

Decision 84 OS 112**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The Atchison, Topeka
and Santa Fe Railway Company for
Exemption from General Order 26-D
as to Two Additional Cars,
Commensurate with Exemptions
Previously Granted.

Application 84-03-31
(Filed March 8, 1984)

O P I N I O N

By Decision (D.) 92899 dated April 7, 1981 and D.93658 dated October 20, 1981, in Application (A.) 60009 and A.60849 respectively, The Atchison, Topeka and Santa Fe Railway Company (AT&SF) was granted authority to operate five excess-width cars over its lines in California. The five cars are Southern Pacific Transportation Company (SP) No. 598376, SP No. 598380, AT&SF 90438, AT&SF 95012 and AT&SF 95018.

By this application AT&SF seeks identical authority for two additional cars, with identical dimensions, because of additional aircraft orders placed by the Department of Defense with McDonnell Douglas Corporation.

The application states that the five cars covered by D.92899 and D.93658 are in active service transporting fuselage assemblies for military F-18 fighter aircraft from Northrup Corporation at El Segundo, California to McDonnell Douglas Corporation at Robertson, Missouri.

On March 20, 1984 the United Transportation Union (UTU) filed a protest and request for public hearing to determine what, if any, new, additional, and changed circumstances are now in place which require the exemption of the additional cars. The protest stated that the points and authority in opposition would, if a hearing was held, be identical to those presented in opposition to

A.60009 and A.60849, expressing concern as to the pressing need for the additional cars, but that it did not wish to broaden the issues as presently defined. The protest also raises the issue that the two additional cars are not identified. On April 18, 1984 one car was identified as AT&SF 95005.

By letter dated May 18, 1984, addressed to the assigned Administrative Law Judge (ALJ), W. L. Oliver, the Principal of the Commission's Railroad Operations and Safety Branch, Transportation Division advised that:

"During recent staff checks concerning the movement of previously authorized excess width cars transporting F18 aircraft assemblies by the Santa Fe, (D.92899 and D.93658) neither the staff nor carrier representatives were able to positively determine that the notification required by Condition No. 1 of previous decisions was provided to all affected trains."

The letter requested additional conditions to those contained in D.92899 and D.93658.

By letter dated May 23, 1984 addressed to the ALJ, UTU again requested the application be set for hearing concerning the inability of the staff or carrier representatives to positively determine that the required notification was provided to all affected trains.

On June 5, 1984 a letter of clarification was sent to the ALJ by Mr. Oliver advising:

"Although Mr. Evans' letter of May 23, 1984 suggests otherwise, my letter of May 18 did not say that Santa Fe had failed to comply with the requirements of previous orders authorizing operation of these excess dimension cars. I said we merely wanted to ensure better documentation so that the staff can more easily audit compliance."

(Copies of all letters were sent to all parties of record).

No other protests have been filed.

Review of the application and filings lead to the conclusion that the application should be granted. A public hearing is not necessary; a hearing would adduce no new facts or considerations not previously addressed. The excess-width cars are required in order to enclose the outer dimensions of the F-18. The additional cars are necessary if the production and delivery schedules to the military are to be maintained, which is clearly essential to military defense. The circumstances surrounding the need for the cars are the same as those in A.60009 and A.60849.

With respect to the UTU request for a hearing, the petition states that the points of authority in opposition would be identical to those presented in A.60009. It should be noted that at the hearing in A.60009, UTU opposed the application on the basis of safety but sponsored no witnesses or evidence. While not precluding any showing it may wish to make, the pleadings are clear that UTU has no plans for an affirmative showing. With respect to the car not identified, we will require AT&SF to provide identification prior to placing it in operation.

With respect to the second request for hearing (UTU's letter of May 23, 1984), it is clear from the staff letter of June 5, 1984 that the required notifications were furnished. The staff request is a suggestion to assist staff in its efforts to audit compliance.

The staff is directed to review records of AT&SF to determine whether AT&SF is complying with Ordering Paragraph 1 of this decision. The review is to be undertaken within 30 days.

