

ORIGINAL

Decision No. 93105 MAY 19 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of Union Pacific Railroad Company, a corporation, and Mid-City Iron and Metal Corporation, a California corporation, respondents.

OII No. 18  
(Filed June 13, 1978;  
amended January 16, 1979)

Leland E. Butler, Attorney at Law, for The Atchison, Topeka and Santa Fe Railway Company; Leo Altshuler, Attorney at Law, for Mid-City Iron and Metal Corporation; William E. Still, Attorney at Law, for Southern Pacific Transportation Company; and Robert M. White, for Union Pacific Railroad Company; respondents.  
James P. Jones, for United Transportation Union, California Legislative Board; and Stanley G. Swarzman, Attorney at Law, for Atlas Lumber Company; interested parties.  
William Bricca, Attorney at Law, and F. M. Blackwill, for the Commission staff.

O P I N I O N

This is an investigation upon the Commission's own motion (OII) to determine whether certain railroad operations violate safety standards set forth in Commission General Orders (GO) Nos. 26-D and 118.<sup>1/</sup> Initially, the OII named Union Pacific Railroad Company (UP) and Mid-City Iron and Metal Corporation (Mid-City) as respondents. It was subsequently amended to include Southern Pacific Transportation Company (SP) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) as additional respondents.

---

<sup>1/</sup> GO 26-D contains regulations governing clearances on railroads with reference to side and overhead structures and parallel tracks.  
GO 118 contains regulations governing the construction, reconstruction, and maintenance of walkways adjacent to railroad tracks.

On September 17, 1978, the matter was called and continued to December 5, 1978 by Administrative Law Judge (ALJ) Main. On December 5, 1978, ALJ Mattson called the matter and removed it from the Calendar. It was reset for January 11, 1979. ALJ Mattson called the matter on that date and it was temporarily removed from the Calendar at the request of the Commission staff (staff). A duly noticed public hearing was held in this matter before ALJ Donald B. Jarvis in Los Angeles on June 13 and 14, 1979 and January 15, 16, and 17, 1980. It was submitted subject to a late-filed exhibit and briefs which were received by April 23, 1980.

Contentions of the Parties

The contentions of the parties are broadly summarized as follows.

The staff position is that over a period of years there has been collusion among the respondent railroads and Mid-City which resulted in numerous violations of GOs 26-D and 118. It asserts that only a strong cease and desist order with continuing surveillance can remedy the situation.

Mid-City and the respondent railroads contend that the staff in its zeal to enforce the GOs has acted in an arbitrary and vindictive manner. Mid-City asserts that the staff is attempting to regulate the use of its private, nonutility property when no railroad operations are taking place and if the staff's unnecessary and impractical demands are adopted Mid-City will be forced out of business.

Interested party United Transportation Union supported the position of the staff. It represents some of the railroad employees who are involved in the train operations considered herein.

Material Issues

The material issues presented in this proceeding are:

1. Have any of the respondents violated GO 26-D or GO 118?
2. Have

any of the respondents engaged in any unreasonable, unsafe, or improper practices in connection with their railroad operations? 3. If violations occurred, what appropriate action should be taken by the Commission?

Statement of Facts

Mid-City purchases, processes, and sells scrap metal. It sells approximately ten million pounds of scrap each month which it ships in 80 - 100 railroad cars. It is the largest supplier on the west coast of scrap metal to Bethlehem Steel Company. Mid-City employs 35 persons.

Mid-City is located in the city of Los Angeles. Its property is served by three railroad tracks. Track 09-11 is an industry track which is owned by Mid-City and located on its property. It was constructed by UP pursuant to an agreement between the parties. It is connected to trackage owned by UP. Track 09-14 is north of Track 09-11. Track 09-14 is a track which is jointly owned by UP, SP, and Santa Fe. The easterly portion of Track 09-14 connects to trackage owned by the railroads. Track 09-14 serves Mid-City as well as Globus Metals and L.A. Waste, which are located west of Mid-City. There are switches on Track 09-14 which lead to two parallel tracks which serve Atlas Lumber Company (Atlas) and Coast Planing Company. Track SPINS 1295 is owned by SP and serves Mid-City's nonferrous metals warehouse.

In June 1976 the Commission's Associate Transportation Operations Supervisor von Ibsch was directed to make a general survey of UP trackage from Los Angeles to Riverside Junction. Similar surveys had been conducted in 1968 and 1974. Mid-City was one of 185 industrial rail users encompassed by the survey. The staff uses Form O&SS-1 to notify railroads or industries of "deviations from the Commission requirement(s)". Von Ibsch used this form in connection with the survey.

On June 22, 1976 von Ibsch surveyed the trackage in the vicinity of Mid-City. He gave Mid-City a Form O&SS-1 which contained four alleged violations. On August 20, 1976, the staff sent a letter to Mid-City asking whether the alleged violations had been corrected. On September 1, 1976 Mid-City replied that all of the alleged violations had been corrected. Staff investigation between September 1, 1976 and July 28, 1977 indicated that the alleged violations had not been corrected. On July 28, 1977 a meeting at the site was held among von Ibsch and representatives of Mid-City and the respondent railroads. During the meeting the owners of Mid-City became enraged with von Ibsch, railed profanity at him, and told him to leave the Mid-City office. Von Ibsch left the premises with the railroad representatives and recommended that Tracks 09-14 and 09-11 be spiked because of the alleged violations. Both tracks were removed from service to Mid-City by railroad personnel driving a spike into the head block tie which prevented switches from moving and allowing entry on the tracks.

On July 29, 1977 von Ibsch returned to the site and found that the spikes had been removed by unknown persons. Railroad personnel did not remove them. Mid-City was in the process of remedying some of the alleged violations. The staff conducted numerous inspections of the Mid-City trackage in 1977 and 1978. It found many alleged violations. In general these alleged violations dealt with maintenance of walkways, impaired clearances, and impairment of the derail on Track 09-14.

Mid-City has gates which close its property to access on the three tracks here involved. Throughout the staff investigation, Mid-City took the position that when the gates were closed and there were no railroad employees on the property it ought to be able to do whatever it wanted on the property including putting scrap metal

on or near the tracks. The staff takes the position that as long as a track is "open" it must be maintained in accordance with GOs 26-D and 118. The staff does not consider Mid-City's locking the gates sufficient to close the track. Some of the alleged violations occurred when the gates were locked.

During the staff investigation some of the violations or alleged violations were corrected. The dispute over when the GOs apply continued. While none of the respondent railroads ever refused to take a specific action requested by the staff, the staff came to the opinion that the railroads were knowingly conducting operations over trackage which violated the GOs. The staff sought the OII which was issued.

Procedural Matters

A. Santa Fe's Motion For Dismissal

On October 9, 1979, after the presentation of the staff's direct case, Santa Fe filed a motion for dismissal as a respondent. The motion asserts that the record indicates Santa Fe does not serve Mid-City, since 1976 it has only delivered six cars in the vicinity and there is no evidence of any violations on the part of Santa Fe. The motion was taken under advisement by the presiding ALJ. (Rule 63.)

The staff does not contradict the assertions of Santa Fe. It argues that Santa Fe should not be dismissed because Santa Fe is a joint owner and user of Track 09-14. The staff contends that any order dealing with Track 09-14 should apply uniformly to UP, SP, and Santa Fe.

Santa Fe will not be dismissed as a respondent because of the need for uniformity in the ensuing order which deals with Track 09-14. However, since there is no evidence of any GO violations by Santa Fe, it will not be included in any cease and desist order which may be issued.

**B. Jurisdiction over Mid-City**

Mid-City raises the question of the scope of the Commission's jurisdiction over it in this proceeding. It was named as a respondent, served, and participated in the hearing.

The Commission has jurisdiction over public utilities and transportation companies. (Cal. Const., Art. XII; Pub. Util. Code.) Mid-City is not a public utility. The respondent railroads are. (Pub. Util. Code §§ 211, 216, 230.) To the extent operations of the respondent railroads on Mid-City's property violate lawful orders of the Commission, the Commission may order the railroads to cease and desist from such operations or to take other appropriate action. (Pub. Util. Code §§ 761 et. seq.) Any action taken against the respondent railroads could affect Mid-City's business and it is properly included as a respondent so it can protect its interests. It is also properly included as a respondent to permit the Commission to determine whether to recommend any action under Sections 2111 and 2112 of the Public Utilities Code.

**C. Proposed Report**

Mid-City filed a petition for a proposed report. The Commission is of the opinion that a proposed report is not warranted and the petition is denied.

**D. Burden of Proof**

The staff had the burden of proof in this investigation. (Evidence Code §§ 500, 550; Shivell v Hurd (1954) 129 CA 2d 320, 324; Ellenberger v City of Oakland (1943) 59 CA 2d 337.) In arguing its position the staff contends that after establishing what it considers to be a violation of GO 118 or GO 26-D "it is fair to conclude that this type of operation was repeated on many occasions...." We do not accept this proposition as stated. To the extent the Commission may

infer violations from the evidence, we will do so. (Evidence Code § 600(b).) For example, if a stationary violation is established, we may infer that it continued until removed. We will not infer a series of transitory violations unless repetitive violations are established.

E. Applicability of GOs 26-D and 118

1. GO 26-D

GO 26-D provides in part that:

"It Is Hereby Further Ordered that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof."

The respondents concede that GO 26-D is applicable to Tracks 09-11 and 09-14 since they or structures adjacent to them were constructed or reconstructed after the effective date of the GO.

SP contends that GO 26-D is not applicable to Track SPINS 1295 because the track and Mid-City facilities which it serves were constructed prior to the effective date of GO 26-D and have not been reconstructed since then. The staff contends the GO is applicable because the track was allegedly removed from service after the effective date of the GO and when service was resumed the GO became applicable to it.

