

Decision 83 OS 075 AUG 17 1983

ORIGINAL

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
(Motion Filed June 6, 1983)

ORDER DENYING MOTION AND PETITION

On June 6, 1983, the State of California, Department of Transportation (Caltrans), complainant, filed a motion requesting this Commission to enter an order directing that certain officers and employees of Southern Pacific Transportation Company (SP) be made available for deposition and that SP produce all documents set forth in its concurrent motion to produce.

Caltrans also moved for a Commission order setting a specific prehearing conference date for the purpose of determining the hearing dates and the manner of presentation of evidence for the determination of the amount of subsidy to be paid to SP by Caltrans for the operation of the temporarily suspended Oxnard-Los Angeles rail commute service.

Caltrans' Allegations in Support of Motion

Caltrans alleges that there is little possibility of agreement on the issue of subsidy; therefore, the only alternative is for this Commission to grant Caltrans' motion for discovery and production of documents, and for the setting of a hearing before this

Commission. Caltrans points out that two prior motions/petitions requesting the same relief have not been acted upon by this Commission.¹ Caltrans alleges that any further delay in these matters would be entirely inconsistent with the public interest in having the subsidy issue expeditiously resolved.

Other Pending Matters

A decision is pending in Case No. 82-4466, Southern Pacific Transp. Co. v Public Util. Comm. of the State of Calif. et al., before the United States Court of Appeals, Ninth Circuit, in which SP challenges this Commission's jurisdiction over the Los Angeles-Oxnard commute services, claiming federal preemption.

Decisions also are pending in the California Supreme Court, S.F. 24525, 24573, in which SP challenges this Commission's prior orders in this proceeding including that holding SP and several of its officers in contempt on jurisdictional grounds.

Hearings were recently completed in Interstate Commerce Commission (ICC) Docket 30123 in which SP seeks final discontinuance of the Los Angeles-Oxnard commute service. Briefs were filed July 25, 1983. Caltrans and this Commission are parties to Docket 30123 and have taken positions against the relief sought by SP.

SP's Reply

SP filed a reply on June 20, 1983 to Caltrans' motion and petition. SP asks that the motion and petition be denied.

SP asserts that Caltrans already has had full discovery and the examination of witnesses on the subsidy issue in connection with the just-concluded ICC proceeding in Docket 30123. Attached to SP's reply are verified statements by SP witnesses attesting to the information supplied to Caltrans in response to discovery actions initiated in that proceeding.

SP also argues that there is no need for an immediate public hearing before this Commission on the subsidy for the reason

¹ Motions/petitions filed March 28, 1983 and April 21, 1983 by Caltrans.

advanced by Caltrans. Caltrans alleges that the subsidy amount must be determined "so that the Legislature, Caltrans, and the affected local communities can decide whether further public support is warranted." SP asserts that Caltrans has no present plans to resume operations, as testified to by Caltrans' Chief of the Office of Rail Services in Docket 30123, nor has Caltrans identified any local agency contemplating the furnishing of support to the commute operations. SP also points out that the California Transportation Commission has recommended to the Legislature that no funds for the Los Angeles-Oxnard rail commute service be included in the 1983-84 State budget.

Discussion

It appears from the pleadings that Caltrans has been accorded discovery of the same materials as sought here and that Caltrans has had full opportunity to cross-examine witnesses on such material in Docket 30123. It is questionable whether any meaningful additional material is available. Therefore, Caltrans' request for discovery will be denied.

We see no immediate need to resolve the subsidy issues as Caltrans urges. Our assessment indicates that additional funding by the State for future operations of the Los Angeles-Oxnard commute service will not be forthcoming, and that local agencies are not at the present time prepared to commit funds to the rail commute operations. Therefore, the request for an immediate hearing should be denied. This Commission will entertain further requests for hearing and discovery following resolution of appeals of prior Commission orders and related ICC proceedings.

