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MAIL DATE

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Decision 97-12-120      December 16, 1997

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on Commission's own motion to provide for mitigation of local rail safety hazards within California.

R.93-10-002  
(Filed October 6, 1993)

Investigation on the Commission's own motion into the causes of recent derailments of Southern Pacific Transportation Company trains, compliance with applicable laws, rules and regulations, the existence of any local safety hazards, and recommendations for improvements in state or federal laws or regulations.

I.91-08-029  
(Filed August 22, 1991)

**ORDER COMPLYING WITH PARTIAL INJUNCTION  
OF DECISIONS 97-09-045 AND 94-11-069**

In this order, we stay enforcement of certain of our orders enjoined by the United States District Court for the Northern District of California in its partial grant of the respondent railroads' motion for preliminary injunction of Decisions (D.)97-09-045 and D.94-11-069.

**Background**

On November 22, 1994, the Commission issued its Decision, D.94-11-069, in its Dunsmuir investigation. That Decision was modified by D.94-12-001, issued December 1, 1994. The railroads filed a time Application for Rehearing. The

Commission's Decision Denying Rehearing of D.94-11-068, Granting Limited Rehearing of D.94-11-069 and Modifying Decisions, issued on September 8, 1997.

D.97-09-045, issued on September 8, 1997, established railroad safety regulations at essentially local safety hazard sites within California pursuant to California legislation to reduce or eliminate fatal railroad derailments and toxic spills having serious consequences on the residents and environment of California. On September 25, 1997, the railroads filed their application for rehearing of D.97-09-045. On October 8, 1997, the railroads filed a Petition for Review of D.97-09-045 before the California Supreme Court.

On October 9, 1997, the railroads filed a motion for preliminary injunction in the United States District Court for the Northern District of California of both Decisions, D.97-09-045 and D.94-11-069. That matter is now pending before the Honorable Thelton E. Henderson, Chief Judge of the United States District Court for the Northern District of California, in C-97-3660 TEH.

#### The District Court's Partial Injunction

On November 26, 1997, the District Court issued an Order Granting In Part and Denying In Part Plaintiffs' Motion for Preliminary Injunction. A copy of that Order is attached here. The portion of the Order enjoining the Commission reads as follows:

"Defendants [the Commission], and each of them, and their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order are preliminarily ENJOINED as of this date [November 26, 1997] from enforcing the following:

1. the regulations set forth in Decision 97-09-045:
  - a.) dynamic brakes;
  - b.) end-of-train telemetry devices;
  - c.) train securement; and
2. the regulations set forth in Decision 94-12-001 and appendices governing:
  - a.) locomotive maintenance."

In compliance with this Order, the Commission shall stay enforcement of all orders, rules and regulations within D.97-09-045 relating to: (1) dynamic brakes, (2) end-of-train telemetry devices, and (3) train securement, and all orders, rules and regulations within D.94-11-069 (as modified by D.94-12-001) concerning locomotive maintenance.

**THEREFORE, IT IS ORDERED that:**

1. Enforcement of the provisions of D.97-09-045 concerning dynamic brakes, end-of-train telemetry devices and train securement is stayed until further order of the District Court.
2. Enforcement of the provisions of D.94-11-069 (as modified by D.94-12-001) concerning locomotive maintenance is stayed until further order of the District Court.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON  
President  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners