L/rys*

MAIL DATE
11/12/96

Decision 96-11-024 November 6, 1996 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF ST, HELENA, TOWN OF YOUNTVILLE, COUNTY OF NAPA, NAPA VALLEY VINTNER ASSSOCIATION, Complainants vs. NAPA VALLEY WINE TRAIN, INC. Defendant.	C.88-03-016 (Filed March 7, 1988)

ORDER DENYING REHEARING AND MODIFYING DECISION (D.) 96-06-060

On July 10, 1996, ALERT Coalition (City of St. Helena, Town of Yountville, County of Napa, and Napa Valley Vintners Association) filed an application for rehearing of Decision (D.) 96-06-060. Napa Valley Wine Train, Inc. (Wine Train) filed an application for rehearing of D.96-06-060 subsequently. D.96-06-060 resolves certain issues which had been pending in Complaint (C.) 88-03-016, the Wine Train complaint proceeding.

We have carefully considered all the arguments presented by ALERT and the Wine Train, and are of the opinion that good cause for rehearing has not been demonstrated in either application. However, we will modify the decision to clarify the Commission's position on jurisdiction. Also, we will modify the discussion on overriding considerations to more clearly conform with the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.).

I. WINE TRAIN APPLICATION

Wine Train's sole contention in its application is that the Commission's decision to use the no-train baseline in calculating the Wine Train's mitigation obligations is mistaken. We find no merit in the Wine Train's argument.

We stand behind our reasoning in D.96-06-060, where we carefully considered the appropriate baseline for mitigation purposes. In D.96-06-060, we rejected the Wine Train's argument that the three train per day level, at which it had been operating pursuant to the Limited Settlement Agreement (LSA), was the appropriate baseline for mitigation purposes. We explained that: 1) the Final Environmental Impact Report (FEIR) had utilized the no train baseline for calculating impacts, and there is no provision in CEQA to use a different baseline for mitigation; 2) the LSA provides no foundation for utilizing two baselines; and 3) Public Resources Code section 21080.04 (the Hansen Bill) [1] contemplates a no-train baseline.

Wine Train argues that the FEIR is actually two EIRs- one which was required by the LSA, which used the no-train baseline, and one which was required by the Hansen Bill, which should have used a three-train baseline. There is no support for the Wine Train's theory. Although both the LSA and the Hansen Bill required the Commission to prepare an EIR for the Wine Train, only one EIR was required and prepared. Significantly, there is only one certified FEIR, and nowhere in that document does it claim to be anything but one EIR.

Furthermore, Wine Train's argument that the LSA and the Hansen Bill have different baseline requirements is erroneous. As we stated in D.96-06-060, the Hansen Bill refers to the "institution of passenger service" which implies a no-train

---

1. The Hansen Bill, enacted in 1990, requires that the Commission prepare an EIR pursuant to CEQA for the Wine Train project.

baseline. Furthermore, CEQA describes the setting, or baseline, as the environment in the vicinity of the project, "as it exists before the commencement of the project...." (CEQA Guidelines § 15125 [emphasis added].) Therefore, pursuant to either the LSA or the Hansen Bill, this is the CEQA standard, and it requires a no-train baseline.

Moreover, there is no basis for the Wine Train's contention that it has a vested right to operate three trains a day and therefore mitigation based on no trains is a regulatory taking. First, the LSA did not provide any vested rights. In fact, by its literal terms, it has expired. (LSA § 6.02 (b).) The case cited by the Wine Train, Avco Community Developers v. South Coast Regional Comm. (1976) 17 Cal.3d 785, holds that there is no vested right to a project if a permit has not been granted. We further note that even if Wine Train had some type of vested right, it provides no reason that a vested right would excuse it from mitigation pursuant to CEQA.

Finally, on a common sense level, the Wine Train is responsible for all of the impacts resulting from its operations. Since the entire Wine Train operation is part of the Wine Train project, it is only reasonable that the Wine Train should be responsible for mitigating all of the associated impacts, and not just the incremental impact which occur above the three train level.

II. ALERT APPLICATION

A. Paramount Jurisdiction

ALERT argues that the Commission mistakenly asserts paramount jurisdiction over the Wine Train, which is not a statewide concern. It also contends that the Commission errs in labelling this jurisdiction as "concurrent", since it is denying local jurisdictions the authority to deny local land use permits. ALERT's arguments are unconvincing.

The law on conflicts between Commission and local regulations is set forth clearly in Harbor Carriers v. City of Sausalito (1975) 46 Cal.App.3d 773. The court explained:

> The Legislature has plenary right to confer power and jurisdiction upon the Public Utilities Commission (Ca. Const., art. XII, § 23). The power of a city to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations" is specifically limit to such as are "not in conflict with general laws." (Cal. Const., art. XI, § 7.)
>
> It follows that in any conflict between action by a municipality and a lawful order of the commission, the latter prevails. (Citations) "[T]he commission has been held to have paramount authority in case where it has exercised its authority, and its authority is pitted against that of a local government involving a matter of statewide concern." (Orange County Air Pollution Control Dist. v. Public Util. Com., 4 Cal.3d 945, 950-951...)

(Harbor Carriers, at p. 775 (emphasis added).)

The principles announced in Harbor Carriers control in the instant case. According to these standards as long as the Commission is acting lawfully and within the scope of its authority its regulation prevails over local regulation.

