

Decision No. 92862 April 7, 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

County of Los Angeles, State of)
California,)

Complainants,)

vs.)

Southern Pacific Transportation)
Company, a corporation,)

Defendant.)

Case No. 10575
(Filed May 18, 1978)

(For appearances see Decision No. 91847.)

ORDER RULING ON MOTIONS

This is a complaint in which the county of Los Angeles (County) and the State Department of Transportation (Caltrans) seek an order of the Commission directing Southern Pacific Transportation Company (SP) to operate a commuter passenger train service between Los Angeles and Oxnard. Decision No. 90018 issued February 27, 1979 denied SP's motion to dismiss on jurisdictional grounds. Decision No. 90417 dated June 5, 1979 denied SP's petition for rehearing of Decision No. 90018. ✓

Following public hearing, the Commission issued Decision No. 91847 on June 30, 1980. Finding 12 of that decision states that based on the evidence adduced on that record, public convenience and necessity require that SP commence passenger train service between Los Angeles Union Passenger Terminal (LAUPT) and Oxnard consisting of two trains daily, each way, between 6:00 and 8:00 a.m. and

between 4:00 and 6:00 p.m., with intermediate stops at stations or platforms at Camarillo, Moorpark, Santa Susana (Simi Valley), Chatsworth, Northridge, Panorama, Airport, Burbank, and Glendale. The Commission's order in Decision No. 91847 set forth the preliminary steps to be taken by complainants and defendant in order to begin the described commuter service.

SP filed a petition for rehearing of Decision No. 91847.^{1/} Decision No. 92230 issued September 3, 1980 modified the Discussion, Findings of Fact, and Conclusions of Law set forth in Decision No. 91847 and ordered that Case No. 10575 be reopened for the purpose of receiving additional evidence from SP and complainants as more fully described in that order.

Further hearing, as ordered in Decision No. 92230, was held before Administrative Law Judge John Mallory in San Francisco on October 14 and 15 and November 17 and 18, 1980. The matter was again submitted on the receipt of proposed findings of fact and conclusions of law by complainants, SP, and our staff on December 22, 1980.

County's Motion to Withdraw

Subsequent to submission of the rehearing proceeding, County Supervisor Antonovich advised the Commission by letter that the County Supervisors had voted to rescind County's agreement with Caltrans to provide railcars for the proposed service. On February 19, 1981, County filed a formal motion to withdraw from the proceeding.

^{1/} Greyhound Lines, Inc. also filed a petition for rehearing of Decision No. 91847, which was denied in Decision No. 92230.

County's motion states, in part, as follows:

"On February 5, 1981, the Board of Supervisors of the County of Los Angeles adopted a motion to have the County of Los Angeles withdraw as a Complainant in CPUC Case No. 10575."

* * *

"Co-Complainant State of California has advised Complainant that it has no objection to the granting of this Request."

County requests an order of the Commission authorizing and directing the withdrawal of County as a complainant in Case No. 10575.

Caltrans has advised this Commission by letter from Adriana Gianturco, its director, and in its response to SP's motion to dismiss (infra) that Caltrans intends to comply with the Commission's order in Decision No. 91847, that Caltrans will be responsible for operation of the commuter service, and that it has no objection to County's withdrawal as County is not an essential party to the operation of the service.

SP's Motion to Dismiss

On February 13, 1981, SP filed a motion to dismiss the proceeding, asserting that events since the close of the further hearings have made it clear that no finding of public convenience and necessity warranting the operation of the service can now be made, and that there is no point in continuing to litigate a proceeding which should in all fairness be put to rest.

In support of its motion, SP argues that when this proceeding was instituted both County and Caltrans enthusiastically promoted the concept of commuter rail transportation on SP's largely single track line to Oxnard as the panacea for what was perceived as a public demand for improved commuter transportation from the Simi Valley and other points in Ventura County. SP also

asserts that the evidence submitted on behalf of complainants confirms that, while Caltrans may have provided certain technical and other analyses to support the complaint, the popular support, which prompted the Commission to make findings of public convenience and necessity, came not from a state department in Sacramento, but from local government in Los Angeles. That local support is alleged by SP to be determinative of the Commission's findings, as illustrated in the narrative discussion in Decision No. 91847 at mimeo. page 57:

"We also believe that the support for this service from the local public officials, bodies, and organizations is an important element in our determination that the public convenience and necessity require this train service."

