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Decision 88-07-019 July 8, 1988

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 Vinters Association, Complainants, v Napa Valley Wine Train, Inc., Defendant.	)	Case 88-03-016 (Filed March 7, 1988; amended March 11, 1988)

Michael S. Riback, Attorney at Law, for City of St. Helena, City of Napa, Town of Yountville, County of Napa, and Napa Valley Vinters Association, complainants.
Victor D. Ryerson, Attorney at Law, for Napa Valley Wine Train, Inc., defendant.
Norm Manzer, for Friends of Napa Valley, W. Robert Phillips, for Napa Valley Grape Growers, and Greg Bissonette, Gunther R. Detert, Tom Jefferson, Thomas H. May, and Lowell Smith, for themselves; interested parties.
Ira Kalinsky, Attorney at Law, for Transportation Division.

O P I N I O N

On April 13, 1988 by Decision 88-04-015 in this proceeding we ordered Napa Valley Wine Train, Inc. (respondent) to show cause why it should not be required to submit to the jurisdiction of this Commission concerning the proposed operation of a passenger train service, in which it will transport almost 500,000 passengers annually between Napa and St. Helena. The decision invited written responses from respondent and other parties, and provided for public hearing on the threshold

issue of jurisdiction on May 4. Hearing was held in San Francisco before Administrative Law Judge (ALJ) John Lemke, and the matter was submitted with respect to the issue of jurisdiction. The parties were offered the opportunity to waive the 30 day waiting period following issuance of the ALJ's proposed decision. However, respondent was not agreeable to this option.

Responses were filed by respondent, by the complainants, City of St. Helena, et al, and by the Commission's Transportation Division. The parties' written responses are summarized as follows:

Respondent

Respondent urges that we vacate the Order to Show Cause, find that respondent is not subject to our jurisdiction with respect to matters other than the regulation of safety, and that no environmental impact report (EIR) concerning its planned passenger operations is necessary.

Respondent maintains that this Commission's issuance of the Order To Show Cause was inappropriate because it has not acted in violation of any citation, order, decree, or rule of the Commission, nor is it required to obtain any permit or certificate from the Commission to commence passenger operations. Further, respondent contends that the scope of our jurisdiction is limited by federal statute, asserting that recent federal legislation has preempted California authority to regulate all intrastate as well as interstate transportation of interstate rail carriers. Respondent refers us to the recent Interstate Commerce Commission (ICC) decision, Mendocino Coast Ry., Inc.--Discontinuance of Train Service in Mendocino County, CA (1987) 4 I.C.C. 2d 71. Respondent insists that this decision was based upon the fact that California had elected not to be certified pursuant to Section 214 of the Staggers Rail Act of 1980, 49 U.S.C. Section 11501. In other words, respondent observes, without certification a state cannot

regulate intrastate railroad operations, since all rail transportation in an uncertified state is deemed interstate.

Concerning the EIR issue, respondent states that since California has no authority to regulate intrastate passenger transportation, a fortiori it cannot require preparation of an EIR under the California Environmental Quality Act (CEQA). Imposition of any CEQA requirement, respondent avers, depends upon the existence of a "project" within the proper jurisdictional exercise of a state or local agency, board or commission. Respondent argues that the California Supreme Court has construed the term "project" to signify that before an EIR is required, the government "must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding" a private activity. (Friends of Mammoth v. Board of Supervisors of Mono County (1972) 8 Cal. 3d 247, 262-3, 104 Cal Rptr. 761.) It believes that the State of California has no such minimal link, either by having a proprietary interest in, or through economic regulation of respondent's proposed passenger transportation; hence, there can be no "project" within the Commission's authority which requires preparation of an EIR.

Respondent insists that we need not search for reasons to assert jurisdiction in order to satisfy the demands for environmental review of its expected service, since the California legislature has declared all aspects of the institution of passenger service on existing railroad rights-of-way to be categorically exempt from the application of CEQA, and any effort by this Commission to assert jurisdiction with respect to CEQA requirements would be futile. Respondent cites Section 21080(b) of the California Public Resources Code (CPRC):

> "(CEQA) shall not apply to the following:"
>
> * * *
>
> "(11) A project for the institution or increase of passenger or commuter services on rail

> or highway rights-of-way already in use, including modernization of existing stations and parking facilities."
> (Emphasis added.)

