

ORIGINAL

Decision No. 91353 FEB 13 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of San Clemente,
Pursuant to California Public Utilities
Code Section 7658, for Approval of the
City's Existing Ordinance No. 544
Prohibiting Passenger Trains from
Exceeding the Speed of Forty Miles Per
Hour While Within the City's Limits.

Application No. 58023
(Filed April 24, 1978)

- Michael J. Bartlett, City Attorney, for
City of San Clemente, applicant.
- O. J. Solander, Attorney at Law, for
California Department of Transportation,
protestant.
- Frederick C. Ohly, Attorney at Law, for
National Railroad Passenger Corporation,
interested party.
- James P. Jones, for United Transportation
Union, California State Legislative Board,
intervenor
- William J. Jennings, Attorney at Law, and
Robert W. Stich, for the Commission staff.

O P I N I O N

San Clemente's corporate limits span more than five miles of Pacific beach much frequented and used throughout the year. Along this entire stretch of beach between highway and surf pass the tracks of the Atchison, Topeka and Santa Fe Railroad Company (Sante Fe), which tracks are utilized for freight trains by Santa Fe and for passenger trains by the National Railroad Passenger Corporation (Amtrak).

In May of 1970 San Clemente enacted Ordinance No. 544 limiting train speeds through city limits to 40 miles per hour. The ordinance speed restriction has been observed by both Santa Fe and Amtrak to this date.

Public Utilities Code (Pub. Util. Code) Section 7658 (added 1976, Ch. 425) provides that no city ordinance which establishes a limit on the speed of passenger trains shall be valid unless approved by this Commission. Section 7658 became effective on January 1, 1977 and it was amended to include freight trains within its purview effective January 1, 1978.

San Clemente accordingly applied to the Commission for approval of Ordinance No. 544 on April 24, 1978.

"The commission, in authorizing any restrictions on the speed of rail services, shall do so only upon receipt of evidence and a finding (a) that the restriction is required due to track condition, alignment, curvature of tracks, superelevation, or inadequate right-of-way protection, or any combination thereof, as the case may be, and (b) that higher speeds will have an adverse impact upon the health and safety of the public until the specified conditions are changed." (Pub. Util. Code Section 7660, effective September 18, 1978.)

A duly noticed public hearing was held before Administrative Law Judge Orville I. Wright commencing March 13, 1979 and continuing for five days, closing in Los Angeles on June 8, 1979. The matter was submitted upon the filing of briefs on September 1, 1979.

Santa Fe did not participate in the hearing, having filed a response to the application stating that its self-imposed, maximum authorized speed for Santa Fe freight and Amtrak passenger trains through San Clemente was already 40 miles an hour, had been in

effect for many years, and would not be increased in the event the Commission denied San Clemente's application, declaring itself unaware of any circumstance which would justify increasing train speeds in that municipality.

The California Department of Transportation (Caltrans) responded to the application of San Clemente by expressing total opposition, but revised its position at the outset of the hearing so as to favor the application with respect to 2.6 miles in the central portion of the city, but to oppose the application as to segments both at the northern and southern limits of the city. Caltrans favors increasing speeds to 80 miles per hour on the 1-mile segment of track at the northern end of the city and to 70 miles per hour on the 1.3-mile portion at the southern end. These speed increases would yield a time saving of 1 minute 36 seconds from the present total trip time between San Diego and Los Angeles of 2 hours and 35 minutes.

Caltrans' limited opposition was endorsed by Frederick C. Ohly, appearing for Amtrak, and by James P. Jones, appearing for United Transportation Union, California State Legislative Board.

Exhibits in this proceeding number 128, and there were 34 witnesses or persons making statements for the record. The evidence is both copious and conflicting.

Three train engineers testified from personal experience. Vinton Fulk, an engineer with 38 years of service who operates Amtrak trains through San Clemente every other day, testified that it would be "ridiculous" to increase train speeds in that city. Donald Richardson, a Santa Fe engineer with a least 20 years of

service, frequently on the San Clemente route, testified that the Caltrans proposal could be safely accomplished at both ends of the city. Robert R. Peterson, a Santa Fe engineer with 9 years of service testified that the Caltrans proposal was acceptable on the northern section but not acceptable on the southern section.

As opposed to the train engineers, participating citizens of San Clemente were of a single mind and testified from personal observation and opinion that (1) trespassers were frequently on the railroad right-of-way in both areas in contention; (2) there was and is access to the tracks for their full length in the city and that such access is used, however inconvenient; (3) that development of the city is continuing apace in accordance with San Clemente's growth policy; (4) growth will increase the present hazards all along the track of injury to the myriad users of the beach; and (5) the singularly enormous safety problems associated with the entire San Clemente trackage should be satisfactorily solved before train speeds are there increased.

Caltrans produced an expert traffic witness, Alfred K. Goldin, whose credentials included Bachelor of Science and Master of Science degrees from the University of Southern California, attendance upon a fellowship to the Yale Graduate School for traffic engineering, and having qualified as an expert traffic witness in court and before this Commission. Mr. Goldin analyzed all accident reports involving trains in San Clemente, the number of which was equally divided between the decade prior to enactment of the 40-mile ordinance and the period thereafter, concluding that none was caused by train speed. Addressing the concerns of San Clemente spokespeople, the witness expressed the view that "near misses," such as were testified to in this proceeding, were given no statistical value in making safety judgments because imminent danger should be shown factually rather than as an opinion clouded by emotion.

Mr. Goldin pointed out that the perception reaction of a prudent person, young or old, would be no more than 2 seconds, during which time a train traveling 80 miles per hour would cover 240 feet. This ordinary person would hear the train at least 1/2 mile away. Thus, concluded the witness, the Caltrans' limited proposal would not increase hazards to life and limb of prudent persons crossing or walking the railroad tracks.

Finally, Robert W. Stich of the Commission staff expressed the view that the Caltrans proposal was reasonable because in the northern area of San Clemente the major crossing is protected by gates, and in the southern area "there is really no public access to the tracks". (Tr. 608.)

~~In its enactment of Pub. Util. Code Section 7658, the Legislature has recognized the need for quality rail passenger service in California and has placed emphasis on the speed of passenger trains in the Los Angeles-San Diego corridor.~~ KN

We have weighed the conflicting evidence and conclude that the record before us does not permit us to make the findings which are required if we would totally approve the ordinance.

Findings of Fact

1. The curvature of the railroad tracks in San Clemente together with inadequate right-of-way protection requires that train speeds in that city be restricted to 40 miles per hour on the 2.6 miles of track located in central San Clemente.

2. There are no specific conditions of sufficient hazard to the health and safety of the public to warrant approval of a

40-mile speed limitation on the 1 mile segment of track at the northern end of San Clemente or on the 1.3 mile section of track at the southern end of San Clemente.

3. Higher rail speeds than 40 miles per hour on the 2.6 miles of track in central San Clemente will have an adverse impact upon the health and safety of the public until right-of-way protection is satisfactorily established throughout that portion of the trackage in that city.

Conclusion of Law

The application of San Clemente to limit train speeds to 40 miles per hour should be approved as to the 2.6 miles in central San Clemente and disapproved as to the balance of the trackage in San Clemente.

ORDER

IT IS ORDERED that Ordinance No. 544 of the City of San Clemente is approved, in part, in accordance with the findings of fact and conclusion of law stated herein.

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

Dated FEB 13 1980, at San Francisco, California.

John E. Grayson
President
Richard D. Howell
Clara J. Decker

Commissioners

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