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Decision 91-02-030 February 21, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern Pacific
 Transportation Company, Union
 Pacific Railroad Company, and The
 Atchison, Topeka & Santa Fe Railway
 Company for an exemption from the
 width restrictions of General Order
 No. 26-D.

ORIGINAL

Application 89-12-029
 (Filed December 20, 1989)

Carol A. Harris, Attorney at Law, for Southern
 Pacific Transportation Company, Jeff S.
 Asay, Attorney at Law, for Union Pacific
 Railroad Company, and Messrs. Hill, Farrer &
 Burrill, by R. Curtis Ballantyne, Attorney
 at Law, for The Atchison, Topeka and Santa
 Fe Railway Company, applicant.

James A. Jones, for United Transportation
 Union, protestant.

Joseph O. Costello, Attorney at Law, for
 Northrop Corporation, Inc. and D. Dalzell,
 for Brotherhood of Maintenance Way
 Employees, interested parties.

Robert G. Webb, for Railroad Safety Branch,
 Safety Division.

OPINION

This Decision grants a Petition to Modify Decision
 (D.) 90-05-043 in this proceeding. The Petition was filed by
 Southern Pacific Transportation Company (SPT).

Background

SPT, Union Pacific Railroad Company (Union Pacific), and
 The Atchison, Topeka & Santa Fe Railway Company (AT&SF) originally
 filed this Application to obtain an exemption from the provisions
 of General Order (GO) 26-D to permit the transportation of excess
 width cars between the California state line near Yuma, Arizona,
 and Palmdale, California, and between the California state line
 near Nipton, California, and Palmdale, California. The extra width

is needed to accommodate large structural components for the B-2 bomber program which will be shipped from Grand Prairie, Texas, and from the State of Washington, to Palmdale, California. The cars to be used (designated NRPX 10001 through 10007 and 30001 through 30004) are gondola cars assigned to Northrop Corporation, Inc. (Northrup) under contract with the United States Department of Defense, and are specially equipped with metal canopies designed to conceal and protect the lading from damage.

Safety Division recommended that the application be granted, subject to certain conditions similar to those imposed in past decisions (D.89-06-039 in Application (A.) 58316, and D.85-01-013 in A.83-10-056). It also recommended that the authorization cover only 11 of such cars.

The United Transportation Union (UTU), which represents operating employees on the three railroads, protested and demanded a hearing, citing concerns over the safety of its members. The Brotherhood of Maintenance Way Employees (BMWE) also protested, citing similar concerns.

The General Order

GO 26-D generally prohibits movement of rail cars exceeding 10 feet 10 inches in width. Section 16.2 of GO 26-D provides for exemptions from this prohibition. The Commission has determined in the above-cited decisions that a flat car with a welded canopy cover is considered an excess width car (not a wide load) and that an exemption is required from GO 26-D before it may be legally operated within California. By those Decisions, the Commission granted exemptions for the movement of 13-foot wide cars similar to those involved in this proceeding.

Initial Proceedings

After a prehearing and settlement conference, the assigned ALJ initiated a procedure much like a rulemaking proceeding. As a result of this procedure, general agreement was reached on the text of an order with conditions which would

authorize the proposed moves. Because of time limitations, it was not possible to resolve a particular issue-- whether it was necessary for wide cars and wide loads to be blocked together. UTU, alone of the appearances, contended that such blocking was necessary.

The Decision

D.90-05-045 authorized the movements subject to specified rules and conditions. The Decision adopted the UTU recommendation, requiring that wide cars and wide loads be blocked together when train lengths permit.

Ordering Paragraph 6(b) provided:

"b. Such cars (i.e. NRPX cars), and any other cars containing lading in excess of ten (10) feet, ten (10) inches wide shall be blocked together in the train where train lengths permit."

The text of the Decision stated:

"[i]f either railroad remains convinced that the operating problems outweigh whatever additional safety our blocking order provides, it is welcome to file a Petition under §1708 Public Utilities Code. (Such a filing would also be appropriate if these experimental moves disclose any other problem with our Order)."

The Petition

SPT filed a petition for modification seeking a liberalization of the blocking rule. SPT took the position that a distinction should be made between the NRPX cars and wide loads. It had no objections to a requirement that all NRPX cars be blocked together since they will be routed to or from the same destination in California. It did object, however, to a requirement that wide loads be blocked together with wide cars. Wide loads are one-time moves and may be routed to a variety of destinations. Requiring them to be placed in the same block with the NRPX cars, it argued, would interfere unnecessarily with train operations. It pointed

out that another subparagraph of the Decision specified that the NRPX cars be located at least five but not more than 15 car lengths from the engine. It contended that the requirements of Ordering Paragraph 6(b) in conjunction with this other requirement would effectively compel the railroad to place all excess width cars at the head end of the train, regardless of where the wide loads are destined. It argued that an excess width car travelling to a destination other than Palmdale should be blocked with other cars travelling to that destination, rather than with those routed to Palmdale. Any other solution, it asserted, would require excessive switching when breaking the train down.

UTU opposed the modification. Consequently, a hearing was conducted before Administrative Law Judge Gilman on August 30, 1990. At hearing, a stipulation was reached that Ordering Paragraph 6(b) could be modified to allow NRPX cars and wide loads to be placed in different blocks. We have adopted the stipulation, and will modify D.90-05-043.

Finding of Fact

Wide car operations as authorized in D.90-05-043 can be conducted without significant increase in hazard to railroad employees if the railroads block all NRPX cars in a single block but are permitted to block wide loads at a different place in trains.

Conclusion of Law

Ordering Paragraph 6(b) of D.90-05-043 should be revised as stipulated.

O R D E R

IT IS ORDERED that Ordering Paragraph 6(b) of Decision 90-05-043 is revised to provide:

(b) Such cars shall be blocked together in the train where train length permits.

This order is effective today.

Dated February 21, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

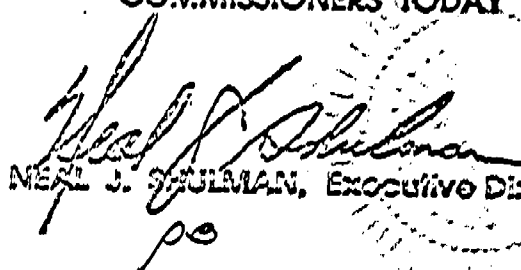
I abstain.

DANIEL WM. FESSLER
Commissioner

I abstain.

NORMAN D. SHUMWAY
Commissioner

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


NEIL J. SHULMAN, Executive Director
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