

ORIGINAL

Decision 82 06 045 JUN 2 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

County of Los Angeles, )  
 State of California, )  
 )  
 Complainants, )  
 )  
 v )  
 )  
 Southern Pacific Transportation )  
 Company, a corporation, )  
 )  
 Defendant. )

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Case 10575  
 (Petition for Modification  
 of Decision 91847 et al.;  
 filed April 22, 1982)

ORDER MODIFYING DECISIONS  
91847, 93118, and 82-02-048

This is a complaint in which the County of Los Angeles (County) and the State Department of Transportation (Caltrans) seek an order of the Commission directing Southern Pacific Transportation Company (SP) to operate a commuter passenger train service between Los Angeles and Oxnard.<sup>1/</sup> Decision (D.) 90018 issued February 27, 1979 denied SP's motion to dismiss on jurisdictional grounds. D.90417 dated June 5, 1979 denied SP's petition for rehearing of D.90018.

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<sup>1/</sup> By D.92862 issued April 7, 1981, the County of Los Angeles was dismissed as a complainant.

Following public hearing, the Commission issued D.91847 on June 30, 1980. That decision as amended by D.92863 and D.93211 ordered:

1. Within thirty days after the effective date hereof, the State of California Department of Transportation (Caltrans) shall submit to Southern Pacific Transportation Company (SP) and file with this Commission locations, plans, and specifications for station platforms and parking facilities.
2. Within ninety days after receipt of the plans and specifications provided for in Ordering Paragraph 1 hereof, SP shall construct the platforms and parking facilities in accordance with said plans, and specifications and shall, upon ten days' notice to the Commission and the public, commence operations of two commuter passenger trains between Los Angeles and Oxnard with intermediate stops at Camarillo, Moorpark, Santa Susana (Simi Valley), Chatsworth, Northridge, Panorama, Airport, Burbank, and Glendale. Said service shall be provided subject to the condition that Caltrans shall subsidize deficits resulting from such operation.
3. SP shall operate the rail service provided for in Ordering Paragraph 2 hereof between the hours of 6 a.m. and 8 a.m. and between 4 p.m. and 6 p.m. daily, Monday through Friday, holidays excepted.
4. Within thirty days prior to the commencement of service by SP, Caltrans shall establish to the Commission's satisfaction that an escrow account has been established containing deposits of \$1.3 million for the purpose of constructing station platforms and parking facilities and a deposit of at least one-half of the estimated costs of the first year operations as set forth in Exhibit 9.

5. Within one hundred eighty days after the effective date hereof SP, Caltrans, and the County of Los Angeles shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom.
6. During the period of negotiations funds deposited in the escrow account provided for in Ordering Paragraph 4(c) hereof, shall be used for the purpose of inaugurating and maintaining the commuter service. When an agreement has been reached and actual costs have been determined adjustment will be made accordingly.
7. Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, SP shall amend its tariffs and timetables on file with the Commission to reflect the service herein authorized and ordered.
- 7(a) One year after commencement of the proposed service, SP or Caltrans may petition for the establishment of Centralized Traffic Control and/or construction of additional sidings or extension of existing sidings, in order to expedite passenger service or reduce delays to freight train operations. Said petition should set forth the facilities proposed to be constructed, the estimated construction costs, and a proposed division of such costs between Caltrans and SP based on the benefits accruing to each from such construction.

D.93211 issued June 16, 1981 denied rehearing of D.92862 and D.92863 and modified the findings set forth in D.91847 and D.92862. D.93118 dated May 22, 1981 stayed the time for compliance with Ordering Paragraphs 2 and 7 of D.91847 until further order of the Commission.

By several orders culminating in D.82-05-039 issued May 4, 1982, the time for compliance with Ordering Paragraph 5 of D.91847 was stayed until further order of the Commission.

