

APR 14 1988

Decision 88 04 015 APR 13 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of St. Helena, City of Napa,)
 Town of Yountville, County of Napa,)
 and Napa Valley Vintners)
 Association,)

Complainants,)

v.)

Napa Valley Wine Train, Inc.,)

Defendant.)

Case 88-03-016
 (Filed March 7, 1988;
 amended March 11, 1988)

ORDER TO SHOW CAUSE

On March 7, 1988 City of St. Helena, City of Napa, Town of Yountville, County of Napa, and Napa Valley Vintners Association (complainants) filed their complaint against Napa Valley Wine Train, Inc. (defendant) alleging violations of the Public Utilities (PU) Code, PU Commission Rules of Practice and Procedure, The Federal Railroad Safety Act of 1970 (FRSA) and The California Environmental Quality Act (CEQA). On March 11 the first amendment to the complaint was filed, adding 16 parties as complainants to those originally shown.

The complaint generally alleges the following:

1. Defendant has purchased approximately 21 miles railroad line from the Southern Pacific Transportation Company, intending to operate a passenger train service in the Napa Valley between Napa and St. Helena.

2. Defendant has rehabilitated the line by installing new ballast, ties and rails, has constructed a maintenance facility, and has advertised its intent to operate the service.
3. Defendant has commenced limited freight service and intends to commence passenger service by May 30, 1988.
4. Reports in various publications estimate that defendant will carry from 1100-1800 passengers per day, and 450,000 passengers annually.
5. Defendant has stated it will be transporting its passengers to and from wineries, and will provide walkways and shuttle buses to effectuate the transportation.
6. Current and proposed activities of defendant constitute violations of the PU Code, FRSA and CEQA.
7. In response to a letter from the Commission informing defendant that it is subject to its jurisdiction, defendant responded, in part, that it is not aware of any railroad operations it plans to conduct that lie within the regulatory jurisdiction of this Commission.

Defendant has filed with the Interstate Commerce Commission a petition in an attempt to have it assume exclusive jurisdiction over defendant. However, to date, the ICC has not issued a response.

In its answer to the complaint, defendant admits that it has purchased and rehabilitated the line in question, and has provided freight service thereon. It states that this Commission lacks jurisdiction over the subject matter of the complaint, and further professes that the complaint fails to state a claim for which relief may be granted. It maintains that it has acted in reasonable reliance upon earlier representations by members of the

Commission's staff in the conduct of its actions. Finally, defendant contends that even if this Commission determines that the activities of defendant referred to in the complaint constitute a "project" within the meaning of CEQA, this particular project is exempt from any requirement to prepare an environmental impact report under the terms of that Act. The answer requests that we order complainants to amend and clarify various allegations pertaining to allegedly wrongful conduct of defendant.

PU Code § 486 requires carriers subject to Commission jurisdiction to file with the Commission schedules showing rates and fares for the transportation of passengers between points within California. Under FRSA as well as under Commission general orders and regulations relating to rail safety, it appears that the Commission may have jurisdiction over operational aspects of defendant's activities. Also, there may be environmental impacts which need to be addressed at the state or local level pursuant to CEQA. In order to address these matters expeditiously, defendant should be ordered to show cause why the Commission should not assert its jurisdiction over defendant's present and proposed activities as described in the complaint.

IT IS ORDERED that:

Napa Valley Wine Train, Inc. shall show cause why it should not be required to submit to the jurisdiction of this Commission with respect to the proposed operation of a passenger train service, as identified in the complaint and acknowledged in its answer to the complaint. Defendant may file a written response to this order, as may other parties. Said response shall be filed by April 25, 1988, with the original and 12 copies filed with the Commission's Docket Office, and a copy served upon attorney for complainants. Hearing shall be held on May 4, 1988 at 10:00 a.m. in a Commission hearing room at 505 Van Ness Avenue, San Francisco, CA, at which time defendant and other parties may appear and be heard. ✓

Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that defendant contemplates commencement of service by May 30, 1988, and the public interest requires that this issue be considered as soon as possible. This justifies our action today under PU Code § 306 (b).

The Executive Director shall cause a copy of this order to be personally served upon the attorney for defendant.

The effective date of this order is today.

Dated APR 13 1988, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Donald Vial, being
necessarily absent, did not
participate.

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

Victor Weisler
Victor Weisler, Executive Director

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