

C.10575 L/saw

Decision No. ~~92230~~ SEP 3 - 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, STATE
OF CALIFORNIA,

Complainants,

v.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, a corporation

Defendant.

ORIGINAL

Case No. 10575

ORDER MODIFYING DECISION NO. 91847,
GRANTING LIMITED REHEARING TO DEFENDANT
AND DENYING REHEARING TO INTERVENOR

A petition for rehearing of Decision No. 91847 has been filed by Southern Pacific Transportation Company. The County of Los Angeles and the State of California have filed their opposition to the petition for rehearing. A petition for rehearing has also been filed by Greyhound Lines, Inc. We have carefully considered all the allegations of error contained in SP's petition for rehearing and are of the opinion that good cause for granting a limited rehearing of Decision No. 91847 on the terms specified herein has been shown. We have carefully considered all the allegations of error contained in Greyhound's petition for rehearing and are of the opinion that good cause for granting rehearing has not been shown. However, we shall modify our discussion, Findings of Fact and Conclusions of Law to reflect the further study which has been given to this matter upon consideration of the petitions for rehearing. Therefore,

IT IS HEREBY ORDERED that proceedings in Case No. 10575 shall be reopened for the following purposes:

1. Exhibits 114, 115, 116, 117, 118 and 126 shall be admitted into evidence. Complainants shall have the right to cross-examine the witnesses whose prepared testimony is contained therein. Pursuant to Rule 57 of the Commission's Rules of Procedure, Complainants shall also have the right to close the proceedings through presentation of a sur-surrebuttal case. No further exhibits or witnesses shall be submitted or tendered by Defendant.

2. Complainants are hereby directed to present substantial evidence of a reasonable solution to the problem of delays incurred by the afternoon commuter trains due to the arrival of the Amtrak "Coast Starlight." Such evidence may but need not necessarily consist of an agreement with Amtrak for rescheduling the Amtrak train to avoid delays to the afternoon commuter trains.

3. Complainants are hereby directed to present evidence of an agreement with Amtrak regarding servicing and maintenance of the passenger cars.

4. Defendant is hereby put on notice that the Commission stands unimpressed with its insistent efforts to magnify minor operational problems into insurmountable obstacles. The Administrative Law Judge shall have discretion to limit proceedings regarding Exhibits 114-118 and 126 to such major issues of service feasibility as he finds consistent with fairness to all parties.

5. We have carefully reexamined each and every exhibit (nos. 111-126) offered by Greyhound and SP as part of SP's surrebuttal presentation. In view of the modification of Decision No. 91847 which follows, Exhibits 111 and 112 shall not be admitted into evidence. Exhibits 113 and 119-125 shall not be admitted into evidence, as they are argumentive, repetitive and merely cumulative of SP's case in chief and Exhibits 114-118 and 126. Except as specifically granted herein, the petitions to set aside submission are denied.

IT IS FURTHER ORDERED that Decision No. 91847 is modified as specified herein:

1. The discussion appearing in the last paragraph of page 49 and continuing through page 50 and footnote 3 are deleted. In their place are substituted the following eight paragraphs:

"In the meantime, alternate modes of public transportation are necessary, particularly to meet the needs and requirements of commuters between home and work. We do not have the statutory or constitutional authority to determine how subsidy funds available under Senate Bill 620 should be distributed or apportioned. We do not have the authority to decide whether a county, a transit district, or Caltrans should enter into a purchase service contract with Greyhound or with Mr. Nathanael Walter Anderson, Sr., General Manager of GLH Tours, Inc., who testified that this minority-owned charter-party carrier company would be willing to provide a commuter service between Los Angeles and Oxnard if subsidized. However, we do have the authority and the responsibility to consider the evidence presented concerning other alternatives and to evaluate its merits relative to Complainants' proposal.

"We discussed earlier the evidence presented by Greyhound on a bus alternative for the Oxnard-Los Angeles corridor. At the present time, Greyhound is not authorized to serve all of the points along this corridor. Both the Staff and Complainants opposed the introduction of Greyhound's evidence on the ground that Greyhound had not filed a formal application for a certificate of public convenience and necessity for this new service; however, we are of the opinion that it was properly admitted. After thorough review of the direct testimony and cross examination of Greyhound's witness, we conclude that this evidence indicates, at most, the possibility that under certain circumstances not demonstrated to necessarily exist in this case, bus service might be preferable to the proposed train service. However, in the face of the specific proposal which we are called upon to consider in this case, such tentative conclusions are not sufficiently persuasive to justify our rejection of the primary proposal on the basis that a more viable alternative has been shown to exist.

"In brief, Greyhound's showing has four basic shortcomings. First, it in no sense of the word represents an existing service which could be relied on tomorrow or even next month. We point out that all of our decisions cited by SP to illustrate that we have always considered alternatives, in fact considered existing alternatives. Secondly, Greyhound did not even offer a firm proposal of service. When questioned by the ALJ, Greyhound's witness agreed that this

'alternative' was merely a suggestion of a possible service Greyhound could provide if certain conditions were met, of which governmental subsidy was one of the most important.

