

ORIGINAL

Decision 88 12 077 DEC 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN PACIFIC TRANSPORTATION)
COMPANY for exemption from certain)
side clearance requirements of)
General Order No. 26-D with respect)
to an industrial spur track owned by)
and serving Alpha Beta Company in)
La Habra, California.)

Application 88-02-032
(Filed February 18, 1988)

Mailed

DEC 19 1988

OPINION

Southern Pacific Transportation Company (SPTC) requests an exemption from the side clearance requirements of General Order (GO) 26-D for railroad operations conducted on an industrial spur track in La Habra. The track, identified as Spins Track 2468, is owned by Alpha Beta Company (ABC) and serves a warehouse which is owned and operated by ABC.

GO 26-D establishes minimum allowable clearances between railroad tracks and other structures, including side and overhead structures, parallel tracks, and highway crossing structures. Railroad corporations are prohibited from operating cars, trains, motors, engines, or other rolling equipment over tracks on which clearances are less than the prescribed minimum. Subsection 16.2 of the GO provides that the Commission may grant exemptions from the requirements in particular cases upon application by the carrier.

As relevant to this proceeding, Section 3 of the GO establishes minimum side clearance requirements for standard gauge railroads operating freight cars. Side clearance is defined in Subsection 1.5 as "the shortest distance from the center line of track to a structure or obstruction at the side of track."

Subsection 3.2 requires a minimum side clearance of 8' 6" for structures and obstructions not specifically listed in subsequent subsections. Subsection 3.16 establishes additional side clearance requirements for curved track:

"All minimum side clearances prescribed in this section are for tangent track. In general, all structures adjacent to curved track, shall have a minimum side clearance one (1) foot greater than the minimum side clearance otherwise required for tangent track. Where the Commission has determined that space is limited, the minimum side clearances for structures adjacent to tracks of not over twelve (12) degree curvature may be the same as for tangent track, but where track curvature exceeds twelve (12) degrees, one-half (1/2) inch for each degree of the curve shall be added to the minimum side clearance required for tangent track."

According to the application, two spur tracks were constructed to serve the warehouse in 1964. Both tracks extended into the warehouse with loading docks on each side of the pair of tracks. The tracks were curved from the switch to approximately the warehouse entrance as it then existed. ABC subsequently extended the warehouse by approximately 200', removed one of the two tracks, removed 400' from the end of the remaining track, filled in that area with concrete flooring, and extended the loading docks into the area of the expanded warehouse. The track is mostly curved within the expanded area of the warehouse.

In making these changes, ABC generally maintained the same side clearances along the curved track that had existed on the tangent (straight) track in the original warehouse. It did not provide the additional side clearances required by Subsection 3.16 for curved track. SPTC states that ABC was apparently unaware of the additional side clearance requirements when the modifications were made.

Side clearance is also impaired at a concrete column located at the original entrance point to the building. A slight shifting of the tangent track at that point, which occurred during the various modifications to the warehouse made by ABC, reduced the side clearance to 8' 4.25", or 1.75" less than the minimum required by the GO.

Pursuant to Subsection 16.2 of GO 26-D, SPTC requests exemptions from the side clearance requirements of Section 3 as may be necessary for seven structures:

<u>Structure Number</u>	<u>Description</u>	<u>Existing Side Clearance (approximate)</u>
1	North concrete column at entrance portal	8' 9.75"
2	South concrete column at entrance portal	8' 0.75"
3	Post No. 1	8' 8.75"
4	Post No. 2	8' 6"
5	Post No. 3	8' 11.5"
6	Post No. 4	8' 10"
7	Concrete column (part of entrance to original building)	8' 4.25"

Structures 1 through 6 are located along the curved portion of the track and Structure 7 is adjacent to the tangent portion of the track. These structures are identified in a drawing which was attached to the application as an exhibit. Portions of the drawing are reproduced as Appendix A, with references to the above structure numbers added.

Because of alleged ambiguities in the GO, SPTC has indicated that the exact side clearance requirement is uncertain in most cases. Depending on how measurements are made, side clearances for Structures 1 and 2 may actually be in conformance with the GO, according to SPTC. This would be the case if the GO

"is interpreted so the clearance can properly be measured on a line extended from the south portal to the north portal of the new doorway."