As ALBRT pointed out when it filed its complaint back in 1988, the Commission has jurisdiction over the Wine Train by virtue of Public Utilities Codes section 216, which provides that the Commission has jurisdiction over common carriers which perform services for compensation. The complaint also correctly cites Public Utilities Code section 730 which gives the Commission authority to determine, "the kind and character of facilities and the extent of the operation thereof, necessary reasonably and adequately to meet public requirements for service furnished by common carriers between any two or more points...."

The Commission also has the authority to order changes to utility facilities more generally pursuant to section 762. Further authority comes from section 701, which authorizes the Commission to do all things necessary and convenient in exercising its power and jurisdiction.

Consistent with Harbor Carriers, the stops connected with the Wine Train are a matter of statewide concern largely because the the Wine Train and its facilities are subject to the Commission's jurisdiction and the Commission has declared that the stops are a necessary part of the train operation. The Harbor Carriers analysis does not require a more extended analysis of statewide concern. As long as a Commission action is lawful, it prevails over municipal regulation, and is presumably therefore a statewide concern.

Although the holding in Harbor Carriers does not require a greater analysis of statewide concern, it is clear that even if this was viewed as an independent issue the Wine Train operations are a statewide concern. Intercity rail operations have been considered a matter of statewide concern by the California Supreme Court. (See Los Angeles Ry. Corp. v. Los Angeles (1940) 16 Cal.2d 779, 783.) ALERT does not cite any authority indicating differently.

ALERT makes a number of attempts to distinguish Harbor Carriers factually. According to ALERT Harbor Carriers involved more of a legitimate transportation service, while the Wine Train is primarily a recreational enterprise. ALERT also points out the ferry had obtained a CPCN from the Commission, while the Wine Train was not required to obtain a CPCN.

Given the broad legal pronouncements in Harbor Carriers, discussed above, these distinctions are not significant legally. Nevertheless, the Harbor Carrier facts are actually strikingly similar to the instant situation. Harbor Carriers held that a city's jurisdiction over a stop which was part of a Commission-regulated transportation system must yield to the Commission's authority. The court did not rely on the degree of

transportation involved. Rather it simply noted that ferries were subject to Commission regulation. Similarly, the granting of a CPCN is not of great significance to the Harbor Carriers holding. The important factor is that the Commission exercised its jurisdiction, and contemplated certain stops in approving a transportation system. The Wine Train case is in fact stronger than Harbor Carriers, since in the instant case the Commission expressly and specifically required the stops in question.

ALERT's other point, that the Commission mistakenly referred to its jurisdiction over the Wine Train as concurrent, is largely semantic. Clearly, the Commission's jurisdiction is paramount, as discussed, where there is a conflict with local regulation. There is no problem with the local jurisdictions also having concurrent jurisdiction over aspects of the station where there is no conflict with the Commission's holdings. ALERT refers the Orange County case which discussed concurrent jurisdiction. That is inapposite, however, since it clearly states it is only discussing concurrent state, as opposed to local authority. (Orange County, at p. 951.)

Although there is no error in our statements regarding concurrent jurisdiction, we will modify our holdings to clarify the Commission's intent.

B. Overriding Considerations

ALERT maintains that the discussion of overriding considerations in D.96-06-060 does not conform to the requirements of CEQA. Although we do not believe there is legal error in the discussion as currently worded, we will modify the decision to explain the overriding considerations more clearly.

C. Other Contentions

ALERT attempts to incorporate by reference all objections raised in its comments on the proposed decision. As we have previously informed ALERT, this incorporation does not

meet the Commission's standard for rehearing applications. Commission Rule 86.1 requires a rehearing applicant to "set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous." We therefore have only considered arguments whcih were specifically argued in ALERT's application.

Therefore, IT IS ORDERED that:

1. The first sentence of the third paragraph on page 13 of D.96-06-060 is deleted and replaced with the following:

> Considering the Harbor Carriers decision, we view our authority in this proceeding as paramount to that of any local agency affected by operation of the Wine Train. However, local agencies may exercise concurrent jurisdiction over the Wine Train's operations to the extent that that regulation is not inconsistent with the holdings of the Commission.

2. The section following "Discussion" on page 51 of D.96-06-060 is deleted and replaced with the following:

> In light of the foregoing discussion we find that the impacts related to the Whitehall Lane crossing, ungated private crossings, and train/gondola conflicts, which were judged in the FEIR to be potentially significant after mitigation, will not in fact be significant. We further conclude that the emissions of NOx and SOx, judged in the FEIR to be unavoidably significant, are in fact below the level of significance. The change in the characterization of these impacts is due to the effectiveness of mitigation of SOx impacts, and recent information provided by Wine Train regarding its NOx emissions. We find that benefit of reduced automobile traffic that the Wine Train provides outweigh these impacts, which are in fact less than significant.
>
> The only significant impact remaining is the residential noise impact in the City of Napa. As we noted, although this impact is considered significant, it is within the acceptable limits adopted by the City of

Napa. We therefore conclude that the Wine Train's benefit of reduced automobile traffic outweighs the residential noise impacts of the train.

3. Rehearing of D.96-06-060, as modified herein, is denied.

This order is effective today.

Dated November 6, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners