

Decision No. 85687**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of UNITED STATES STEEL CORPORATION for permission to maintain structures not in compliance with General Order No. 26-D of the Public Utilities Commission of the State of California.

Application No. 55291  
(Filed November 6, 1974)

Phillip J. Sheehe and Wayne L. Emery, Attorneys at Law, for United States Steel Corporation, applicant.

George Bodle, Attorney at Law, J. L. Evans, and J. P. Jones, for State Legislative Board, United Transportation Union, protestant.

William J. Jennings, Attorney at Law, and Ray R. Gentry, for the Commission staff.

O P I N I O N

Applicant United States Steel Corporation (USS) by amended application requests variances from the provisions of the Commission's General Order No. 26-D (GO 26-D) and General Order No. 118 (GO 118) relative to approximately 93 conditions found by the Commission's staff to exist on USS' property in the vicinity of its private railroad tracks at Pittsburg, Contra Costa County, so as to allow public utility railroads to operate upon its private tracks to perform switching services for USS. A hearing was held at Pittsburg before Examiner Pilling on January 19 and 20, 1976.

GO 26-D, entitled "Regulations Governing Clearances on Railroads and Street Railroads with Reference to Side and Overhead Structures, Parallel Tracks, Crossings of Public Roads, Highways and Streets", became effective February 1, 1948 and provides for certain minimum side and overhead clearances to be observed in the construction and reconstruction of structures adjacent to railroad tracks. As here pertinent those minimum clearances set out in GO 26-D are as follows

(side clearances are measured from the center line of tangent track and overhead clearances from the top of the rail):

Table of Minimum Clearances

Side Clearances:

a. All structures except as noted below.	8' 6"
b. Handrails.	7' 9"
c. Platforms.	7' 6"
d. Low switches of necessity installed between tracks.	6' 0"
Add 1' for structures on curved track.	

Overhead Clearance:

All structures.	22' 6"
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GO 118 is entitled "Regulations Governing the Construction, Reconstruction, and Maintenance of Walkways Adjacent to Railroad Trackage and the Control of Vegetation Adjacent Thereto" and sets forth certain standards for the construction and reconstruction of walkways and the maintenance thereof.

USS desires to open for public utility railroad switching operations its private trackage which it designates as HL1, HL2, 50, 51, 51A, 53, 53A, 55, 70, 72, 73, 75, 80, RD, RD1, RD2, RL, and RSY. The switching service to be performed by public utility railroads, which heretofore has always been performed by USS employees with USS owned engines, will be done in connection with plant operations on both inbound and outbound rail cars. A Commission staff witness testified that he inspected the tracks in question on December 12, 1974, July 3, 1975, and January 12, 1976 and noted many situations where structures and walkways did not conform with the standards set out in GO 26-D and GO 118.<sup>1/</sup> He confirmed, however, that some of the

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<sup>1/</sup> A complete list of such situations is set out in Appendix 3 of Exhibit 4.

Situations have subsequently been corrected, and a USS witness testified that additional situations have been corrected.<sup>2/</sup>

The evidence does not show that there are any structures or walkways not in conformance with general orders on tracks HL1, HL2, 55, or RD2. Tracks HL1 and HL2 are linked to public utility railroad tracks and provide entry into and through the southern portion of the plant site from the east and west. Track 55, which serves a sheet and tin mill, branches off from track HL2. Track RD2 provides entry into a limited portion of the northern part of the plant site, but impaired clearances exist beyond the connecting track.

Some examples of the description of current nonconforming structures and walkways listed in Appendix 3 of Exhibit 4 are as follows:

- "56. Track 50. Corrugated metal building located on the westerly side of Track 50 north of the runaround track measured less than 8'0" from centerline of track. Building footings were as close as 7'0" from centerline of track. Stop sign attached to the corner of the building measured 5'6" from centerline and 15 feet above top of rail. Steel pipe guard-rail at same location measured as close as 7'3" from centerline.
- "57. Same Track, Northerly End of Corrugated Metal Building Mentioned in Item 56. Building corner footing and steel guardrail located at this end of the building impair side clearances by as much as 2½ feet. Track is curved at this location and no portion of the building or other fixtures may be less than 9'6" from centerline of track.

