

Decision 98-12-021 December 3, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The City of Vernon, a municipal corporation,

Complainant,

vs.

The Atchison, Topeka and Santa Fe Railway, a  
corporation,

Defendant.

Case 96-01-019  
(Filed January 19, 1996)

ORIGINAL

James Squeri, Attorney at Law, for complainant.  
Greshma, Varner, Savage, Nolan & Tilden, by  
John C. Nolan and Robin Cochran, Attorneys  
at Law, for The Atchison, Topeka and Santa Fe  
Railway, defendant.

OPINION

Summary

The City of Vernon (Vernon) has failed to prove that implementation of defendant The Atchison, Topeka and Santa Fe Railway's (Santa Fe) plans of expansion creates adverse environmental effects so as to make the expansion of the Hobart Yard unreasonable. The complaint is denied.

### **Background and Procedural History**

Santa Fe<sup>1</sup> owns and operates a railroad switchyard and transfer facility known as the Hobart Yard, which is located, in part, in Vernon and, in part, in the City of Commerce, near Los Angeles.

A few years ago, Santa Fe began to expand the Hobart Yard by acquiring additional property and making internal improvements with the objective of increasing the number of "lifts" (movements of container units on to or off of railroad flatcars) that can be accommodated from approximately 823,000 in 1987 to 1,000,000 to 1,250,000 per year. As a result, the associated truck traffic entering and leaving Hobart Yard will also increase.

Vernon filed a complaint against Santa Fe on January 19, 1996. The complaint alleged the Santa Fe has failed to comply with applicable local land use regulations, applicable Commission policy requiring utilities to cooperate with local jurisdictions in planning, constructing, and operating expanded facilities, and has violated the policies of the California Environmental Quality Act (CEQA). In Decision (D.) 96-11-015, we dismissed Vernon's complaint with leave to amend to state a cause of action against Santa Fe for relief pursuant to §§ 761 and 762 of the Public Utilities (PU) Code. We further indicated that in reviewing the adequacy of the amended complaint we would be guided by Public Resources Code section 21082.2

Vernon filed its amended complaint on April 7, 1997. Vernon alleges that as a local jurisdiction it was preempted by state law from exerting its zoning and land use jurisdiction against a public utility such as Santa Fe, and that if the Commission fails to act, Santa Fe would be able to substantially expand its

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<sup>1</sup> Now known as The Burlington Northern and Santa Fe Railway.

Hobart Yard facility without mitigating adverse environmental impacts that would be caused by the increased activity. In particular, Vernon alleges, increased truck traffic associated with the expanded operations at Hobart Yard will result in increased intersection capacity utilization or volume/capacity (V/C) ratios for several intersections within Vernon. The intersections affected already have V/C ratios in excess of 0.90, which indicates severe congestion and an unacceptable level of service. Vernon and the California Department of Transportation (CALTRANS) are sponsoring an intersection improvement project at the I-710 Atlantic/Bandini intersection. Vernon alleges that requiring Santa Fe to participate in the financing of the intersection project is an economically feasible mitigation measure that will lessen significant adverse impacts associated with the expansion of Hobart Yard.

Santa Fe filed its answer on May 9, 1997. Santa Fe contends that the Commission does not have authority to review or consider the environmental impacts of the expansion of the Hobart yard, nor does the Commission have the authority to require Santa Fe to mitigate significant off-site impacts of the project.

A prehearing conference was held on June 16, 1997. An evidentiary hearing was held on April 21-22, 1998, and the matter was ordered submitted on concurrent opening and reply briefs filed by the parties on June 9 and June 26, 1998, respectively.

### **Discussion**

In D.96-11-015, we found that PU Code section 1001 does not require Santa Fe to obtain a certificate of public convenience and necessity (CPC&N) for the expansion of the Hobart yard because these facilities are an extension of the utility's existing facilities in an area already served by the utility. Moreover, we held that since Santa Fe is not required to obtain a CPC&N, the requirements of CEQA do not apply. Therefore, we concluded that the expansion of the Hobart

yard does not require the preparation of an environmental impact report (EIR) under CEQA since Santa Fe may lawfully undertake construction of the facilities without prior Commission approval. However, notwithstanding that Santa Fe was not required to seek prior approval, we held that the Commission is not precluded from examining the impact of a project on the environment. In D.96-11-015 we granted Vernon leave to amend its complaint and we stated that in assessing the adequacy of the complaint we would be guided by Public Resources Code § 21082.2.