Complainants

Complainants maintain that respondent's proposed service is not exempt from CEQA, nor from Rule 17.1 et seq. of the Commission's Rules of Practice and Procedure; that the exemption set forth in CPRC Section 21080(b)(11), supra, was not intended to, nor does it apply to a project such as respondent's. Complainants assert that Subdivision (a) of CPRC Section 21080 is the governing statute concerning applicability of CEQA. Subdivision (a) reads as follows:

> "(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where the project is exempt from the preparation of an environmental impact report pursuant to Section 21166)."

Further, complainants emphasize that CEQA defines "project" broadly to include all "activities involving the issuance to a person of a lease, permit, license, certification, or other entitlement for use by one or more public agencies." Generally they argue that CEQA applies where a public agency has some "minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity," also citing Friends of Mammoth, supra. They maintain that the provisions of Section 21080(b)(11) cited above which exempt from CEQA a project for the institution or increase of passenger or commuter services on rail rights-of-way already in

use cannot be applied to respondent's project since the passenger service formerly performed over this line has not been provided for over 50 years, and freight service had ceased prior to respondent's very recent handling of a limited amount of cargo.

Complainants contend that the rail line in question had obviously fallen into such a state of disrepair as to require its rehabilitation. They state that CPRC Section 21080(b)(11) which was enacted in 1978 as Senate Bill 1894 was authored for the purpose of furthering the proposed operation of a high-speed passenger commute train service between Los Angeles and San Diego.

Exhibit E included with complainants' response is an affidavit by respondent's president, John McCormack, dated June 18, 1987 stating that the railroad was currently under construction. Also included with Exhibit E is a decision of the ICC dated December 3, 1985, stating that by an earlier decision in October 1985, the Southern Pacific Transportation Company (SP) had been authorized to abandon the rail line in question, but that respondent had offered to purchase the line; accordingly, the application to abandon was dismissed. Exhibit G of the response is a copy of an article appearing in the February 10, 1988 Napa Valley Times stating that the deliveries of three cars loaded with stainless steel wine vats to a consignee in Rutherford were the first freight shipments made on the line in three years.

Finally, complainants point out that in Friends of Mammoth the court held that CEQA is to be interpreted in such a manner as to afford the fullest possible protection to the environment.

Staff

Staff cites Article 12 of the California Constitution as the authority for the Commission to regulate intrastate passenger service by railroads. Staff also notes that there are 17 Commission general orders governing the proposed operations of respondent. Further, staff points out that respondent concedes it

is subject to Commission authority over railroad safety matters not otherwise preempted by federal law. (See respondent's Request for Extension of Time to Answer Complaint.) Staff emphasizes that the ICC has not granted respondent's Petition for a Declaratory Order filed in Finance Docket No. 31156, and urges that in the absence of an order binding on the State of California, respondent should not be allowed to persist in its refusal to comply with California law.

Staff also observes that the definition of a CEQA project in CPRC Section 21065 includes activities undertaken which are supported in whole or in part through public funds, as well as those involving issuance of a certificate or other entitlement.

Staff believes there may be substantial environmental impacts throughout the Napa Valley stemming from respondent's proposed operation, principally in connection with the proposed volume of traffic and its impact on existing patterns of pedestrian and motor vehicle traffic; further, that additional concerns relating to safety, noise, and air quality may be involved and should be considered. Finally, staff notes that the Commission is reviewing the release of funds to reimburse respondent for crossing warning devices. (See Exhibit A to Staff Response, declaration of Robert Stich, including letter dated October 13, 1987 from Stich to respondents's president, John McCormack.)

Discussion

After considering the arguments presented both in the written responses of the parties and during the May 4 hearing, we conclude that the service proposed by respondent falls under the jurisdiction of this Commission with respect to economic and safety matters, as well as to issues relating to environmental impact. The last passenger service on the line was performed nearly 60 years ago, and the last freight service prior to the February 1988 shipments was performed three years before that date. The SP had requested permission to abandon the line, a request virtually uncontested except for respondent's request to acquire the

operation for its own purposes, involving activities significantly different from those performed by SP. This abandonment proceeding indicates that there had been a virtual cessation of all rail service, freight and passenger, in the Napa Valley. Thus, the exemption in CPRC 21080(b)(11) cannot be invoked because the existing line could not have been used without the substantial efforts undertaken by respondent to make the line operable.

