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Decision 90 07 031 JUL 6 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the abandonment and/or discontinuance of intermodal railroad service to spur track located at Blythe, California, by THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY and Order to Show Cause.	I.89-11-002 (Filed November 3, 1989)

R. Curtis Ballantyne, Attorney at Law, for The Atchison, Topeka, and Santa Fe Railway Company, respondent.
Dressler & Quesenbery, by Larry A. Dawson, Attorney at Law, for Western Growers Association; Scott Zundel, Attorney at Law, for City of Blythe; and James P. Jones, for United Transportation Union; interested parties.
James T. Quinn, Attorney at Law, for Safety Division.

O P I N I O N

Summary of Decision

This decision discontinues the proceeding, an Order Instituting Investigation/Order To Show Cause, why the Santa Fe Railway should not be required to maintain its intermodal (piggyback) spur track at Blythe, California. The decision orders the railroad to maintain its intermodal ramps at Blythe in operable condition and to reinstitute the intermodal spur-team track service that the railroad had discontinued.

Background

This proceeding was initiated by the filing on November 3, 1989 of our Order Instituting Investigation (OII) And Order To Show Cause (OSC).

The OII was initiated for the purpose of inquiring into the circumstances surrounding the abandonment or discontinuance by the Atchison, Topeka, and Santa Fe Railway Company (Santa Fe) of its intermodal trailer-on-flatcar (TOFC) spur track at Blythe, California, located in the far eastern portion of Riverside County.

The OII recited that such discontinuance may have violated portions of the Public Utilities (PU) Code, including §§ 560, 761, and 765 thereof. The investigation was ordered to determine the "...extent to which such action may be contrary to California statutes, may have violated notice requirements, may involve adverse economic and environmental impacts, and may otherwise be opposed to laws and regulations of the State of California."

Santa Fe was also ordered to show cause "...why it should not be required to submit to the jurisdiction of this Commission with respect to the matter of its abandonment and/or discontinuance of intermodal spur track at Blythe."

The OII/OSC invited Santa Fe to respond to the order, and set the proceeding for public hearing commencing November 27, 1989 in Blythe. Notice of the OII/OSC did not appear on the Commission's public agenda. We stated in the order that an emergency appeared to exist because Santa Fe had peremptorily ceased to provide intermodal service at Blythe, and the region's peak harvest was at hand. Therefore, we felt that public interest justified our action in issuing the OII/OSC under PU Code § 306(b).

In its response filed November 20, Santa Fe argues principally that our Commission lacks jurisdiction with respect to this issue, because exclusive jurisdiction over interstate rail transportation is vested in the Interstate Commerce Commission (ICC).

Duly noticed evidentiary hearings were held in Blythe on November 27, 28, and 29 before Administrative Law Judge (ALJ) John Lemke. The matter was submitted with the filing of concurrent

briefs on January 24, 1990. Briefs were filed by Santa Fe, by the Commission's Safety Division (SD staff), by the City of Blythe (Blythe), by Western Growers Association (WGA), and by the United Transport Union (UTU).

At the outset of evidentiary hearings, Santa Fe agreed that the OII/OSC is amended so that wherever the term "intermodal spur track" appears, it is changed to read "intermodal spur-team track."

Evidence

SD Staff and Parties other than Santa Fe

Donald Edmisten, Associate Transportation Operations Supervisor with the SD Staff, testified essentially as follows:

During the week of November 13, 1989, he conducted an investigation of the circumstances surrounding Santa Fe's closure of its Blythe TOFC ramps. These facilities served as the regional piggyback facilities for produce grown in the Palo Verde, Coachella and Imperial Valleys. The ramps had been open for about 25 years, and handled as many as 6,000 trailer loads of perishable row crops annually, including principally lettuce, melons, asparagus, broccoli, and mixed vegetables. These loads were all destined for midwestern and eastern markets. Santa Fe discontinued service from its Blythe TOFC ramps in August 1989 on five days' notice.

The Santa Fe line over which these loads were hauled extends from Ripley, about two and-a-half miles south of Blythe, northward through Blythe to Rice, thence to a junction with Santa Fe's main line at Cadiz. The railroad's main east-west line extends from Los Angeles to Chicago.

The Blythe line accesses the area in connection with hauls of many products in other than TOFC service, including shipments of propane, lumber, farm implements, fertilizer and other commodities used in the agriculture industry.

Farmers generally grow, pack, and ship their crops. Their activity includes cooling the produce and selling it to

either a wholesaler or a retail chain store. Wholesalers/retailers arrange with Plan III TOFC operators for hauling produce trailers from coolers to the piggyback ramp, where the trailers are loaded on flatcars and transported to market. Under Plan III piggyback service the railroad furnishes the power, the flatcars and the right of way. The Plan III operator furnishes the trailer, and serves in much the same capacity as a freight forwarder.

Edmisten testified that he believes the downgrading of service on the Blythe line could ultimately lead to the abandonment of all rail service presently provided to and from the community. When the Blythe piggyback facility was open, the railroad served the facility daily. Trailers could be ramped up to 4:30 a.m. The loaded train then departed Blythe for Cadiz at 6:00 a.m. The train returned to Blythe from Cadiz about 1:00 p.m. with empty piggyback cars to be spotted at the loading ramps. Since the discontinuance of TOFC service in mid-August 1989, Blythe regular freight service has been reduced to two schedules weekly. These schedules do not serve perishable shippers.

Shippers of perishables have been offered piggyback service alternatives through ramp facilities located at Los Angeles, San Diego, San Bernardino, or Phoenix. The railroad provides dollar allowances to shippers to defray the increased cost of trucking piggyback trailers to these more distant facilities. However, Los Angeles and Phoenix often experience a shortage of trailers for loading, especially during peak demand periods, and transit times to Chicago from these alternate facilities are longer than from Blythe. The regional growers are now less competitive with those growers in areas located closer to piggyback ramps. The mileages from the three growing areas formerly served by the Blythe ramps to Los Angeles and Phoenix are two to three times greater than to Blythe.

When Blythe piggyback ramps were operative, produce trailers were transported to Chicago markets for third morning

arrival. If the trailers have to be driven to Los Angeles, fourth morning delivery in Chicago may become the norm. This will result in reduced shelf life, requiring California shippers to compete with produce having lesser transit times from other growing areas.

The witness believes that without adequate piggyback service, shippers will have to turn to long-haul truckers to move their produce. These truckers can be expected to increase their rates.