#### Commission Authority

Our decision in D.96-11-015 is consistent with prior decisions in which we have reviewed the environmental impacts of utility projects which did not require prior Commission approval. In D.94-01-016, for example, we reviewed the environmental impacts of a utility's proposed construction of a 115-kilovolt transmission line, even though the construction of this line did not require prior Commission approval. In that case, we found that §§ 762 and 762.5 "give the Commission authority to direct utilities under its jurisdiction to add, extend, repair, improve, construct or maintain any plant or facilities when it is necessary for the benefit or safety of their customers, their employees or the public generally." 53 CPUC2d 10, 16. Pursuant to this authority, we found it appropriate to grant complainant's request for a hearing and to require the utility to provide percipient witnesses, prepared testimony and exhibits addressing the issues raised in the complaint.

As we said in D.94-01-016: "although the Commission retains paramount jurisdiction over those utility activities which require no 'permit' approval by the Commission, it has recognized that sometimes there is a good deal of local interest in these activities. Accordingly, the Commission encourages local

government involvement because local jurisdictions are often in the best position to review land use concerns." (Id. at 17.)

As to our authority to require a utility to mitigate the significant adverse effects of the construction and operation of utility facilities, we find the case of SDG&E v. Superior Court (1996), 13 Cal4th 893, (also known as the Covalt case) to be dispositive. In that case, the California Supreme Court found that the Commission "has broad authority to determine whether the service or equipment of any public utility poses any danger to the health or safety of the public, and if so, prescribe corrective measures and order them into effect. . . . The Legislature has vested the commission with both broad and specific powers to ensure that public utilities comply with that mandate." Among the powers cited by the Supreme Court are §§ 701, 761, 762 and 768.

Santa Fe, without citation to authority, urges us to read §§ 701 and 762 extremely narrow, so as to find that we are without authority to impose any conditions on the construction or operation of utility facilities beyond the boundaries of the physical plant. We find such a narrow reading to be inconsistent with the Covalt case and with the previous exercises of our authority. In Covalt, the court expressly held that the Commission has "comprehensive jurisdiction over questions of public health and safety arising from utility operations. . . . To this end the Commission is empowered...to do any other act which the health or safety of its employees...customers, or the public may demand." In the exercise of such powers, we have routinely imposed mitigation requirements, including off-site mitigation and monitoring measures, upon utility projects. See, for example, D.96-04-056, in which we granted authority to an oil pipeline company to issue stock, and as a condition of such approval, required the company to implement a comprehensive list of mitigation measures, including measures designed to mitigate the off-site impacts of

increased traffic volumes resulting from construction of the project. (65 CPUC2d 653.)

**Whether Environmental Effects of the  
Hobart Yard Expansion are Significant**

In D.96-11-015 we indicated that our assessment of the amended complaint will be guided by Public Resources Code § 21082.2. This section provides that the lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in the record.

Vernon has identified that the expansion of the Hobart Yard will have one primary environmental effect: traffic at five intersections will increase. Vernon's witness projected that in the morning or afternoon peak hour, or both, in each of the five intersections that the traffic associated with Hobart Yard would increase the V/C ratio by 0.03 or more. Vernon argues that an increase in traffic is "significant" if it results in an increase of the V/C ratio of a roadway by 0.01 or greater or, in the case of a roadway in which the V/C is already greater than 1.0, the V/C ratio is "merely worsened."

Vernon's witness projects that by the year 2020, for both the morning and afternoon peak hours, each of the five intersections will operate at V/C ratios substantially above 1.0 regardless of whether projected traffic from the Hobart Yard materializes. Vernon's witness projects "background" V/C ratios that range from a low of 1.28 to a high of 1.91 and "with expansion" V/C ratios that range from 1.35 to 1.96.

Santa Fe concedes that the project will result in increased traffic at intersections in the vicinity of the project. (Santa Fe Reply Brief, p. 17.) However, because there is only a small decrease in the level of service, Santa Fe dismisses these impacts as "hardly significant."

The evidence shows that the future traffic conditions in the vicinity will be sufficiently bad without any traffic from Hobart Yard to raise the same concerns. Vernon's witness admitted that he had never observed an existing intersection with an actual V/C ratio as bad as 1.67 (Tr. 79-79). Traffic conditions that are so congested as those represented by such V/C ratios will result, in the opinion of Vernon's witness, in motorists either taking a different route or traveling at a different time of day. Vernon's witness also admitted that the level-of-service classification<sup>2</sup> of the affected intersections would be identical, with or without the traffic associated with the Hobart Yard expansion. (Tr. at 76.)

Given these facts, the question before us is whether these incremental traffic conditions constitute a adverse environmental impact which requires mitigation. We conclude that they do not. When V/C ratios are below 1.0, the impact threshold of 0.01 recommended by Vernon lies at the most conservative end of the range often used to measure significance of this impact in this setting; these thresholds range from 0.01 to 0.04 in these circumstances. When V/C ratios lie above 1.0, Vernon considers any impact that worsens the V/C ratio to be significant. This scenario is overly speculative with respect to the long term cumulative impacts. Projections of V/C ratios reaching this level are speculative both because the projection is for 2020, and because Vernon's witness admits that this scenario has never been observed to date, perhaps in part because under those conditions, traffic tends to adjust in both route and time of use. The

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<sup>2</sup> Level of Service E, corresponding to V/C ratios greater than 0.9 and less than 1.0, typically has traffic moving at stop-and-go speeds of less than 15 miles an hour with 2-3 cycles necessary to clear intersections. (Tr. at 75.) Level of Service F, corresponding to V/C ratios greater than 1.0, generally involves vehicular backups that extend from signalized intersections to unsignalized intersections. (Tr. at 74-75.)

evidence shows, and Vernon's witness conceded, that traffic conditions in the vicinity of Hobart Yard will be sufficiently bad and the level-of-service classification will be identical, irrespective of the Hobart Yard expansion. For these reasons, we cannot conclude that the projected traffic impacts constitute a foreseeable significant effect.

In addition, based on the evidence presented by Vernon, the projected significant environmental effects are unavoidable. Vernon presented no evidence to show that Santa Fe could change the traffic effects of its expansion by selecting another location, by changing the arrangement of its site entrances or exits, or by adopting a plan of operations to shift traffic from peak hours to other hours. Vernon's only suggestion was that Santa Fe could mitigate the traffic effects by contributing toward the funding of improvements to one of the five intersections. However, the evidence showed that those improvements would be constructed whether or not Santa Fe contributed to their cost or expanded Hobart Yard.

Indeed, it is clear that any Santa Fe contribution to the traffic improvement project would have no mitigation effect on the traffic patterns generated by this project other than to displace funding from another source. Vernon has failed to make the case that such displaced revenues would be used in any manner designed to alleviate traffic congestion at the subject intersections. The traffic improvement project is intended to alleviate existing conditions unrelated to the Hobart Yard expansion.

If Vernon had been able to show that Santa Fe would have been able to achieve a comparable increase in its capacity while reducing the magnitude of the traffic impact by, for example, constructing a dedicated truck lane along Washington Avenue to accommodate traffic exiting Hobart Yard, the result might be different. We might have found that it would be unreasonable to operate its expansion without such a feature, even though it may have added to



the costs to be borne by Santa Fe. As it is, however, Vernon has failed to show that from among the alternatives available to it, Santa Fe has unreasonably selected an alternative with traffic impacts that could have been reduced and the mitigation which Vernon proposes would have no effect in reducing traffic congestion whatsoever. The most that Vernon has showed is that traffic conditions in its vicinity are bad and getting worse, regardless of what Santa Fe does. Vernon does not dispute that Santa Fe needs to expand nor does it contend that it had a choice of where to expand and inappropriately chose Hobart Yard. Vernon simply says that it wants to be paid a toll for the increased traffic in lieu of unavailable mitigation to reduce traffic. Vernon's desire for revenue does not make Santa Fe's conduct unreasonable.