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<sup>2/</sup> Items listed in Appendix 3 of Exhibit 4 which were stated to have been corrected are Items 1 through 23, 25, 30 through 45, 48, 53, 63, 72, 83, 89 through 94, 97 through 103, 107, 108, and 125. Some items on the list contain more than one situation.

- "58. Same Track. Rough and uneven walkway along Track 50 from the corrugated metal building noted in Item 56 northerly to Track 50 connection with Track 30. A reasonably level walkway even with top of tie should be provided along this track.
- "59. Same Track. Light standard located north of corrugated metal building noted in Item 56 measured only 7'11" from centerline of track.
- "60. Same Track. Switch mechanism to Track 53A switch measured only 7'0" from centerline of track. Room exists to relocate this stand to lawful clearance."

Following is a brief summary of the staff witness' findings covering most of the structures and walkways which do not meet the standards in GO 26-D and GO 118:

- Track 50: 7 switches, 6 other structures, 7 walkways.
- Track 51: 2 switches, 7 other structures, 1 walkway.
- Track 51A: 2 walkways.
- Track 70: 1 switch, 4 handrails, 3 other structures, 2 walkways.
- Track 72: 2 structures.
- Track 73: 4 structures.
- Track 75: 5 structures.
- Track 80: 1 switch, 3 handrails, 7 other structures, 3 walkways.
- Track RD: 2 switches, 2 other structures, 2 walkways.
- Track RD1: 1 walkway.
- Track RL: 1 switch, 4 other structures, 1 walkway.
- Track RSY: 1 structure, 1 walkway.

Witnesses for USS testified that in their opinion no substantial risks to life or limb of trainmen would be created if public utility railroads were permitted to perform switching services over the involved tracks and in fact in-plant crews have continuously performed switching services past the involved structures for many years without a loss time accident. USS estimates that the cost to

bring the structures and walkways into compliance with GO 26-D and GO 118 would be \$163,150. USS also argues that any structures built which met the minimum specifications set out in General Order No. 26-C (GO 26-C), the predecessor order of GO 26-D, at the time GO 26-C was in effect should not be considered nonconforming structures because the provisions of GO 26-D are prospective. USS points to the two preamble paragraphs to, and Section 15 of, GO 26-D in support of its contentions. No public utility railroad has ever operated over USS' Pittsburg tracks. USS contends that public safety, convenience, and necessity would be served by granting the variances.

The staff contends that GO 26-D is prospective in nature only for tracks over which the Commission had jurisdiction on the effective date of GO 26-D, that is, tracks of railroad corporations and private tracks over which railroad corporations were conducting operations. Since USS' tracks were not being operated over by a railroad corporation at that time, they are to be considered new tracks upon commencing public utility use and clearances and walkways must conform to present standards.

A conductor-brakeman for The Atchison, Topeka and Santa Fe Railroad Company (Santa Fe) with 20 years' railroading experience and who occasionally is part of the train crew which delivers rail cars to USS testified that approximately 1,920 rail cars were delivered to USS during the month of December 1975. He stated that the average size boxcar was approximately 10' 10" wide (a standard gauge railroad track is 4' 8½" wide) and that in riding the side of a boxcar he considers 3' to be a reasonably safe clearance between the side of the boxcar and an obstruction and that any less clearance would be unsafe and hazardous.

A conductor-brakeman for the Sacramento Northern Railway testified that his company delivered approximately 500 railcars each during the months of December and November 1975.

Discussion

We adopt the staff's position that structures which do not meet the clearance standards required by GO 26-D are nonconforming structures despite the fact they were installed when GO 26-C was in effect and the clearances at that time met GO 26-C standards. The prospective application of the higher GO 26-D standards applies only to structures lawfully created prior to the advent of GO 26-D on the tracks of a railway over which we had jurisdiction on the date GO 26-D became effective.

The preamble paragraphs to and Section 15 of GO 26-D read as follows:

"IT IS HEREBY ORDERED by the Public Utilities Commission of the State of California that minimum clearance requirements for railroads and street railroads hereinafter prescribed shall hereafter be observed in this state in all construction and reconstruction of tracks or structures adjacent to tracks.

"IT IS HEREBY FURTHER ORDERED that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof.

\* \* \*

"Section 15

"Where the overhead or side clearances between a track and any building, structure or facility are less than the minimum prescribed in this order, but were lawfully created prior to the effective date thereof, the minimum clearances prescribed herein shall be provided whenever the building, structure or facility is relocated or reconstructed; ..."

