the actual growth trend realized by the carrier was 40 percent. Furthermore, in arriving at its net result of a \$63,000 loss, the carrier included so-called below-the-line expenses amounting

¹³ As we have mentioned, there are many other transportation facilities available. Since the record does not contain information concerning the specific origins and destinations of passengers traveling east of Phoenix, the convenience of these alternate facilities cannot be adequately evaluated.

¹⁴ The estimate of revenues is the same whether the merchandise service is provided as an adjunct to trains Nos. 39 and 40 or by operation of a separate train.

to \$249,000.¹⁵ Such items are not ordinarily recognized by the Commission as added costs and their elimination would actually produce a net profit from operation of a separate train of \$186,000. In our opinion, the prospect of Southern Pacific developing sufficient traffic to warrant the operation of a separate expedited freight train between Phoenix and Los Angeles is real, indeed.

We are not persuaded by the record that the portion of the public concerned with the movement of freight has a more critical need for the service of trains Nos. 39 and 40 than that part of the public interested in their own transportation. Six public witnesses testified in support of the overnight merchandise service on trains Nos. 39 and 40. None of them objected to continuation of the passenger service on the trains so long as the merchandise service was not impaired. Two supporting witnesses had not had the occasion to use the overnight service. Not one of the witnesses had a constant need for such service. Overnight service by motor carrier is available. The objection to motor carrier service is the higher cost, although a consignee of lumber complained about the difficulty in obtaining flatbed equipment. This consignee knew he could complain to the Arizona Corporation Commission about the inadequacy of the service, but he did not do so because he believed a complaint was not warranted.

Southern Pacific complains of the lack of flexibility in the mixed-train operation. Among other things, the carrier claims that there must be times when the demands of the passenger and merchandise service conflict. It correctly asserts that it is under an obligation to try to adhere to advertised schedules if it transports passengers and that failure to do so would leave an adverse impression on the public and draw criticism by State regulatory commissions. Adherence to its schedule might work to the disadvantage of the freight service because it would be unable to delay the trains for late-arriving freight if this should become necessary. In the final analysis, this is the heart of Southern Pacific's case—the desire to acquire freedom of action.

¹⁵ The items are interest on diesel locomotives, maintenance of way and structures, all other maintenance of equipment, station service, all other transportation, traffic, general, haul of company material, and health and welfare expenses and payroll taxes attributable thereto. Southern Pacific estimated that such expenses would total \$161,000 in connection with providing merchandise service on trains Nos. 39 and 40.

We cannot properly sanction Southern Pacific's proposal in the circumstances of this case. The situation which the carrier would alter is of its own making. It cannot expect to make a deliberate management decision to downgrade its passenger service—a decision not forced upon it by poor operating results of the service in question¹⁶ or inadequate funds to maintain a higher quality of service—a successful basis under section 13a(1) for discontinuing the service. See *Pennsylvania R. Co. Discontinuance of Passenger Service*, 320 I.C.C. 319, 323. Certainly, where the passenger service is more than paying its way, it would be completely unjustified to allow the carrier to subordinate its passenger traffic in such a fashion for the purpose of advancing other objectives it may have. While the status of the passenger service in railroad transportation has deteriorated in many ways, particularly revenue-wise, that part of the traveling public which relies upon trains to move about the country must be considered in any case where the public convenience and necessity is an issue.¹⁷

In any event, there is not one shred of evidence in this record that the passenger service has had any effect on the freight traffic for trains Nos. 39 and 40. Southern Pacific's argument is based on speculation, and we find it without merit.

The Arizona Corporation Commission has urged that we require Southern Pacific to restore the service it provided prior to August 29, 1964, and further, to improve that service. We have no such power. The Commission's authority in a section 13a(1) proceeding is limited to the proposal described in the notice filed by a carrier with the Commission. *Chicago, M., St. P. & P. R. Co. Discontinuance of Trains*, 317 I.C.C. 761, 769. The question presented here is whether Southern Pacific should be permitted to discontinue passenger service on trains Nos. 39 and 40 between Phoenix and Los Angeles, and the scope of this proceeding is so limited.

¹⁶It is true that there has been a downward trend in the overall earnings of trains Nos. 39 and 40 from all sources. But excluding the items not recognized by the Commission as savable shows that the trains still produce a substantial excess of revenues over expenses for Southern Pacific both over the entire route between Tuoluma and Los Angeles and the segment between Phoenix and Los Angeles.

¹⁷This factor should be borne in mind in connection with testimony to the effect that if this Commission should enter an order requiring the continuance of passenger service on trains Nos. 39 and 40 between Phoenix and Los Angeles, the carrier's legal department would be consulted to ascertain what steps might be taken to discourage the use of such service. We wish to make it clear that such actions on the carrier's part would tend to undermine any argument it might make that the service is not required by the public convenience and necessity.

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.

We find that the operation by the Southern Pacific Company of passenger service on trains Nos. 39 and 40 between Phoenix, Ariz., and Los Angeles, Calif., is required by the public convenience and necessity and will not unduly burden interstate or foreign commerce.

An appropriate order will be entered.

APPENDIX A

Schedules of trains Nos. 39 and 40, between Phoenix, Ariz., and Los Angeles, Calif.