Lou Cluster, Associate Transportation Engineer with the SD Staff, testified concerning expected adverse impacts of the piggyback ramp closures on air quality, as well as the adverse effects expected due to the projected additional truck traffic. Cluster stated that the South Coast Air Quality Management District (SCAQMD) has identified the five major atmospheric pollutants found harmful to the environment. These are carbon monoxide (CO), hydrocarbons, or unburned gasoline and other reactive organic gases (HC), nitrogen dioxide (NOX), sulfur dioxide (SOX), and particulates (P). The single most serious air pollution problem is the high concentrations of oxidants. About 95% of photochemical oxidants is comprised of ozone. Ozone formation results from the reactions of HC and nitrogen oxides, which, in the presence of sunlight and oxygen, participate in photochemical reactions.

SCAQMD has developed suggested threshold criteria to determine significant impacts on air quality. Threshold Criterion 1 defines an activity as having a significant impact if it generates daily emissions of one or more of the following pollutants:

Pollutant	Threshold Level
CO	550 lbs.
HC	75 lbs.
NOx	100 lbs.
SOx	150 lbs.
P	150 lbs.

An increase even of 7 truck roundtrips between Blythe and Los Angeles would have a significant impact on NOx emissions under the above standards.

Cluster stated that Threshold Criterion 2 is:

> "A project which may cause an exceedance of any ambient air quality standard or makes a substantial contribution to an existing exceedance of an air quality standard. This can be determined through air quality modeling. Substantial is defined as making measurably worse an existing exceedance of any national ambient air quality standard at any receptor location in the District."

According to SCAQMD's Air Quality Annual Report for 1988, the witness professed, there were many incidents of exceedances in Los Angeles, San Bernardino, and Riverside Counties during calendar year 1988. He stated that there will be an increase in highway congestion due to the Santa Fe discontinuance which will adversely affect the SCAQMD sphere of influence. Cluster testified that the abandonment of intermodal service is an activity exempted from the provisions of the California Environmental Quality Act requiring the preparation of an environmental impact report.

Approximately 20 witnesses from the business community testified concerning the negative impact upon the community and their businesses of the discontinuance of TOFC service and reduction of other than TOFC service by Santa Fe. Their testimony covered topics ranging from increased trucking expenses to reduced payrolls associated with the former maintenance of TOFC refrigerated trailers.

The general manager of the El Centro Chamber of Commerce testified on behalf of members of the agricultural industry doing business in that area. He sponsored a letter from his Chamber to the Santa Fe, dated August 22, 1989 stating that about 10% of the total volume of local produce moved through the Blythe piggyback ramps, and that local shippers would be required to look to the

railroad's Phoenix TOFC ramps for comparable facilities. This would increase shipper costs because of the increased mileage from El Centro to Phoenix.

Congressman Al McCandless represents the 37th Congressional District in California which includes the Blythe area and the major portion of Riverside County. He testified that the railroad is a key factor in the success of the local agricultural industry. He stated that the Palo Verde Valley has pockets of poverty containing people who, when work is available, rely heavily on the agriculture and related industries for employment. He also commented on the issue of air quality in San Bernardino, Riverside, and Los Angeles Counties, which became so acute that in 1974 a regional air pollution control district was created. He noted that the Phoenix basin has become extremely toxic at times. Thus, he observed, any increase in trucking through these areas due to a reduction in intermodal service would be adding to the air quality problems experienced in southern California and Phoenix.

The Congressman also emphasized that during parts of the year Blythe is in strong competition for the eastern markets with other growing areas, such as Texas and Florida, which enjoy a rate advantage because of their relatively closer proximity to those markets. Any increase in freight costs would worsen the local growers' ability to compete effectively with those other growing areas.

Assemblyman Steven Clute spoke of his awareness of the hardships besetting the Blythe community due to the TOFC closure, and of the possibility of legislative remedy, if necessary.

A Plan III witness spoke of a freight allowance given by the railroad as a result of the Blythe closure, in order to equalize the new total cost with the transportation cost that would have been paid had a load originated at the Blythe ramp. These allowances are confidential business arrangements negotiated annually.

In response to a question concerning the share of traffic moving via Plan III through Blythe compared with truck shipments, this witness stated that amounts vary depending upon distances and the level of rail service offered to various destinations. For example, no produce which moved over the Blythe ramps terminated in New Orleans; however, probably 35% to 40% of the Blythe produce transported to Boston used the services of that facility.

The Intergovernmental Affairs Officer of SCAQMD testified concerning an air quality plan the district is working on. The plan contemplates the reduction of air pollution in the district through a lessening of congestion. The witness believes that trucks constitute a major part of the traffic congestion experienced in the district. Closure of the Blythe ramp is contrary to the district's plan to encourage the replacement of truck traffic with rail service, thereby assisting in the reduction of pollution. He also stated that the district is concerned over the loss of jobs; that it is undesirable to have persons who may lose jobs in the Blythe area commute to new jobs in the western portion of the district, or to move to such areas in order to find employment, thus exacerbating the problems in the already severely congested and polluted areas.

John Robertson, a trucker domiciled in Blythe, stated that transporting produce vans to the Blythe ramps for loading had constituted about 50% of his business. He picked up shipments in the Imperial, Coachella, and Palo Verde Valleys and hauled them to Blythe. Since the Blythe facility closure, he has opened an office in Phoenix and is attempting to handle his produce transportation business from that location. His former annual payroll for his Blythe employees was approximately $250,000. Plan III shippers pay his freight bills. He testified that shippers must pay about $200 more for his services on loads from El Centro to Phoenix than to Blythe, and about $250 more on loads from the Blythe area to Phoenix than to the Blythe ramp. The servicing of his 12 tractors

associated with the intermodal hauling, as well as tire and parts purchases, will be done in Phoenix now rather than at Blythe.

A sales representative for Sahara Packing Company, a grower-packer-shipper located in Blythe, testified that his firm shipped about 270 piggyback vans of produce through the Blythe ramp during the past year. However, this is a very small percentage of the company's total business. The balance moved via truck. He stated that there has been no piggyback activity through the Blythe ramps during the months of August or September.

A member of the Blythe city council testified that the city is concerned about the intermodal closure because of the harmful impact it is expected to have on the local community. She performed an analysis of the number of industries affected by the closure, and arrived at a figure of 45 jobholders who will have been put out of work because of the cessation of piggyback service. Using the 1988 median income, she determined that there will be a total payroll loss in the community in excess of $1 million.

The owner of Piggyback Service, Inc. testified concerning his business in Blythe, one which ramped and deramped vans in connection with the former intermodal service. During 1985, 1987, and 1988, respectively, he serviced 4,847, 4,414, and 6,500 vans. Figures were not available for 1986. He stated that he believes three of the piggyback ramps could, after remodeling, be used with an overhead ramp, which seems to be the method preferred by Santa Fe for handling intermodal vans.