Respondent's argument that this Commission should not be allowed to assert jurisdiction here because it has not elected to be certified pursuant to Section 214 of the Staggers Rail Act of 1980 must be rejected. The Mendocino case cited by respondent was the subject of this Commission's appeal to the United States Court of Appeals for the District of Columbia Circuit, No. 87-1739. In dismissing this appeal in May on the grounds that the case lacked ripeness, the Court of Appeals described the ICC's jurisdictional ruling in Mendocino as a "controverted policy statement." The Court further said that the ICC ruling does not constitute the "final word on the subject" and does not have any impact upon California's conduct of its "day to day affairs." Without a final decision in this matter from a higher tribunal, this Commission should not forsake its considered duty to the many citizens who may be adversely affected by the operation proposed by respondent. Furthermore, it is our opinion here that this Commission has jurisdiction over the environmental impacts resulting from respondent's proposed service regardless of the eventual resolution of the jurisdictional issue that was posed by the ICC in the now concluded Mendocino case.

The California Supreme Court in Friends of Mammoth, supra, held that CEQA must be interpreted in such a manner as to afford the fullest possible protection to the environment. Respondent is willing to do the necessary environmental studies on the proposed construction of two stations in Napa. (See article from the Napa Register dated April 14, 1988, included with the

staff's response as Attachment B.) We feel compelled to comment that had respondent been disposed to have the environmental studies undertaken in connection with the rest of its proposed operation, it is not unlikely that the study and any necessary mitigations could have been completed by now, in time for respondent to commence its proposed service.

As noted by the parties, the California Supreme Court held in Friends of Mammoth that CEQA is generally applicable where a public agency has "some minimal link with the activity, either by direct proprietary interest or by permitting, regulating or funding private activity." It appears that this Commission has more than merely a minimal link in view of our acknowledged jurisdiction over safety matters on the respondent's line, as well as the potential release of funds to reimburse respondent for crossing warning devices.

The question of jurisdiction over matters involving safety has been decided in Southern Pacific Transportation Company v. Public Utilities Commission of the State of California (1987) No. 86-2983, where the United States Court of Appeals for the Ninth Circuit upheld the district court's grant of summary judgment in favor of the Commission, holding that this state's track clearance and walkway regulations were not preempted by federal rules or regulations.

Given our claimed jurisdiction over economic issues involving respondent, there are Public Utilities (PU) Code requirements applicable to the proposed service, such as those relating to fare increases, the filing of annual reports, etc.

Complainants assert that they only wish to have respondent comply with the environmental impact regulations required of any other business in California.

With respect to the issue of environmental oversight, the essential facts are these: respondent is proposing to transport almost 500,000 passengers annually, over a line not used for

passenger transportation for several decades, and never used to the extent proposed by respondent, through an environment considerably different from the one existing 60 years ago.

We are dealing here with sensitive issues having great environmental importance to the people residing in the Napa Valley. To ignore the potential impacts of respondent's service involving noise, air quality, traffic congestion, etc. is contrary to the purpose of CEQA. Moreover, respondent acknowledges that if this Commission does not have the power to require a study of such environmental elements, then it is not aware of any other agency so empowered.

Respondent's contention that this Commission has acted inappropriately in issuing the Order to Show Cause is without merit. PU Code Section 701 provides plenary power to the Commission to do all things necessary and convenient in the exercise of its power and jurisdiction. We are finding in this decision that respondent is obliged to comply with the provisions of our rules relating to CEQA (Rule 17.1, et seq.). This finding entails compliance with procedures which ought to have been followed well in advance of any proposed start-up date. Respondent has been furnished the opportunity to argue the issue of jurisdiction, as have the other parties. In the circumstances the Show Cause procedure followed has been wholly appropriate for determining this threshold issue of jurisdiction.

In accordance with PU Code Section 311, as amended by Assembly Bill 3383, the ALJ's proposed decision was mailed to appearances on May 19, 1988. Comments were due by June 8. Respondent submitted its comments on June 8, but inadvertently omitted attaching the original of the required certificate of service. It submitted its comments one day late, on June 9, and also filed its Motion For Leave To Submit Late-Filed Comments on that date.

The staff filed its comments on June 8. Complainants filed their reply to respondents late-filed comments on June 13. Both complainants and staff concur with the proposed decision.

