

ORIGINAL

Decision 82 09 043 SEP 8 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application	)	
of Southern Pacific Transportation	)	
Company to modify Decision D.93501	)	
re permission to rearrange the	)	Application 82-03-103
switch stand located in Los Angeles	)	(Filed March 26, 1982)
County in conformance with G.O.	)	
26-D pursuant to the plan formulated	)	
in the application.	)	
	)	

Anthony P. Parrille, Attorney at Law, for  
Southern Pacific Transportation Company,  
applicant.

James P. Jones, for United Transportation  
Union, interested party.

Lynn T. Carew, Attorney at Law, and  
Herman Privette, for the Commission  
staff.

O P I N I O N

Statement of Facts

Southern Pacific Transportation Company (SP) operates a double main line track standard gauge railroad within its right-of-way in the City of Alhambra (Alhambra) in Los Angeles County. Approximately 20 trains use these main line tracks daily. Between September 1976 and March 1979, in a project known as the Alhambra Railroad Lowering Project, SP, Alhambra, and the California Department of Transportation collaborated to lower the grade of the tracks along a 3.2-mile stretch of track, and constructed 9 grade separations to provide street overcrossings. As a result the tracks are now located in a slot about 46 feet wide at the base and varying in depth below street level. The city was the lead agency on the project and the primary contractor was Irvine-Santa Fe.

At the Marengo Avenue overcrossing, Switch 2370 is located 25 feet below Mission Road, which parallels the depressed track slot. Switch 2370 permits freight trains to leave the depressed north main line track and ascend to street level where the Alhambra team track and the Palm drill track serve local industries. Switch 2370 is manually operated, but electrically locked.

In this area the slot is encased within walls of concrete piling with earth in between, over which gunite was applied. The gravel-surfaced area between the north track and the north retaining wall is used as a roadway for SP maintenance vehicles and also serves as an emergency passageway for Alhambra police vehicles and fire trucks. The distance between the switch stand for Switch 2370 and the retaining wall is 10 feet, 2 inches.

As constructed, the switch stand was installed 6½ feet from the center line of the north track (or 4 feet from the track). General Order (GO) 26-D requires that there be a minimum of 8½ feet from the center line of the track to the switch stand. The reason is that a detraining switchman anticipating a normal size toe path (as required by GO 118) could be injured by jumping into the switch. Even though SP rules prohibit detraining in front of a switch, in emergency situations such as a derailment it might be necessary to detrain in front of the switch. Switching operations in the vicinity of Switch 2370 occur at night.

That the 2370 switch stand did not comply with the GO was discovered by staff during an inspection of the project on September 27, 1978. Thereafter, over a 17-month period there were numerous staff-SP efforts to reach a reasonable solution. All failed. Consequently on February 25, 1980, pointing out that there had been no accidents involving the switch in the past interval, that there were only two train

movements daily over that particular switch, and that train crews operating in the area were well aware of the location of the switch and exercised care, SP asserted that the switch stand, although not in conformity, presented no hazard, and by Application (A.) 59470 asked that a variance from GO 26-D be granted.

Two days of hearing before Administrative Law Judge (ALJ) Jarvis followed in Los Angeles. The United Transportation Union (UTU) strongly opposed any variance, contending that SP should be required to do whatever was necessary to bring the switch stand installation into compliance. The Railroad Operations and Safety Branch of our staff took no position relating to the variance, but did point out that since the existing switching operations were nocturnal, illuminating the area would serve to alleviate the danger potential.

At that hearing, while alternatives were being explored, staff counsel asked witness Skaff (then area engineer for SP) whether moving the switch stand from alongside the track to against the retaining wall would gain anything. The witness, while demurring that he was not an operating person, was not enthusiastic about putting the switch stand approximately 10 feet further away from the track, feeling that the distance plus the intervening roadway would render it less effective.

After considering all the evidence the Commission concluded that SP should be granted a variance for the switch stand as installed on the condition that it install and maintain adequate illumination. By Decision (D.) 93501 dated September 1, 1981 the railroad was ordered to submit plans for illumination within 60 days, and the order further provided that the installation was to be completed within 90 days after staff approval

of the plans, with the installation to be maintained thereafter. The granting of a variance was conditioned upon SP's meeting these conditions.

SP met none of these conditions. Nonetheless it continued to use Switch Stand 2370 as installed. It explains this continued violation of GO 26-D as follows. The first draft of illumination plans, estimated to cost \$10,410, was considered too costly. By changing it to bring in electricity from another approach, the estimated cost was reduced to \$3,020. But when presented to SP's operations vice president early in December 1981 for funding approval as a nonbudget item, he questioned the plan's feasibility, pointing out that this switch stand was located in an area with heavy vandalism problems and that it would be very vulnerable to rock-throwing and shootings. The engineers were told to come back with a more practical alternative solution.

At this point SP erred. It did not inform the Commission of its conclusion or that it would require more time to work on an alternative it would present. On January 12, 1982, alerted by staff that as yet no illumination plans had been received, staff counsel communicated with SP's counsel. Assertedly on January 15, 1982 she was reassured that these plans would be forthcoming in several weeks. On January 21, 1982 she wrote SP a confirming letter of her understanding. But nothing happened. No illumination plans came to the staff.

On March 15, 1982 the railroad's counsel telephoned staff counsel to state that the railroad would be filing a petition to modify D.93501 on the grounds that vandalism problems would render the planned illumination resolution of the switch problem unfeasible, and that the railroad would be proposing instead

to move the switch stand away from trackside to along the wall of the slot, and would also propose to bury the required connecting rod mechanism to the switch stand under the maintenance roadway where it would be protected by heavy metal plating. On March 26, 1982 the petition (treated here as an application) was filed with the Commission.

A duly noticed public hearing was held on this matter on June 30, 1982 in San Francisco before ALJ John B. Weiss. Both SP and the Railroad Operations and Safety Branch staff presented evidence. UTU participated as an interested party.

SP admitted that it had not furnished illumination plans as ordered, but asserted that during the course of preparing such plans it had encountered well-founded cause to reconsider, and that after doing so it had promptly formulated and presented for Commission consideration an alternate plan which in addition to alleviating the GO 26-D violation would be more cost-effective. The SP proposal moves the switch stand mechanism from alongside the track to immediately next to the north retaining wall of the slot. This would locate the target of the switch next to the wall along with the throw mechanism, leaving this mechanism approximately 18½ feet from the center line of the north tracks. The stand itself would be protected by guard posts to prevent damage from any vehicles in the maintenance of way road. The proposal would eliminate any toe path danger to a switchman or brakeman who might, against the rules or in an emergency, detrain. It also allows for an unimpeded maintenance of way road adjacent to the track. Cost would be \$5,500.

Staff observed that while GOs 26-D and 118 are designed to cover normal or regular installations, they cannot cover all situations, and concluded that, although the proposed installation does not represent a common or desirable method of installing a switch stand, with proper installation and maintenance it would here be feasible. The staff witnesses were concerned about what materials would be used in the maintenance of way road leading up to the metal grill SP proposes to use to cover the connecting rod mechanism from the stand to the switch itself, and recommended decomposed granite instead of asphalt. Staff also suggested that as an alternative to the steel plates, a 10-inch diameter, 1/2-inch wall steel pipe could be buried between the headblocks to encase the connecting rod. If the Commission should grant the application, staff recommended that the order require (1) continual maintenance of the toe path walkways, (2) regular inspection at least every 30 days of the walkways and grill plates by a supervisor, and (3) retention in the district manager's office of a written inspection report to be available during regular business hours. Such an order should also provide a variance to permit less than the three-foot radius to operate the switch specified in Standard 3 of that GO 118.

Staff further was concerned with SP's noncompliance with the order contained in D.93501 to provide illumination plans within 60 days, as well as with SP's failure to either advise staff or request a delay when SP had ascertained the need to prepare an alternate proposal. A staff witness expressed his view that the Commission should have taken action to secure compliance with its order. However, staff had no answer to the ALJ's

question why staff itself, as the Commission watchdog on compliance, had not proposed a Show Cause Order supported by appropriate affidavits if staff deemed some action to be appropriate or necessary.