By letter dated June 7, 1984 applicant advised that:

"At the request of the aircraft manufacturers, the reconstruction of ATSF 95005 was given top priority and it was completed and released at Topeka on the afternoon of June 6. It is scheduled to be placed for loading at Hawthorne on June 12, meaning it will enter California about June 10.

"We have advised McDonnell Douglas that this car cannot be available to them by June 12, and that we will have to hold it at Arizona. They have slightly rearranged their production schedule but advise that the car must be available for production by June 20 or there will be a serious disruption in production schedules."

Findings of Fact

1. By D.92899 and D.93658 AT&SF was granted authority to operate five excess width cars over its lines in California.
2. Because of additional aircraft orders placed by the Department of Defense with McDonnell Douglas Corporation, it is necessary to place two additional excess width cars in service.
3. The additional cars to be placed in service will have dimensions identical to those of the five cars presently in service.
4. A public hearing is not necessary.

Conclusions of Law

1. AT&SF should be authorized to place two additional excess-width cars in service subject to the same conditions as apply to the five excess width cars presently in service, plus the additional condition suggested by the Commission staff which condition shall also apply to the five additional cars presently in service.
2. Because the cars are needed to deliver material necessary to the national defense the decision should be effective today.
3. Notice of the following order did not appear on the Commission's public agenda as required by the Government Code. This

matter is an unforeseen emergency under Public Utilities Code § 306(b) in that it is necessary that the car enter California by June 18 to avoid disruption in production schedules, which schedules are set by requirements of the U.S. Department of Defense. A disruption could have an adverse effect on national security.

O R D E R

IT IS ORDERED that:

1. AT&SF is authorized to operate two additional cars, AT&SF 95005 and another to be identified, over its lines in California from El Segundo en route to McDonnell Douglas Corporation at Robertson, Missouri subject to the following conditions:

- a. Such cars shall be operated subject to the provisions of Section 7 of General Order 26-D.
The train order or message required by Sub-Sections 7.5 and 7.6 shall include the wide car's number. If a message is used, the car number shall be cross-referenced onto the train's clearance card. Where clearance cards are not required, procedures shall be established to notify crew of train carrying the cars and of opposing trains. A method of record retention, subject to audit by the Commission's staff, shall be established to indicate to whom the required notification has been provided and the method of notification.
- b. Such cars and any cars containing lading in excess of ten feet, ten inches wide shall be blocked together in the train.
- c. Such cars shall not be left standing on tracks where adjacent track centers are less than fifteen feet apart.

- d. A train containing such cars shall not meet, pass, or be passed on curves, turnouts, or locations where track centers are less than fourteen feet apart by any rail movement in excess of ten feet, ten inches wide.
 - e. Such cars shall have alternating red and white reflective four-inch-wide diagonal stripes from floor to top on the end portion which extends beyond five feet, five inches from center line.
 - f. Movement of such cars shall be expedited and handled in through trains and mainlined wherever operations will permit.
 - g. Employees shall be prohibited from riding such cars or on cars moving past such cars on adjacent tracks.
2. The above conditions are also made applicable to the excess width cars covered by D.92899 (A.60009) and D.93658 (A.60849).
 3. Prior to operating the unidentified car AT&SF shall notify the Commission in writing of its identification number.
 4. The application is granted as set forth above.

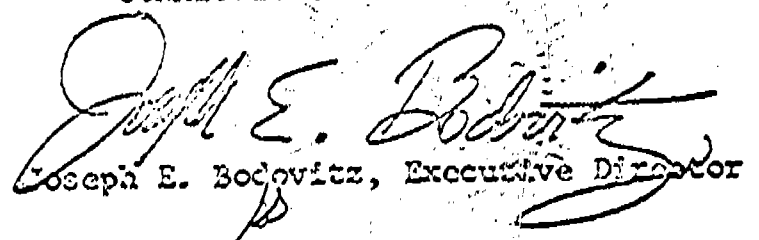
This order is effective today.

Dated JUN 13 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
WILLIAM T. ZAGLEY
Commissioners

Commissioner Priscilla C. Crow,
being necessarily absent, did
not participate

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

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