Respondent's Motion For Leave To Submit Late-Filed Comments is granted. Respondent has essentially reargued its case, asserting (1) failure of the decision to address the alleged nonexistence of a project, (2) failure of the decision to address the specific statutory exemption covering institution of passenger service, (3) the existence of Federal jurisdiction over the proposed activity, and (4) the impropriety of the form of the proposed order.

The first three issues have been adequately addressed in the ALJ's proposed decision. Further, the form of the order, enjoining respondent from commencing passenger service until it has complied with all applicable requirements of CEQA, is particularly appropriate in these circumstances stemming, as it does, from an Order To Show Cause. The proposed decision is proper in all respects and will be adopted.

Findings of Fact

1. Respondent proposes to operate a passenger train service, transporting almost 500,000 passengers annually in the Napa Valley, over a line formerly operated by the SP, on which passenger service has not been performed for approximately 60 years, and on which freight service had not been performed for three years prior to February 1988.

2. The provision contained in CPRC Section 21080(b)(11) exempting the planned service from compliance with CEQA cannot be invoked by respondent, because the rail right-of-way used by respondent was not already in use prior to its acquisition of the line from the SP, and could not be used without first effecting substantial repairs and construction.

3. The definition of "project" set forth in CPRC Section 21065 (b) includes activities supported through various forms of assistance from public agencies.

4. This Commission has jurisdiction over respondent's proposed service concerning matters involving safety, as well as matters involving the filing of tariffs, timetables, reports, etc.

5. In view of Findings of Fact 3 and 4, this Commission has at least the "minimal link" with the respondent's planned service, as required under the California Supreme Court's holding in Friends of Mammoth cited herein.

6. The California Supreme Court in Friends of Mammoth held that the provisions of CEQA must be interpreted in such a manner as to afford the fullest possible protection to the environment.

7. This Commission is the appropriate agency to give oversight under CEQA to respondent's proposed rail passenger service.

Conclusions of Law

1. The rail passenger service proposed by respondent is subject to the jurisdiction of this Commission to the extent set forth in various PU Code provisions, general orders, and rules contained in the Commission's Rules of Practice and Procedure, particularly those relating to implementation of CEQA set forth in Rule 17.1, et seq.

2. Respondent should be ordered to refrain from instituting the passenger service described in this decision until after having complied with applicable CEQA requirements set forth in the Commission's Rules of Practice and Procedure, and with all other applicable rules, regulations and general orders of this Commission.

O R D E R

IT IS ORDERED that Napa Valley Wine Train, Inc. shall not institute any passenger service until it complies with all applicable requirements of the California Environmental Quality Act, as set forth in this Commission's Rules of Practice and Procedure, and with all other applicable statutes, rules, regulations, and general orders of this Commission, and until authorized to commence the proposed service by this Commission.

This order is effective today.

Dated JUL 8 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda, being necessarily absent, did not participate.

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

Victor Weisser, Executive Director

AO

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JUL 11 1988

Decision 88 07 019 JUL 8 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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use, cannot be applied to respondent's project since the passenger service formerly performed over this line has not been provided for over 50 years, and freight service had ceased prior to respondent's very recent handling of a limited amount of cargo.

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is subject to Commission authority over railroad safety matters not otherwise preempted by federal law. (See respondent's Request for Extension of Time to Answer Complaint.) Staff emphasizes that the ICC has not granted respondent's Petition for a Declaratory Order filed in Finance Docket No. 31156, and urges that in the absence of an order binding on the State of California, respondent should not be allowed to persist in its refusal to comply with California law.

Staff also observes that the definition of a CEQA project in CPRC Section 21065 includes activities undertaken which are supported in whole or in part through public funds, as well as those involving issuance of a certificate or other entitlement.

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own purposes, involving activities significantly different from those performed by SP. This abandonment proceeding indicates that there had been a virtual cessation of all rail service, freight and passenger, in the Napa Valley. Thus, the exemption in CPRC 21080(b)(11) cannot be invoked because the existing line could not have been used without the substantial efforts undertaken by respondent to make the line operable.

