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Decision 91-11-031 November 6, 1991

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of State of California, Department)
of Transportation for an Order)
Permitting the Southern Pacific)
Company to Increase Passenger Fares)
Between San Francisco, San Jose, and)
Intermediate Points, to Impose a)
Surcharge o \$1.00 (One Dollar) for)
Tickets Purchased on Board Where)
Stations are Open.)

Application 91-05-057
(Filed May 29, 1991)

ORDER DENYING REHEARING OF DECISION (D.)91-09-028

D.91-09-028 (the Decision) granted passenger fare and parking fee increases for Southern Pacific Transportation Company (SP) between San Francisco, San Jose and intermediate points filed by the Department of Transportation of the State of California (Caltrans) on behalf of SP. The Decision authorized all requested increases with the sole exception of the elimination of weekly tickets. An application for rehearing was filed by Caltrans on September 4, 1991, prior to the adoption of the Decision on September 6, 1991. No responses were filed.

The application of Caltrans requested rehearing only of the portion of the Decision which refused immediate elimination of the weekly ticket. Caltrans further requested a stay "of the sale of said ticket on and after September 8, 1991," rather than a stay of the Decision. (Application for a Limited Rehearing and For Stay, Caltrans, p. 2.)

The Decision found that the record did not support the elimination of weekly tickets and ordered a further public hearing on that issue. (Findings of Fact Numbers 8 and 10, Conclusion of Law Number 3 and Ordering Paragraph Numbers 1 and 2, D.91-05-028, p. 9-10.) The Administrative Law Judge conducted

a duly noticed hearing on this issue on October 7, 1991. His proposed decision following that hearing is now pending.

DISCUSSION:

Caltrans alleges in their application that there "is no substantial protest on file that opposes discontinuance of the weekly ticket and no substantial evidence that supports the continuation of the weekly ticket." (Caltrans, p. 2.) In so arguing they attempt to shift their burden as proponents of a rate change onto protestants and the Commission.

A "Comment of Opposition" was filed by United Transportation Union. Despite that title, the Decision considered that filing a protest. Additional public comments and letters were received in opposition to the elimination of the weekly ticket.

Caltrans' reliance on Public Utilities Code § 1733 in their request for a stay "of the sale" of the weekly ticket is misplaced. While the Decision denied the change which Caltrans requested, a stay of the Decision would not operate to grant them relief. A stay of the Decision returns the parties to the status quo ante. In this case, the sale of the weekly ticket continues during the operation of a stay. In any event, Public Utilities Code § 454(a) provides:

"...no public utility shall change any rate...except upon a showing before the commission and a finding by the commission that the new rate is justified."

The conduct of a further hearing by the Commission on October 7, 1991 to take evidence on the issue of the elimination of the weekly ticket renders Caltrans' request for a stay of the sale of the weekly ticket and its application for rehearing moot.

CONCLUSION:

The application of Caltrans has failed to allege any facts or raise any legal issues which constitute error on the part of the Commission. On the issue of the weekly ticket, the Decision found insufficient evidence to rule. The Commission

ordered a further hearing which has already been conducted, rendering Caltrans' request moot. After having considered all of the allegations of error in the application we are of the opinion that sufficient grounds for rehearing have not been shown.

THEREFORE, IT IS ORDERED that the application for rehearing of D.91-09-028 is denied.

This order is effective today.

Dated November 6, 1991 at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director