

65441

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
 SAN DIEGO & ARIZONA EASTERN RAILWAY)
 COMPANY for an exemption from)
 General Order No. 114.)

Application No. 45132
 (Filed January 23, 1963)

William R. Denton, for applicant.
George W. Ballaro, for Brotherhood of
 Railroad Trainmen, AFL-CIO; Leonard M.
Wickliffe, for California State
 Legislative Committee, Order of
 Railway Conductors and Brakemen;
 protestants.
Hugh N. Orr and Claude Carlock, for the
 Commission staff.

O P I N I O N

This application was heard and submitted before Examiner Thompson at San Diego on April 9, 1963. San Diego & Arizona Eastern Railway Company is a railroad corporation with main line operations between San Diego and El Centro. Approximately 45 miles of its main line are between Tijuana and Tecate in Mexico. It seeks an exemption from the provisions of Section 9(b) of General Order No. 114. The Brotherhood of Railroad Trainmen and the California State Legislative Committee of the Order of Railway Conductors and Brakemen protest this application. The Commission staff participated in the proceeding but did not take a position for or against the granting of the sought exemption.

General Order No. 114 prescribes minimum safety, health and comfort requirements for cabooses used in service in California. Section 9(b) provides, "Each cupola side window shall be equipped with a wind deflector".

The five cabooses operated by applicant have cupolas and are subject to the requirement in Section 9(b). They are presently equipped with wind deflectors.

Applicant contends: (1) the maintenance of glass wind deflectors will be costly because of probable damage resulting from the prevalence of rock throwing by children and adults along portions of its line; (2) the trainmen do not use the wind deflectors; and (3) because of circumstances unique to the operation of the railroad, the wind deflectors do not promote or safeguard the safety, health or comfort of the trainmen.

Applicant has encountered numerous acts of vandalism on its line and more particularly along sections in Mexico and in the vicinity of San Diego. It installed wind deflectors on its cabooses two months ago and one has already been damaged, presumably by a rock thrown by someone. Applicant has wind deflectors on its locomotives. Damage to them has been frequent. The cost to applicant to replace the glass in a wind deflector is between \$12 and \$15.

Applicant's superintendent testified that the trainmen did not use the wind deflectors. This was corroborated by the testimony of a representative of the Commission's Safety Section who testified that he had inspected all of the cabooses operated by applicant and had discussed the wind deflectors with the train crews. He said that the position of the wind deflectors on the cabooses indicated to him that they were not being used and in his interviews with the trainmen only one stated that the wind deflectors are beneficial. The representative stated that he had ridden in the cupola of one of applicant's cabooses on a train from San Diego to Plaster City. He said that the conductor warned him about the probability of the caboose being a target for rock throwing. During the trip none of the trainmen rode in the cupola. The representative testified that he found it difficult to get into a position

in the cupola so as to place his head out of the window. He had to kneel on the lazy board in order to accomplish that feat. While observing the train from that position, he did not notice any material difference in conditions when the wind deflectors were retracted from those when they were extended. He said that the ineffectiveness of the wind deflectors may be the result of the construction of the caboose. The sides of the cupola of four of applicant's cabooses are slanted inward. General Order No. 114 will prohibit the use in service of that type caboose on and after October 2, 1963.

The windows of applicant's cabooses are individually covered with a heavy wire mesh and are normally kept closed so as to ward off rocks. The trainmen seldom ride in the cupola. Rule 327 of applicant's operating rules requires a trainman to observe the track to the rear of the train while traveling along 85 miles out of the total 148 miles of main line. The speed limit of applicant's trains in California is 30 miles per hour. Much of the main line of applicant is in a mountainous region and has many sharp curves and steep grades. It is the practice of the train crews to observe the train from the caboose platform or from windows in the caboose other than those in the cupola. This practice is encouraged by applicant.

It is clear that in the opinions of management, of the majority of the trainmen, and of the representative of the Safety Section, the wind deflectors do not materially promote or safeguard the health, comfort or safety of trainmen. Those opinions, however, may be influenced by reason of the ineffectiveness of the wind deflectors on the slanted sides of the cupolas of four of the five cabooses. Because of the provisions of General Order No. 114 which become effective October 2, 1963, applicant will either replace

the four cabooses or will modify the structure of their cupolas. The circumstances may be different when that occurs.

The basic premise in applicant's showing is that there is no reason for the trainmen to be in a position to use the wind deflectors. The facts remain, however, that applicant requires the train crews to observe the train so as to assure the safety of operation; it has lazy boards in the cupola for the trainmen to use; it has placed the wire mesh screens over the cupola windows so that they may be readily moved aside in order to permit the trainman to place his head out of the open window for observation purposes; on applicant's cabooses the best vantage point to observe the entire train is the window in the cupola; and, it is the custom for the trainman in normal railroad operations to place his head alongside or out of the open cupola window occasionally so as to better observe the trucks of the cars near to the caboose. Even though applicant has suggested to its employees that along certain sections of its line they should stay behind the protective wire mesh screen, it provides the facilities which enable the trainman to follow the customary practice of observing the train from the cupola. It could be maintained that the trainman has the responsibility to utilize those facilities when necessary to assure the safety of train operations. In any event, without specific instructions to the contrary, the furnishing of those facilities implies an invitation to use them. A wind deflector provides protection to the trainman from dust and other objects in the slipstream of the moving trains.

Applicant has not shown that the elimination of wind deflectors will not adversely affect the health, comfort and safety of train crews. A different result might be reached if it was shown that the facilities in the cupola would not permit the trainman to

follow the customary practice of observing the train by placing his head out of an open window in the cupola. The application will be denied.

O R D E R

IT IS ORDERED that the application of San Diego & Arizona Eastern Railway Company is denied.

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

Dated at San Francisco, California, this 21st day of May, 1963.

President
John E. Mitchell

Frederick B. Hallock

William W. Bennett

Commissioners

I dissent.
George H. Hoover
Pres.