The staff position rests on a letter sent to it by SP on November 1, 1978 which listed all industrial and spur tracks removed from service by SP during April, May, and June 1978. The

letter contained the following statement: "Please note that the spur to Mid City Iron & Metals at Clement Junction should be deleted from the list provided for the first three months of 1978 since that track is presently in service." This was the only evidence adduced by the staff to prove removal from service.

SP contends that SPINS 1295 was built in 1904 and has never been removed from service. It argues that the cited sentence in its letter of November 1, 1978 was not accurate. SP's industrial yardmaster for the area encompassing Mid-City testified that he had served in that capacity since October 1941 and that he had no knowledge of SPINS 1295 ever being out of service during that period. One of the owners of Mid-City testified that Mid-City acquired the building and track in May 1948, that there has been no change in location of the track or building since then, and that SPINS 1295 has always been used since 1948.

The alleged uncorrected violation on SPINS 1295 relates to an outside metal door which extends from the side of the building and brackets at either end to prevent the door from moving off its tracks. The building itself is within the minimum clearance requirements of GO 26-D. The door and brackets do not meet the minimum requirements by four to six inches. The staff contends that the violation can only be cured by: 1. Changing the position of the door and brackets, or 2. Filing an application with the Commission and securing a deviation from GO 26-D.

Mid-City contends that for security reasons, it is impractical to change the position of the door and that when SP crews served the building they always rode on the opposite side of the car. During the course of the investigation SP changed the mode in which it served the building. There is a gate where SPINS 1295 enters



Mid-City property. SP does not have a key to the gate. SP delivers cars to the gate. They are moved to the building by Mid-City personnel. In addition, SP has put out a bulletin noting impaired clearance at the building for the benefit of traincrews. The staff contends that this practice still violates GO 26-D because the track is "open" and it is possible for SP crews to go directly to the building.

While an inference might be drawn from SP's letter of November 1, 1978 that SPINS 1295 had been removed from service, the overwhelming weight of credible direct evidence indicates that it was not. Since the track and building were constructed before the effective date of GO 26-D, they are not subject to its provisions. We will find no violation of GO 26-D with respect to the door and brackets on SPINS 1295. However, the ensuing order will exercise the Commission's jurisdiction over SP's operating practices and formalize the arrangement presently in effect.

2. GO 118

UP contends that GO 118 does not apply to the tracks on Mid-City's property, which are owned by Mid-City. UP argues that GO 118 only applies to trackage owned by a railroad. It asserts that the initial draft of GO 118 proposed by the staff would have applied to all railroad tracks in the State, but that this proposal was not adopted by the Commission. There is merit in this contention.

GO 118 was adopted by Decision No. 65208 in Case No. 7306. The GO originally proposed by the staff provided in part as follows:

"IT IS ORDERED by the Public Utilities Commission of the State of California that the following regulations governing the minimum standards for the future construction, reconstruction, and maintenance of walkways adjacent to railroad tracks and the control of vegetation on railroad

rights of way shall be observed within the State of California.

"IT IS FURTHER ORDERED that unless otherwise prescribed herein, the walkways as specified by this order shall be provided adjacent to all tracks within the State of California not later than December 31, 1965."

\* \* \*

"WALKWAYS IN INDUSTRIAL AREAS

"Section 4 - Walkways around Switches and along Industrial, Lead, House, Team, and Similar Tracks

"4.1 A level walkway having a width of not less than 5'0" from the center line of switch stands and not lower than the top of ties shall be provided around all industrial lead track switches or other similar switches used in the serving of industrial, house, team, and similar tracks.

"4.2 A level walkway not lower than the top of ties, nor higher than the top of rails, and extending outward at least 6'0" from the edge of the nearest rail shall be provided parallel to all industrial, lead, house, team, and similar tracks." (Emphasis added. Case No. 7306, Appendix A to OII, entered March 27, 1962.)

The Commission did not adopt the original staff proposal. The GO which was adopted was the result of compromises between the staff and the respondent railroads. (GO No. 118 (1963) 60 CPUC 756-7.) GO 118, as adopted, provides in part that:

"IT IS ORDERED by the Public Utilities Commission of the State of California that each railroad corporation operating in the State of California shall file its standards for the construction, reconstruction and for the subsequent maintenance

of walkways adjacent to its tracks as hereinafter required and any future changes or revisions thereof in accordance with the following provisions and shall hereafter, in the construction and reconstruction of its tracks and walkways, observe its standards filed with the Commission in accordance with the provisions of this order:

