

Decision No. 70292**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and services of Northwestern Pacific Railroad Company in connection with the Puerto Suello Tunnel, San Rafael, California.

Case No. 7907
(Filed May 19, 1964)

SUPPLEMENTAL ORDER

Northwestern Pacific Railroad Company has filed a petition herein asking that this proceeding be reopened, asking for oral argument and an opportunity to present evidence of changed conditions, for a further hearing, and for this Commission to rescind, alter or amend its previous orders and decisions.

In Decision No. 67889 (as amended), petitioner was ordered to reconstruct the Puerto Suello Tunnel under authority provided in Section 762 of the California Public Utilities Code. The decision made clear that as to the issue of the public need for the tunnel the Commission fully accepted the prior determination of the Interstate Commerce Commission in Finance Docket No. 21725 (upheld by the United States Supreme Court in Northwestern Pacific R. R. Co. v. I.C.C., 379 U.S. 132; 13 L. ed. 2d 333), pursuant to that Commission's exclusive jurisdiction over line abandonments (Sections (18)-(20), Interstate Commerce Act), that the public convenience and necessity did not permit abandonment of the tunnel. This Commission, therefore, did not allow petitioner to introduce evidence at the hearing on the issue of the public need for the tunnel.

The instant petition asks reopening for the purpose of raising the issue of whether the public convenience and necessity

or the public need require continued operation through the tunnel. The allegations set forth in the petition purport to show, contrary to the aforementioned finding of the Interstate Commerce Commission, that no such public convenience, necessity or need exists.

We repeat our stand previously made in Decision No. 67889 (as amended), which position has been sustained on appeal by petitioner to the Supreme Court of California (Northwestern Pacific R. R. Co. v. P.U.C., S.F. No. 21861) and on further appeal to the United States Supreme Court (Northwestern Pacific Railroad Co. v. Public Utilities Commission, October Term, 1965, No. 676), that this Commission has no jurisdiction to pass on the issue petitioner seeks to raise and that such jurisdiction lies exclusively with the Interstate Commerce Commission.

It appears further that petition for writ of review of Decision No. 67889, as amended, has been denied by the Supreme Court of California, and appeal of said denial having been filed with the Supreme Court of the United States (Northwestern Pacific Railroad Co. v. Public Utilities Commission, October Term, 1965, No. 676) and a stay of this Commission's order herein having been issued by said Court, which stay, by its terms, terminates automatically upon dismissal of the appeal, and it appearing further that on January 17, 1966, the Supreme Court of the United States did dismiss the appeal, thereby terminating and vacating said stay on that date; therefore,

IT IS ORDERED that the petition of Northwestern Pacific Railroad Company to reopen this proceeding is denied.

IT IS FURTHER ORDERED that the effective date of Decision No. 67889, as amended, is made the date hereof.

Dated at San Francisco, California, this 12 day
of FEBRUARY, 1966.

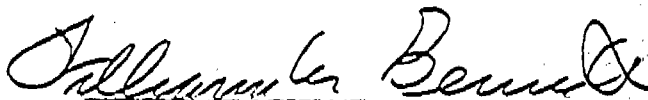
Frederick B. Whitely
President
George A. Brown
Augustine
Dallman
Commissioners

CONCURRENCE

BENNETT, William M., Commissioner, Concurring Opinion:

At long last the deliberate delaying tactics of the Northwestern Pacific have ground to a halt. All the while the legal avenues of delay which this carrier has pursued have denied the public a valuable rail service. This applicant persists in a philosophy of ignoring its public responsibilities and takes no cognizance of the fact that it is endowed with fixed legal obligations towards the public. The entire north coastal area of California has long been denied proper rail service simply because this common carrier disregards its historic public utility obligations.

It is to be hoped, although not expected, that this admonition and deliberately strong criticism of the instant carrier would have the effect of reminding it of its special place in our economy conferred by the public of the State of California and that this carrier might give heed to its public responsibilities. I concur whole-heartedly in today's order which denies the dilatory petition of the Northwestern Pacific Railroad Company to defer once again its obligation to open the Puerto Suello Tunnel. In short, and in less than lawyer-like language, Northwestern Pacific should now get with it and allocate some of its surplus funds to employing such engineering resources and personnel as is required to open the Puerto Suello Tunnel and as promptly as possible.



WILLIAM M. BENNETT
Commissioner

San Francisco, California
February 1, 1966.