

Decision 99-08-018 August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The City of St. Helena,

Complainant,

vs.

Napa Valley Wine Train, Inc.,

Defendant.

FILE COPY * * RETAIN

Case 99-01-020
(Filed January 14, 1999)

OPINION DISMISSING COMPLAINT

Summary

We deny complainant's motion for an order to show cause and dismiss the complaint, which seeks an advisory opinion we decline to issue. We grant defendant's motion to dismiss to the extent it advances arguments consistent with the rationale we adopt and otherwise deny the motion.

Procedural Background

Complainant, the City of St. Helena (St. Helena), filed this complaint against defendant, the Napa Valley Wine Train, Inc. (Wine Train) on January 14, 1999. Wine Train filed an answer on March 3, as well as a motion to dismiss. St. Helena responded to that motion on March 18 and also filed a motion for an order to show cause why Wine Train should not be ordered to cease and desist from providing rail service. Thereafter, on March 29, after obtaining approval from the assigned administrative law judge (ALJ), Wine Train filed a reply to

St. Helena's responsive pleading on the motion to dismiss and on April 2, Wine Train responded to the show cause motion.

The one thing the parties agree upon is that there is no need for evidentiary hearings, since no facts are in dispute between them.

Discussion

1. A Brief History

This complaint and the cross motions it has engendered have their origin in a dispute more than a decade old which was first brought before the California Public Utilities Commission (Commission or CPUC) in Case (C.) 88-03-016, a complaint filed by St. Helena against Wine Train. At the heart of the dispute is Wine Train's rail service along a corridor in the Napa Valley. St. Helena and other local entities have challenged various aspects of that service and the ongoing dispute has been subject to review by both state and federal administrative agencies and in the California Supreme Court.

Particularly noteworthy events include the following: our 1988 authorization of preliminary, limited service by Wine Train in the Napa Valley corridor [Decision (D.) 88-07-019, 1988 Cal PUC LEXIS 364]; the 1990 enactment of Pub. Res. Code § 21080.04, which made Wine Train's project subject to the California Environmental Quality Act (CEQA) and designated the CPUC as the lead agency [Stats. 90-1654 (Assembly Bill 4370 - Hansen)]¹; the 1991 Interstate Commerce Commission (ICC) determination that Wine Train's passenger operations are not subject to its jurisdiction [7 ICC 2d 954 (1991)]; our 1993

¹ This statute was enacted through emergency legislation following the California Supreme Court's reversal of our determination that the Wine Train project was not exempt from CEQA under then-existing law. [See Napa Valley Wine Train, Inc. v Public Utilities Com. (1990) 50 Cal 3d 370.]

certification of the final environmental impact report (FEIR) [D.93-07-046, (1993) 50 CPUC2d 377]; and in 1996, our approval of Wine Train's project, subject to certain conditions and limitations and subject to the Mitigation Implementation Program/Implementation Schedule [D.96-06-060, (1996) 66 CPUC2d 602, as modified by D.96-11-024, 1996 Cal PUC LEXIS 1148].

According to allegations in the pleadings of both parties, the dispute appears to be focused, at present, on the siting of a train station in St. Helena. We cannot determine from the pleadings in which informal or formal forum the current dispute is being aired, but it is not pending at the CPUC.

2. The Complaint Seeks an Advisory Opinion

The complaint asks us to address two issues:

"a. Is the Wine Train presently operating as a public utility, within the meaning of Public Utilities Code Section 216?"

"b. If the Wine Train were to operate in the manner authorized by the Commission in D.96-06-024 and D.96-11-024, would the Wine Train be a public utility within the meaning of Public Utilities Code Section 216?"