- "1. The standards of each railroad corporation operating in the State of California for the construction or reconstruction of walkways adjacent to its tracks shall be filed with the Commission for its approval not later than thirty days after the effective date of this order.
  - "2. Each railroad corporation operating in the State of California shall file with the Commission any change or reissue of its standards for the construction and reconstruction of walkways adjacent to its tracks. No change or reissue of any such standard shall become effective less than five days after approval thereof by the Commission. . . .
  - "3. The standards of each railroad corporation shall contain provisions for reasonably safe and adequate walkways adjacent to its tracks in all switching areas, and shall provide that all such walkways shall be maintained and kept reasonably free from vegetation as may be appropriate to prevailing conditions, and shall provide for abatement of weeds and brush adjacent to walkways as necessary to prevent the growth of objectionable vegetation encroaching upon such walkways."
- \* \* \*
- "6. Each railroad corporation operating within the State shall pursue a program of improvement of walkways in all switching areas

where a substantial amount of switching is performed, along its main, branch and industrial trackage toward substantial conformity with its standards filed with the Commission pursuant to this order." (Emphasis added.)

GO 118 deals with the construction and maintenance of walkways and control of vegetation adjacent to railroad trackage. The language of GO 118 uses the possessive "its" in describing the trackage of the railroads to which it applies. "It" is defined as "of or belonging to it or itself as a possessor." (Webster's Third New International Dictionary, p. 1204.) It is reasonable to place the duty and financial responsibility for construction and maintenance on the entity who owns the trackage. This is consistent with the exercise of the Commission's safety jurisdiction. GO 26-D deals in part with the operation of railroad cars over all trackage in the State. Thus, on a track owned by an industry a railroad would not be responsible for removing debris from the walkway within 8'6" from the center of the track because GO 118 would not apply to that situation. However, unless the industry (which is not subject to GO 118) voluntarily remedied the situation the railroad could not operate over the track because it would be in violation of GO 26-D, Sections 3.2 and 6.1.

UP also contends that GO 118 has a different standard than GO 26-D. It argues that GO 118 only requires standards for reasonably safe walkways. It is unnecessary to dwell on this argument. Assuming arguendo that there is a different standard of construction for GO 118 than GO 26-D, we hold that at a minimum reasonably safe walkways are ones which meet the minimum operating requirements of GO 26-D.

The record indicates that Track 09-11 is owned by Mid-City. Since it is not a railroad, GO 118 does not apply to it. No findings of GO 118 violations are warranted with respect to Track 09-11.

F. Fouling the Switch

During the course of the hearing the staff introduced evidence to which there was no objection that Mid-City or the respondents serving it have blocked or fouled the switch on Track 09-14. SP, UP, and Mid-City also presented evidence about the situation.

Blocking or fouling a switch is not within the ambit of GOs 26-D and 118. However, the matter was fully litigated at the hearing. "The virtually unanimous rule in California is that variance between pleading and proof does not constitute error where no prejudice is shown and no objection to evidence or motion for nonsuit has been made in the trial court. (See 3 Witkin, Cal. Procedure (2d ed.) Pleading § 1061, p. 2637; and cases collected therein; Code Civ. Proc., § 469; Witkin, supra, § 1057, pp. 2632-2633; Dougherty v. California Kettleman, etc. (1937) 9 Cal. 2d 58, 85 [69 P. 2d 155]...." (Quezada v Hart (1977) 63 CA 3d 754, 761.) Public Utilities Code Sections 761, 762, and 768 confer safety jurisdiction on the Commission with respect to the switch. The ensuing findings, conclusions, and order will deal with this situation.

Discussion

The Commission has the responsibility to "require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, ..." (Public Utilities Code § 768, see also §§ 761, 762.) GOs 26-D and 118 were adopted to protect the health and safety of railroad employees.

GO 26-D provides the minimum clearance for a man's body on the widest authorized railroad car and a building or other obstruction. A violation of GO 26-D could result in a railroad employee's being killed or injured by being knocked off the car or wedged against or impaled by the obstruction. GO 118 provides for construction and maintenance of tracks and adjacent walkways to ensure the operating conditions required by GO 26-D.

Under the facts of this case, violations of GOs 26-D and 118 could result in the following type of injuries to railroad employees: 1. Sharp metal puncturing the sole of the shoes of a person walking over it and injuring the foot. 2. Sharp metal cutting through the pant leg and injuring the person's leg. 3. A person falling over scrap metal and breaking, spraining, or otherwise injuring his leg, arm, head, or other parts of the body. 4. A fall which results in the person's landing on the railroad track and risking being run over by a railroad car.

The Commission is of the opinion that when no railroad employees are present and their safety is not otherwise jeopardized, Mid-City ought to be able to conduct its scrap metal business on its property without regard to GOs 26-D and 118. The acrimony which developed during the staff investigation precluded a voluntary solution of this problem. The ensuing order will provide a mechanism for defining when Mid-City's property is closed for railroad operations until it is in compliance with GOs 26-D and 118.

Mid-City's scrap operation in the absence of railroad personnel is only one facet of the problems presented by this OII. The enumerated findings hereafter made set forth numerous violations of GOs 26-D and 118 while railroad personnel were operating on Mid-City's property or in the immediate vicinity.