UTU took no position with regard to the installation proposed by this application. However, in cross-examination the union pointed up the fact that SP not only had failed to comply with the D.93501 order from December 1, 1981 to March 26, 1982, but also had not given any notification of its changed intentions. The union contended that these omissions go to the question of the railroad's good faith. UTU argues that for this failure to comply, the Commission should fine SP under Public Utilities Code §§ 2107, 2108, and 2111 in the amount of \$2,000 for each of the 115 days of delay, i.e. a \$230,000 penalty.

At the conclusion of the hearing the matter was submitted.

#### Discussion

While it is to be regretted that appreciation of the vandalism danger did not surface earlier so that it could have received full consideration when illumination of Switch Stand 2370 was being considered as a means to make conditions safer in the proceeding under A.59470 in 1981, it is well that it did come up before funds were spent in what could have proved to be a futile and unsafe reliance upon illumination. Reexamination of the problem has resulted in a solution which, while as staff notes, does not represent a common or desirable method of installing a switch stand, nonetheless here would be a feasible installation and resolution of the problem, provided some conditions are met.

The proposal presented eliminates any toe path danger to switchmen or brakemen who might detrain under any circumstances at the place, and at the same time allows for unimpeded use of the intervening maintenance of way road. While not insignificant in cost (indeed, it will cost more to reconstruct this switch than it would cost to provide the illumination ordered under D.93501), when compared to the very substantial costs (estimated to be as much as \$150,000) which would be involved were the north retaining wall of the slot to be cut back to widen the slot, or to costs of a similar magnitude which would result were the two main line tracks to be moved closer to the south wall of the slot, this proposal presents a reasonable and cost-effective solution.

Although the installation proposed would eliminate need for a variance from GO 26-D, it would require instead a variance from the requirement in Standard 3 of GO 118 for a 3-foot radius completely around a switch stand. In the normal-type track side installation, this 3-foot radius provides room for a switchman to get behind the switch away from the exposed track side, thereby enabling him to assume a squatting stance behind the switch facing the track to safely operate the switch. The proposed wallside installation provides only inches behind the switch, but allows the switchman ample room in the maintenance of way road, in front of the switch, to operate it safely.

SP's proposal would use three 1/2 x 44 x 48-inch steel safety floor grill plates to provide the roadbed over the headblocks at the switch. These grill plates are designed to support H-20 loading, the same load as city streets carry. The grill plates would be spiked into the three 10 x 12-inch x 22 1/2-foot headblocks underneath by 27 5/8 x 8-inch dome-head drive spikes.



The forged steel connecting rod from the switch stand to the track would operate in the 1-foot space between adjoining headblocks.

Staff's alternative was to enclose this connecting rod in a steel pipe buried in decomposed granite, thus eliminating the steel grill plates entirely. While it might be easier, should the need arise to remove the rod, to disconnect the rod and pull the pipe, the rod itself if buried would be invisible for inspection purposes. Upon examination by the ALJ, staff's expert witness testified that he was not making a recommendation between the two methods. Accordingly, we will not substitute our judgment for that of the railroad and will adopt SP's proposal to install the connecting rod under steel grill plates.

The railroad proposed to construct the maintenance way road approach to the steel grill plates of asphaltic concrete sloped not steeper than 1:8. As an alternative, staff suggested using decomposed granite for the approach slopes. Staff believes that the asphaltic concrete might erode or otherwise break down, leaving a dangerous surface not conducive to smooth walking. SP's witness objected, noting that the railroad has successfully used asphaltic paving in terminals and on walkways between tracks. Granite dust raised by trucks could also bother passing trains. His view is that the gradual slope proposed would be sufficient to avoid breakdown of the asphaltic concrete. In the absence of more convincing and compelling reasons, we will permit SP to adhere to its plans and use asphaltic concrete on the approach slopes.