The complaint concludes by requesting that we find that the Wine Train is not a public utility. Pub. Util. Code § 1702 governs the content of complaints filed at the CPUC and provides, in relevant part, that a complaint shall state:

"any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

As Wine Train argues in its motion to dismiss, St. Helena's complaint does not allege any violation of law by Wine Train. Rather, the only relief St. Helena seeks is a restatement of our jurisdictional authority over Wine Train, or in other words, an advisory opinion. We seldom issue advisory opinions and have

clearly articulated our rationale for declining to do so. Our policy against issuing advisory opinions is not unique to the CPUC nor other administrative agencies but is a policy long-adopted by the courts. [See Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal 3d 158, 170, ripeness requirement prevents courts from issuing purely advisory opinions.] In a recent affirmation of this policy, we explained:

“We have ‘a longstanding policy against issuing advisory opinions. In order to conserve scarce decisionmaking resources, [we] generally ‘[do] not issue advisory opinions in the absence of a case or controversy.’ [Citations omitted.]’ [We adhere] to this ‘rule’ unless [we are] presented with ‘extraordinary circumstances.’ [Citation omitted.]” (D.98-03-038, 1998 Cal PUC LEXIS 74, p. 5.)

St. Helena has presented us with no “case or controversy” to adjudicate. In fact, the pleadings, themselves, reveal that the parties’ actual disagreement concerns a siting dispute that is not pending before us.

Neither has St. Helena alleged any “extraordinary circumstances” which suggest we should make an exception here and entertain a request for, and then issue, an advisory opinion. In its comments, St. Helena suggests that the outcome of the siting dispute will turn upon our declaratory opinion in this case. But St. Helena does not explain why our prior decisions provide insufficient guidance to the parties. In D.96-06-060, as modified by D.96-11-024, we approved the Wine Train’s proposed project, a project which contemplated one or more up valley stations, including one at St. Helena. The decisions conditioned the authorization as detailed in the Mitigation Implementation Program/ Implementation Schedule.

The circumstances here, where both parties appear to be jockeying for position over the siting of a train station, urge us to adhere to our general policy. After review of the comments, we conclude that St. Helena is seeking to relitigate

D.96-06-060 and D.96-11-024 obliquely. As Wine Train notes in its reply comments, if St. Helena believes it has grounds to file a petition to modify those decisions, that course of action is available to it under Rule 47 of our Rules of Practice and Procedure.

3. The Motion for an Order to Show Cause

St. Helena has filed a motion for an order to show cause which asks that we: "issue an order to show cause why the Wine Train should not be ordered to cease and desist from providing rail service, until it complies with the laws that apply to its putative status as a public utility." Unlike most requests for a provisional remedy of injunctive relief, St. Helena's motion is unsupported by declaration or affidavit. Instead it claims to rely upon Wine Train's answer, arguing in essence that if Wine Train is a public utility, Wine Train is in violation of law because it has no tariffs on file and should be prohibited from operating.

We will not attempt to sift through these assertions and arguments in order to provide support for St. Helena's motion. When provisional injunctive relief is sought, the burden of proof is upon the moving party to establish the conditions that support this extraordinary remedy. Four conditions must be satisfied: (1) likelihood of prevailing on the merits; (2) irreparable injury; (3) no substantial harm to other interested persons; and (4) not contrary to the public interest. [D.95-05-020, p. 15, (1995) 59 CPUC2d 665, 675-676.] St. Helena has made no attempt to identify these elements, let alone offer evidentiary support to establish each one of them.

In its comments, however, St. Helena claims it is not seeking a provisional but a permanent injunction, and that consequently, its motion lacks the procedural defect discussed above. St. Helena is correct that the requirements for these two types of injunctions are different. The requirements are different

because the purposes are different. While a preliminary injunction is issued to maintain the status quo, a permanent injunction can only issue after a final judgment on the merits. [*Dawson v. East Side Union High School Dist.* (1994) 28 C.A.4th 998, 1041.] Moreover, since an injunction is a remedy and not a cause of action, a permanent injunction is unavailable if a complaint does not seek it as an ultimate remedy. [See Witkin, Cal. Procedure 4th Ed. (1997) Vol. 6 § 290, p. 230.] Nonetheless, we need not belabor these procedural issues. However unusual it may be to request a permanent injunction by motion and in the form of an order to show cause at that, we do not reach the issue unless we find for St. Helena on the merits.