It is true that none of the respondent railroads ever refused to take corrective action when requested by the staff. However, a railroad's obligation is to obey the GOs on its own volition and not wait until violations are called to its attention by the staff.

The commercial interests of UP seem to have tempered management's enthusiasm for ensuring that its crews operating at Mid-City were informed of the provisions of GOs 26-D and 118 and instructed to obey them. Fouling of the switch on Track 09-14 constitutes an unreasonable, unsafe, and improper practice and cannot be tolerated. Because of the numerous violations by UP a cease and desist order is warranted.

The record indicates that SP serves Mid-City only on SPINS 1295. That situation was previously discussed. The ensuing findings show one violation of GO 26-D by SP while operating on Track 09-14. We do not find this sufficient to warrant a cease and desist order against SP. However, the rules promulgated for Track 09-14 will be made applicable to SP.

Disposition of this matter, to preclude future violations and protect the safety of railroad employees, requires the establishment of rules to define when the tracks at Mid-City are open for service and subject to GOs. In view of Mid-City's operations it is reasonable to allow it, in the first instance, to close the tracks and conduct its scrap business on its property. However, if Mid-City opens the tracks when they are in violation of GO 26-D or GO 118 the railroads have an absolute duty to determine the condition of the track and adjacent walkways and not operate over any track where the conditions violate a GO.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. UP, SP, and Santa Fe are railroad corporations as defined in Section 230 of the Public Utilities Code and subject to the jurisdiction of the Commission.

2. Mid-City is not a public utility or common carrier. It purchases, processes, and sells scrap metal. Mid-City sells approximately ten million pounds of scrap each month which it ships in 80 - 100 railroad cars. It is the largest supplier on the west coast of scrap metal to Bethlehem Steel Company. Mid-City employs 35 persons.

3. Mid-City is located in the city of Los Angeles. Its property is served by three railroad tracks. Track 09-11 is an industry track which is owned by Mid-City and located on its property. It was constructed by UP pursuant to an agreement between the parties. It is connected to trackage owned by UP. Track 09-14 is north of Track 09-11. Track 09-14 is a track which is jointly owned by UP, SP, and Santa Fe. The easterly portion of Track 09-14 connects to trackage owned by the railroads. Track 09-14 serves Mid-City as well as Globus Metals and L.A. Waste, which are located west of Mid-City. There are switches on Track 09-14 which lead to two parallel tracks which serve Atlas and Coast Planing Company. Track SPINS 1295 is owned by SP and serves Mid-City's nonferrous metals warehouse.

4. GO 26-D was originally adopted on January 1, 1913. It was adopted in its present form on January 19, 1948 and became effective on February 1, 1948. The portions of GO 26-D pertinent to this proceeding are as follows:

"It Is Hereby Further Ordered that no railroad or street railroad corporation shall operate any cars, trains, motors, engines, or other rolling equipment over its own or other tracks, except as hereinafter provided, on which overhead or side



clearances, or clearances between tracks, are less than the minimum herein prescribed, if such tracks or structures adjacent to such tracks are constructed or reconstructed subsequent to the effective date hereof.

"DEFINITIONS"

\*\*\*

- "1.4 Overhead Clearance is the vertical distance from the level of the top of the highest rail to a structure or obstruction above.
- "1.5 Side Clearance is the shortest distance from the center line of track to a structure or obstruction at the side of track.

"STANDARD GAUGE RAILROADS AND STREET RAILROADS  
TRANSPORTING FREIGHT CARS

"Section 2 - Overhead Clearances

- "2.1 The minimum overhead clearance above railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, shall be twenty-two (22) feet six (6) inches. Structures constructed prior to the effective date of this order may be maintained at such clearances as was lawful at the time of construction.
- "2.2 The overhead clearance above top of rail of such tracks located inside of buildings may be reduced to eighteen (18) feet, provided that this clearance shall apply only to tracks terminating within the building, and further provided, that when an overhead clearance of less than twenty-two (22) feet exists on tracks inside such building, all cars, trains, motors, engines or other equipment shall be brought to a stop before entering such building, the conditions provided to require such stop to be approved by the Commission."

\*\*\*

"Section 3 - Side Clearances

"3.1 Minimum side clearances from center line of tangent standard gauge railroad and street railroad tracks, which are used or proposed to be used for transporting freight cars, except as hereinafter prescribed, shall be as shown below.

<u>Description</u>	<u>Minimum Side Clearances</u>
"3.2 All structures and obstructions above the top of the rail except those hereinafter specifically mentioned .....	8' 6"

Note: Posts, pipes, warning signs and similar obstructions should, where practicable, have a side clearance of ten (10) feet."

\*\*\*

"3.16 All minimum side clearances prescribed in this section are for tangent track. In general, all structures adjacent to curved track, shall have a minimum side clearance one (1) foot greater than the minimum side clearance otherwise required for tangent track. . . ."