Another member of the Blythe city council noted that Santa Fe had originally extended its line into the Palo Verde Valley in 1915, when less than one third of the valley was under cultivation. Nevertheless, he opined, Santa Fe deemed its Blythe operations to be profitable. Further, he stated, when intermodal service was established in Blythe 25 years ago, the railroad apparently considered its service to be economically feasible. He observed that Blythe is central not only to the Blythe and Palo

Verde Valley area, but is at the geographic center of the southwestern United States, being located within 250 miles of more than 15 million people, including those living in Los Angeles, Orange County, San Diego, El Centro/Mexicali, Yuma/Tucson, Phoenix, Kingman/Needles, Las Vegas, and Barstow. If Santa Fe abandons the intermodal service which has handled over 6,000 cars annually, he asks, how can it ever hope to make a profit on the remaining regular rail service freight moving to and from the area? Finally, the witness emphasizes that the area is being considered as a potential "Enterprise Zone" by business entrepreneurs, and while the area has the airport and the highways to service this type of development, rail service is absolutely essential to the plan.

Jack Rich, Supervisor of the Commission's Railroad Operations and Safety Section, testified that he visited Blythe twice during October 1989 to meet with civic leaders and assess the impacts of the Santa Fe's abrupt closure of its intermodal ramps. He stated that in connection with perishable products, speed of delivery is crucial. Further, that operationally, the interconnection of the Blythe line at Cadiz is advantageous since at this point a Santa Fe train headed east has already ascended the line's steepest grade at Cajon Pass and faces only lesser grades as it continues eastward. At an October 27 meeting, Rich noted, a Santa Fe official stated that the railroad had not assessed the environmental effects of the intermodal closure. The official also remarked that the intermodal service at Blythe was not profitable; however, he refused to furnish the staff with figures which demonstrate these unprofitable operations. Rich also sponsored a letter dated August 11, 1989, addressed to "Dear Customer," announcing the closure of the intermodal ramp four days thereafter, and stating that the station of Blythe would also be terminated as an agency station.

Rich maintained, with respect to notice regarding service, that General Order (GO) 36-D, the predecessor of the

presently effective GO 36-E, contained specific notice requirements by railroads; but that GO 36-E which superseded GO 36-D in August 1977 does not contain the same specific wording. (GO 36-D, in fact, did contain specific wording proscribing railroads from abandoning any nonagency station, or reducing agency service at any station except after 60 days' notice to the Commission and the public. The Commission, upon protest or complaint, could then suspend the abandonment and require the railroad to file a formal application to make such change. GO 36-E addresses abandonments and reductions in service only in connection with the transportation of passengers.

Rich referred to Decision 87752, dated August 23, 1977 in Application 56415, which adopted GO 36-E. In that decision it is stated that the Santa Fe's position was that there was no need for the paragraphs in GO 36-D which required notice by railroads of their intended abandonment or reduction in freight service, because the PU Code would still provide ample protection to the public regarding matters covered by the general order. The staff recommended in that proceeding that GO 36-D be modified to cancel its application to freight services and facilities, apparently concurring with Santa Fe's opinion that the PU Code provided adequate protection against abrupt closures.

The Southern Pacific took a position in the GO 36-E proceeding similar to that taken by Santa Fe:

> "Just as in the case of freight service, if the General Order is cancelled in its entirety, railroads will continue to have a legal responsibility to provide adequate service and facilities with respect to the limited amount of passenger service still under the Commission's jurisdiction."

The decision concluded that there was little public interest in the continuation of GO 36-D insofar as it related to freight matters.

Thomas Hunt, a Senior Transportation Operations Supervisor with the Commission staff, testified that he performed a study of alternative intermodal ramp facilities recommended by Santa Fe for use by shippers in lieu of the Blythe facility. He concluded that none of them was a viable alternative. He determined that the facilities at Fullerton, Santa Ana, and Oceanside are not immediately accessible to shippers, having small ramp capacities, unavailable flatcars, or local billing services. He stated that the ramp at San Diego is still comparatively small, and its use requires a long, circuitous rail route to move shipments out of southern California. Further, the facilities at Hobart Yard in Los Angeles, those at Barstow and San Bernardino, and those at Phoenix all involve traversing hundreds of truck miles from Blythe, El Centro, etc. to reach the rail origin points.

The sales manager for Badlands Sales, a grower-packer-shipper located in Brawley, testified that during the past several years his firm shipped about 275 vanloads of broccoli annually, and that about 90 of those vans moved via piggyback through the Blythe ramps. Of 400,000 packages of spring cantaloupes shipped, 75,000 moved through Blythe, and of 200,000 packages of fall cantaloupes, 35,000 moved through Blythe. Since the Blythe closure, the company had shipped 45 truckloads of broccoli, of which 16 vans moved via piggyback through Los Angeles or Phoenix. The extra cost incurred by the company for the additional mileage to Los Angeles or Phoenix has been at least an additional $150 per van, the witness stated.

This witness foresees a large increase in truck rates during the coming seasons because of the Blythe closure and the increased demand for truck service. He testified also that the current truck cost to the east coast for a load of produce is about $3,300 or $3,400. By piggyback, the cost would have been $3,200 or $3,300. However, there is now an additional charge of $150 for the haul of the piggyback trailer to Phoenix.

Western Growers Association represents about 1,300 growers, packers, and shippers of all fresh fruits and vegetables. WGA members supply approximately 50% of the nation's produce. WGA's transportation manager testified that the association is opposed to the Blythe closure because of the resultant higher transportation costs. He stated that of the total shipments moving from southern California, about 10% to 15% had moved through the Blythe ramps, the balance by truck.

Another member of the Blythe Chamber of Commerce sponsored an exhibit consisting of a letter to the Interstate Commerce Commission (ICC) protesting the closure, and the ICC's response (Exhibit 23). The response is difficult to comprehend, but appears to state that the Santa Fe's action may be proper because the ICC had exempted piggyback service from its jurisdiction.

The State Legislative Director of the United Transportation Union (UTU) testified in opposition to the discontinuance of piggyback service, as well as the reduction in regular rail service to two days weekly. He stated that there had been no discussion between UTU and Santa Fe prior to the reduction and discontinuance, and no prior notice by the railroad. Nor had there been any indication from Santa Fe that there was an excessive labor cost associated with its Blythe operations. In his view, the witness professed, the Staggers Act, which removed much of rail transportation from regulation, was intended by the railroads to relieve them from burdensome regulations in order to allow them to attract some of the traffic moving via highway carriers. Santa Fe's actions here, he alleged, are having the opposite effect. He believes that the Santa Fe is attempting to achieve its corporate goal of optimizing piggyback service to and from Phoenix, to the detriment of the economy of Blythe. In other words, this argument goes, the railroads are attempting to eliminate branch line operations, whether profitable or not, in favor of mainline

operations which involve only through-freight service. The witness conceded, however, that the railroad was under no legal obligation to notify UTU of the reduction and discontinuance, and that there have been no violations of the Staggers Act.