Although the maintenance of way road alongside the north track in the Alhambra slot in the area where it traverses the Switch Stand 2370 installation will not be a public way, it will be used by railroad maintenance vehicles, and at times by fire,

police, and other community emergency vehicles. These latter would be operating under exigent conditions, possibly at high speed, thereby affording potential for damage both to the switch stand and its approaches, and to the walkway area adjacent to the railroad trackage and continuing up the track not less than 50 feet in advance of the switch. The walkway area also includes one of the three steel grill plates protecting the connecting rod of the switch, and it is possible that a combination of train vibration and vehicular use might work loose spikes, allowing movement or displacement of the grill plate were it to go undetected. With these considerations in mind we think that staff's concerns for the need for continual maintenance of the walkway at this switch are valid.

Accordingly, we will require that maintenance crews regularly using this section of the maintenance of way road be instructed particularly to observe the area way at the switch when driving through for unusual bumps, loose spikes, or other damage, and to report immediately any such irregularities observed to their supervisor. In addition, a supervisory employee (track supervisor or above) at least every 30 days must make a regular walking inspection of the walkway and switch area, and on the day of his inspection prepare a written report setting forth his observations, including listing any defects found and the remedial action taken. This written report will be maintained for one year in the district manager's office and will be made available to Commission personnel during regular business hours.

Lastly, we address the issues raised by the fact that for approximately three months past the date set for submission of illumination drawings, SP failed to advise this Commission that

it had no intention of complying with D.93501, and that having belatedly come to the conviction that illumination was not feasible, the railroad was independently seeking an alternative solution to present to the Commission for consideration. SP took this approach despite the fact that a variance from GO 26-D for Switch Stand 2370 was conditioned under D.93501 upon the railroad's providing and maintaining illumination at the switch, and that in the absence of any variance SP would be continuing to knowingly operate a non-conforming switch stand.

The union contends that literally we should throw the book at SP for this "flagrant and contemptuous violation of a direct order of your Commission." It asks that a \$230,000 fine be imposed for failure to comply with our order in D.93501. The railroad argues that while it is true that it did not supply illumination drawings, it had prepared them before it discovered that illumination was not a feasible solution, and that thereafter it delayed seeking a modification of the Commission order until it had something feasible to offer, pointing out that on March 26, 1982 it had presented a petition for modification once it had a reasonable alternative. Staff is disturbed that trains have been operated for so long over this switch without authorization for a variance, and takes the view that Commission orders must be enforced if they are to be respected. In essence staff considers that there is a question to be resolved regarding SP's good faith.

While it is true that failure to comply with an order of the Commission is a serious matter and will not be overlooked (La Marr Dump Truck Serv. (1966) 66 CPUC 337), each such failure must be viewed objectively and dispassionately. Furthermore, the matter must be kept in perspective. Not every failure or

omission constitutes an actionable violation or a willful disobedience requiring punitive measures. One of the basic objectives of General Orders is safer working conditions. And that is what this present matter is all about. In D.93501 it was determined that Switch 2370 was not in compliance in that the switch as installed blocked the toe path between the switch and the outer rail. But it was also clear that absent disobedience by a switchman of railroad detrainning rules, or the occurrence of a derailment emergency at that precise stretch of track which might result in a crew member jumping off a stricken train into that switch, there really would be only a remote chance of injury. The illumination which was to be provided under D.93501 was to further decrease that remote chance.

But the railroad did not submit the illumination plans as required under D.93501. The deadline set by the decision, December 1, 1981, came and passed. Neither did the railroad request an extension of time to comply, or explain what was happening. We agree that these circumstances raise the question of whether the railroad was keeping faith.

SP's witness (its engineer of design) insisted that the railroad intended to comply. He testified of how copies of D.93501 had been distributed immediately at the railroad and that an estimator had been instructed to prepare a detailed cost estimate to cover illumination as ordered. This estimate was ready September 30, 1981, but had then been revised. The revised estimate on October 27, 1981 was sent to the operations vice president to obtain authorization for funding for the unbudgeted cost of the project. But then that official had detected a flaw, pointing out that acute vandalism problems in

the area of the switch would render illumination impractical. Accordingly, he directed the estimate be returned to the Operations Division for rework.

On December 7, 1981 the operations general manager instructed the Los Angeles operations superintendent to seek a solution not involving flood lights. Subsequently when in Los Angeles the witness himself went to the site area with the area engineer to consider alternatives. Early in 1982 they arrived at the rearrangement of the switch which is proposed by this application. Their plans were formalized and rendered in a drawing dated February 26, 1982 entitled "Alhambra: Proposed Rearrangement of Switch Stand to Conform to P.U.C. - G.O. No. 26-D" (an exhibit attached to the application submitted March 26, 1982).