\*\*\*

"Section 6 - Other Conditions and Obstructions Adjacent to Tracks

"6.1 No merchandise, material or other articles shall be placed or permitted to remain either on the ground or on platforms adjacent to any track at a distance less than eight (8) feet six (6) inches from the center line of track."

5. GO 118 was adopted on April 9, 1963 and became effective on April 23, 1963. The portions of GO 118 pertinent to this proceeding are as follows:

"IT IS ORDERED by the Public Utilities Commission of the State of California that each railroad corporation operating in the State of California shall file its standards for the construction, reconstruction and for the subsequent maintenance of walkways adjacent to its tracks as hereinafter required and any future changes or revisions thereof in accordance with the following provisions and shall hereafter, in the construction and reconstruction of its tracks and walkways, observe its standards filed with the Commission in accordance with the provisions of this order:"

\* \* \*

"3. The standards of each railroad corporation shall contain provisions for reasonably safe and adequate walkways adjacent to its tracks in all switching areas, and shall provide that all such walkways shall be maintained and kept reasonably free from vegetation as may be appropriate to prevailing conditions, and shall provide for abatement of weeds and brush adjacent to walkways as necessary to prevent the growth of objectionable vegetation encroaching upon such walkways."

The standards filed by the railroads provide that in case of "conflict with General Order 26-D, the provisions of General Order 26-D shall apply." All of the standards applicable to this proceeding apply to walkways with a minimum distance of 8'6" from the center of track.

6. GO 26-D provides the minimum clearance for a man's body on the widest authorized railroad car and a building or other obstruction. A violation of GO 26-D could result in a railroad employee's being killed or injured by being knocked off the car or wedged against or impaled by the obstruction.

7. Under the facts of this case, violations of GOs 26-D and 118 could result in the following type of injuries to railroad employees: (a) Sharp metal puncturing the sole of the shoes of a person walking over it and injuring the foot. (b) Sharp metal cutting through the pant leg and injuring the person's leg. (c) A person falling over scrap metal and breaking, spraining, or otherwise injuring his leg, arm, head, or other parts of the body. (d) A fall which results in the person's landing on the railroad track and risking being run over by a railroad car.

8. On June 22, 1976, Track 09-11 at Mid-City had:

- a. One 12-inch I beam above the top of rail 8'8" from the center of track at the left-hand side of curved track.
- b. The walkways adjacent to the track littered with scrap metal from Mid-City's gate to the end of the track.

9. UP conducted frequent railroad operations over Track 09-11 during the period June 22, 1976 to January 1977. On or about January 1, 1977 the I beam was moved to a minimum of 9'6" from the center of track at the curve.

10. On June 22, 1976, Track 09-14 at Mid-City had:

- a. Above the rail within 8'6" from the center of track scrap metal and mounded dirt with scrap metal from the loading chute to the fence.
- b. A damaged bail loading chute which was less than 8'6" from the center of track.

11. BP conducted frequent operations over Track 09-14 while the condition in Finding 10b. existed.

12. On June 22, 1976, staff member von Ibsch gave Mid-City a Commission Form O&SS-1, which contained a list of conditions alleged to be in violation of GOs 26-D and 118 on Mid-City's property.

On August 20, 1976, the staff directed a letter to Mid-City inquiring about the situation. On September 1, 1976, Mid-City sent a letter to the Commission which stated that all of the conditions "are taken care of". It is not true that all of the conditions noted in the O&SS-1 were corrected on September 1, 1976.

13. On July 28, 1977, von Ibsch, SP's engineering department member Jim Young, Santa Fe representative John Dwyer, and representative Steve Morton of UP and a UP acting roadmaster met at the Mid-City site to review safety conditions.

14. On July 28, 1977, Track 09-14 at Mid-City had:

- a. Above rail and within 8'6" of the center of track, the walkways adjacent to it heavily littered with scrap metal. At the suggestion of the staff, representatives of UP who were present spiked the track.
- b. The loading chute in Finding 10b. was still less than 8'6" from the center track.

15. On July 28, 1977, the staff also recommended that Track 09-11 at Mid-City be spiked and representatives of UP spiked that track.

16. Between the time Tracks 09-11 and 09-14 were spiked on July 28 and July 29, 1977, both spikes had been removed by persons unknown. They were not removed by UP or the other respondent railroads.

17. By the afternoon of July 29, 1977 there was no debris or impairment adjacent to Track 09-11. ✓

18. On the afternoon of July 29, 1977 there was scrap metal above the rail within 8'6" of the center of track on Track 09-14. The loading chute adjacent to the track in the raised position was approximately 8'6" high. A clamshell bucket was operating over railroad cars which were being loaded. A UP crew was operating on the Mid-City's property at that time. Track 09-14 was again spiked on July 29, 1977.

19. On August 5, 1977, Track 09-14 was found to be in service, although the UP management was unaware of this. There were three railroad cars on the track at Mid-City. The loading chute was the same as on prior occasions. There was scrap metal above the rail within 8'6" of the center of the track. A UP engine and crew were operating on Mid-City's property.