The proprietor of a refrigeration system repair service located in Blythe testified that 75% of his business has been eliminated as a result of the discontinuance of Blythe's piggyback service. His firm did repairs of the piggyback trailers and of the refrigeration units mounted thereon. He had six employees, but has had to discharge four of them since the facility closure. He works under contract for a refrigeration unit manufacturer, and may not work outside of his Blythe district, i.e., may not simply pick up and move to Phoenix because that area is already serviced by a contractor domiciled there.

Santa Fe

Santa Fe's response to the OII/OSC was presented through its Director of Special Projects and Planning in Santa Fe's Operating Department, Michael Blaszak. His verified statement, attached to Santa Fe's response to the OII/OSC, constituted the major portion of his testimony. That statement, offered in order to explain why Santa Fe decided to discontinue the Blythe piggyback service, asserts generally as follows:

1. Santa Fe believes that the California Public Utilities Commission has no jurisdiction over this action.

2. Santa Fe must, as a business, operate in a manner which maximizes profit. The marketplace in which it operates will not tolerate inefficient and outmoded operations.

3. The intermodal service provided from Blythe was the epitome of an inefficient and outmoded operation. The Blythe ramp is of the "circus" variety, i.e., flatcars bearing trailers had to be spotted end-on to the ramp, with all of the trailers pointed toward the ramp, so that a truck

tractor could drive up the ramp and onto the flatcars, hitch onto the trailers one at a time, and unload them by driving them over the flatcars and down the ramp. The same procedure had to be observed when loading trailers, except that tractors had to back the trailers onto the flatcars.

4. The above procedure tied up the trucks and was rough on the trailers and tractors. Further, it required a considerable amount of additional switching by Santa Fe to get all of the trailers pointed in the right direction before the flatcars were set out at the ramp.

5. Santa Fe's ramps at higher volume terminals such as Los Angeles have been modernized with Travelift overhead cranes and "piggypacker" sideloaders which can load intermodal units (containers) which are growing in popularity for domestic as well as international moves, as well as trailers, in whichever direction they may be pointing. These modern devices can load/unload a unit in as little as a minute, far less than the time required at Blythe.

6. "Circus" ramps cannot handle units loaded on modern intermodal equipment. The only type of flatcar which can be loaded on unloaded at a "circus" ramp is the old 85-foot conventional flatcar with collapsible stanchions for hitching trailers and bridge plates, allowing trucks and trailers to pass from one car to another. Because of efficiencies in loading and unloading trailers with Travelift and "piggypacker" cranes at modern intermodal terminals, and the expense of maintaining collapsible stanchions, a growing number of flatcars are equipped with fixed stanchions. Such cars cannot be unloaded at "circus" ramps.

7. Conventional cars with conventional couplers and draft gear are subject to slack action when in trains, which can damage goods not properly blocked and

braced. Shippers do not want to incur the delay and expense involved in blocking and bracing loads. Thus, Santa Fe has been replacing conventional intermodal flatcars with articulated well and spine cars that have fewer conventional couplers and draft gear and provide shipments with a smoother ride.

8. A further benefit of modern articulated equipment is that it has a lower tare weight than conventional cars, contributing to fuel efficiency and conserving capital investment in locomotives.

9. Another drawback of the Blythe operation was inefficient use of space on outbound flatcars. The conventional 89-foot flatcar has two stanchions on which trailers can be hitched for intermodal units. But due to the length of today's intermodal equipment, particularly refrigerated trailers with nose-mounted refrigerator units, and the multiplicity of possible destinations, many flatcars could be loaded with only one trailer instead of two.

10. Blythe was a one-way market for intermodal movements. Piggyback shipments were transported from, but not to, Blythe. Such two-way traffic is not possible at Blythe.

11. Three alternatives to the former method of serving Blythe were considered to be available: modernize the terminal, withdraw entirely from the market, or serve the market in another manner. Santa Fe chose what it considers to be the last alternative.

12. Modernization of Blythe was not attractive, costing between $450,000 and $500,000 for a crane, and $1.0 to $1.5 million for ground preparation to convert the Blythe "circus" ramp to a top-loading terminal. Further, the traffic was not there, as the volume of trailers moving through Blythe declined from 1986 through 1988.

13. Rather than withdrawing from the market formerly served by Blythe, Santa Fe decided to blend its Blythe operation with the one performed in Phoenix. Phoenix is basically a one-way operation, being a consumer center. By marrying the traffic flow into Phoenix with outbound Blythe traffic, greater efficiencies could be achieved. Further, because the Phoenix terminal is already modernized, Santa Fe could gain the benefits of top-loading without additional investment.

14. While there was little advance notice of the Blythe closure, the discontinuance took place at a time of year when there were few intermodal loads at Blythe. Thus, no shipper was seriously inconvenienced by Santa Fe's failure to announce the closure sooner.

15. During September, Santa Fe informed its customers that effective October 1, 1989, it would pay them to move trailers originating in the territory served by Blythe to Phoenix, Los Angeles or San Diego for further movement by rail. Since it was the railroad's goal to maximize its Phoenix operation, the largest allowance is applicable on shipments through that point.

16. Before discontinuing intermodal service at Blythe, the move was discussed with major shippers. These customers, who are the owners and operators of refrigerated trailers, expressed support for the plan to divert shipments through Phoenix. Only a small percentage of the trailers loaded at Blythe actually carried produce grown near Blythe; most of the shipments originated at Imperial Valley points. It is not that much more inconvenient for operators of refrigerated trailers to haul them from the Imperial Valley to Phoenix than to Blythe, and the allowance paid by Santa Fe helps defray the added cost.

17. Santa Fe must eliminate inefficient and outmoded services and give shippers what they want in terms of price, reliability

and convenience. The marketplace will ultimately determine whether the Blythe closure was the correct marketing decision.

In response to a staff witness' testimony that 99 percent of Santa Fe's flat cars had collapsible, as opposed to fixed stanchions, Blaszak testified that 900 of the railroad's conventional piggyback flatcars have collapsible stanchions, while 1,549 have fixed stanchions. Further, Santa Fe has 533 articulated, and 429 double stack or single stack container cars. The double or single stack container cars cannot accommodate trailers. Thus, of about 3,412 cars in the Santa Fe intermodal fleet, 2,511, or approximately 75%, are not suitable for loading at "circus" ramps. Looking to the future, the railroad plans to add 480 new platform articulated cars and 100 new double stack cars, none of which can be loaded at "circus" ramps. As the newer cars are added, he testified, the 85-foot cars with collapsible stanchions will be retired.