Caltrans' Request

By its Petition for Modification filed April 22, 1982, Caltrans seeks the following:

1. The stay order in D.93118 be dissolved.
2. Ordering Paragraph 2 of D.91847 be modified as follows:
  - a. On June 1, 1982 SP shall commence the following construction:
    - (1) Construction of station platforms and parking substantially in accordance with the plans and specifications on file with this Commission.
    - (2) Construction of track work in accordance with Exhibit A of the proposed Construction and Maintenance Agreement submitted with this petition.
  - b. The construction described above shall be prosecuted diligently by SP to conclusion on or before September 30, 1982.
3. Ordering Paragraph 7 of D.91847 be modified as follows:

"On or before October 15, 1982, SP shall amend its tariffs and timetables on file with this commission to reflect the service herein authorized and ordered. Said tariffs and timetables shall be provided by Caltrans to SP on or before October 1, 1982."

4. Ordering Paragraph 5 of D.91847 be modified as follows:  
"SP shall, on the effective date of this order, negotiate with Caltrans in order to reach agreement on the service, lease and construction agreements. If the parties have not agreed on the costs thereof within six months from the effective date of the commission's order, the commission shall determine the costs by further order."
5. Ordering Paragraph 4 of D.91847 be changed to require SP to commence service on November 1, 1982, and further to require that Caltrans shall provide evidence to the commission on or before May 10, 1982, that the sum of \$1,974,900 has been encumbered to perform the agreements submitted herewith, or the orders herein requested shall not be effective until further order of the commission.

Reasons Advanced in Support  
of Caltrans' Request

Caltrans states that the purpose of its petition is to make certain the time for compliance with various orders of this Commission.

Caltrans states that while it and SP have been negotiating for the terms of payment of the various services to be provided by SP, these negotiations are not expected to be complete by May 4, 1982, the time specified in D.82-02-048 for submission of the service agreement to this Commission for approval.<sup>2/</sup>

Caltrans' firm offer to SP is submitted with its petition to indicate the readiness of Caltrans to finance this service. Caltrans urges that the reasonableness of its offer is not in issue now. It asks that we fix the costs of construction and operation if SP and Caltrans cannot agree.

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<sup>2/</sup> The petition asks for an extension of time to comply with Ordering Paragraph 5 of D.91847. Time for compliance with that provision had been extended to May 4, 1982 by D.82-02-048. D.82-05-039 issued May 4, 1982 extended time for compliance until further order of the Commission.

By Ordering Paragraph 1 of D.91847 (the time of compliance having been extended during rehearing of D.91847), Caltrans submitted to SP and filed with the Commission, locations, plans, and specifications for the station platforms and parking. As a result of subsequent meetings with SP, the station locations, plans, and specifications have been revised and are reflected in the locations, plans, and specifications submitted to SP and filed with the Commission on April 16, 1982. Caltrans states that while these plans do not include utility relocation or comments from local agencies, they are sufficient for SP to commence construction in accordance with them on June 1, 1982. Caltrans anticipates no changes in the station locations, and no substantial changes in the plans and specifications as a result of review by the local agencies.

Ordering Paragraph 4 of D.91847 referred to an "escrow" account being established 30 days prior to commencement of the service. Caltrans states that not only did this paragraph not establish a time certain for SP to commence operation of the service, but it presented unexpected difficulty for Caltrans in establishing an escrow account. In fact, no escrow account has been established. However, Caltrans believes that evidence satisfactory to the Commission will be presented by May 10, 1982, which will establish that the funds necessary to commence the construction and the service are available for payment to SP for timely compliance with the orders requested in this petition.

The petition states that the necessity for Caltrans' request is related to Caltrans' source of funds for the service. The funds to finance the service are derived from Senate Bill 620, Chapter 161 of the 1979 statutes, Section 71(c). This three-year funding program will expire on June 30, 1982. Money not encumbered by that date will not be available after June 30, 1982. The evidence to be provided by

May 10, 1982 by Caltrans assertedly will demonstrate that the orders requested here will, if issued by the Commission, be sufficient to encumber the funds and make the money available for this service after June 30, 1982.