Respondent's argument that this Commission should not be allowed to assert jurisdiction here because it has not elected to be certified pursuant to Section 214 of the Staggers Rail Act of 1980 must be rejected. The Mendocino case cited by respondent is the subject of this Commission's appeal to the United States Court of Appeals for the District of Columbia Circuit, No. 87-1739. Without a final decision in this matter from a higher tribunal, this Commission should not forsake its considered duty to the many citizens who may be adversely affected by the operation proposed by respondent. Furthermore, it is our opinion here that this Commission has jurisdiction over the environmental impacts resulting from respondent's proposed service regardless of the eventual resolution of the Mendocino case.

The California Supreme Court in Friends of Mammoth, supra, held that CEQA must be interpreted in such a manner as to afford the fullest possible protection to the environment. Respondent is willing to do the necessary environmental studies on the proposed construction of two stations in Napa. (See article from the Napa Register dated April 14, 1988, included with the staff's response as Attachment B.) We feel compelled to comment that had respondent been disposed to have the environmental studies undertaken in connection with the rest of its proposed operation, it is not unlikely that the study and any necessary mitigations could have been completed by now, in time for respondent to commence its proposed service.

As noted by the parties, the California Supreme Court held in Friends of Mammoth that CEQA is generally applicable where a public agency has "some minimal link with the activity, either by direct proprietary interest or by permitting, regulating or funding private activity." It appears that this Commission has more than merely a minimal link in view of our acknowledged jurisdiction over safety matters on the respondent's line, as well as the potential release of funds to reimburse respondent for crossing warning devices.

The question of jurisdiction over matters involving safety has been decided in Southern Pacific Transportation Company v. Public Utilities Commission of the State of California (1987) No. 86-2983, where the United States Court of Appeals for the Ninth Circuit upheld the district court's grant of summary judgment in favor of the Commission, holding that this state's track clearance and walkway regulations were not preempted by federal rules or regulations.

Given our claimed jurisdiction over economic issues involving respondent, there are Public Utilities (PU) Code requirements applicable to the proposed service, such as those relating to fare increases, the filing of annual reports, etc.

Complainants assert that they only wish to have respondent comply with the environmental impact regulations required of any other business in California.

With respect to the issue of environmental oversight, the essential facts are these: respondent is proposing to transport almost 500,000 passengers annually, over a line not used for passenger transportation for several decades, and never used to the extent proposed by respondent, through an environment considerably different from the one existing 60 years ago.

We are dealing here with sensitive issues having great environmental importance to the people residing in the Napa Valley. To ignore the potential impacts of respondent's service involving

noise, air quality, traffic congestion, etc. is contrary to the purpose of CEQA. Moreover, respondent acknowledges that if this Commission does not have the power to require a study of such environmental elements, then it is not aware of any other agency so empowered.

Respondent's contention that this Commission has acted inappropriately in issuing the Order to Show Cause is without merit. PU Code Section 701 provides plenary power to the Commission to do all things necessary and convenient in the exercise of its power and jurisdiction. We are finding in this decision that respondent is obliged to comply with the provisions of our rules relating to CEQA (Rule 17.1, et seq.). This finding entails compliance with procedures which ought to have been followed well in advance of any proposed start-up date. Respondent has been furnished the opportunity to argue the issue of jurisdiction, as have the other parties. In the circumstances the Show Cause procedure followed has been wholly appropriate for determining this threshold issue of jurisdiction.

In accordance with PU Code Section 311, as amended by Assembly Bill 3383, the ALJ's proposed decision was mailed to appearances on May 19, 1988. Comments were due by June 8. Respondent submitted its comments on June 8, but inadvertently omitted attaching the original of the required certificate of service. It submitted its comments one day late, on June 9, and also filed its Motion For Leave To Submit Late-Filed Comments on that date.

The staff filed its comments on June 8. Complainants filed their reply to respondents late-filed comments on June 13. Both complainants and staff concur with the proposed decision.

Respondent's Motion For Leave To Submit Late-Filed Comments is granted. Respondent has essentially reargued its case, asserting (1) failure of the decision to address the alleged nonexistence of a project, (2) failure of the decision to address

noise, air quality, traffic congestion, etc. is contrary to the purpose of CEQA. Moreover, respondent acknowledges that if this Commission does not have the power to require a study of such environmental elements, then it is not aware of any other agency so empowered.

