

Decision No. 87752 AUG 23 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY for
Order Canceling General Order 36-D. }Application No. 56415
(Filed April 20, 1976)Frederick B. Pfrommer, Attorney at Law, for
Atchison, Topeka and Santa Fe Railway
Company, applicant.George W. Falltrick, Eleanor West, Willard
Le Beouf, Lyle D. Burkhardt, and Max Strawser,
for Brotherhood Railroad and Airline Clerks
(B.R.A.C.); and Ralph O. Hubbard, for
California Farm Bureau Federation; protestants.Harold S. Lentz, Attorney at Law, for Southern
Pacific Transportation Company and Affiliated
Companies; Robert M. White, Attorney at Law,
for Union Pacific Railroad Company; Thomas J.
Hale, for California Grape and Tree Fruit
League; Jeffrey Lee Guttero, Attorney at Law,
for Western Growers Association; and Richard O.
Austin, for Kaiser Cement and Gypsum Corp.;
interested parties.Thomas F. Grant, Attorney at Law, Paul A. Burket,
and Marc E. Gottlieb, for the Commission staff.O P I N I O NProceeding

Nine days of hearing were held after due notice on this matter in San Francisco and Los Angeles in October, November, and December 1976. The presiding officer was C. T. Coffey. Closing statements by the California Farm Bureau Federation (Farm Bureau) and the Commission staff were received on the last day of hearing.

Applicant (Santa Fe), Southern Pacific Transportation Company and affiliated companies (SP), the California Grape and Tree Fruit League (League), and The Brotherhood of Railway, Airline, and Steamship Clerks, Freight, Express, and Station Employees (B.R.A.C.) filed briefs on or before February 18, 1977. On February 21, 1977 the staff informally requested permission to supplement its position presented at the hearing. Upon the withdrawal of the staff request, this matter was submitted on March 28, 1977.

Santa Fe, a railroad common carrier of property in intra-state commerce in California and elsewhere, alleges that the Commission's General Order No. 36-D is no longer necessary to protect the public interest, is unduly restrictive, and is discriminatory against railroads. Santa Fe asks that the general order be canceled.

Santa Fe presented evidence in support of its request. Although appearances in protest were entered by the Farm Bureau, Western Growers Association(WGA),^{1/} the League, and B.R.A.C., only B.R.A.C. and the League presented witnesses. Appearances and evidence in support of the application were also entered on behalf of SP and Union Pacific Railroad Company (UP). Kaiser Cement and Gypsum Company appeared as interested party, but took no part. The Commission staff presented evidence of two staff witnesses.

General Order No. 36-D

The general order, which first became effective on August 7, 1913, has evolved through successive modifications to its present form which became effective January 20, 1975.

^{1/} WGA appeared through counsel, participated actively in cross-examination of witnesses, and then withdrew its protest.

Essentially, as to the railroads, the current General Order No. 36-D is the same as General Order No. 36-B, which became effective in early 1934. In fact, current Ordering Paragraphs 1 and 2 were in the 1913 issue of General Order No. 36. A railroad is required (paragraph 1) to notify the Commission whenever a depot is constructed by it, or an agency is established at any depot, or a siding, spur, or other track is constructed for the reception and delivery of freight. Ordering Paragraph 2 prohibits a railroad to "abandon any non-agency station" without prior application and consent of the Commission. Ordering Paragraph 3 prohibits a railroad to "reduce agency service at any station" except by giving prescribed notice and filing statements of explanation and justification with the Commission and provides that the Commission may suspend such change and require a formal application for authority. Ordering Paragraph 4 prohibits a railroad from abandoning or removing any depot, platform, siding, spur, or other facility except upon notice and the filing of a statement in justification, which the Commission may suspend and investigate. General Order No. 36-D applies only to railroads.

Applicant's Position

It is Santa Fe's position that there is no need for paragraphs 1 and 4 of General Order No. 36-D since, if General Order No. 36-D were canceled, the Public Utilities Code would still provide ample protection to the public regarding matters now covered by paragraphs 1 and 4 of General Order No. 36-D.

Santa Fe contends that paragraph 2 of General Order No. 36-D, which requires an application and consent of the Commission before a "non-agency" station may be abandoned, is redundant and not necessary to protect the public interest. Abandonment of a "non-agency station" consists of removing the station name from rate tariffs. If that results in an increase in rates, then without regard to the general order, provisions of the California Constitution

and the Public Utilities Code require a formal application. If removal of the station name from the tariff does not affect rates, the public interest is not involved. Therefore, Santa Fe contends that cancellation of paragraph 2 would not affect the public interest.