The key words in the above quoted paragraphs are "railroad" and "tracks". We adopted GO 26-D under authority of Division 1, Part 1 of the Public Utilities Code to regulate railroads. The definition of the word "railroad" and the operations to which GO 26-D is addressed is found in Section 229 of the Public Utilities Code and reads in part as follows:

"229. 'Railroad' includes every commercial, interurban, and other railway...together with all tracks...operated ...for public use in the transportation of persons or property."

USS' railway operations do not come within that definition since USS' tracks have not been "operated...for public use..." USS has never allowed its tracks to be operated for public use. GO 26-D, then, is and was applicable only to railroads or tracks operated over by railroads as defined in Section 229 on the date GO 26-D became effective. Hence, USS, a nonrailroad at the time GO 26-D became effective, is required to bring its clearances up to GO 26-D standards before railroads may operate upon its private tracks unless variances are authorized by the Commission.

The number of conditions which do not meet the standards of GO 26-D and GO 118 are indeed numerous. This is not a case where our authorizing variances for just a few key conditions would open up a substantial length or number of clear tracks for railroad switching operations, and it is vital to plant operations that those conditions remain unchanged. Rather, conditions which do not meet GO 26-D and GO 118 standards are scattered in profusion along the length of practically all track proposed to be used for railroad switching operations so that the granting of just a few variances would allow for little or no railroad switching operations. Authorizing the requested variances would be inimical to the safety purposes of GO 26-D and GO 118. Train crews, strangers to the property and unfamiliar with either the existence or location of the variances, would be placed in hazardous situations.

Section 16.3 of GO 26-D states that the Commission may modify any part of GO 26-D "when, in the Commission's opinion, public safety, convenience or necessity would be served by so doing". USS has put forward no cogent reasons that our authorizing the variances would serve public safety, convenience, or necessity. Opening the track for public utility railroad switching operations appears to spring from convenience rather than need. Any convenience to USS to have public utility railroads perform the switching service is far outweighed by the potential hazards to crews unused to the existence or location of the many structures and walkways not conforming to GO 26-D and GO 118 standards.

Findings

1. GO 26-D forbids a public utility railroad from operating on tracks with adjacent structures which have less than the minimum clearances prescribed by GO 26-D if such structures or tracks are constructed or reconstructed subsequent to February 1, 1948, the effective date of GO 26-D.
2. GO 26-D provides that railroads may operate on tracks with structures having less than the minimum clearance if the clearance was lawful when the structure or tracks were built unless the structure or track was constructed or reconstructed subsequent to the effective date of GO 26-D.
3. GO 118 sets forth minimum standards governing the construction, reconstruction, or maintenance of walkways adjacent to railroad tracks.
4. USS requests that we authorize variances for approximately 71 structures and 20 walkways which do not conform to the requirements of GO 26-D and GO 118, respectively, located adjacent to USS' private trackage at Pittsburg so that railroads may send their crews and equipment upon USS' trackage to perform switching services.

5. Switching service on USS' trackage has heretofore been performed wholly by USS' employees and engines, all without a loss time accident attributed to the involved structures or walkways.

6. USS estimates that the cost to bring the structures and walkways up to the requirements of the two General Orders is \$163,000.

7. GO 26-D addresses itself only to structures adjacent to the tracks over which a public utility railroad had been conducting operations on February 1, 1948.

8. The prospective nature of GO 26-D requirements as to structures and tracks which were lawful when constructed is not applicable to trackage and adjacent structures over which no public utility railroad operations were being conducted on February 1, 1948.

9. Train crews unfamiliar with property and the existence and location of the variances would be placed in hazardous situations if the variances were allowed.

10. Authorizing the requested variances has not been shown to serve a public need, nor to serve public convenience, nor to serve public safety.

#### Conclusions

1. Public safety, convenience, or necessity would not be served by authorizing the requested variances.

2. Before USS opens any of its private trackage to railroad operations such trackage and structures and walkways adjacent thereto must be brought up to the specified minimum standards set forth in GO 26-D and GO 118.

3. The relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 13<sup>th</sup>  
day of APRIL, 1976.

William Lyons J. President  
Henry L. Shugart  
Don  
Robert Bateman Commissioners

Commissioner D. W. Holmes, being  
necessarily absent, did not participate  
in the disposition of this proceeding.