

Decision 99-02-064 February 18, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

Investigation 91-08-029  
(Filed August 22, 1991)

**OPINION APPROVING SETTLEMENT AGREEMENT**

By Decision (D.) 97-09-063 issued in this proceeding on September 3, 1997, we granted a limited rehearing of D. 94-11-069 as modified by D.94-12-001. The rehearing was limited to consideration of two issues: (1) the appropriateness of penalties imposed upon Southern Pacific Transportation Company (SP), and (2) the constitutionality of the change in the definition of the term "hazardous materials" as contained in Commission General Order (GO) 161.

Pursuant to notice, a Prehearing Conference (PHC) on the limited rehearing was held before the assigned Administrative Law Judge (ALJ) on October 23, 1997. On October 27, 1997, the ALJ issued a Prehearing Conference Report and Ruling in which he recited that at the PHC a settlement in principal had been reached between the parties regarding the issue of penalties, and secondly, that further proceedings on the issue of the constitutionality of the change in the definition of "hazardous materials" as contained in GO-161 be held in abeyance until a final determination of the issue by the federal courts where the question is currently under consideration in connection with an injunction proceeding arising out of D.97-09-045 in Rulemaking (R.) 93-10-002.

On January 14, 1998, the ALJ held a hearing on the proposed settlement concerning penalties, at which hearing Rehearing Exhibit 1, a proposed settlement agreement executed by representatives of Union Pacific, the successor in merger to SP, and a representative of the Rail Safety Branch of the Commission's Rail Safety and Carriers Division, was offered and admitted in evidence, with the request that it be approved by the Commission. After review of the proposed agreement, we are satisfied that it is in the public interest to approve the same. The approval of this agreement disposes of one of the two last issues remaining unresolved in this proceeding. The other issue is currently before the United States District Court in another proceeding. Thus, in reality, this settlement resolves the final issue before this Commission arising out of the derailment of a Southern Pacific [now Union Pacific] freight train near Dunsmuir on July 14, 1991. Approval of the agreement will obviate the necessity of holding an evidentiary hearing, with its attendant uncertainty of outcome but certainty of expense to all parties concerned, in order to establish the number of days by which the maximum penalty should be multiplied to establish the monetary penalty to be imposed. The settlement is not opposed by any party. The settlement appears reasonable in light of the whole record and is not inconsistent with any provision of law. We will, therefore, approve the proposed settlement agreement attached hereto as Attachment A as being in the public interest.

Although this proceeding has been contested, this disposition is not and this order grants the relief requested. Accordingly, pursuant to Public Utilities Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. By D.97-09-063, we granted a rehearing on the issue of penalties assessed against SP in I.91-08-029.

2. At a PHC held on October 23, 1997, the ALJ issued a Ruling in which he recited that a settlement in principle had been reached on the issue of penalties, and a hearing on the settlement would be scheduled.

3. On January 14, 1998, a hearing on the settlement was held, and a copy of the proposed settlement agreement was admitted in evidence as Rehearing Exhibit 1 with the request that it be approved by the Commission.

4. No party has opposed the settlement.

5. The relief being granted by this order is the relief requested and is uncontested.

### **Conclusions of Law**

1. At a rehearing on the issue of the appropriateness of penalties assessed against SP, the parties reached a settlement which was offered and admitted in evidence with a request that it be approved by the Commission.

2. The settlement is not in conflict with any provision of law.

3. The settlement agreement should be approved as being in the public interest.

4. The sole remaining issue in this proceeding, namely the constitutionality of the change in the definition of "hazardous materials" in GO-161, should continue to be held in abeyance pending its final resolution in the federal courts, where it is currently under consideration in connection with an injunction proceeding arising out of D.97-09-045 in R.93-10-002.

### **O R D E R**

#### **IT IS ORDERED that:**

1. The settlement agreement annexed hereto as Attachment A is approved, and the penalties assessed against Southern Pacific Transportation Company (SP) in Decision (D.) 94-11-069, as modified by D.94-12-001, are modified as set forth in Attachment A hereto.

