

**ORIGINAL**

Decision No. 55864

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WESTSIDE COMMUNITY ASSOCIATION, a voluntary association, WESTWOOD GARDENS CIVIC ASSOCIATION, INC., a corporation, RANCHO HOMES ASSOCIATION, a voluntary association, LORETTA K. REEVES, WESTWOOD TEMPLE and ERNEST R. TRATTNER, Rabbi, BEVERLY HILLS DOCTORS HOSPITAL, HARRY I. ALTMAN CO., TEMPLE VIEW TRAVEL LODGE and ELLEN S. DAVIS and J. CLIVE DAVIS, owners, SHEARSON HAMMIL & CO., PETER PAN NURSEY SCHOOL and ISAAC DELLAR, owner, CHEVIOT HILLS CONVALARIUM and FRED E. ELG, JR., Director, JAMES A. FOSHAY JUNIOR HIGH SCHOOL and CAREW HANDY, Principal, OVERLAND ELEMENTARY SCHOOL, NATIONAL SANITARIUM, TOCALOMA CLUB, INC., FRANCES I. BUSSEY, MARSHALL G. GROENER, certified public accountant, VISTA DEL MAR CHILD CARE SERVICE, LAWRENCE BLOCK CO., INC., REV. LEONIDAS CONTOS, Dean, SAINT SOPHIA CATHEDRAL, MANOR HOUSE and KATHERINE S. WHITE, owner, JOHN P. LORDAN, M.D., and BEVERLY HILLS CLINIC, ROBERT LANGLEY, M.D., BEVERLY HILLS NATIONAL BANK & TRUST CO., MILTON SLADE, ALPHA MOTOR HOTEL, LOMBAILLE CO. SANITARIUM HOSPITAL, and MARJORIE HAMLIN RAINEY,

Case No. 5826

Complainants,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and PACIFIC ELECTRIC RAILWAY COMPANY, a corporation,

Defendants.

Chapman, Frazer & Lindley by John S. Frazer and D. W. Chapman,  
for Westside Community Association.

John C. Thorpe for Pacific Electric Railway Company.

Roger Arnebergh, Alan G. Campbell, T. M. Chubb, T. V. Tarbet,  
for the City of Los Angeles, interested party.

James K. Gibson, Howard F. Christenson, Clent E. Milne, and  
Alan F. Williams, for the Commission staff.

O P I N I O N

Complainants are residents and people engaged in businesses and professions having their places of business or their residences adjacent to or near the tracks of the Southern Pacific Company along the route commonly known as the "Airline" and of Pacific Electric Railway Company's "Santa Monica Boulevard Line," "Del Rey Line" and other connecting branches thereto.<sup>1</sup> The defendant Pacific Electric Railway is the operator of the rail lines in question while the defendant Southern Pacific Company is the parent corporation which owns and controls the Pacific Electric Railway Company.

Complainants allege that the operations of trains over the rail tracks in question cause considerable noise, vibration, smoke, dirt and dust, and that as a result thereof, the residents and business people in the area have been disturbed, their properties have been damaged, and that, in general, the train operations constitute a nuisance.

The answer of the defendants alleges in substance that the operations of the railroad over the tracks in question are conducted in a reasonable manner and the answer also denies the principal allegations of the complaint as to the nuisance caused by the railroad operations. In addition the answer challenges the jurisdiction of the Public Utilities Commission over the length of trains to be operated, the type of motive power and the type of freight cars to be used. The answer further raises the defense that the complaint fails to state a cause of action.

Public hearings were held before Examiner Grant E. Syphers in Los Angeles on April 29 and 30, May 9, June 10, 14, 18 and 19, 1957. On these dates evidence was adduced and on the last-named

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<sup>1</sup> All of these lines are referred to hereinafter as the Santa Monica Air Line.

date the matter was submitted subject to the filing of briefs by the parties. Briefs now have been filed and the matter is ready for decision.

The evidence discloses that the Santa Monica Air Line was built about 1876. It was operated as a steam railroad from the time of its construction until about 1908 at which time it was converted to an electric railroad. It was so operated under electric power both as a passenger and freight railroad until 1953 when the passenger service was discontinued. The freight service continued to be operated on the electric railroad until 1954 when diesel locomotives were substituted for electric power, and the electric overheads and appurtenant equipment were removed. Since 1954 the freight service has continued and the motive power equipment has consisted of diesel locomotives.

Numerous witnesses who were either residents or engaged in some business activity in the area testified as to the effect of these diesel operations. This testimony may be summarized into five types of complaints: (1) the residents claim that they are awakened at night by noise and vibrations, (2) the diesel operations have caused property damage in the nature of plaster and tile cracks and other types of damage, (3) the diesel operations have caused dirt to collect which is particularly noticeable on window sills and on the walls of houses, (4) these conditions have resulted in the property values being affected in a downward direction, and (5) the railroad right of way is allowed to become unsightly in that weeds are permitted to grow and rubbish permitted to accumulate.