#### **Comments on Alternate Decision**

The alternate decision was mailed for comment on November 19, 1998. Timely comments were received from Vernon. We have incorporated comments in the text as appropriate.

#### **Findings of Fact**

1. Santa Fe owns and operates a railroad switchyard and transfer facility known as the Hobart Yard, which is located, in part, in Vernon and, in part, in the City of Commerce, California near Los Angeles.
2. A few years ago, Santa Fe began to expand the Hobart Yard by acquiring additional property and making internal improvements with the objective of increasing the number of "lifts" (movements of container units on to or off of railroad flatcars) that can be accommodated from approximately 823,000 in 1987 to 1,000,000 to 1,250,000 per year.
3. As a result, the associated truck traffic entering and leaving Hobart Yard will also increase.

4. As a result, traffic at five intersections will increase.
5. As a result, in 2020, V/C ratios at such intersections will deteriorate by approximately 0.03 or more.
6. Vernon's witness projects that by the year 2020, for both the morning and afternoon peak hours, each of the five intersections will operate at V/C ratios substantially above 1.0, with or without the Hobart yard expansion.
7. Vernon's witness projects "background" V/C ratios that range from a low of 1.28 to a high of 1.91 and "with expansion" V/C ratios that range from 1.35 to 1.96.
8. Vernon's witness admitted that he had never observed an existing intersection with an actual V/C ratio as bad as 1.67.
9. Vernon's witness also admitted that the level-of-service classification of the affected intersections would be identical, with or without the traffic associated with the Hobart Yard expansion.
10. Traffic conditions that are so congested as those represented by such V/C ratios will result in motorists either taking a different route or traveling at a different time of day.
11. Vernon presented no evidence to show that Santa Fe could change the traffic effects of its expansion by selecting another location, by changing the arrangement of its site entrances or exits, or by adopting a plan of operations to shift traffic from peak hours to other hours.
12. Vernon's only suggestion was that Santa Fe could mitigate the traffic effects by contributing toward the funding of improvements to one of the five intersections.
13. The traffic improvement project is intended to alleviate existing conditions unrelated to the Hobart Yard expansion.

14. Those improvements would be constructed whether or not Santa Fe contributed to their cost.

15. The only environmental impact identified relates to traffic impacts.

16. Santa Fe's contribution can do nothing to mitigate the effects of the traffic generated from Santa Fe's expansion of Hobart Yard.

17. Vernon has failed to show that from among the alternatives available to it, Santa Fe has unreasonably selected an alternative with traffic impacts that could have been reduced.

18. Vernon has failed to prove that implementation of Santa Fe's plans of expansion create adverse environmental effects so as to make the expansion of the Hobart Yard unreasonable.

#### **Conclusions of Law**

1. PU Code §§ 710, 761, 762, 762.5 and 768 provide the Commission broad authority to determine whether the service or equipment of any public utility poses any danger to the health or safety of the public.

2. If the facts show that Santa Fe has acted unreasonably and that changes to its facilities exist that could improve conditions, PU Code Section 762 provides the authority to enter an appropriate order.

3. PU Code Section 762.5 does not provide any separate remedy from PU Code Section 762.

4. The expansion of the Hobart Yard will effect V/C ratios at the intersections.

5. No reasonable alternate to mitigate the traffic impacts has been presented by Vernon.

6. Vernon has failed to show that from among the alternatives available to it, Santa Fe has unreasonably selected an alternative with traffic impacts that could have been reduced.

7. The complaint should be dismissed.

**O R D E R**

**IT IS ORDERED** that the complaint of the City of Vernon against The Atchison, Topeka and Santa Fe Railway is denied, and Case 96-01-019 is closed.

This order is effective today.

Dated December 3, 1998, at San Francisco, California.

**RICHARD A. BILAS**

President

**HENRY M. DUQUE**

**P. GREGORY CONLON**

**JESSIE J. KNIGHT, JR.**

**JOSIAH L. NEEPER**

Commissioners