

Decision 90 03 074 MAR 28 1990

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.)

ORIGINAL

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

SECOND INTERIM OPINION

By Decision (D.) 89-08-054 dated August 23, 1989 in this proceeding we granted the Motion of the Commission's Safety Division to Adopt the Agreement of Parties Which Would Allow Preliminary Limited Service by the Napa Valley Wine Train, Inc. (NVWT), and approved the Settlement Agreement of parties providing for initiation of review of environmental impacts associated with operations of NVWT between Napa and St. Helena. Previously, by D.88-07-019 dated July 8, 1988, we had ordered NVWT to comply with the California Environmental Quality Act and to submit to other Commission authority prior to conducting passenger train operations as proposed

On December 21, 1989 the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference in order to assess the status of this proceeding, with particular reference to performance pursuant to the Settlement Agreement approved by D.89-08-054. The ALJ and assigned Commissioner had been in receipt of numerous letters expressing dissatisfaction because of the failure of NVWT to comply with the agreement.

At the prehearing conference on January 17, 1990, counsel for NVWT explained that because of conflicting schedules, the earthquake of October 17, etc., the parties had been unable to get together for several weeks, or to file the Proponent's Environmental Assessment (PEA) as soon as originally agreed. The PEA was filed on January 12, 1990. Counsel also advised that a revised Settlement Agreement, agreed to by all parties, had been executed. Counsel for the Commission's Division of Ratepayer Advocates (DRA) filed a Joint Motion to Amend Settlement Agreement on January 31, 1990, urging adoption of the revised Settlement Agreement. The revision, attached to the motion, amends Section 3.06 of the agreement, and incorporates new dates in the schedule for preparation of the Environmental Impact Report (EIR). ✓

The revised agreement also provides for the conduct of public workshops as well as a public scoping meeting in the Napa Valley. A Draft Environmental Impact Report (DEIR) is to be released in May; a Final Environmental Impact Report (FEIR) incorporating and responding to comments on the DEIR is due in July; and consideration by the Commission of the FEIR is tentatively set for mid-August 1990. The parties understand that if the Commission concludes that additional hearings have become necessary, the schedule would be adjusted accordingly.

On March 19, 1990 the California Supreme Court, in S-007919, issued its order annulling our D.88-07-019. Nevertheless, the Settlement Agreement approved by D.89-08-054 provides that the EIR shall be completed regardless of the outcome of the Supreme Court litigation. The Supreme Court decision may have created uncertainties with respect to the present posture of this proceeding. Parties are invited to furnish the Commission with comments, within 30 days from today, regarding the impact of the Supreme Court decision on the issues they consider remaining open in this proceeding, together with recommendations concerning the disposition thereof.

The revised Settlement Agreement provides for necessary and reasonable amendments to the schedule in the agreement adopted by D.89-08-054. In the circumstances the joint motion to amend the Settlement Agreement should be granted, and the recommended revisions adopted.

Findings of Fact

1. D.89-08-054 granted the Safety Division's Motion Requesting the Commission to Adopt the Agreement of Parties Which Would Allow Preliminary Limited Service by NVWT, and approved the agreement of parties providing for initiation of review of environmental impacts associated with the operation of NVWT between Napa and St. Helena.

2. Because of unavoidable delays the schedule set forth in the original Settlement Agreement could not be observed. The parties have executed a revised Settlement Agreement, amending Section 3.06 and incorporating new dates in the schedule for the preparation of the EIR.

3. Staff counsel for DRA has filed a Joint Motion to Amend Settlement Agreement on behalf of DRA as well as complainants and respondents, urging our adoption of the revisions to the agreement.

Conclusions of Law

1. The Joint Motion filed by counsel for DRA should be granted, and the revisions to the Settlement Agreement adopted.

2. A public hearing is not necessary.

3. Since the revisions to the Settlement Agreement have been agreed to by all parties, the effective date of this order should be today.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. The Joint Motion to Amend Settlement Agreement filed by the Division of Ratepayer Advocates to amend Section 3.06 of the Settlement Agreement is granted, and the revisions in the amended Settlement Agreement are approved.

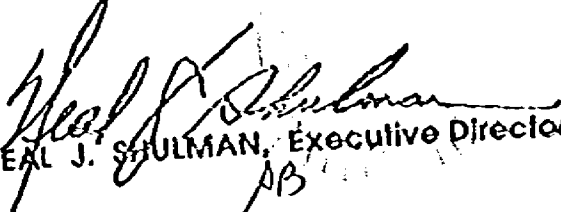
2. Decision 89-08-054 shall remain in full force and effect, except as modified by this decision. ✓

This order is effective today.

Dated MAR 28 1990, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
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