In addition to this testimony there was a professional physicist who testified as to the intensity of noise generated by diesel trains. This witness had made a study of the situation and, in his opinion, the general train noise was at a density of about 70 decibels which constitutes an increase of about 400 times in energy density over the general background noise in the neighborhood. This witness was of the opinion that the noise of the railroad train could be reduced by appropriate silencers or mufflers, by shorter trains and slower speeds.

Another engineer testified to the effect that diesel trains generate a greater quantity of air pollutants than do electric trains or, for that matter, motor buses. It was pointed out that a diesel locomotive will normally produce approximately five times as much air pollutants as a motor bus, and approximately 350 times as much air pollutants as a passenger automobile. It was the opinion of this witness that possible remedies might include a sufficient after-burner to minimize the escape of air pollutants, or a change of motor power from diesel to electric, or a combination of electric and diesel.

It should be noted in passing that many of the witnesses testified that the alleged nuisance conditions which now exist as a result of the diesel operations did not exist in any such aggravated form when the railroad was operated as an electric road.

So far as the defense presented by the defendants is concerned, it should be observed at the outset that the facts in this record disclose that the operations are those of the Pacific Electric Railway Company. That company is responsible for the

operations and in full charge thereof. The Southern Pacific Company does not have the immediate responsibility of these train operations, its only connection being that it is the parent corporation owning control of the Pacific Electric Railway Company.

The Pacific Electric Railway Company presented various witnesses who operate industries in the area, which industries receive shipments of freight over the lines of the railroad. These witnesses described their various business activities and their needs for freight service.

Likewise this defendant presented a witness who testified as to the problems involved in the receiving and delivering of freight along this line, and also as to the efforts which have been made by the defendant railroad to reduce objectionable features of the operation. For example, the diesel locomotives originally had a rather harsh whistle. However, these have been changed over to a trombone-type of whistle which does not produce such a disturbing sound. Likewise the locomotives have been equipped with a third muffler which, according to the railroad's witness, has been effective in reducing some of the sound. The witness also pointed out that the original diesel locomotives used weighed 124 tons but these have been replaced by smaller locomotives which weigh approximately 99 tons.

A witness for the Division of Highways of the State of California presented testimony as to the proposed route of the Santa Monica Freeway. This freeway apparently will parallel a section of the Pacific Electric track in the vicinity here under consideration.

The staff of the Public Utilities Commission presented a study relating to the operations herein concerned showing that the track, in general, is in satisfactory condition for the operation of freight trains. In addition, the staff report contained data on train movements and the location of industries served by this rail operation.

The City of Los Angeles presented a study of this problem, covering the complaints which have been received as a result of the rail operations, and also a sound study relative to the noises emanating from the railroad. The witness for the city also made recommendations to the effect that (1) an independent engineering study be made as to the situation, (2) the right of way should be landscaped, (3) the length, weight and speed of the trains should be controlled, and (4) the engines should be maintained to such a standard that fumes will be reduced to a minimum.

The defendant Southern Pacific Company has filed a motion to dismiss on the grounds that the complaint fails to state a cause of action, that the relief demanded is outside the jurisdiction of this Commission, and that the complainants' case fails because of lack of proof. Lastly, the motion to dismiss points out that in any event the complaint should be dismissed as against the Southern Pacific Company.

The motion to dismiss against the Southern Pacific Company will be granted, the evidence herein showing that that company does not directly conduct operations of the rail lines in question. While it is the parent company of the defendant, Pacific Electric Railway Company, there is no reason to invoke a "common ownership" rule, nor to consider an alter ego situation. The defendant, Pacific Electric Railway Company, is a corporate entity operating as a public

utility, and, in the opinion of the Commission, is able to respond to its lawful obligations.

As to the Pacific Electric Railway Company, the motion to dismiss will be denied. We hold that the complaint does sufficiently set out a cause of action, alleges the facts complained of, and requests specific relief. It asks that the Commission order the defendants to discontinue the use of diesel locomotives and heavy freight trains along the Air Line and Santa Monica Boulevard tracks and roadbeds, or, in the alternative, it requests an order limiting the weight of the diesel locomotive, the length of trains, the weight of the cars, the time or hours of operation of the trains, and requiring the roadbed to be reconstructed, repaired and renovated.

The Commission is of the opinion and holds that this matter is one which is within the jurisdiction of this Commission. It may be true that the defendant does conduct some interstate commerce, but its tracks do not leave the state even though some of the freight moving thereover may be in interstate commerce. It is well recognized "that, in the absence of conflicting legislation by the Congress, there is a residuum of power in the State to make laws governing matters of local concern which may, nevertheless, in some measure affect interstate commerce, or even to some extent, regulate it." (Southern Pacific Co. v. Arizona, 1944, 325 U.S.:761, 767; 89 L.ed. 1915, 1923.) The problem here presented is one of local concern and well within the regulatory powers of this Commission. For example, this Commission has a General Order in effect which prescribes the minimum clearances on railroads (General Order No. 26-D, 47 Cal. P.U.C. 662). Likewise it is regulating the number of brakemen which are required in the operation of freight trains (Section 6902.5 Labor Code; Decision No. 43373, dated October 4, 1949, in

Case No. 4988, 49 P.U.C. 135). Specifically, it has heretofore ordered the defendant herein to make improvements in its tracks in the public interest. (Wood v. Pacific Electric Railway Co., Decision No. 51355, dated April 19, 1955, in Case No. 5565, 54 P.U.C. 121).