Respondent's contention that this Commission has acted inappropriately in issuing the Order to Show Cause is without merit. PU Code Section 701 provides plenary power to the Commission to do all things necessary and convenient in the exercise of its power and jurisdiction. We are finding in this decision that respondent is obliged to comply with the provisions of our rules relating to CEQA (Rule 17.1, et seq.). This finding entails compliance with procedures which ought to have been followed well in advance of any proposed start-up date. Respondent has been furnished the opportunity to argue the issue of jurisdiction, as have the other parties. In the circumstances the Show Cause procedure followed has been wholly appropriate for determining this threshold issue of jurisdiction.

Findings of Fact

1. Respondent proposes to operate a passenger train service, transporting almost 500,000 passengers annually in the Napa Valley, over a line formerly operated by the SP, on which passenger service has not been performed for approximately 60 years, and on which freight service had not been performed for three years prior to February 1988.

2. The provision contained in CPRC Section 21080(b)(11) exempting the planned service from compliance with CEQA cannot be invoked by respondent, because the rail right-of-way used by respondent was not already in use prior to its acquisition of the line from the SP, and could not be used without first effecting substantial repairs and construction.

3. The definition of "project" set forth in CPRC Section 21065 (b) includes activities supported through various forms of assistance from public agencies.

4. This Commission has jurisdiction over respondent's proposed service concerning matters involving safety, as well as matters involving the filing of tariffs, timetables, reports, etc.

5. In view of Findings of Fact 3 and 4, this Commission has at least the "minimal link" with the respondent's planned service, as required under the California Supreme Court's holding in Friends of Mammoth cited herein.

6. The California Supreme Court in Friends of Mammoth held that the provisions of CEQA must be interpreted in such a manner as to afford the fullest possible protection to the environment.

7. This Commission is the appropriate agency to give oversight under CEQA to respondent's proposed rail passenger service.

Conclusions of Law

1. The rail passenger service proposed by respondent is subject to the jurisdiction of this Commission to the extent set forth in various PU Code provisions, general orders, and rules contained in the Commission's Rules of Practice and Procedure, particularly those relating to implementation of CEQA set forth in Rule 17.1, et seq.

2. Respondent should be ordered to refrain from instituting the passenger service described in this decision until after having complied with applicable CEQA requirements set forth in the Commission's Rules of Practice and Procedure, and with all other applicable rules, regulations and general orders of this Commission.

the specific statutory exemption covering institution of passenger service, (3) the existence of Federal jurisdiction over the proposed activity, and (4) the impropriety of the form of the proposed order.

The first three issues have been adequately addressed in the ALJ's proposed decision. Further, the form of the order, enjoining respondent from commencing passenger service until it has complied with all applicable requirements of CEQA, is particularly appropriate in these circumstances stemming, as it does, from an Order To Show Case. The proposed decision is proper in all respects and will be adopted.

Findings of Fact

1. Respondent proposes to operate a passenger train service, transporting almost 500,000 passengers annually in the Napa Valley, over a line formerly operated by the SP, on which passenger service has not been performed for approximately 60 years, and on which freight service had not been performed for three years prior to February 1988.

2. The provision contained in CPRC Section 21080(b)(11) exempting the planned service from compliance with CEQA cannot be invoked by respondent, because the rail right-of-way used by respondent was not already in use prior to its acquisition of the line from the SP, and could not be used without first effecting substantial repairs and construction.

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5. In view of Findings of Fact 3 and 4, this Commission has at least the "minimal link" with the respondent's planned service,

O R D E R

IT IS ORDERED that Napa Valley Wine Train, Inc. shall not institute any passenger service until it complies with all applicable requirements of the California Environmental Quality Act, as set forth in this Commission's Rules of Practice and Procedure, and with all other applicable statutes, rules, regulations, and general orders of this Commission, and until authorized to commence the proposed service by this Commission.

This order is effective today.

Dated _____, at San Francisco, California.

6. The California Supreme Court in Friends of Mammoth held that the provisions of CEQA must be interpreted in such a manner as to afford the fullest possible protection to the environment.

7. This Commission is the appropriate agency to give oversight under CEQA to respondent's proposed rail passenger service.

Conclusions of Law

1. The rail passenger service proposed by respondent is subject to the jurisdiction of this Commission to the extent set forth in various PU Code provisions, general orders, and rules contained in the Commission's Rules of Practice and Procedure, particularly those relating to implementation of CEQA set forth in Rule 17.1, et seq.

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