Santa Fe is also a part owner of Trailer-Train, a company which operates a large fleet of intermodal cars. Trailer-Train operates some flatcars with collapsible stanchions, but is also moving toward more modern flatcars.

Blaszak testified that the Blythe line is not being offered for sale at the moment, although some preliminary discussions have been held with that ultimate goal in mind. The intention is to sell the line to an experienced operator who could provide service at a cost lower than Santa Fe's cost.

The witness maintained that, in his opinion, service from Phoenix to Chicago is comparable to that formerly provided from Blythe to Chicago. Total elapsed time from Blythe was 55 hours and 30 minutes; from Phoenix it is 57 hours.

Blaszak was unable to state whether Santa Fe's present Phoenix TOFC operations are profitable or unprofitable, but concedes that the move in closing Blythe is intended to improve the

profit at Phoenix. He considers the Blythe closure a business decision not requiring authority from this Commission. He noted that involved shippers have exercised their own business judgment in giving Santa Fe only 10% of their business, and tendering the balance to the trucking industry.

Blaszak emphasized that advance notice was given to its shippers of the Blythe intermodal closure, those shippers being primarily Transamerica and Martrac, the largest Plan III piggyback operators. He stated that even if the Blythe ramps were modernized, there would still be a problem with the imbalance of loaded versus unloaded cars moving to and from the area.

James McCaul, Transportation Operations Supervisor, had testified that there is a sufficient supply of "circus" type ramp flatcars available for loading at Blythe. He stated that while driving down to the hearing in Blythe he had passed the rail yard at Fresno, where he observed the intermodal facilities. He observed one track containing 34 cars, none of which were of the fixed stanchion type. Altogether, he observed about 100 flatcars, none of the fixed stanchion type.

In rebuttal testimony McCaul stated that on a Santa Fe intermodal train observed by him, no more than 10 percent of the cars being pulled were owned by Santa Fe. This testimony was intended to show that while Santa Fe is moving heavily into more modern flatcars, there is an ample supply of collapsible stanchion type flatcars owned by other railroads which may be operated in Santa Fe trains.

Briefs

UTU

The brief of UTU stresses principally that it was the intent of Congress in deregulating the railroad industry that railroads be able to retain existing business, and to attract other traffic from competing modes, particularly the trucking industry. UTU notes that the Blythe closure is having the opposite effect.

WGA

WGA maintains that the abandonment of intermodal service was a violation of PU Code §§ 560 and 765, and also of Sections 2 and 3 of GO 36-D. WGA refers us to Illinois Commerce Commission v. Interstate Commerce Commission, 879 F.2d 917 (D.C. Cir. 1989), where it maintains the United States Court of Appeals for the District of Columbia on July 18, 1989 rejected an identical argument. WGA maintains that case is dispositive of the jurisdictional issue before us here. WGA notes that in the Illinois case the court stated that the central concern of the Staggers Rail Act of 1980 was reformation of the economic regulation of railroads, i.e. ratemaking, and that the claim of Santa Fe that California has not been certified and therefore cannot impose its jurisdiction over the discontinuance issue before us here is without merit. The court held that Section 11501 (b)(2) of the Staggers Rail Act (49 U.S.C.A.) imposes no barrier to the state regulation of the abandonment of a rail spur.

WGA asserts that this case involves a spur track abandonment. It points out that Title 49 U.S.C. Section 10907(b) provides that the ICC does not have authority over the construction, abandonment, discontinuance, etc. of spur, industrial, team, switching or sidetracks if the tracks are located entirely in one state.

City of Blythe

The City of Blythe essentially recites the evidence adduced through the testimony of witnesses, and stresses that Santa Fe's actions were without adequate notice or regard for the economic effects upon the Palo Verde, Imperial, and Coachella Valleys. It asks that we order the railroad to reinstate the intermodal services, and to reinstate the regular rail service on at least a five-day week basis.

Santa Fe

The railroad argues essentially as follows:

The federal government has traditionally regulated both inter- and intrastate railroad traffic. Prior to 1980, the federal government, through the ICC, preempted state regulation of railroad traffic only where a state's regulation discriminated against or imposed an undue burden on interstate commerce; however, the Staggers Rail Act of 1980 (Pub Law No. 96-448, 94 Stat. 1985 (1980) greatly expanded the preemptive and deregulatory powers of the ICC.

The Staggers Act changed the provision of the Interstate Commerce Act which empowered the ICC to exempt certain aspects of transportation from federal regulation to provide that the ICC shall exempt carriers, shippers, transactions or services from federal regulation when it finds that application of a provision of the Act

> "(1) is not necessary to carry out the transportation policy of Section 10101a of this title (Title 49, U.S.C.); and (2) either (A) the transaction or service is of limited scope, or (B) the application of a provision of this subtitle (The Interstate Commerce Act) is not needed to protect shippers from an abuse of market power." (49 U.S.C., Section 10505.)

The ICC exercised its powers under this provision in 1981 by exempting railroad transportation of trailers and containers as part of a continuous intermodal movement:

> "We believe that a total exemption for this traffic is appropriate based on the standards of 49 U.S.C. Section 10505. We are proposing to exempt from economic regulation, rail and truck service provided by railroads as part of continuous intermodal movement. The responses to the advance notice issued in this proceeding confirmed our belief that the potential for railroad abuses of market power in TOFC/COFC (trailer on flat car/container on flat car) service is virtually nonexistent . . .
>
> "The presence of actual and potential intermodal and intramodal competition, and the historical

> evidence support our view that TOFC/COFC service is sufficiently competitive to insure that the public interest will be protected without regulation." (Improvement of TOFC/COFC Regulation, 364 T.C.C. 391 (1981), aff'd sub nom. American Trucking Association v. I.C.C., 656 F.2d 1115 (5th Cir. 1981).) Thus, Santa Fe concludes, the ICC determined that transportation by motor carrier, as a substitute for rail/truck intermodal service, was so universal and pervasive that there remained no justification for continued regulation of such intermodal transportation."

Santa Fe also asserts that the Staggers Act broadened federal preemption of regulation by the states. It notes that the Staggers Act preempted "state authority over rail rates, classifications, rules and practices" (49 U.S.C. Sec. 11501(b)(1). The railroad argues that while the Staggers Act gave states a limited role in the regulatory process, in order to exercise any regulatory powers, a state first must receive a certificate from the ICC that its regulatory practices are "in accordance with the standards and procedures applicable to regulation of railroad carriers by the Commission."