SPTC also maintains that when there is a determination of limited space, Subsection 3.16 is unclear whether one-half inch of additional side clearance is required for every degree of curvature or only for each degree of curvature over 12 degrees. It asserts that "it does not appear to be either logical or reasonable that no additional side clearance is required if the amount of track curvature is 12 degrees, but that at least an additional six and one-half (6.5") inches is suddenly required if the amount of curvature is increased by even one additional degree." As shown in Appendix A, the track is curved approximately 22 degrees. Depending on how the rule applies, the additional side clearance requirement is therefore either 11" or 5", or a difference of 6". Based on the more liberal interpretation, side clearance would be adequate for Structure 5 and no exemption would be required if there is also a determination of limited space.

The greatest side clearance deficiency, based on the general rule for curved track, is 1' 5.25" for Structure 2. Impaired side clearances for the other structures do not exceed one foot under any interpretation of the rules. SPTC states that structural modifications to provide side clearances that conform to Section 3 would be "extremely substantial and costly." ABC advised it that the changes needed to provide the full side clearances which might be required are estimated to cost at least \$250,000, and that this would not be economically justified. ABC received approximately 445 cars in 1987. It has advised SPTC that if any needed exemptions from GO 26-D cannot be obtained, this traffic will be diverted to trucks in order to avoid the high cost of the structural modifications.

SPTC states in the application that all of the structures have been painted safety yellow and striped with reflective tape. Signs stating "IMPAIRED SIDE CLEARANCE", in letters at least 2.5" high, have been placed on or adjacent to the structures. In its opinion and that of ABC, these warning measures are adequate to permit safe operations, and physical elimination of any impaired side clearances which may exist would either result in such a minimal change, or would be so expensive as not to be reasonably or economically justified. An exemption, where needed, is therefore considered by SPTC to be the only reasonable and satisfactory solution.

Copies of the application were served on the Brotherhood of Locomotive Engineers and the United Transportation Union (UTU), and notice of the application appeared in the Daily Transportation Calendar. The UTU filed a protest on March 15, 1988, requesting that the matter be set for a hearing.

By letter dated June 6, 1988 and received by the Administrative Law Judge on June 20, 1988, SPTC advised the Commission that representatives of SPTC, ABC, UTU, and the Commission's staff met at the warehouse. SPTC stated that as a result of the meeting, it consented to issuance of an order in which the Commission determines that space is limited and in which the seven structures are exempted from the side clearance requirements of GO 26-D, subject to various conditions. It requested that such an order be made effective approximately ten days after its issuance. The UTU protest was subsequently withdrawn.

The conditions cited by SPTC in its letter, and to which it consents, include maintaining the warning signs, painting, and striping described in the application, as well as the following additional conditions:

- "1. Existing signs on the two concrete entrance columns at the entrance portal, described in paragraphs A and B of Section VI of the Application, are to be lowered and placed so that the bottom edge of such signs are no less than eleven feet, nine inches (11'9") and no more than twelve feet, three inches (12'3") above top of rail.
- "2. An additional sign shall be affixed to the outside wall of building on the magnetic north side of the entrance portal and will be illuminated during hours of darkness. The additional sign shall be positioned with the bottom edge no less than eight feet (8') nor more than eight feet, six inches (8'6") above top of rail and the right (south) edge of such sign shall be located within four feet (4') of the concrete column on the north side of the entrance portal. The size of the sign shall be approximately three feet (3') wide and one and one-half feet (1'6") high. The sign shall contain four rows of lettering, as follows:

"STOP
Movements Must Be
Preceded By Train-
Person on Foot

- "Said sign shall have a white background, the word "STOP" shall be in red lettering approximately six inches (6") high with a brushstroke width of approximately three-quarters of an inch (3/4") and the remaining lettering shall be black, approximately three inches (3") high, with a brushstroke width of approximately three eighths of an inch (3/8").
- "3. Instructions shall be issued by railroad in an appropriate manner to members of train crews requiring members of such crews to remain on the magnetic north side of the spur track, at points at or beyond the entrance to the building, at all times when railroad equipment is in motion."

Discussion

Subsection 3.16 of GO 26-D establishes a general rule that for curved track, one foot should be added to the side clearance required for tangent track. Under this general rule, the minimum side clearance would be 9' 6" for Structures 1 through 6. None of these structures are in compliance with this general rule. Where the Commission determines that space is limited, somewhat smaller side clearances, which vary according to the degrees of track curvature, are allowed by Subsection 3.16. None of these structures (with the possible exception of Structure 5) are in compliance with this exception to the general rule either. Thus, a mere determination that space is limited is insufficient to allow continuation of the impaired side clearances under the terms of Section 3. On the other hand, Subsection 16.2 of GO 26-D provides for exemption from any of the requirements of the GO without regard to a determination of limited space. Such a determination is therefore unnecessary in this case, and we decline to make one. Since we are granting exemptions for all of the structures under Subsection 16.2, including Structure 5, resolution of a possible ambiguity in Subsection 3.16 concerning the method of computing additional clearance according to degrees of curvature is also unnecessary.