SP states that, accordingly, Finding of Fact 9 recited:

"9. Regional and local governmental officials and planning agencies support and encourage commuter rail service in the corridor between Los Angeles and Oxnard."

SP's motion states that the indispensable role of County as the moving force in this complaint is reflected in Ordering Paragraph 5 which provided:

"5. Within 180 days after the effective date hereof SP, CalTrans, and the County of Los Angeles shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom."

SP's motion further argues that the proposed rail service is fatally flawed and is unworthy of popular support and County's withdrawal is for that reason. SP states former County Supervisor Baxter Ward was the initial proponent of the Oxnard-Los Angeles

commuter train plan, and that his defeat by Supervisor Michael D. Antonovich, after the commuter train proposal was placed in issue in the election, was a rejection of the plan by popular vote. SP argues that the rejection of the plan by the electorate and the County Board of Supervisors indicates that there is no longer local government support for the proposal, and that it is apparent that the commuter train proposal, having been rejected by the Board, will play no part in essential regional transit planning.

SP summarizes its arguments as follows:

- "1. Local government does not support the commuter train proposal.
- "2. Local government's active support is indispensable in any attempt to institute a new service such as that initially proposed here.
- "3. With the support of local government withdrawn, there is no longer any assurance that the proposed commuter train services will be integrated into regional transportation planning.
- "4. The proposed commuter trains would require massive infusions of public funds. The general scarcity of public funds for transit rationally dictates that such public funding be expended only for services which have the full support of local government, and that State transit experiments should not be imposed upon local communities which do not want them."

Greyhound Lines, Inc.'s Motion to Dismiss

On March 11, 1981, Greyhound Lines, Inc. (Greyhound) filed its motion to dismiss, advancing the same grounds for dismissal as SP. Greyhound's motion also calls to the Commission's attention the filing on January 28, 1981 of its Application No. 60222 in which it seeks authority to operate a bus service between the junction of Interstate Highway 5 and Camarillo, and between Thousand Oaks and Moorpark (the Simi Valley route). Greyhound asserts that the granting of that application would permit it to serve every point in Simi Valley now on the commuter rail route directed to be established in Decision No. 91847. Greyhound submits that it now has on file an unconditional application to serve between Oxnard-Los Angeles and intermediate points. (See Decision No. 92230, in which Greyhound's petition for rehearing was denied; see also, S.F. No. 24244, in which the California Supreme Court denied Greyhound's petition for a writ of review.)

Disposition of County's Motion

County is no longer an indispensable party to this proceeding. Initially, County was to furnish some of the railcars needed for the service. Agreement has now been reached between Caltrans and Amtrak wherein Amtrak will furnish the cars and engines necessary to perform the service and will service and repair that equipment.

The subsidy funding for the proposed service will come entirely from Caltrans; none will be furnished by County. County will not be responsible in any way for the operation of the proposed service. The only essential parties are SP and Caltrans.

Concerning County's request to withdraw, we make the following findings of fact:

1. County would not be responsible for operation of the proposed service under the plan described in our order in Decision No. 91847.

2. County is not required to furnish any cars, engines, or other facilities to operate the proposed service.

3. County is not responsible for any portion of the funding of the proposed service.

The Commission concludes that:

1. County is not an essential party to the proceeding.

2. County's withdrawal from the proceeding will not affect the ability of Caltrans or SP to conduct the proposed service.

3. County's motion to withdraw should be granted.

Disposition of SP's Motion

The thrust of SP's arguments in support of its motion to dismiss is that the proposal for operation of the Oxnard-Los Angeles rail commuter service originated with the County Board of Supervisors (specifically Supervisor Baxter Ward), that our finding of public convenience in Decision No. 91847 is chiefly based on the evidence by or on behalf of County and that withdrawal by County from the proceeding constitutes repudiation of its prior position, which negates the evidence adduced by it supporting our finding of public convenience and necessity.

On February 26, 1981, Caltrans filed its response to SP's motion to dismiss. Caltrans argued that: (1) County is not legally required to be joined in the complaint; therefore, its withdrawal is not grounds for a motion to dismiss; (2) there is substantial evidence in support of the proposed service from regional and local officials and planning agencies other than County; therefore, there is adequate public support from other entities

than County; and (3) withdrawal of County does not affect the outcome of Decision No. 91847, as indicated in the rehearing, inasmuch as Caltrans has arranged with Amtrak to provide and maintain the necessary cars and locomotives, Caltrans has the responsibility for establishing the stations, and Caltrans stands ready to negotiate an agreement with SP to subsidize deficits.