When asked on cross-examination why SP had not advised the Commission of these events and changes in direction, the witness stated that it was his understanding that the railroad's attorney had communicated with staff counsel. However, the witness could produce no specifics apart from reference to a January 21, 1982 letter from staff counsel to the railroad's counsel wherein staff counsel confirmed a January 15, 1982 telephone conversation from which staff counsel was led to understand that illumination plans would be submitted as soon thereafter as possible.

But by early December 1981 SP's Operations people knew that the railroad had abandoned further work on the illumination concept as being unfeasible, and they were seeking an alternative proposal to be presented to the Commission. And by early January it appears they had an alternative in mind. Why did SP's Legal Department not inform staff counsel? Apparently

Operations did not inform the Legal Department and the Legal Department did not ask. From the lame answers given at the hearing by the railroad's only witness, an Operations man, it would appear that once D.93501 had been received at SP and the Legal Department had turned over copies internally to Operations, the Legal Department did not further monitor progress until in mid-January staff counsel contacted SP's attorney. Then, after checking with Operations and being told that "plans" (but not which plans) were being prepared, he, assuming that the plans were the illumination plans, told staff counsel that plans would be forthcoming. Then when its attorney discovered that Operations was on another track, SP found itself in the procedural quandary of having to file an untimely and somewhat inappropriate petition to modify a decision rendered after two days of hearing, and at that a petition asking the Commission to drop a variance to a GO (although that variance had never come into being) for a concept which had been one of staff's suggestions during those earlier hearings. ✓

There seems to be no other reasonable answer. Had SP's attorney been aware in early January that Operations had abandoned illumination and was preparing an alternative, it would have been no less uncomfortable and embarrassing to have asked for a delay to complete that new proposal than to state as he did that illumination plans would soon be forthcoming. There was no reason or advantage, had he known, to have deliberately and intentionally misled the Commission counsel. In no manner would the switch stand issue by itself just go away; sooner or later it would have to be faced. For these reasons we find that SP's attorney's answer to staff counsel was the consequence of a failure of internal communications at SP.

Could SP's action be construed as contempt? We think not. To constitute contempt, conduct must be willful with an intent to disobey an order of the Commission. While there was a willful abandonment by SP of the unfeasible illumination concept, there is nothing clearly proved to substantiate that there was an intent to disobey an order of the Commission. Once it became clear that illumination was not feasible, the railroad's Operations people turned to work on coming up with another proposal. With reasonable expedition they produced an alternative proposal. Staff should have been advised immediately of the changed circumstances. Additional minds could then perhaps have been applied to the problem. While not acceptable, it is nonetheless understandable that lapses in internal communications can and do occur in the best run organizations. In any event there was a necessary delay while another proposal was prepared. It is clear that SP's personnel were all the while working on the problem and that the end result, which would have come no sooner in any event, is a reasonable and acceptable solution. While there appears to have been a definite breakdown in communications, there was nothing shown to have been contemptuous, flagrant, deliberate, or outrageous in the delay and attendant circumstances.

Findings of Fact

1. As part of its intrastate railroad operations, SP operates main line railroad traffic through Alhambra, California.
2. In a project to eliminate certain crossings at grade, between September 1976 and March 1979 a portion of its trackage through Alhambra was lowered to a depressed trench, and as part of that project Switch 2370 was constructed.
3. As constructed, Switch 2370 was not in compliance with GO 26-D.

4. After a 1981 hearing the Commission made a determination set forth in D.93501 dated September 1, 1981 in A.59470 that a variance from GO 26-D for Switch 2370 should be granted to SP provided the area of the switch be illuminated.

5. By D.93501 SP was ordered (1) to submit to staff plans for constructing and maintaining illumination of Switch 2370 by December 1, 1981, (2) to construct the switch illumination within 90 days after the plans were approved by staff, and (3) to maintain the illumination.