20. Some time prior to the hearing Mid-City built a wooden barricade 9-1/2' from center of track to protect the walkway adjacent to Track 09-14.

21. On August 16, 1977, UP issued terminal Superintendent's Notice No. 64 which stated that: "The derail at Zone 9, Track 14, Mid City Iron and Metal, must be in derailing position when switching is completed." At that time UP installed a switch lock which could only be operated by railroad personnel to secure the position of the derail. The derail is on private property behind a gate. The switch lock and a few replacements were smashed by unknown persons.

22. On January 17, 1978, a UP gondola car was spotted at Mid-City on Track 09-11. There was debris on the walkways adjacent to the car on top of rail within 8'6" of the center of track.

23. On February 28, 1978, Track 09-11 at Mid-City had scrap metal and debris in the walkways within 6'8" from the center of track. The gantry crane cage was less than 9'6" from the center of curved track.

24. On February 28, 1978, Track 09-14 at Mid-City had scrap metal within 6'8" from the center of track.

25. On February 28, 1978, the Santa Fe switch stand on Track 09-14 had been removed by persons unknown. Railroad cars for Mid-City were fouling the lead to Atlas. On August 9, 1978, Atlas complained that Santa Fe was unable to make a delivery because of the missing switch stand.

26. On March 3, 1978, on Track 09-14 at Mid-City two UP cars were positioned over the switch fouling the lead to Atlas.

27. On March 3, 1978, on Track 09-14 at Mid-City there was scrap metal and debris above the top of the rail within 8'6" from the center of the track. An SP crew operated over that track.

28. On August 15, 1978, at Mid-City on Track 09-11 a UP locomotive and crew operated past a gate of Mid-City which was open but did not provide clearance of at least 9'6" from the center of track. There was barely enough clearance for a man standing on the side of a railroad car. There was also vegetation growing within 8'6" from the center of the tracks. Mid-City was operating overhead magnets within 22'6" from the top of rail while the UP crew was present at approximately 4:30 p.m.

29. On August 28, 1978, on Track 09-11 at Mid-City there was scrap metal and debris within 8'6" of the center of track. No railroad crews were operating on the property at that time.

30. In the loading of railroad cars at Mid-City scrap metal on occasion can fly 25 to 30 feet from the car.

31. On November 3, 1978, the switch on Track 09-14 was damaged and a derailment occurred. As a result, Atlas was unable to receive service. One Mid-City car was positioned beyond the derailment. Because of flying scrap, the loading of that car constituted a safety threat to Atlas employees and any railroad personnel in the area.

32. On November 6, 1978, UP's Locomotive 1006 was operating on Tracks 09-11 and 09-14 at Mid-City. There was scrap and debris above the rail within 8'6" of the center of Track 09-14. There was scrap metal above the rail within 8'6" of the center of Track 09-11. As a result of the scrap and debris, UP's Car 61086 was derailed at both axles. The UP crew rerailed the car and spiked the switch. When the

presence of von Ibsch was noticed by Mid-City personnel, it commenced operations to clear the walkway. Mid-City was operating an overhead magnet within 22'6" of the top of rail while the UP crew was present.

33. On June 1, 1979, on Track 09-11 at Mid-City there was an open ditch running perpendicular to the center line of the track. The ditch extended 8' to 10' beyond the outside edge of the rails. There were piles of dirt and debris on the walkway within 8'6" of the center of the track. The "H" beam steel retaining wall was damaged and was within 8' of the center of the track on a curve. A UP crew operated over the track in this condition.

34. On June 1, 1979, on Track 09-14 at Mid-City there was scrap metal above the rail within 8'6" of the center of track. Because of the position of a truck trailer, the Mid-City gate, which is on a curve, was open to less than 9'6" from the center of the track. A UP crew operated over the track under these conditions.

35. Depending on the point of origin, Atlas receives lumber shipments in railroad cars on Track 09-14 by UP, SP, and Santa Fe. Because of recurring track blockage at the switch, Atlas has had to resort to receiving some shipments by truck. The cost of the truck transportation is greater than that of rail transportation.

36. The Mid-City's nonferrous metals warehouse on Track SPINS 1295 has an outside door which has a metal bracket which extends within 8'6" of the center of track. During the course of the staff investigation in this matter, SP changed its operating practices on SPINS 1295. SP put out an operating bulletin noting the impaired clearance on the building. There is a gate where SPINS 1295 enters Mid-City's property. Mid-City locks the gate. SP delivers railroad cars to the locked gate. Mid-City personnel take the cars from the gate to the building.