Staff Response

The staff response states that it has reviewed the plans and specifications on file and called for in Paragraph 1 of D.91847 to be submitted to SP and the Commission. Originally under D.91847, SP was to have commenced and completed construction of the stations and parking lots by Ordering Paragraphs 2 and 7 within 90 days from the decision's original effective date. The Commission in D.93118 indefinitely stayed the time for compliance, pending further review of this matter.

The staff also draws attention to the fact the court review of its decisions relating to this ordered commuter rail service has been exhausted by the final decision of the California Supreme Court filed December 23, 1981, (S.F. 24316) denying SP's petition for writ of review, thus rendering a final judgment on the merits of this matter.

The staff believes SP can commence construction of the station platforms and parking lots by those documents as originally ordered in D.91847, inasmuch as the staff and SP have had ample time to review the plans and specifications with respect to their conformance to the Commission decisions and relevant general orders.

Staff urges the Commission do only what is reasonably necessary to cause the initiation of the rail service ordered. The first step necessary is the establishment of times specific for the commencement of construction of the stations and parking lots detailed in the "plans and specifications" for these facilities on file with the Commission for a number of months. That could be accomplished if the Commission lifts the stay order in effect for commencement and completion of construction of the stations and parking facilities and sets a date certain for construction.

Staff urges that the other requirements upon SP requested by Caltrans in its petition should not be dealt with at this time pending further review by the staff. Therefore, staff urges the Commission lift the indefinite stay on construction made effective by D.93118 and set specific dates for commencing and completing construction of the stations and parking facilities. The petition can then be evaluated more carefully to determine to what extent, if any, further orders should be issued. Staff suggests that June 15 is a reasonable time for SP to commence construction of the stations and parking facilities and that they could reasonably be completed in 120 days, on October 15. (This period would give SP an additional 30 days longer than the original order for completion of those facilities.)

Paragraph 7 of D.91847 required SP to submit within 60 days of the effective date of that order (and on 10 days' notice to the Commission and the public) revised timetables and tariffs reflecting the rail service ordered in that decision. Staff recommends the stay also be lifted for compliance with Paragraph 7 and a date certain be set for compliance. The date for completion of the station and parking facilities, of October 15 would appear an appropriate date to order SP to submit the train tariffs and timetables called for in that paragraph, and staff urges the Commission to so order.

#### SP's Response

In its response, SP does not concede jurisdiction of this Commission to issue the order sought by Caltrans and urges that there is no legal requirement for it to negotiate with Caltrans on the issues. However, SP believes it is in the best interests of both parties that a full, free discussion take place. SP claims that Caltrans' offers for subsidy payments and for construction of facilities are too low, and that Caltrans has ignored (to its advantage) the findings and dicta in prior Commission decisions concerning the payments reasonably due it from Caltrans. Therefore, SP, opposes the petition, insofar as it seeks adoption of Caltrans' proposed contract provisions.



SP also opposes any order that would lift the stay granted in D.93118. SP states as follows:

"Caltrans' petition stresses that it has an urgent need for the requested schedule modifications so that it can sequester SB 620 funds, which were earmarked three years ago by the State Legislature for the state rail experiment by June 30, 1982. If Caltrans does not encumber those monies pursuant to a Commission order, this would simply mean that Caltrans would have to resubmit its need for the proposed commute trains to the legislature. We submit that this would be in the public interest. In view of the present transportation projects, which would benefit greater numbers of riders at considerably less expense, it is likely that the Legislature might conclude, as the Board of Supervisors for the County of Los Angeles did just last year, that the proposed service is "not needed at this time." In any event, the present SB 620 appropriation, which is based on Caltrans' original budget for its share of the commute service, is wholly inadequate to cover the additional expenses it assumed when County dropped out of the case or the subsidy requirements imposed by Decision 93211. Regardless of the instant petition, Caltrans will have to go before the Legislature this year for additional funding for the trains. The primary purpose of the instant petition, it seems, is to support an argument to the legislature that the project has been irretrievably committed, and is beyond further examination or recall. The Commission should not permit its process to be so used as to frustrate legitimate legislative oversight."