6. While preparing illumination plans for submission to staff, SP ascertained that as a consequence of heavy vandalism in the switch area, illumination was not feasible, and consequently redirected its Operations personnel to prepare an alternative proposal to be submitted to the Commission.

7. An alternative plan involving a relocation of the switch stand from alongside the track to a position against the north retaining wall of the depressed trench was completed and submitted March 26, 1982 to the Commission.

8. Relocation of the switch stand as proposed by this application, while not representing a common or desirable method of installing a switch stand, with proper installation and maintenance, would be feasible in this situation.

9. Relocation of the switch stand as proposed by this application would provide adequate toe path room for switchmen detrainning in an emergency, thereby removing the need for a variance from GO 26-D.

10. Relocation of the switch stand as proposed by this application would provide an 11-foot wide maintenance roadway over the headblocks and safety plates protecting the switch



connecting rod. This would provide an adequate unimpaired roadway for vehicles using the maintenance road, while at the same time two steel rail guard posts would provide reasonable protection for the switch stand.

11. Relocation of the switch stand as proposed by the application would result in loss of half of the clearance radius (on the retaining wall side) required by Standard 3 of GO 118 for switch operation.

12. In that the switch could still be fully and safely operated from the side away from the retaining wall, it would be reasonable to grant a variance from GO 118.

13. The toe path approaches to and the grill plate section of the maintenance way road over the Switch 2370 installation should be regularly inspected, and records maintained of these inspections.

14. Until March 15, 1982 SP failed to inform the Commission that it would not comply with D.93501 or that it was proceeding with work on an alternate proposal.

15. SP's failure to inform the Commission appears to have been the result of a failure of internal communications rather than intentional.

#### Conclusions of Law

1. SP should be authorized to rearrange Switch Stand 2370 as set forth in the June 28, 1982 revision to the drawing entitled "Alhambra: Proposed Rearrangement of Switch Stand to Conform to P.U.C. - G.O. No. 26-D," submitted as Exhibit 2 to this proceeding.

2. SP should be granted a variance from Standard 3 of GO 118 for Switch Stand 2370 subject to a condition that the toe path approaches to and the grill plate section of the maintenance

way road over the switch installation be regularly inspected and that records be kept of these inspections.

3. SP's delay in notifying the Commission that it would not comply with D.93501 but instead was working on an alternative proposal was not contemptuous, flagrant, deliberate, or outrageous.

O R D E R

IT IS ORDERED that:

1. Within 90 days after the effective date of this order Southern Pacific Transportation Company (SP) shall rearrange Switch Stand 2370 as provided in the June 28, 1982 revision to the drawing entitled "Alhambra: Proposed Rearrangement of Switch Stand to Conform to P.U.C. - G.O. No. 26-D" (entered as Exhibit 2 in this proceeding).

2. After SP complies with Ordering Paragraph 1 of this decision, it is granted a variance from the provisions of Standard 3 of GO 118 for Switch Stand 2370. The variance granted shall remain in effect so long as SP:

- a. Requires maintenance crews regularly passing over the switch installation to observe the switch area and report any unusual bumps, loose spikes, or other damage,
- b. Requires a supervisory employee (track supervisor or above) to make a regular walking inspection of the switch area every 30 days, and at the end of each inspection prepare and file a written report of his observations, listing defects and remedial action taken, and

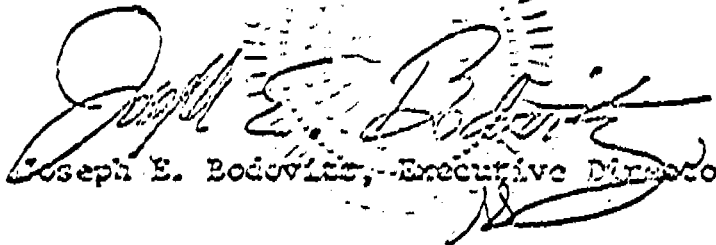
- c. Maintains these written reports in the district manager's office for one year, making them available during regular business hours for inspection by Commission personnel.

This order becomes effective 30 days from today.

Dated SEP 8 1982, at San Francisco, California.

JOHN E. ERYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. CRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

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

  
Joseph E. Bodovick, Executive Director

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