Santa Fe refers us to Interstate Commerce Commission v. Texas, 107 S.Ct. 787 (1987). There, railroads operating in Texas challenged the authority of the Railroad Commission of Texas to regulate the motor carrier segment of intrastate intermodal transportation provided by a rail carrier. The court found that "the plain language of 49 U.S.C. Sec. 10505(f) unambiguously supports the ICC's position" that the ICC has complete authority over both the inter- and intrastate transportation being provided by the railroads, and that state efforts to regulate such transportation cannot be sustained. Santa Fe states that a similar conclusion was reached in Alliance Shippers v. Southern Pacific T. Co., 858 F.2d 567 (9th Cir. 1988).

In sum, Santa Fe argues that ICC has occupied the field by determining that there shall be no regulation of TOFC/COFC

service provided by railroads, and observes furthermore that California has never sought certification under 49 U.S.C. Sec. 11501 and therefore has no concurrent authority to regulate transportation within the jurisdiction of the ICC. Santa Fe maintains that the fact that California may have jurisdiction over the abandonment of miscellaneous trackage exempt from the ICC's jurisdiction under 49 U.S.C. Sec. 10907(b) (Illinois Commerce Commission v. ICC, supra) is irrelevant to this proceeding, since this case involves the regulation of intermodal service, and not the railroad's physical use of the tracks.

The OII/OSC contained references to possible violations of PU Code § 761, and to "ordinary due process" by Santa Fe.

PU Code § 761 provides that whenever the Commission finds that the rules, practices, or services of a public utility are unjust, unreasonable, inadequate, or insufficient, the Commission shall by order set such practices to be observed by the utility. Santa Fe argues that the provisions of Section 761 are inapplicable to its actions in discontinuing the intermodal service at Blythe, because California has failed to seek the certification from the ICC referred to above. Santa Fe also maintains that since all of the shipments from the Blythe ramp were destined to eastern markets, involving interstate commerce, California has no authority to assert jurisdiction under Section 761.

With respect to the issue of "ordinary due process" Santa Fe acknowledges that state and federal constitutions guarantee that no person may be deprived of life, liberty, or property without due process of law. However, the railroad contends, the protection afforded is against judicial or administrative procedure involving governmental action which, by reason of denial of notice and opportunity for hearing, unfairly deprives a person of statutorily conferred benefits. It argues that the protection does not apply to the actions of individuals or business entities unless there is a sufficiently close relationship between the government and the

challenged action. Santa Fe professes that its status as a regulated public utility is not, in and of itself, sufficient to subject its actions to the scrutiny of due process, referring to Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

Santa Fe insists that since its decision to discontinue its intermodal service at Blythe did not require any approval of the ICC, or this Commission, nor any other regulatory agency, the requisite "state action" (found necessary under Jackson) which would give rise to the right of due process does not exist.

Santa Fe also argues that the notice given of the discontinuance of intermodal service did not violate any statute or GO of this Commission. It notes that the only requirement stated in GO 36-E regarding freight service is in paragraph 5 which states that a railroad shall not cause anyone to incur a toll telephone call because of any abandonment or reduction of service. It had been suggested during the course of staff testimony that there was an agreement by Santa Fe during the conduct of hearings on Application 56415, which led to the adoption of GO 36-E, to adequately notice parties of any cessation or reduction of service. Santa Fe refers us to D.87752, dated August 23, 1977, which adopted GO 36-E and clearly discontinued the notice requirements formerly contained in GO 36-D. Further, Santa Fe has furnished in its brief the portions of the testimony during the GO 36-E proceeding addressing notice, and emphasizes that notwithstanding the lack of any statutory obligation, whether in a GO or the PU Code, to provide notice of discontinuances of freight service, the Commission eliminated the notice requirements from the GO 36-E series.

Santa Fe agrees with staff witness Cluster's opinion that the abandonment of the intermodal service is not an activity requiring the preparation of an environmental impact report (EIR). However, the railroad has anticipated a possible staff claim that even though an EIR is not required, the Commission is nevertheless

under a statutory duty to recognize and implement the policy stated in Public Resources Code Sections 21000 and 21001. These sections provide as follows:

> "It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage." (Pub. Res. C. Sec. 21000(g).)
>
> "The Legislature further finds and declares that it is the policy of the state to: . . . Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment." (Pub. Res. C. Sec. 21001(g).) Santa Fe submits that the above statutory duty applies only to matters over which the Commission has jurisdiction.

Finally, Santa Fe asserts that there is no emergency which would warrant waiving the 30-day waiting period following the filing of the ALJ's proposed decision in this proceeding. The railroad points out that its intermodal traffic constituted only a small percentage of the total number of shipments of perishable commodities originating in the areas served by the Blythe ramp.

SD Staff

SD staff argues that there is an absence of federal jurisdiction over the abandonment or discontinuance of spur, industrial, or team tracks if the track is located entirely in one state (49 U.S.C. Sec. 10907(b)(1). It maintains that because of the clear absence of such federal jurisdiction, the state's authority to regulate such discontinuances is irrefutable, citing Illinois Commerce, supra. SD staff relies heavily on the holding in that decision by the federal court that the Staggers Act and

Section 11501(b)(2) dealt only with intrastate ratemaking. Thus, SD staff insists, while a state must be certified by the ICC if it wishes to exercise jurisdiction in the field of ratemaking, the court stated that a state's jurisdiction over other matters, including team track abandonments, is not dependent on such certification. (As previously noted, Santa Fe had agreed to an amendment of the OII/OSC, providing that wherever the OII/OSC referred to the Blythe intermodal ramps as spur tracks, such references shall be redesignated "spur-team track areas.")

SD staff also contends that state jurisdiction over the discontinuance of such tracks is not dependent on whether intermodal shipments travel in interstate commerce, but only on whether the track is located "entirely within one state." It further maintains that there is little precedent for what has transpired at Blythe, pointing to the ICC response (Exhibit 23) to a letter from the Blythe Chamber of Commerce asking for direction and a way to end intermodal discontinuance. The ICC response was as follows:

> "In a proceeding not dissimilar from your situation, Investigation and Suspension Docket No. 9070, decided February 11, 1977...the Commission (ICC) found the proposed cancellation of TOFC service to be just and reasonable. Subsequent to the above proceeding, the Commission exempted TOFC/COFC service from the requirements of 49 U.S.C. Subtitle IV."

SD staff notes, however, that there were numerous dissimilarities between that situation and what occurred at Blythe. The ICC required a showing of the railroad's intermodal revenues and costs and a demonstration that the service was not profitable. Here, Santa Fe has refused to provide any financial data. There was only minimal service involved in the above case, compared with a total of about 6,500 trailers shipped from Blythe during 1988.