It is apparent that ABC was not fully aware of the requirements of GO 26-D when the warehouse was modified, and that corrective modifications at this time would involve considerable expense. Since the protest has been withdrawn, and the parties have met and discussed several conditions to promote safety following an on-site meeting, with the opportunity for physical inspection of the facilities by all concerned, we will grant an exemption for each of the seven structures, subject to the conditions listed above. We are satisfied that measures contemplated in these conditions will provide adequate warning of impaired side clearances at the warehouse. SPTC and ABC are placed

on notice that future modifications to the warehouse should fully comply with the GO.

We reject any argument that Structures 1 and 2 are in conformance with Section 3 and do not require an exemption. We dismiss the attempt to interpret Subsection 1.5 to allow side clearance measurements to be made along an imaginary line between the two entrance portals. We find no basis for such an interpretation. The rule is clear that the relevant measure is the "shortest distance" between the track's center line and the structure or obstruction. The distance between the structure and an arbitrary point along the center line of the track is not important. At issue is the distance between the structure and the closest point along the center line, i.e. the shortest distance.

Findings of Fact

1. Spins Track 2468, located in La Habra and owned by ABC, serves a warehouse owned and operated by ABC.
2. SPTC requests an exemption from the side clearance requirements of GO 26-D for impaired clearances involving seven structures along Spins Track 2468 within the warehouse of ABC.
3. Impaired side clearances for these structures were created when the warehouse was modified by ABC.
4. The actual side clearance for Structure 2 is 8' 0.75", or 1' 5.25" less than that required under the general provisions of Section 3.
5. Actual side clearances for the other five structures which are adjacent to curved track equal or exceed 8' 6", and impaired side clearances for these structures do not exceed one foot.
6. The actual side clearance for Structure 7 is 8' 4.25", or 1.75" less than that required by Section 3 for tangent track.

7. The cost of structural modifications required to bring the warehouse structures within full compliance with the side clearance requirements of GO 26-D is estimated to be at least \$250,000.

8. After the filing of a protest to the application by UTU, representatives of SPTC, ABC, UTU, and the Commission staff met at the warehouse location. SPTC subsequently agreed to conditions under which warnings of impaired side clearances would be provided, and the protest by UTU was withdrawn.

Conclusions of Law

1. The application should be granted to the extent provided in the order which follows.

2. The exemptions from side clearance requirements should be made subject to conditions which provide for adequate warning of impaired clearances.

3. SPTC should be authorized to continue operating cars, trains, motors, engines and other rolling equipment over Spins Track 2468 provided the conditions of this order are observed.

4. A hearing is not necessary.

5. Since impaired side clearances currently exist, and since issuance of this order will facilitate completion of the placement of signs and other warnings not already installed within the warehouse, thereby contributing to overall safety at the facility, the order should be made effective as soon as possible. To allow sufficient time as may be necessary for preparation and installation of the signs and other warnings required by this order, the effective date will be ten days after the date it is signed.

ORDER

IT IS ORDERED that:

1. Southern Pacific Transportation Company is authorized to operate cars, trains, motors, engines, and other rolling equipment over Spins Track 2468 in La Habra, provided that the conditions listed in Ordering Paragraph 2 are observed.

2. The seven structures adjacent to Spins Track 2468, listed in the opinion and identified in Appendix A, are exempted from the side clearance requirements of GO 26-D, subject to the following conditions:

- a. Signs, painting, and reflective striping installed on or adjacent to each of the seven structures listed in Appendix A prior to February 18, 1988, including the signs stating "IMPAIRED SIDE CLEARANCE" in letters at least 2.5" high, shall be maintained and/or modified as provided in subparagraph b.
- b. Existing signs on the two concrete entrance columns at the entrance portal, described as Structures 1 & 2 in the opinion and in Appendix A, are to be lowered and placed so that the bottom edges of such signs are no less than eleven feet, nine inches (11'9") and no more than twelve feet, three inches (12'3") above top of rail.
- c. An additional sign shall be affixed to the outside wall of building on the magnetic north side of the entrance portal and will be illuminated during hours of darkness. The additional sign shall be positioned with the bottom edge no less than eight feet (8') nor more than eight feet, six inches (8'6") above top of rail and the right (south) edge of such sign shall be located within four feet (4') of the concrete column on the north side of the entrance portal. The size of the sign shall be approximately three feet (3') wide

and one and one-half feet (1'6") high. The sign shall contain four rows of lettering, as follows:

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Preceded By Train-
Person on Foot

Said sign shall have a white background, the word "STOP" shall be in red lettering approximately six inches (6") high with a brushstroke width of approximately three-quarters of an inch (3/4") and the remaining lettering shall be black, approximately three inches (3") high, with a brushstroke width of approximately three eights of an inch (3/8").