Whatever the nature of the injunctive relief sought, we conclude that St. Helena's arguments are not persuasive. We have not modified prior decisions which ordered Wine Train to file tariffs and we direct staff to ensure that tariffs are on file. We conclude that the motion is really an alternative effort to secure an advisory opinion from us, in the absence of a dispute ripe for our adjudication.

4. We Dismiss the Complaint

We conclude the complaint fails to state a cause of action under Pub. Util. Code § 1702, but rather requests an advisory opinion, which we decline to issue for the reasons expressed above. We dismiss the complaint without leave to amend since the pleadings of both parties reveal that the actual dispute between them is not one ripe for our adjudication but is pending in some other forum. We remind the parties that the 12-month timeline for resolution of adjudicatory proceedings, established in Pub. Util. Code § 1701.2(d) (see Senate Bill 960 [Leonard] Stats. 1996, ch. 856), requires vigilant case management by this Commission. As noted above, St. Helena may assess whether it has cause to file

a petition for modification of prior Commission decisions, consistent with our rules.

Because we dismiss the complaint on the grounds just articulated, we need not reach the remainder of the contentions raised in Wine Train's motion to dismiss. Therefore, we grant defendant's motion to the extent it advances arguments consistent with the rationale we adopt and otherwise deny the motion.

We deny complainant's motion for an order to show cause for the reasons previously stated.

No Hearing is Necessary

In granting the motion to dismiss, we change the determination, in the instructions to answer dated February 1, that this proceeding required a hearing and make a final determination that no hearing is necessary, in accordance with Rule 6.6 of the Rules of Practice and Procedure.

Comments on Draft Decision

The draft decision of ALJ Jean Vieth in this matter was mailed to the parties in accordance with Pub. Util.Code § 311(g) and Rule 7.1 of the Rules of Practice and Procedure. We have revised the decision, as indicated herein, to reflect comments filed by St. Helena on July 12 and reply comments filed by Wine Train on July 19.

Findings of Fact

1. The parties' current dispute appears to be focused on the siting of a train station in St. Helena.
2. We cannot determine from the pleadings in which informal or formal forum the current dispute is being aired, but it is not pending at the CPUC.

3. St. Helena has not supported its motion for an order to show cause by declaration or affidavit but claims to rely upon Wine Train's answer for support.

4. If St. Helena believes it has grounds to file a petition to modify prior Commission decisions, that course of action is available to it under Rule 47 of our Rules of Practice and Procedure.

Conclusions of Law

1. St. Helena's complaint does not allege any violation of law by Wine Train; rather, St. Helena seeks a restatement of our jurisdictional authority over Wine Train in the form of an advisory opinion.

2. St. Helena has presented us with no case or controversy to adjudicate.

3. St. Helena has not alleged any extraordinary circumstances that suggest we should make an exception here and issue an advisory opinion. To the contrary, the circumstances here urge us to adhere to our general policy against the issuance of advisory opinions.

4. We should dismiss the complaint for failure to state a cause of action under Pub. Util. Code § 1702 and decline to issue an advisory opinion.

5. We should dismiss the complaint without leave to amend.

6. St. Helena has not identified the four elements which must be established for provisional injunctive relief to issue nor offered evidentiary support for its claim for provisional injunctive relief.

7. Since we do not find for St. Helena on the merits, a permanent injunction is unavailable.

8. We have not modified prior decisions which ordered Wine Train to file tariffs.

9. We should deny St. Helena's motion for an order to show cause.

10. For reasons stated in the foregoing conclusions of law, we should grant Wine Train's motion to dismiss.

11. In dismissing the complaint, we make a final determination that no hearing is necessary in accordance with Rule 6.6 of the Rules of Practice and Procedure.

O R D E R

IT IS ORDERED that:

1. The motion for an order to show cause filed by the City of St. Helena is denied.
2. The motion to dismiss is granted and the complaint is dismissed without leave to amend.
3. Staff of the Commission's Rail Safety and Carriers Division are directed to ensure that Wine Train tariffs are on file, consistent with prior Commission decisions.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners