

ALJ/LEM/cac

Decision 89 08 054 AUG 23 1989

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,

vs.

Napa Valley Wine Train, Inc.,

Defendant.

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

INTERIM OPINION

The Napa Valley Wine Train, Inc. (NVWT), the Commission's Safety Division (SD staff), and interested public and private parties of the Napa Valley have reached an agreement which, if accepted by the Commission, would initiate review of environmental impacts associated with operations of the NVWT between the Cities of Napa and St. Helena. The agreement also provides for the start of preliminary, limited passenger rail service within carefully prescribed conditions and limits, while the environmental review is being conducted. Litigation in state and federal courts on jurisdictional issues surrounding the Commission's authority over the NVWT will continue, unaffected by this interim agreement.

On July 14, 1989 the SD staff filed its Motion Requesting the Commission to Adopt the Agreement of Parties Which Would Allow Preliminary Limited Service by the Napa Valley Wine Train, Inc. The agreement accompanied the motion.

Background

On April 13, 1988 by Decision (D.) 88-04-015 in this proceeding we ordered NVWT 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. After hearing on May 4, 1988, we issued D.88-07-019 on July 8, 1988 ordering NVWT to comply with the California Environmental Quality Act (CEQA) and to submit to other Commission authority prior to conducting passenger train operations as proposed. D.88-07-019 is presently pending legal review before the California Supreme Court in S-007919. The matter is not expected to be decided for some time.

The Motion

SD staff maintains there is a need to determine the environmental, safety and operational characteristics of the NVWT service prior to its conducting regular passenger service. SD staff, NVWT, local governments in the Napa Valley, vintners, growers, landowners, and interested private parties have negotiated an agreement which they expect will resolve and settle certain issues with respect to the proposed service. Copies of the agreement were sent, along with the motion, to each appearance in this proceeding.

The Agreement

Under the agreement, the NVWT will prepare and submit to the Commission a proponent's environmental assessment (PEA). The PEA will be used by the SD staff to prepare an Environmental Impact Report (EIR) in conformance with CEQA regarding the proposed regular service, as well as the proposed preliminary service. It is believed that the preliminary service will provide information enabling the local governments and citizens of Napa Valley to better assess the potential impacts of the regular service. Nothing in the agreement would render the pending California Supreme Court review of D.88-07-019 in Civil Case No. S-007919 moot, nor affect review of the Interstate Commerce Commission's decisions before the U. S. Court of Appeals for the District of

Columbia Circuit in Case Nos. 88-1650 and 89-1154. This is because the agreement does not resolve the issues that were before, and decided by, the Commission in D.88-07-019, but merely provides for an interim arrangement that will control preliminary rail service, environmental review, and other concomitant matters.

The agreement provides for:

1. The completion of an EIR on the entirety of NVWT's proposed passenger service;
2. NVWT to operate preliminary service during the pendency of the Supreme Court Proceeding and under certain circumstances for a reasonable time thereafter;
3. The Commission and applicable complainants to withdraw their protests to NVWT's application to the Department of Alcoholic Beverage Control, based upon receipt of a letter from NVWT constituting its full and complete good faith response to all concerns raised by the Commission and applicable complainants by the subject protests;
4. The Commission and applicable complainants to withdraw their protests to the preparation and processing by the City of Napa of an EIR related to the issuance of a use permit for the McKinstry Street Station in the City of Napa, provided that NVWT shall comply with any and all mitigation measures required by the City of Napa; and
5. The Commission to take action to permit NVWT to commence preliminary service during the term of this agreement.

On August 10 the Commission staff filed a revised motion, requesting the Commission to adopt a revised agreement. The revision pertains to the allowed number of cars per train. The number of cars per train will be limited--prior to November 1, 1989--to five. After November 1, 1989 the number of cars allowed

will increase to eight. The original agreement had allowed eight cars per train, with no restriction as to date of operation.

SD staff requests that the Commission quickly consider and approve the revised agreement, and that we specifically provide that D.88-07-019 remain in effect, with enforcement deferred while the terms of the agreement are in effect. SD staff further urges that we condition commencement of preliminary service on verification by the Commission that safety requirements with respect to NVWT trackage, facilities and rolling stock have been met. This can be accomplished, SD staff suggests, by requiring NVWT, prior to commencement of service, to obtain a letter from the Executive Director stating that the line meets applicable safety requirements.