SD staff argues that Santa Fe has offered no evidence that its Blythe intermodal operation was unprofitable, and calls our attention to the adverse impact of the discontinued service upon the community, the various growers and shippers, as well as the increased air pollution and highway congestion.

Discussion

In this proceeding, we are faced with two fundamental questions. The first question is whether or not the public interest supports Santa Fe's discontinuance of service on the intermodal spur-team track at Blythe. If not, the second question is whether the Commission has any jurisdiction to effectuate the public interest and require adequate service.

On the first question, we find that the public interest does not support Santa Fe's discontinuance and, therefore, Santa Fe's unauthorized discontinuance violates PU Code Section 761 and service should be restored pursuant to PU Code Sections 560, 761, and 765. The record herein is replete with adverse economic and environmental impacts. The intermodal spur-team track at Blythe had been utilized for approximately 25 years before Santa Fe abruptly discontinued service in August, 1989. Even though Santa Fe has provided alternative service, these alternatives require a much greater trucking cost, because they are two to three times farther away from shippers thant the ramps at Blythe. This has caused the regional growers to be less competitive and caused severe consequences to local communities that have businesses affected by the discontinuance of intermodal service at Blythe.

Under the Public Resource Code Sections 21000 and 21001, we are required to consider alternatives to activities that cause environmental damage. It is clear that the increased trucking caused by Santa Fe's unauthorized discontinuance has contributed to the deterioration of our environment by causing a significant increase in NOx emissions and other pollutants. Thus, the far superior alternative to this increased trucking would be the

continuation of Santa Fe's operation over the spur-team track at Blythe.

Notwithstanding the abundant evidence of these adverse economic and environmental impacts, Santa Fe has not even attempted to justify its discontinuance with any evidence showing that its previous operations were unprofitable. Indeed, Santa Fe refused to furnish Commission staff with any figures to demonstrate that its operations at Blythe were unprofitable. Considering that Santa Fe's operations at Blythe had handled over 6,000 cars annually, in all likelihood these operations were, in fact, profitable. As Santa Fe explained, it had discontinued its Blythe piggyback service, because as a business, it operates in a manner which "maximizes profits."

In light of the above, the public interest supports a resumption of Santa Fe's operations on the intermodal spur-team track at Blythe, and we find that Santa Fe's unauthorized discontinuance is contrary to the public interest.

While there is no question that under state law (i.e., PU Code Sections 560, 761, 765) we could require Santa Fe to continue its spur-team track service, Santa Fe has claimed that our state law authority has been preempted by federal law. Thus, the second fundamental question we must examine is whether we have jurisdiction to order Santa Fe to restore its spur-team track service at Blythe. We conclude that we have such jurisdiction.

Santa Fe first argues that the Staggers Act, 49 U.S.C.§10505, empowered the ICC to exempt certain transportation from regulation, and that in 1981 the ICC exercised its authority to exempt intermodal service by interstate rail carriers. Improvement of TOFC/COFC Regulation, 364 I.C.C. 391 (1981), aff'd sub nom. American Trucking Association v. I.C.C., 656 F.2d 1115 (5th Cir. 1981).

While it is by no means clear that the ICC has even attempted to exempt from regulation intermodal service over spur-team track, this preemption argument (and Santa Fe's other Staggers Act argument) ultimately turn on whether the ICC has jurisdiction over rail carrier operations on spur-team track. Our review of the law leads us to conclude that the ICC has no authority whatsoever over spur-team track services. This area of regulation has historically been left to state regulatory bodies where, as here, the spur-team track is entirely located within one state. This was made clear when Congress specifically limited the ICC's jurisdiction over spur-team track under the Interstate Commerce Act, 49 U.S.C. §10907(b)(1), which provides that the ICC does not have authority over "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks if the tracks are located, or intended to be located, entirely in one State..." (Emphasis added).

In Illinois Commerce Com'n v. I.C.C., 879 F.2d 917, 922 (D. C. Cir 1989) (hereinafter "Ill. Commerce Com'n."), the Court found that "(t)his language plainly excepts abandonments of intrastate railroad spurs from (ICC) regulation. It does not, however, expressly answer the question whether a state agency has authority to regulate them; it simply provides that the (ICC) may not. Nonetheless, we think state power to do so follows as inevitably as night follows day."

The Court based this inevitable conclusion upon an exhaustive review of the legislative history of Section 10907(b)(1) (and its forerunner) and of court cases involving this issue. Id. at 922-24. Thus, the Court held that "by virtue of the exception established by Section 10907(b)(1), abandonment of intrastate spurs are beyond the jurisdiction of the (ICC) and within the residual regulatory authority of the states." Id. at 924.

Santa Fe attempts to distinguish Ill. Commerce Com'n from the present case, because Ill. Commerce Com'n concerned abandonment

of intrastate spur track whereas the present case involves the discontinuance of service over spur track. This is the classic distinction without a difference.

The Court in Ill. Commerce Com'n based its holding upon Section 10907(b)(1) of the Interstate Commerce Act, and this section places beyond the ICC's jurisdiction the "operation" over spur-team track and "discontinuance" of the use of spur-team track, as well as the abandonment of the spur-team track itself. Under Santa Fe's interpretation, the words "operation" and "discontinuance" are read right out of Section 10907(b)(1) and all of these words would mean the same thing as abandonment. Moreover, when the Court in Ill. Commerce Com'n reviewed the cases supporting state authority over industrial or spur track, the Court included in footnote 48 the Supreme Court case, Western & A.R.R. v. Georgia Pub. Serv. Com'n, 267 U.S. 493, 496 (1925), which held that the state's requirement that switching service on industrial track not be discontinued without notice and hearing was "clearly within the police power of the State." Thus, Ill. Commerce Com'n is not distinguishable upon the ground that discontinuance of service over spur-team track is involved in the present case rather than the abandonment of spur-team track.

In view of the above, it is clear that the ICC has no jurisdiction over the discontinuance of service over the spur-team track in question. With this clarity, it logically follows the Santa Fe's argument concerning the ICC's exemption of intermodal service of spur-team track must also be rejected. The ICC cannot exempt from state regulation or deregulate services over which the ICC has no authority in the first instance.

In ICC v. Texas, 479 U.S. 450 (1987), the Supreme Court found that under 49 U.S.C. §10505, the ICC could deregulate state regulation of intrastate trucking to the extent that it was part of intermodal service. Pivotal to the Supreme Court's analysis was its determination that the ICC had jurisdiction over the intrastate

trucking segment of intermodal service by rail carriers. As the Supreme Court declared, "the [Interstate Commerce] Commission's power to grant these exemptions from state regulation is coextensive with its own authority to regulate, or not to regulate, these intermodal movements by rail carriers." Id. at 455. [Emphasis added]. That is why the Court focused its review in that case on the extent of ICC's jurisdiction over the intrastate trucking segment of intermodal service. Id. at 456.