- d. Instructions shall be issued by railroad in an appropriate manner to members of train crews requiring members of such crews to remain on the magnetic north side of the spur track, at points at or beyond the entrance to the building, at all times when railroad equipment is in motion.

This order becomes effective 10 days from today.

Dated DEC 19 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisbur
Victor Weisbur, Executive Director

So

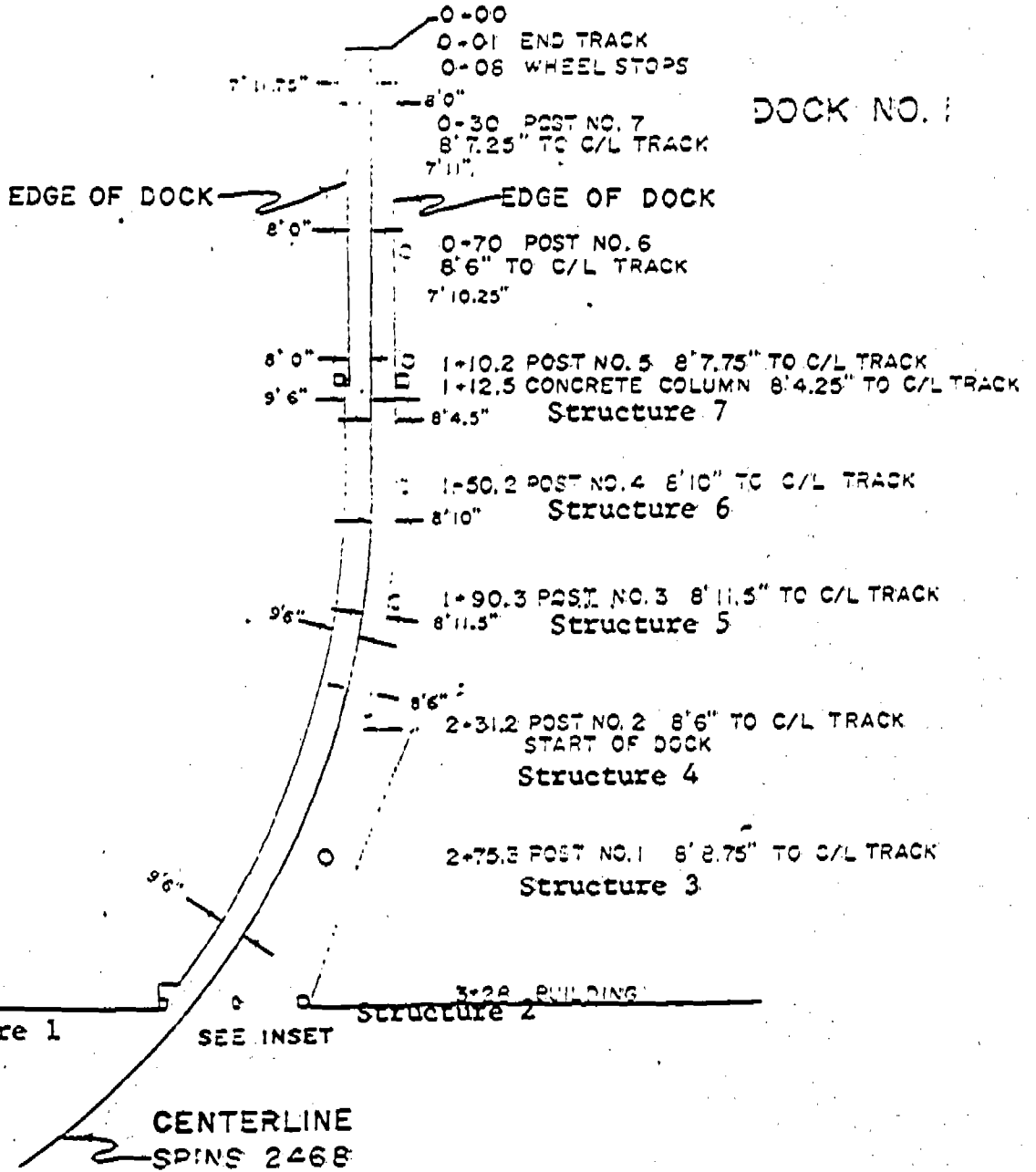
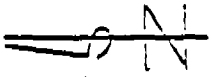
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MICROFILMING SERVICES
WILL NOT ASSUME
RESPONSIBILITY FOR THE
IMAGE QUALITY