Time (read down)		City and population ¹	Time (read up)	
Prior to August 29, 1964	Since August 29, 1964		Since August 29, 1964	Prior to August 29, 1964
2:55 p.m.	6:00 p.m.	Lv. Phoenix, Ariz. (MST) Ar. ----- 489,170 -----	10:30 a.m.	11:10 a.m.
5:55 p.m.	9:10 p.m.	Ar. Yuma (MST) Lv. ----- 28,974 -----	7:05 a.m.	8:00 a.m.
5:20 p.m.	8:20 p.m.	Lv. Yuma (PST) Ar. -----	5:55 a.m.	6:30 a.m.
7:25 p.m.	10:30 p.m.	Lv. Indio, Calif., Lv. ----- 9,745 -----	3:25 a.m.	4:05 a.m.
10:20 p.m.	12:50 a.m.	Lv. Colton Lv. ----- 18,666 -----	1:05 a.m.	12:15 a.m.
11:00 p.m.	3:00 a.m.	Ar. Los Angeles (PST) Lv. ----- 2,479,015 -----	11:30 p.m.	1:00 a.m.

¹ Population from 1960 Census

SOUTHERN PAC. CO. DISCONTINUANCE OF PASSENGER TRAINS 31

APPENDIX B

*Estimated daily average number of revenue passengers
from and to stations west of Phoenix*

Month	Train 39			Train 40		
	1962	1963	January- June 1964	1962	1963	January- June 1964
January	23	23	15	20	15	14
February	14	23	12	17	14	11
March	15	14	10	16	14	12
April	14	17	9	14	16	10
May	14	16	15	15	13	9
June	22	21	20	20	16	14
July	25	28		25	21	
August	22	24		22	18	
September	18	16		15	11	
October	18	14		13	11	
November	14	16		13	11	
December	29	38		19	15	
Average	19	21	14	17	15	12

APPENDIX C

*Daily average number of passengers entraining and detraining at Phoenix
and stations west thereof on trains Nos. 39 and 40—in September 1964*

Stations	Train 39		Train 40	
	On	Off	On	Off
Phoenix	1			1
Yuma	1	1	1	(¹)
Indio	(¹)	(¹)		(¹)
Colton		1	(¹)	
Los Angeles		14	4	
Totals	2	16	5	1

¹ Less than one-half.

APPENDIX D

Net results of operating passenger coach between Phoenix, Ariz., and Los Angeles, Calif., on trains Nos. 39 and 40 during September 1964

Item	Carrier	Amounts eliminations	Recognized
Passenger revenues -----	\$11,785		\$11,785
Expenses:			
Servicing-passenger cars -----	1,277		1,277
Repairs-passenger cars-----	3,424		3,424
Casualties-----	140		140
Switching -----	596		596
Health and welfare for above expenses-----	145		145
Payroll taxes -----	291		291
Train fuel -----	378		378
Depreciation-passenger cars -----	511		511
Joint facilities -----	798	\$798	
Maintenance of way and structures-----	566	566	
All other maintenance of equipment --	109	109	
All other transportation-----	59	59	
Haul of company material-----	71	71	
Health and welfare for four foregoing expenses-----	21	21	
Payroll taxes for four items preceding health and welfare-----	43	43	
Total expenses-----	8,429	1,667	6,762
Net profit-----	3,356	1,667	5,023

APPENDIX E

Net benefit from discontinuing passenger coach on trains Nos. 39 and 40 and adding caboose

Items	Increase or (decrease)		
	Carrier	Eliminations	Recognized
Passenger revenue -----	(\$62,700)		(\$62,700)
Expenses:			
Crew wages-----	11,016		11,016
Passenger coach (appendix D x 12)--	(101,148)	(\$20,004)	(81,144)
Caboose:			
Servicing -----	433		433
Repairs -----	3,962		3,962
Health and welfare on above -----	117		117
Payroll taxes -----	236		236
Train fuel -----	1,529		1,529
Depreciation -----	526		526

SOUTHERN PAC. CO. DISCONTINUANCE OF PASSENGER TRAINS 33

Net benefit from discontinuing passenger coach on trains Nos. 39 and 40 and adding caboose—Continued.

Items	Increase or (decrease)		
	Carrier	Eliminations	Recognized
Maintenance of way and structures ---	\$2,298	\$2,298	-----
All other maintenance of equipment --	371	371	-----
All other transportation-----	810	310	-----
Haul of company material -----	94	94	-----
Health and welfare on four foregoing items -----	82	82	-----
Payroll taxes on four items preceding health and welfare-----	165	165	-----
Total caboose expenses-----	10,128	3,320	\$6,808
Total net expenses-----	(80,009)	(16,684)	(63,325)
Net benefit-----	17,809	-----	625

APPENDIX F

Alternate Southern Pacific passenger service

Time (read down)		Time (read up)
Train 3		Train 2
12:05 a.m.	Lv. Phoenix (MST) Ar-----	6:45 a.m.
-----	Ar. Yuma (MST) Lv-----	8:40 a.m.
2:10 a.m.	Lv. Yuma (PST) Ar-----	2:25 a.m.
4:15 a.m.	Lv. Indio Lv-----	11:50 p.m.
6:15 a.m.	Lv. Colton Lv-----	10:00 p.m.
8:15 a.m.	Ar. Los Angeles (PST) Lv-----	8:30 p.m.

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