37. The following rules with respect to operations on Tracks 09-11 and 09-14 are reasonable:



Tracks 09-11 and 09-14 shall be deemed closed to railroad operations and not subject to GOs 26-D and 118 when any of the following occur:

- a. The switch serving the track is locked with an industry lock.
- b. A gate controlling access to the track is locked with an industry lock.
- c. A red flag and white light are displayed by the industry on the gate controlling access or on the end of a car located closest to the switch serving the track or at or near the switch, provided, however, that this procedure shall not block access to other industries served by Track 09-14.
- d. A blue flag is placed by the railroad in accord with the Federal Railroad Administration regulation pertaining to the placement of blue flags, provided, however, that this procedure shall not block access to other industries served by Track 09-14.
- e. A superintendent's train order limits operations on the track.
- f. An operational limits sign prohibits operations in the area.

38. It is reasonable to require UP, SP, and Santa Fe to instruct their crews operating on Tracks 09-11 and 09-14 of the provisions of GO 26-D and instruct them that if either track is open for service they shall not operate on that track if the operation would violate GO 26-D.

Conclusions of Law

1. UP, SP, and Santa Fe are subject to GOs 26-D and 118.
2. GOs 26-D and 118 are not applicable to Mid-City. If trackage owned by Mid-City on its property does not meet the requirements of GOs 26-D and 118 all railroads are precluded from operating on such trackage.

3. The facts set forth in Findings 8a., 9, 10a., 11, 14a. and b., 18, 19, 22, 27, 28, 32, 33, and 34 constitute violations of GO 26-D.

4. The facts set forth in Findings 10a., 11, 14a. and b., 18, 19, 24, 27, 32, and 34 constitute violations of GO 118.

5. The facts set forth in Findings 24, 25, 30, and 34 indicate practices and facilities that are unreasonable, unsafe, improper, and insufficient within the meaning of Section 761 of the Public Utilities Code.

6. UP, SP, and Santa Fe should be ordered to take all necessary action to ensure that the switch on Track 09-14 is not blocked or fouled so as to prevent rail traffic to rail users other than Mid-City who are served by that track. UP, SP, and Santa Fe should be ordered that, if the switch is blocked or fouled by Mid-City or persons unknown, they should immediately cease all rail service to Mid-City on Track 09-14 and should not resume service until authorized by the Commission.

7. SP should be ordered to continue the present practices, described in Finding 36, for delivering railroad cars on Track SPINS 1295, unless modified by further order of the Commission.

8. UP should be ordered to cease and desist railroad operations on Tracks 09-11 and 09-14 which violate GOs 26-D and 118.

9. UP, SP, and Santa Fe should be ordered to adopt and publish rules putting into effect the procedures found reasonable in Finding 37 for Tracks 09-11 and 09-14.

10. UP, SP, and Santa Fe should be ordered to instruct their crews operating on Tracks 09-11 and 09-14 of the provisions of GO 26-D and further instruct them that when either track is open for service they shall not operate over it if the operations would violate GO 26-D.

11. A cease and desist order against Santa Fe or SP would not be appropriate in this proceeding.

12. The Commission should retain continuing jurisdiction over this matter.

13. Since this is a matter affecting public safety, the order which follows should be effective on the date of signature.

O R D E R

IT IS ORDERED that:

1. Union Pacific Railroad Company (UP) shall cease and desist from violating General Order No. 26-D on Tracks 09-11 and 09-14 at Mid-City Iron and Metal Corporation (Mid-City) located at Los Angeles, California.

2. UP shall cease and desist from violating General Order No. 118 on Track 09-14 at Mid-City located at Los Angeles, California.

3. UP, Southern Pacific Transportation Company (SP), and The Archison, Topeka and Santa Fe Railway Company (Santa Fe) shall take all necessary steps to ensure that the switch or switches on Track 09-14 located near Mid-City at Los Angeles, California, are not blocked or fouled to prevent traffic to rail users other than Mid-City served by Track 09-14. If the switch or switches are blocked or fouled by Mid-City or persons unknown, UP, SP, and Santa Fe shall cease all rail service to Mid-City on Track 09-14 and shall not resume such service until authorized by the Commission.

4. SP is ordered to continue the practices described in Finding of Fact 36 until further order of the Commission.

5. Within thirty days after the effective date of this order UP, SP, and Santa Fe shall adopt and publish rules putting into effect the rules found reasonable in Finding of Fact 37 for Tracks 09-11 and 09-14. A copy of these rules shall be mailed to the Commission's Transportation Division within ten days after adoption, and a copy served by the respondents on all appearances in this investigation.

6. Within thirty days after the effective date of this order, UP, SP, and Santa Fe shall instruct their crews operating on

Track 09-11 or 09-14 of the provisions of General Order No. 26-D and that the crews shall not operate over either track if the operation would violate General Order No. 26-D. UP, SP, and Santa Fe shall periodically repeat said instructions.

7. The Commission retains continuing jurisdiction over this matter.

*This order is effective today.*  
~~The effective date of this order shall be thirty days after the date hereof.~~

✓  
SS

Dated     MAY 19 1987    , at San Francisco, California.

    John G. Geyson      
President

    Richard D. ...    

    Bernard ...    

    Walter ...    

    Raymond C. Grew      
Commissioners