The active parties to this proceeding have signed or concur with the agreement. SD staff recommended in its motion that the assigned Administrative Law Judge (ALJ) issue a ruling affording the parties 10 days to respond to the motion and the agreement.

The limited service proposed in the agreement will allow the development of precise information concerning specific impacts on the Napa Valley of the proposed regular service with a minimum of speculation, thereby providing a firm basis for determination of mitigations to be adopted. The ALJ issued a ruling requiring written responses to the motion by July 28, and advising that barring any responses with substantive objections, he would recommend to the Commission that the agreement be approved and the motion granted. No such response has been received to either the original or revised motion. In the circumstances, the motion of SD staff, as revised, should be granted, and the agreement, as revised, attached thereto approved. Although the Commission is approving this Agreement, and intends that the parties comply with its terms and provisions, the Commission will assert its authority

to regulate NVWT train service in any matter not controlled by the terms of the Agreement.

Findings of Fact

1. D.88-07-019 required that NVWT comply with CEQA and submit to other Commission authority prior to conducting passenger train operations between the cities of Napa and St. Helena.

2. D.88-07-019 is presently subject to legal review before the California Supreme Court.

3. There is a need to determine the environmental, safety and operational characteristics of the NVWT service prior to the conduct of regular passenger service.

4. NVWT, SD staff, and interested public and private parties of the Napa Valley have reached an agreement which, if approved by the Commission, would initiate review of environmental impacts associated with operation of the NVWT, and provide for the start of limited service while the environmental review is being conducted.

5. Under the agreement, litigation in state and federal courts on jurisdictional issues surrounding the Commission's authority over the NVWT will continue, unaffected by the agreement.

6. SD staff filed a motion on July 14, requesting the Commission to adopt the agreement of parties which would allow preliminary service by NVWT. The motion and agreement were sent to all appearances.

7. The assigned ALJ issued a ruling on July 18, directing that parties could have until July 28 to furnish him with written responses containing substantive objections to the motion and agreement, and stating that barring such responses, he would recommend to the Commission that it grant the motion and approve the agreement.

8. No substantive objection to the motion or the agreement has been received.

9. On August 10, SD staff filed a revised motion, requesting adoption of a revised agreement. The revision attached to the

motion pertains to the number of cars allowed per train. No objection has been received to the revised motion.

10. The agreement, as revised, will allow the collection and analysis of information during preliminary service which will provide a firm basis for assessing the potential impacts of the proposed regular train service.

Conclusions of Law

1. SD staff's revised motion should be granted.
2. The revised agreement providing for preliminary service should be approved.
3. Authorization to perform the the limited service described herein should be conditioned upon receipt by NVWT of written confirmation from the Executive Director of this Commission that NVWT's rail line between Napa and St. Helena meets all applicable safety standards required by this Commission.
4. Because of the delay already experienced by the parties interested in initiating this service and the desirability of initiating review of the environmental impacts associated with the service, this decision should be effective on the date signed.

INTERIM ORDER

IT IS ORDERED that:

1. The Safety Division staff's Revised Motion Requesting the Commission to Adopt the Agreement of Parties Which Would Allow Preliminary Limited Service by the Napa Valley Wine Train, Inc. (NVWT) is granted. NVWT may commence passenger train service pursuant to the Agreement, Section 4.01(b), and as provided in tariffs and timetables for preliminary service train operations submitted to the Commission by NVWT.
2. The agreement, as revised, providing for initiation of review of environmental impacts associated with operations of NVWT between Napa and St. Helena is approved.

3. Decision 88-07-019 shall remain in full force and effect, except that enforcement of the decision is deferred as long as the agreement remains in effect.

4. At the termination or dissolution of the agreement, the deferral of enforcement of Decision 88-07-019 shall end.

5. NVWT shall not commence the limited service authorized by this decision until it has received written confirmation from the Executive Director of this Commission that its rail line between Napa and St. Helena meets all applicable safety standards required by this Commission.

This order is effective today.

Dated August 23, 1989, at San Francisco, California.

FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

President G. Mitchell Wilk,
being necessarily absent,
did not participate.

Commissioner Patricia M. Eckert,
being necessarily absent,
did not participate.

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director