APPENDIX A
Page 1

DOCK NO. 2

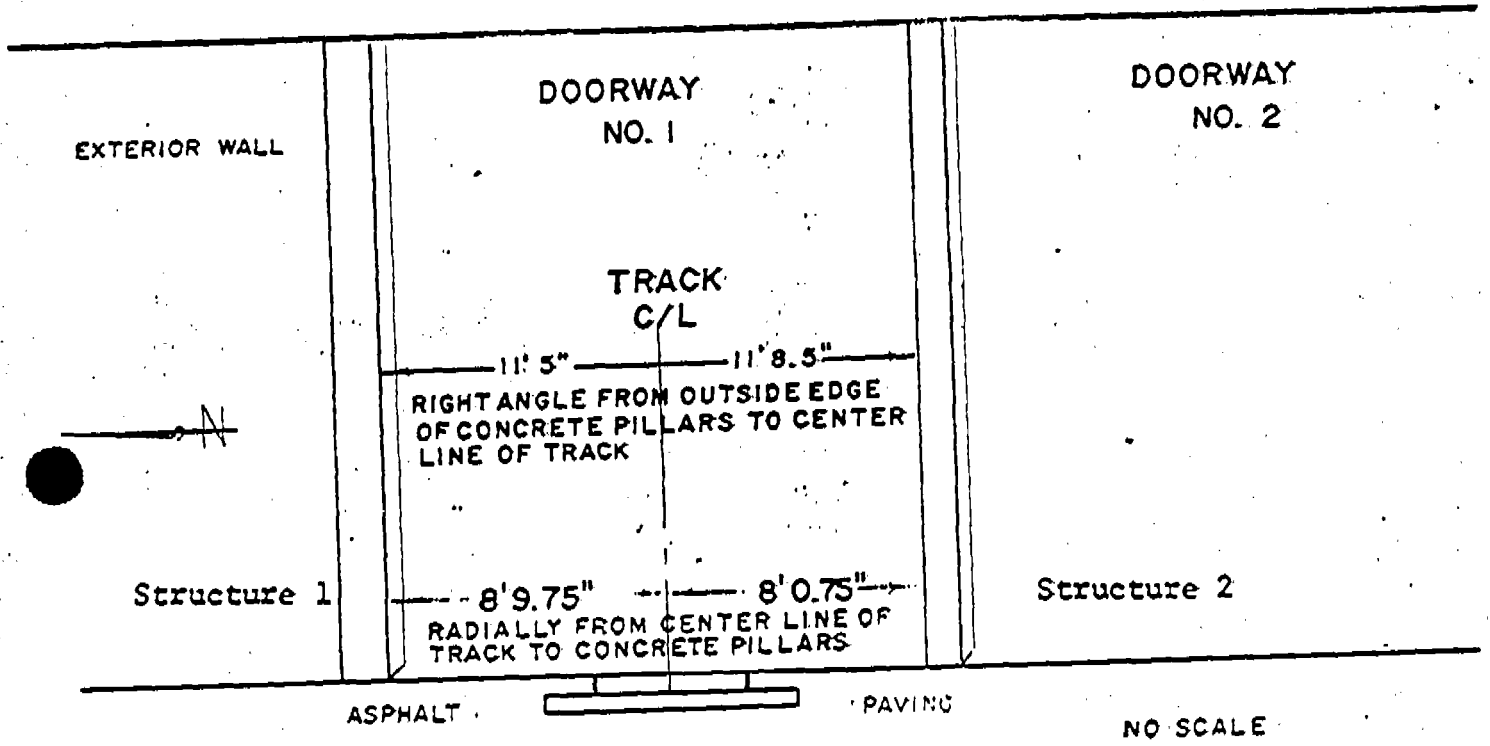
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CURVE DATA

R = 257.61'
D = 22°15'

SCALE 1" = 50'



INSET

(END OF APPENDIX A)