I.91-08-029 ALJ/PSW/sid

2. The sole remaining issue in this proceeding, namely the constitutionality of the change in the definition of "hazardous materials" in General Order 161, will continue to be held in abeyance pending its final resolution in the federal courts, where it is currently under consideration in connection with an injunction Proceeding arising out of D.97-09-045 in R.93-10-002.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

SETTLEMENT AGREEMENT

between  
Rail Safety and Carriers Division of the California Public Utilities Commission  
and  
Southern Pacific Transportation Company

This SETTLEMENT AGREEMENT ("Agreement") dated December 12, 1997, is entered into between the Rail Safety and Carriers Division, Rail Safety Branch, Public Utilities Commission of the State of California ("Staff") and Southern Pacific Transportation Company ("SP" or "Railroad").

In order to assist the California Public Utilities Commission ("Commission") in resolving the issue of penalties imposed for violations of Public Utilities Code sections 7673 (a) and 7673 (b) in Decision ("D") 94-11-069 (as modified by D. 94-12-001) in I. 91-08-029, the parties have voluntarily agreed to the following:

**I. Mutual Understandings**

P.U. Code Sec. 7673 (a) directs each railroad which transports hazardous materials in the state to provide a system map of its rail lines within the state to the Office of Emergency Services and to the Commission. P.U. Code Sec. 7673 (b) directs each railroad to annually submit to the Office of Emergency Services 50 copies of a publication which identifies emergency handling guidelines for the surface transportation of hazardous materials.

The Commission's Decision No. 94-11-069 (as modified by D. 94-12-001) imposed penalties of \$2,000 per day for 122 days, or \$244,000 per violation, against SP for noncompliance with the system map and emergency handling guidelines.

Exhibit	<i>Rehearing Exhibit 1</i>
CPUC Proceeding	<i>I 91-08-029</i>
Sponsor/Witness	<i>Janit</i>
Date Ident.	<i>1/14/98</i>
Recd.	<i>1/14/98</i>
Robert L. Ramsey Administrative Law Judge	

SP timely filed an application for rehearing of D. 94-11-069 and also filed a petition for stay of the penalties provisions pending a ruling on the application for rehearing. SP's application asserted that the penalties were imposed in violation of SP's right to due process without adequate notice or an opportunity to be heard and were additionally based on erroneous factual findings. SP also challenged the finding of a "continuing" daily violation of the annual requirement in P.U. Code Sec. 7673 (b).

The petition for stay was granted by the Commission in D. 95-02-047. On September 3, 1997, in D. 97-09-063, the Commission granted limited rehearing of D. 94-11-069 on the issue of penalties.

At the prehearing conference on October 23, 1997, Staff advised ALJ Robert L. Ramsey that SP had proposed that the Commission should return to ALJ Ramsey's Proposed Decision issued September 20, 1994 for the Seacliff derailment. The ALJ's Proposed Decision imposed a penalty of \$20,000 for failure to timely provide the map required by P.U. Code Sec. 7673 (a) and \$20,000 for failure to timely furnish 50 copies of the emergency handling guidelines manual required by P.U. Code Sec. 7673 (b). Further, Staff announced its general agreement with SP's proposal.

This Settlement Agreement is intended to memorialize the understanding of SP and Staff with regard to a mutually acceptable outcome of the contested issue of penalties covered by the limited rehearing granted in D. 97-09-063.

## **II. Agreement**

Staff and SP agree to compromise and settle the issue of penalties imposed by the Commission in D. 94-11-069 (as modified by D. 94-12-001) by restoring the level of

penalties established by the Administrative Law Judge in his proposed decision for Seacliff issued September 20, 1994 which recommended fining SP \$20,000 each for violations of P.U. Code Sections 7673 (a) and 7673 (b), for total penalties of \$40,000.

SP shall pay to the Commission the sum of \$40,000. within 30 days of the date this Agreement is adopted by order of the Commission.

Pursuant to Rule 51.8 of the Commission's Rules of Practice and Procedure, the Commission's adoption of this Agreement shall not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement on December 12, 1997.

RAIL SAFETY AND CARRIERS DIVISION  
RAIL SAFETY BRANCH,  
CALIFORNIA PUBLIC UTILITIES COMMISSION

*Robert G. West*

Name/Title *Sr. Transp. Oper. Supv. CPUC.*

SOUTHERN PACIFIC TRANSPORTATION COMPANY

*Carol A. Harris*

Name/Title *General Commerce Counsel UPRR*

(END OF ATTACHMENT A)