#### Discussion

We adopt the staff's recommendations. The only actions we should take at this time are those reasonably necessary to cause the initiation of the ordered rail service. The first step is the establishment of times specific for commencement of the construction

of the stations and parking lots detailed in plans for such facilities on file for a number of months. This will be accomplished by lifting the stay of that portion of Ordering Paragraph 2 of D.91847 directing construction of such facilities. We concur with the staff analyses that June 15, 1982 is a reasonable time for SP to commence construction of station and parking facilities, and that such construction should be completed 120 days after. ✓

We also agree with the staff that the stay of Ordering Paragraph 7 of D.91847 should be lifted and a date certain for the filing of timetables and tariffs should be established. That filing date should be October 15, 1982, the date for completion of construction of the parking and station facilities.

In all other respects, the petition for modification filed by Caltrans is premature and unnecessary at this time and should be denied. The order should become effective today so that construction may commence immediately.

IT IS ORDERED that:

1. The stay ordered in D.93118 of the time for compliance with Ordering Paragraphs 2 and 7 of D.91847 is dissolved. ✓
2. Ordering Paragraph 2 of D.91847 is modified to read as follows:
  2. On or before June 15, 1982, Southern Pacific shall commence the following construction:
    - a. Construction of station platforms and parking substantially in accordance with the plans and specifications on file with this Commission;
    - b. Construction of track work in accordance with Exhibit A of the proposed Construction and Maintenance Agreement submitted with Caltrans' petition filed April 22, 1982.

The construction specified in subparagraphs a and b shall be prosecuted diligently by SP to conclusion on or before October 15, 1982.

3. Ordering Paragraph 7 of D.91847, as amended by D.92862, is modified to read as follows:

7. On or before October 15, 1982, SP shall amend its tariffs and timetables on file with this Commission to reflect the service authorized and ordered. These tariffs and timetables shall be provided by Caltrans to SP on or before October 1, 1982.

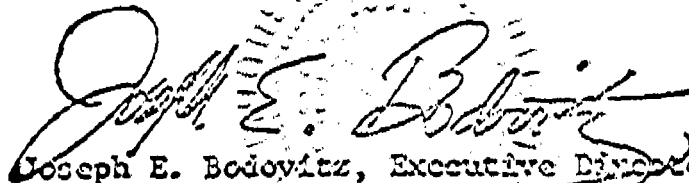
4. In all other respects, Caltrans' petition for Modification filed April 22, 1982 is denied.

This order is effective today.

Dated JUN 2 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director

Staff urges that the other requirements upon SP requested by Caltrans in its petition should not be dealt with at this time pending further review by the staff. Therefore, staff urges the Commission lift the indefinite stay on construction made effective by D.93118 and set specific dates for commencing and completing construction of the stations and parking facilities. The petition can then be evaluated more carefully to determine to what extent, if any, further orders should be issued. Staff suggests that June 15 is a reasonable time for SP to commence construction of the stations and parking facilities and that they could reasonably be completed in <sup>120</sup>~~180~~ days, on October 15. (This period would give SP an additional 30 days longer than the original order for completion of those facilities.)

Paragraph 7 of D.91847 required SP to submit within 60 days of the effective date of that order (and on 10 days' notice to the Commission and the public) revised timetables and tariffs reflecting the rail service ordered in that decision. Staff recommends the stay also be lifted for compliance with Paragraph 7 and a date certain be set for compliance. The date for completion of the station and parking facilities, of October 15 would appear an appropriate date to order SP to submit the train tariffs and timetables called for in that paragraph, and staff urges the Commission to so order.

SP's Response

In its response, SP does not concede jurisdiction of this Commission to issue the order sought by Caltrans and urges that there is no legal requirement for it to negotiate with Caltrans on the issues. However, SP believes it is in the best interests of both parties that a full, free discussion take place. SP claims that Caltrans' offers for subsidy payments and for construction of facilities are too low, and that Caltrans has ignored (to its advantage) the findings and dicta in prior Commission decisions concerning the payments reasonably due it from Caltrans. Therefore, SP, opposes the petition, insofar as it seeks adoption of Caltrans' proposed contract provisions.

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