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Decision 82 10 031 OCT 6 1982

**CONFIDENTIAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION )  
STATE OF CALIFORNIA, )  
Complainant, )  
v. )  
SOUTHERN PACIFIC TRANSPORTATION )  
COMPANY, a corporation, )  
Defendant. )

Case 82-08-01  
(Filed August 4, 1982)

O. J. Solander, Eugene Bonnstetter, and Robert E. Patterson, Attorneys at Law, for California Department of Transportation, complainant.

Douglas E. Stephenson, Ann Hasse, and Carol Harris, for Southern Pacific Transportation Company, defendant.

James P. Jones and Roger E. Willeford, for United Transportation Union, intervenor.

Vincent MacKenzie, Attorney at Law, for the Commission staff.

INTERIM OPINION

California Department of Transportation (CalTrans) by this proceeding seeks an order to show cause why the officers and directors of Southern Pacific Transportation Company (SP) should not be found in contempt for failure to construct station platforms and parking facilities for eight stations as required by Decision (D.) 91847 in Case (C.) 10575.

D.91847 dated June 3, 1980 ordered SP to construct passenger station platforms and parking facilities in SP's right-of-way between Los Angeles and Oxnard in accordance with plans and specifications on file with the Commission. D.82-06-045 dated June 2, 1982 set the effective date for commencement of the construction which is to be completed in time for SP to commence commuter train service between Los Angeles and Oxnard on October 15, 1982.

In its answer to the complaint in C.82-08-01, SP indicated that it had prepared plans and specifications for several stations, but had not commenced construction in time to commence service on October 15, 1982 for the several reasons specified in the pleading. As an additional defense, SP alleged that even if the construction had been completed on a timely basis, the service could not start on October 15, 1982, as CalTrans had not obtained the locomotives and cars required by D.82-06-045, and that funding for the service, in addition to startup costs, was not available. The construction costs for stations and parking, the costs of acquisition of rolling stock, and operating subsidies are to be paid by CalTrans to SP by D.91847 and D.82-06-045. In response to these allegations, CalTrans was directed to inform the Commission whether it met all of the conditions imposed on it by those decisions, and in particular, whether rolling stock and funding were available. ✓

Public hearing on these issues was held in San Francisco on September 27 and 29, 1982, and the matter was taken off the calendar. Evidence was presented by CalTrans and SP. CalTrans' position at the hearing was that it is essential for public convenience and necessity that the proposed rail commuter service commence on the date set by this Commission of October 15, 1982. To that end it asked that its request for an order to show cause ✓

should be held in abeyance with respect to track work and that the Commission implement its orders in D.91847 and D.82-06-045 by directing SP to permit CalTrans right of entry upon the property of SP in order that CalTrans may construct station platforms and parking facilities at Simi Valley (Santa Suzana) and Panorama City (GEMCO) stations. CalTrans presented evidence that it could construct such facilities in time to commence rail commuter service on October 18, 1982 if an immediate order was issued under which it could gain access on the property of SP by October 6, 1982. CalTrans also presented tariffs and timetables for filing with the Commission containing an October 18th date for commencement of service.

SP presented testimony in support of its position with respect to an order to show cause, and in opposition to CalTrans' proposal described above. In particular, SP opposes a Commission order which would permit access by CalTrans to SP's properties, without indemnification by CalTrans for law suits against SP as a result of actions of CalTrans and its contractors. CalTrans did not offer such indemnification. The courts of this State are the proper forum to determine liability for actions of CalTrans and its contractors.

SP argued that this Commission has no authority to enter an order binding on SP which would permit CalTrans access to SP property. CalTrans takes the opposite view.

In order to expedite a decision on CalTrans' request for an immediate order, CalTrans was directed to file by September 30, proposed findings of fact, conclusions of law, and a proposed order granting the authority sought in this phase of C.82-08-01. SP was authorized to file its proposed findings, conclusions, and order by October 4, 1982. Those pleadings have been timely filed.

#### Findings of Fact

1. Amtrak has agreed to deliver to CalTrans six Amfleet Coaches for commencement of service on October 18, 1982. Amtrak has further

agreed to provide ten Heritage Coaches to CalTrans by January 15, 1983, six of which will replace the Amfleet cars.

2. CalTrans cannot sign the lease agreement prepared by Amtrak for the passenger cars until funds are allocated for that purpose by California Transportation Commission (CTC).

3. CalTrans has requested the CTC to allocate \$2.4 million on October 8, 1982, for payment to Amtrak for lease of the passenger cars and locomotives for the 1982/83 fiscal year.