"Moreover, Greyhound's witness made assertions about timing, fuel efficiency, and costs which he simply could not support on cross-examination. Nor could he provide specific fuel efficiency figures for the commuter service proposed which were comparable to those developed by the Oak Ridge study. Finally, Greyhound's proposal was shown not to be comparable to that proposed by Complainants. For example, most of the buses leaving Oxnard would go directly to Los Angeles and vice versa; moreover, apparently no one bus would stop at all of the intermediate stops.

"Greyhound's proffered surrebuttal evidence, even if it had been properly offered, does not help Greyhound's case. This evidence, showing (1) the results of three trial bus runs between Oxnard and Los Angeles, and (2) a proposed contract between Greyhound and Los Angeles County giving the specifics of routing and number of buses needed to and from Oxnard, the intermediate stops, and Los Angeles, amounted to a last minute effort to educate an unknowledgeable witness who had been discredited on cross examination. It was therefore of little merit.

"In sum, Greyhound's evidence was fully considered. Greyhound was given every opportunity at the hearings to develop its case; moreover, we thoroughly examined its evidence in the course of making our decision. This evaluation showed Greyhound's proposal to be at best a tentative offer. We could not conclude, on the basis of the showing presented, that a comparable, feasible, and indeed preferable alternative existed.

"It is unclear what Greyhound's motive was in presenting this evidence. We cannot ignore the fact that this complaint was originally filed in May of 1978; had either Greyhound or SP been serious about presenting the Commission with a viable alternative they had plenty of time to do so. It may be that Greyhound is seriously considering seeking the authority to operate buses in this corridor under some type of governmental subsidy, although Greyhound's witness testified that as of the date of the hearing, Greyhound had made no effort to communicate with any local government, with the exception of Simi Valley, about institution of commuter bus service. However, our authorization of the proposed train service does not rule out a complementary service by Greyhound. In fact, Greyhound's witness stated that

Greyhound would be willing to provide service complementary to, as well as in lieu of, the train service. We would urge Greyhound to pursue this approach in the appropriate forum.

"In these circumstances, we must decide: (1) whether we have jurisdiction to require SP to provide the proposed commuter service; (2) whether the proposed commuter service is required by public convenience and necessity; and (3) whether a rail service would be feasible under existing conditions."

2. The discussion appearing on page 69, before the commencement of the Findings of Fact, is modified to read:

"Senate Bill 849, Chapter 791 of the Statutes of 1978 (Public Resources Code, Section 21085.5, an urgency measure) provides for the following exemption from CEQA:

'A project for the institution or increase of passenger or commuter service on rail lines already in use, including modernization of existing stations and parking facilities, shall be exempt from this division.'

"In addition, the Commission's Rules of Procedure include categorical exemptions for classes of projects which the Secretary of Natural Resources has exempted from the EIR requirements of CEQA. Interpreting the EIR Guidelines found in Title XIV of the California Administrative Code, Sections 15000 et seq., the Commission has provided that construction of "[a]ccessory (appurtenant) structures to utility structures" is exempt from EIR requirements. (Rule 17.1(h)(1)(C)(3). See Title XIV, Cal. Admin. Code, Section 15103(e).) The type of construction proposed by Caltrans (i.e., open platforms and paved parking areas) falls within this categorical exemption.

"The motion will be denied."

3. New Finding of Fact 34 is added to read:

"Greyhound's evidence on a bus alternative (1) does not represent an existing alternative, (2) is not even a firm proposal, (3) is not supported by first-hand knowledge of its details or its purported benefits, and (4) is not equivalent to the proposal offered by Complainants."

4. Conclusion of Law 12 is modified to read:

"This Commission has no statutory or constitutional authority to determine how subsidy funds available under Senate Bill 620 should be distributed or apportioned. This Commission does not have the authority to decide whether a county, a transit district, or Caltrans should enter into a purchase service contract with Greyhound or other passenger stage or charter party carriers."

5. Conclusion of Law 13 is modified to read:

"Inauguration of a rail commuter service between Los Angeles and Oxnard requires no environmental impact report. Construction of station platforms and parking lot facilities is exempt from the provisions of CEQA."

6. A pre-hearing conference for scheduling these additional proceedings in Case No. 10575 shall be held before Administrative Law Judge Mallory at 10:00 a.m. October 1, 1980 in the Commission's Courtroom, State Building, San Francisco, California 94102.

The effective date of this decision is the date hereof.

Dated SEP 3 - 1980 at San Francisco, California.

John E. Bay
President

Deborah L. Sturgeon

Richard D. Howell

Clare J. ...

James W. ...
Commissioners