The third allegation, that the complaint should be dismissed because complainants have failed to prove their case, leads us to now evaluate the proofs submitted. A consideration of all of the testimony and exhibits, and the briefs and arguments filed in this matter, leads us to find and we do find and conclude that the defendant Pacific Electric Railway Company should take certain corrective actions in the operation of its rail lines in the area here under consideration. Specifically, the following items should be accomplished.

1. Rail flange lubricators should be installed at Home Junction and at the curve in the tracks at Santa Monica and Sepulveda Boulevards.
2. The cut ditches between Overland Avenue and Motor Avenue should be cleaned out to provide adequate drainage.
3. The section of track between Overland Avenue and Motor Avenue should be reballasted, lined and surfaced.
4. The company should continue its program of lining and surfacing the entire lines, and patch ballasting in those places where it is needed.
5. The company should continue its program of the welding of battered joints until all such joints have been built up to proper condition.
6. The company should continue its regular maintenance program, and in connection therewith replace fouled ballast with crushed rock.



7. The right of way should be kept in a clean and orderly condition.

In addition to these specific requirements, the company, within a reasonable time, will be required to show cause as to why its trains cannot be operated between 6 a.m. and 10 p.m. westward of Culver Junction or in lieu thereof why the tonnage of such trains cannot be limited.

It appears from this record that one of the most aggravated conditions resulting from train operation is the noise thereof and the vibration therefrom during nighttime hours.<sup>2</sup>

As to the smog conditions, the Commission is of the opinion that the company has taken reasonable steps in this regard although it is admonished to be continuously alert to this problem. In a growing area such as the one under consideration, it is obvious that there is a conflict between the industrial, the business and the residential uses involved. This problem should be met by all parties concerned in the light of reason. Obviously, the operations of the railroad cannot be stopped. Likewise it is improbable that one could live or have a business in the vicinity of a railroad without being aware of its presence and its operations. The interest of this order is to require the defendant to take such steps as may minimize the objectionable features of its operation.

While the complainants requested that the defendant be required to revert to electrical operations, this request will be denied. Such a requirement would require a large investment of capital and a complete operating reversal of the operations of the railroad. Diesel operations are accepted as standard railroad practice today, and the defendant is entitled to conduct reasonable

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<sup>2</sup> The assembly of the State of California by House Resolution No. 257, adopted on June 7, 1957, requested this Commission to make a study as to the possibility of developing an adequate muffler for diesel electric engines which will reduce noise and vibration. Such study will be made.

diesel operations. The ensuing order will provide for the requirements hereinbefore set out.

O R D E R

Complaint as above entitled having been filed, public hearings thereon having been held, the Commission having been fully advised in the premises and hereby finding it to be in the public interest and that public convenience and necessity so require,

IT IS ORDERED:

(1) That the Pacific Electric Railway Company shall make and perform the following improvements on its Santa Monica Air Line:

- a. Rail flange lubricators shall be installed at Home Junction and at the curve in the tracks at Santa Monica and Sepulveda Boulevards.
- b. The cut ditches between Overland Avenue and Motor Avenue shall be cleaned out so as to provide adequate drainage.
- c. The section of track between Overland Avenue and Motor Avenue shall be reballasted, lined, and surfaced.
- d. The entire right of way of the Santa Monica Air Line shall be kept in a clean and orderly condition.

(2) That the Pacific Electric Railway Company shall continue its program of lining and surfacing the entire length of Santa Monica Air Line and, in this connection, shall patch ballast in those places where such action is warranted.

(3) That the Pacific Electric Railway Company shall continue its program of welding the bettered rail joints until all such joints have been built up to proper condition.

(4) That the Pacific Electric Railway Company shall continue its regular maintenance program and in connection therewith shall replace fouled ballast with crushed rock wherever necessary.

(5) That within thirty days from the effective date of this order the Pacific Electric Railway Company shall submit to this Commission a statement setting out the train operations on the Santa Monica Air Line westward of Culver Junction between the hours of 10 p.m. and 6 a.m., which statement shall include any alleged reasons as to the necessity for the continuance of these operations, and the size and length of trains operated and the tonnage handled during the aforementioned hours.

IT IS FURTHER ORDERED that in carrying out the provisions of this order, the Pacific Electric Railway Company shall complete the work herein ordered in paragraph (1) of this order within a period of ninety days from the effective date of this order or, in the event such completion cannot be effected by that time, this Commission shall be advised in writing as to the reasons therefor.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of November, 1957.

*John E. Mitchell* President  
*Ralph Winters*  
*Mark D. ...*  
*R. ...*  
*E. ...* Commissioners