The principal thrust of the hearings was testimony and exhibits directed to the lack of need for Ordering Paragraph 3, which permits a railroad to "reduce agency service" only on prescribed notice and, perhaps, only after a formal application. It is Santa Fe's contention that this paragraph is burdensome, unduly restrictive, discriminatory, and is no longer required in the public interest. It contends that such agents now perform only essentially internal recordkeeping functions and there no longer is anything about the work performed by them which warrants singling out such station agents from other railroad employees in order to give them the special protection afforded by General Order No. 36-D, or to warrant singling out railroads for this form of regulation while the railroads' principal competitors are free from it.

Staff Position

The staff recommends that the general order be modified to cancel its application to freight services and facilities and that a modified General Order No. 36 be adopted which will preserve the present regulations insofar as they apply to passenger service and facilities.

It is noted by the staff that passengers have grown to expect a certain level of individual attention in services from railroads, for example in ticketing. General Order No. 36-D provides an orderly and reasonable procedure for the evaluation of the public interest in the retention of existing railroad passenger facilities. The cancellation of these General Order provisions would constitute, in effect, a transference of the burden of proof vis-a-vis the need for passenger railroad facilities from the railroad to the public and its agencies, with the public's remedy being reduced to an after-the-fact appeal for the restoration of closed and/or removed passenger facilities. Staff prepared, as part of its exhibit, a suggested General Order No. 36-E which would retain General Order No. 36-D's provisions concerning passenger facilities, etc., while deleting those provisions relating to freight matters.

Position of Other Railroads

An SP witness supported the application and testified about the relevant similarities of SP's operations to Santa Fe's. A Union Pacific freight agent presented a list of stations on the UP in California and counsel stated that UP supports applicant's position. SP has no objection to the form of the amended general order proposed by the staff if it is determined that regulations should be retained with respect to passenger service and facilities. However, SP contends that the staff has failed to establish any need for any different

treatment of the limited passenger service still subject to Commission jurisdiction or for the continuance of such regulations applicable only to passenger service.

SP argues that it appears that the staff witness' basic reason for recommending retention of regulations applicable to passenger service and facilities is simply that there is some remaining passenger service subject to the Commission's jurisdiction. SP submits that this is an insufficient basis for retaining the regulations insofar as passenger service is concerned. SP's argument on this passenger issue continues as follows:

"While some limited passenger service remains available, the same is true of railroad freight service. While a railroad agent's duties and contacts with the public with respect to freight service have been greatly reduced, the same is also true of passenger service. Southern Pacific agents no longer handle baggage, they do not sell interline passenger tickets for transportation over more than one railroad, they do not sell sleeping car tickets or make seat reservations and no longer have to make any complicated rate calculations of passenger fares.

"Just as in the case of freight service, if the General Order is cancelled in its entirety, railroads will continue to have a legal responsibility to provide adequate service and facilities with respect to the limited amount of passenger service still under the Commission's jurisdiction. The Commission has not provided any comparable regulations with respect to bus lines or airlines which have the same legal responsibility. Therefore, under the circumstances, it is submitted that the record provides no justification for retaining the provisions of the General Order and making them applicable only to railroad passenger operations. There is no more justification for retaining the General Order with respect to railroad passenger operations, when comparable regulations are not imposed upon other carriers, than there is in retaining such special regulations with respect to railroad freight service and facilities. In

Southern Pacific Company (Vacaville), 56 Cal. PUC 345 (1958), at page 346, the Commission stated:

'Southern Pacific Company should not be required to provide a service which is greater and more expensive than that required of its competitors.'

"The same basic principle should apply here. Southern Pacific (or any other railroad) should not be subjected to more onerous restrictions upon its ability to adjust service and facilities than are applicable to comparable service of other carriers in the absence of any showing of need for special regulations."

B.R.A.C. Position

B.R.A.C. requests that applicant's request be denied since it disagrees with the contention that the notification and procedure required by the general order is no longer necessary. An SP station agent, called by the union, testified in opposition to the application.

California Grape and Tree Fruit League Position

The League argues that General Order No. 36-D is not prohibitive, that it does protect the public interest, that it does NOT prevent elimination of agency services, that it does require public notification and review of any proposed curtailment in agency services, and that this process is not unduly restrictive in light of the protection it affords. In view of the hardship that would be placed on shippers of fresh California grapes and deciduous tree fruits with the elimination of the protection provided by the general order, the League urges that the application be denied.

A League witness testified that the local services presently being offered shippers to meet the demands of fresh perishable transportation by rail include:

1. Car ordering.
2. Diversion/reconsignment.
3. Handling for correction of local car distribution problems.

4. Forecasting car demand and supply.
5. Handling for repair of malfunctioning equipment.
6. Yard checks.
7. Shipper contact.

California Farm Bureau Federation Position

The Farm Bureau requests that no change be made in the present general order until such time as Public Law 94-120 (Exhibit 10) shall be placed in operation and had sufficient time to determine if the provisions of the law fully protect the California shipping public and until projected centralized computer operations are implemented.

Further, if the application is granted, the Farm Bureau requests that it be made conditional that shippers be furnished free telephone service to the nearest representatives of the railroad involved.

Discussion

Without discussing further the voluminous testimony which dealt principally with railroad stations and agencies and which is well summarized in the briefs, we are persuaded to adopt the staff recommendations and also to require that the closing of an agency shall not require any person to incur a toll telephone call. We concur also with the staff that the public interest requires a continuation of the present provisions concerning passenger service and facilities.

Findings

1. When an agency is discontinued, agency services continue to be available although the manner of providing them is changed.
2. General Order No. 36-D imposes a burden upon both the railroads and the Commission staff.
3. It is reasonable that the closing of an agency to effect savings and increased efficiency should not cause shippers to incur increased telephone expenses.

4. There is little public interest in the continuation of General Order No. 36-D, insofar as it relates to freight matters.

5. Public convenience and necessity require a continuation of the existing provisions concerning passenger service and facilities.

6. The staff recommendations are reasonable.

We conclude that General Order No. 36-D should be modified as hereafter ordered.

O R D E R

IT IS ORDERED that:

1. General Order No. 36-D is repealed as of the date this order becomes effective.

2. General Order No. 36-E, attached hereto as Appendix A, is hereby adopted as of the date this order becomes effective to govern the establishment or abolition of agencies, non-agencies, and other station facilities and the curtailment of agency service of common carriers.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 23rd day of AUGUST, 1977.

Robert Bakewell
President
William J. Quinn
William L. Sturgeon
Richard R. Howell
Clare L. Delrich
Commissioners

APPENDIX A
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GENERAL ORDER NO. 36-E
(Supersedes General Order No. 36-D)

IN THE MATTER OF THE ESTABLISHMENT OR
ABOLITION OF AGENCIES, NON-AGENCIES,
SIDINGS, SPUR TRACKS, AND OTHER STATION
FACILITIES, AND THE CURTAILMENT OF
AGENCY SERVICE OF COMMON CARRIERS.

Adopted AUG 23 1977, 1977; Effective SEP 12 1977, 1977.

Decision No. 87752 in Application No. 56415.

IT IS ORDERED that:

1. Whenever a depot is constructed in this State by a railroad corporation at any station, or an agency established at any depot, for passenger service, the Commission shall be immediately supplied with information regarding the same, including the name of the station or agency. The distance, to the nearest tenth of a mile, to such station from existing stations on each side shall be given at the same time.
2. No railroad corporation shall abandon any non-agency passenger station without first having made application to and received the consent of the Commission.
3. No railroad corporation shall hereafter reduce passenger agency service at any station without having first given sixty days' notice to the public, unless otherwise authorized by the Commission, by posting in a conspicuous place at each such station or office, notice or notices of intention to effect such changes and by filing with the Commission a statement setting forth the nature and extent of such changes and the reasons therefor. Such statement shall contain the following information:

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- (a) The name of and the distance to the nearest tenth of a mile to passenger agency stations adjacent to the one involved; and
- (b) The number of passenger tickets sold during the last preceding twelve months.

The Commission, upon protest or complaint filed at least thirty days prior to the requested change or upon its own motion, shall have power to suspend the effect of any such notice of intention by a railroad corporation and to require such corporation to file a formal application for authority to make said change.

4. Unless otherwise authorized by the Commission, no railroad corporation shall abandon or remove any passenger depot, platform, or other passenger facility, except upon sixty days' notice to the public and to the Commission, by posting in a conspicuous place at each such facility, notice or notices of intention to effect such changes or abandon such facilities, and by filing with the Commission a statement setting forth the nature and extent of such changes to be made or facilities to be abandoned. The Commission, upon protest or complaint filed at least thirty days prior to the requested change or upon its own motion shall have power at once and without notice, to suspend the effect of any such notice of intention by a railroad corporation and to require such corporation to file a formal application for authority to make such change.

5. No railroad corporation shall cause any person to incur a toll telephone call because such railroad corporation abandons any agency or non-agency station or reduces any agency service or abandons or removes any depot, platform, siding, spur, or other facility.