As we discussed above, however, the ICC has no jurisdiction over the operations or discontinuance of service over spur-team track. Therefore, since the ICC has no authority to regulate, or not to regulate, service over spur-team track, the ICC could not deregulate or exempt from state regulation our authority over spur-team track operations.

Santa Fe's second argument is that under the Staggers Act, 49 U.S.C. §11501(b), a state may only regulate intrastate transportation by interstate rail carriers if the state is certified by the ICC. Recognizing that we have never sought such certification, Santa Fe maintains that we have no jurisdiction over the operations or discontinuance of service on the spur-team track near Blythe. However, this argument has already been explicitly rejected in Ill. Commerce Com'n, 879 F.2d supra at 925-27, which held that Section 11501(b) of the Staggers Act only preempted state jurisdiction over the rates of freight service by rail carriers, and that Section 10907(b)(1) of the Interstate Commerce Act continues to govern and allow state jurisdiction over the operations, discontinuance, and abandonment of service over spur and spur-team track.

In view of the above, we conclude that our jurisdiction over Santa Fe's operations and/or discontinuance of operations over the spur-team track near Blythe has not been preempted. We also conclude that the public interest requires that Santa Fe restore its spur-team track operations near Blythe immediately in order to

mitigate the adverse economic and environmental impacts caused by its unauthorized discontinuance.

Notwithstanding these conclusions, we must recognize the limits to our jurisdiction in this matter. Whereas our Commission has jurisdiction over Santa Fe's spur-team track service, we do not have jurisdiction over Santa Fe's operations on its main line or branch line which are part of the general system of transportation regulated by the ICC. Thus, if Santa Fe had received from the ICC authorization to abandon its track or to discontinue its interstate service on its branch line that is connected to the spur-team track near Blythe, our limited jurisdiction over Santa Fe's spur-team track service would be rendered meaningless.

What is significant in the present case, however, is that Santa Fe has not applied for and received such abandonment or discontinuance authorization from the ICC.[1] Indeed, Santa Fe continues to provide interstate transportation two times each week on its branch line that connects to the spur-team track near Blythe. The only operation that Santa Fe has discontinued in the vicinity of Blythe is Santa Fe's spur-team track service, which is a service regulated only by our Commission and not by the ICC.

We therefore order Santa Fe to restore this spur-team track service near Blythe commensurate with its service on the connecting branch line. While this service is only presently provided two times each week, it is our intent that Santa Fe provide this spur-team track service to the same extent as its service on the connecting branch line, whether such service

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1 Of course, if Santa Fe were ever to apply to the ICC for abandonment or discontinuance authorization concerning its branch line service, parties would have the opportunity to oppose Santa Fe's application before the ICC, and, if necessary, before the courts reviewing any adverse ICC order.

increases or decreases in the future.[2]

There is clearly a significant demand for service on both Santa Fe's branch line and spur-team track near Blythe. It would therefore make sense for Santa Fe to consider its customers' needs and to restore this branch line and spur-team track service to the full level of service that it had provided for the past 25 years. However, what we hold is that Santa Fe must provide the same level of service on its spur-team track near Blythe as it provides on its connecting branch line, whatever that service level may be.

Findings of Fact

1. Santa Fe provided TOFC service from Blythe in connection with the transportation of fresh produce in interstate commerce since 1964.

2. Santa Fe discontinued the service described in Finding 1 in August, 1989, on several days' notice.

3. The TOFC ramps from which TOFC service had been provided in Blythe constitute a team track as that term is used in Section 10907(b)(1) of the Interstate Commerce Act.

4. Prior to Santa Fe's discontinuance in August, 1989, Santa Fe's spur-team track near Blythe was extensively used and it handled as many as 6,000 trailer loads of perishable row crops annually that were destined for midwestern and eastern markets.

5. Santa Fe hauls many products on the branch line which connects to its spur-team track near Blythe, and these other products do not require TOFC intermodal service.

6. Santa Fe's freight service on the branch line described in Finding 5 occurs twice a week, and Santa Fe does not have

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2 As already noted, Santa Fe could not cease its operations on its connecting branch line without discontinuance or abandonment authorization from the ICC.

authorization from the ICC to discontinue or abandon that branch line.

7. The longer transit time caused by trucking the piggyback trailers to more distant facilities located in Los Angeles, San Diego, San Bernardino or Phoenix may reduce the shelf life of the produce and causes greater costs to the regional growers, which make their products less competitive.

8. Santa Fe's discontinuance of its spur-team track service at Blythe has caused economic problems in the Blythe area, because many local businesses relied upon or related to Santa Fe's spur-team track service.

9. Santa Fe's discontinuance of spur-team track service near Blythe has caused a corresponding increase in the trucking of piggyback trailers to Los Angeles, San Diego, San Bernardino and Phoenix, which has significantly increased the amount of NOx emissions and other pollutants in southern California and the Phoenix area.

10. Santa Fe's spur-team track service near Blythe appeared to have been profitable before Santa Fe discontinued it.

Conclusions of Law

1. Pursuant to our authority under PU Code Sections 561 and 765, Santa Fe should be ordered to provide service on its spur-team track near Blythe.

2. The practice of Santa Fe to discontinue its spur-team track service at Blythe without adequate notice and without our authorization is unjust and unreasonable and Santa Fe's present lack of such service is plainly inadequate; therefore, pursuant to our authority under PU Code Section 761, Santa Fe should be ordered to restore service on its spur-team track near Blythe.

3. Santa Fe should also be ordered to maintain its TOFC ramps and spur-team track at Blythe in operable condition.

4. The Stagger Act does not preempt state regulatory jurisdiction over spur-team track operations, discontinuance or abandonment.

5. The ICC's exemption of intermodal service from regulation does not apply to state regulation of spur-team track operations or discontinuances, because the ICC has no jurisdiction over the services on spur-team track located entirely within one state.

6. This proceeding should be discontinued.

O R D E R

IT IS ORDERED that:

1. The Atchison, Topeka, and Santa Fe Railway Company shall restore its spur-team track service near Blythe to the same level of service that it provides on its connecting branch line until such time that it is authorized by this Commission to abandon or discontinue the spur-team track service.

2. The Atchison, Topeka, and Santa Fe Railway Company shall maintain its intermodal ramps and spur-team track near Blythe in operable condition until such time that it is authorized by this Commission to abandon or discontinue them.

3. This proceeding is discontinued.

This order is effective 30 days from today.

Dated July 6, 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