IT IS ORDERED that the Motion and Petition of the State of California, Department of Transportation, filed June 6, 1983, and related prior motions are denied without prejudice.

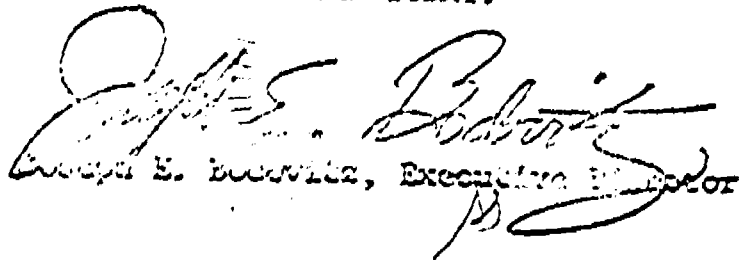
This order becomes effective 30 days from today.

Dated AUG 17 1983, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREN
DONALD VIAL
WILLIAM T. BACLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

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


Joseph E. Boonville, Executive Director

Commission. Caltrans points out that two prior motions/petitions requesting the same relief have not been acted upon by this Commission.¹ Caltrans alleges that any further delay in these matters would be entirely inconsistent with the public interest in having the subsidy issue expeditiously resolved. ✓

Other Pending Matters

A decision is pending in Case No. 82-4466, Southern Pacific Transp. Co. v Public Util. Comm. of the State of Calif. et al., before the United States Court of Appeals, Ninth Circuit, in which SP challenges this Commission's jurisdiction over the Los Angeles-Oxnard commute services, claiming federal preemption.

A decision also is pending in the California Supreme Court, S.F. 24573, in which SP seeks review of this commission's prior orders in this proceeding. SP also challenges our orders on jurisdictional grounds.

Hearings were recently completed in Interstate Commerce Commission (ICC) Docket 30123 in which SP seeks final discontinuance of the Los Angeles-Oxnard commute service. Briefs ~~are~~^{were} due July 25, 1983. Caltrans and this Commission are parties to Docket 30123 and have taken positions against the relief sought by SP. *ld*

SP's Reply

SP filed a reply on June 20, 1983 to Caltrans' motion and petition. SP asks that the motion and petition be denied.

SP asserts that Caltrans already has had full discovery and the examination of witnesses on the subsidy issue in connection with the just-concluded ICC proceeding in Docket 30123. Attached to SP's reply are verified statements by SP witnesses attesting to the information supplied to Caltrans in response to discovery actions initiated in that proceeding.

SP also argues that there is no need for an immediate public hearing before this Commission on the subsidy for the reason

¹ Motions/petitions filed March 28, 1983 and April 21, 1983 by Caltrans. |

advanced by Caltrans. Caltrans alleges that the subsidy amount must be determined "so that the Legislature, Caltrans, and the affected local communities can decide whether further public support is warranted." SP asserts that Caltrans has no present plans to resume operations, as testified to by Caltrans' Chief of the Office of Rail Services in Docket 30123, nor has Caltrans identified any local agency contemplating the furnishing of support to the commute operations. The California Transportation Commission has recommended to the Legislature that no funds for the Los Angeles-Oxnard rail commute service be included in the 1983-84 State budget.

Discussion

It appears from the pleadings that Caltrans has been accorded discovery of the same materials as sought here and that Caltrans has had full opportunity to cross-examine witnesses on such material in Docket 30123. It is questionable whether any meaningful additional material is available. Therefore, Caltrans' request for discovery will be denied. ✓

We see no immediate need to resolve the subsidy issues as Caltrans urges. Our assessment indicates that funding by the State for future operations of the Los Angeles-Oxnard commute service will not be forthcoming, and that local agencies are not prepared to commit funds to the rail commute operations. Therefore, the request for an immediate hearing should be denied. This Commission will entertain further requests for hearing and discovery following resolution of appeals of prior Commission orders and related ICC proceedings.