4. CalTrans is negotiating with Amtrak for delivery of an additional eight cars for the service.

5. The tariffs and schedule provided by CalTrans on September 27, 1982 are requested by CalTrans to be filed on behalf of SP as ordered by D.82-06-045.

6. The tariffs provided by CalTrans set the time for commencement of service at October 18, 1982.

7. The public and press have been notified of the status of the proceedings in C.10575. CalTrans is ready to inform the public of the imminent commencement of service.

8. CalTrans has set aside \$260,000 to market the inauguration of service.

9. Tickets for the service will be printed by CalTrans by October 18, 1982.

10. CalTrans has encumbered \$1 million for first year operational costs of SP and \$2 million for construction of the station platforms and parking facilities.

11. The Legislature has appropriated \$6 million for this service for fiscal year 1982/83.

12. CalTrans has purchased property outside SP right-of-way for \$762,400 for parking at Panorama City.

13. SP does not intend to construct the station platforms and parking facilities by October 15, 1982 as required by D.82-06-045.

14. SP does not intend to negotiate a subsidy agreement and submit it to this Commission in accordance with the decisions of this Commission.

15. CalTrans has proposed that it be allowed to construct station platforms and parking facilities at Simi Valley and Panorama City in accordance with plans on file with the Commission.

16. CalTrans has shown an ability to complete the construction at Simi Valley and Panorama City by October 18, 1982, provided that it is authorized to enter SP's property at those locations by October 6, 1982.

17. In lieu of issuing the order to show cause re contempt at this time, and to further implement our decisions in C.10575, CalTrans should be authorized to enter SP's property at Simi Valley and Panorama City to construct station platforms and parking.

18. CalTrans has withdrawn its request that an order to show cause re contempt issue for failure of SP to commence and complete track work as required by D.82-06-045.

19. Track work is not required for the commencement of service on October 18, 1982.

20. SP has failed to date to implement fully the decisions of this Commission.

Conclusions of Law

1. D.82-06-045 is final and conclusive.
2. If the Commission decides to issue an order to show cause re contempt, SP may present the defenses raised in its answer and motions filed September 7, 1982.
3. Further implementation of the decisions of this Commission will be accomplished by CalTrans' construction of station platforms

and parking at Simi Valley and Panorama, and relocation of track 6065 at Simi Valley to the east end of Santa Suzana siding off Los Angeles Avenue.

4. Granting the right of entry to CalTrans at Simi Valley and Panorama City and authorizing CalTrans to construct station platforms and parking, there is made to carry out the common carrier purposes to which SP's right-of-way and attendant structures and facilities have been dedicated since 1904. Liability for the action of CalTrans or its contractors must be determined by the appropriate court of law.

5. Service shall commence by SP on October 18, 1982, in accordance with the tariffs and timetables filed on September 27, 1982 if construction authorized to be performed by CalTrans is completed by that date.

6. An unforeseen emergency exists which requires the addition of this order to the Commission's public meeting agenda without public notice under provisions of Section 306(b) of the Public Utilities Code. ✓

INTERIM ORDER

IT IS ORDERED that:

1. SP's first, second, third, fourth, and fifth motions to dismiss filed in C.82-08-01 are denied.

2. In order to commence passenger services in accordance with the decision in C.10575, CalTrans shall have the immediate right to enter SP property and construct station and parking facilities at Simi Valley and Panorama City, in accordance with plans on file with the Commission and to relocate track 6065 at Simi Valley to the east end of Santa Suzana siding off Los Angeles Avenue.

3. Further hearing on CalTrans' application for an order to show cause re contempt is scheduled at 10 a.m., October 18, 1982, in the Commission's Courtroom, State Building, San Francisco, California.

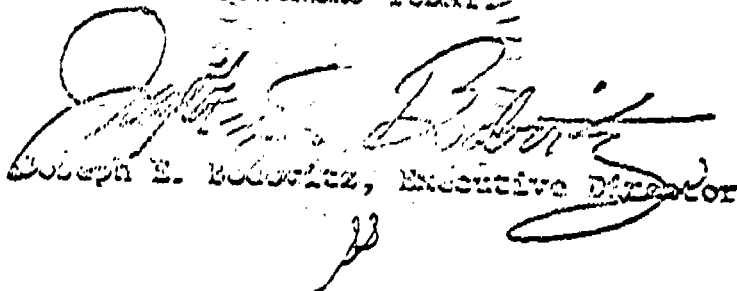
4. SP is directed to file with this Commission timetables and tariffs substantially as provided by CalTrans in its September 27, 1982 filing with the Commission, and such timetables and tariffs shall become effective October 18, 1982.

This order is effective today.

Dated OCT 6 1982, at San Francisco, California.

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

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

  
Joseph E. Bobovitz, Executive Director

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