On the critical issue of support for the service, Caltrans states:

"SP incorrectly credits Los Angeles County with the 'popular support' of the complaint. The record is clear that the popular support for the service is derived also from a number of citizens and officials in Ventura County as well as citizens and planning agencies of Los Angeles City and County. The critical factor is, moreover, the demand for the service as demonstrated by the ridership projections of Caltrans' witness Mr. Browne. This demand was conservatively estimated when he testified.

"Finding No. 9 is not significantly affected by the withdrawal of Los Angeles County. Indeed, the record still supports the finding that '[r]egional and local governmental officials and planning agencies support and encourage commuter rail service in the corridor between Los Angeles and Oxnard.'"

County's motion states only that the current Board of Supervisors adopted a motion to have County withdraw. The motion does not repudiate any evidence previously adduced by County, nor does the motion state a position in opposition to the proposed service. As indicated above, County is not a necessary party to the proceeding; County need not contribute either railcars or funding to the project. It would be entirely speculative for this Commission, in addition, to attempt to read election results as a popular referendum on the service ordered in Decision No. 91847. We are not persuaded by SP's efforts to have us engage in such speculation. ✓

Concerning SP's motion to dismiss, we make the following findings of fact:

1. There is substantial evidence in the record from regional and local officials and planning agencies on the issue of public convenience and necessity.

2. There is adequate public support from entities other than County to show that the proposed service is needed.

3. Withdrawal of County as a complainant does not affect the establishment of the rail commuter service ordered in Decision No. 91847, as Caltrans will be solely responsible for the furnishing and maintenance of the operating equipment and station facilities necessary to perform the service.

We make the following conclusions of law:

1. County's withdrawal is not a basis for dismissal of the complaint.

2. Case No. 10575 should not be dismissed for the reasons set forth in SP's motion.

3. Ordering Paragraph 4 of Decision No. 91847 should be amended to delete reference to County.

4. Ordering Paragraph 5 of Decision No. 91847 should be amended to delete reference to County.

Disposition of Greyhound's Motion

Greyhound's motion to dismiss is posited upon the same grounds as SP's motion to dismiss. Accordingly, it will be denied for the same reasons as SP's motion is denied. Examination of Greyhound's Exhibit 3 ("Proposed Simi Valley Service") shows that Greyhound's application to serve Simi Valley provides no basis for dismissal of the complaint. We note, for example, that a bus scheduled to depart from Oxnard (Schedule 6759 revised) at 7:30 a.m.: (a) does not originate there, but appears to be enroute

from San Luis Obispo and therefore might be delayed; (b) does not arrive in Los Angeles until 10:00 a.m.; and (c) obviously does not meet typical commuter requirements. The return bus in the afternoon (new schedule) leaves Los Angeles at 4:10 p.m. and arrives in Oxnard at 7:40 p.m. This service too obviously does not meet typical commuter requirements. We do not here prejudge whether Greyhound's application will be granted, but it offers service which is not comparable to Caltrans' rail service. ✓

This order should become effective on the date of issuance in order to expedite consideration of SP's request for a writ of review (SF 24220) now pending before the California Supreme Court.

IT IS ORDERED that:

1. The motions to dismiss Case No. 10575 filed February 13, 1981 by Southern Pacific Transportation Company and March 1, 1981 by Greyhound Lines, Inc. are denied.

2. The County of Los Angeles is authorized to withdraw as a co-complainant in Case No. 10575.

3. Ordering Paragraphs 4 and 5 of Decision No. 91847 are revised to read as follows:

4. Within thirty days prior to the commencement of service by SP, Caltrans shall establish to the Commission's satisfaction that:

- a. Two consists of eight rail passenger cars each are available and ready to be used in service.
- b. Arrangements have been made for the maintenance of rail cars and for the sale of tickets.
- c. An escrow account has been established containing deposits of \$1.3 million for the purpose of constructing station platforms and parking facilities and a deposit of at least one-half of the estimated cost of first-year operations as set forth in Exhibit 9.

5. Within one hundred eighty days after the effective date hereof SP and Caltrans shall negotiate and submit to this Commission for its approval an agreement relating to the equipment and facilities to be used in providing said commuter service and the method to be applied in subsidizing deficits that may result therefrom.

The effective date of this order is the date hereof. ✓

Dated APR 7 1981, at San Francisco,

California.

John E. Guyon President
Richard D. Douglas
Thomas J. Smith
Victor Cabre
Phyllis C. Grew Commissioners