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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 or federal laws or)
regulations.)

F I L E D
PUBLIC UTILITIES COMMISSION
AUGUST 22, 1991
SAN FRANCISCO OFFICE
I.91-08-029

ORDER INSTITUTING INVESTIGATION

I. SUMMARY

Two recent major derailments involving releases of toxic substances from derailed Southern Pacific Transportation Company (Southern Pacific) rail cars give us grave concern and require that we initiate a formal investigation into the circumstances surrounding these derailments and the responses to them.

Southern Pacific is the respondent of today's order instituting investigation (OII). This investigation will evaluate whether the railroad has operated prudently and safely and satisfied applicable rules and regulations. The Commission will enter any appropriate orders within its jurisdiction concerning respondent, including sanctions for any violations supported by the evidentiary record developed at hearings.

The goals of the OII are to (a) investigate the causes of the derailments, (b) identify any local safety hazards, (c) investigate compliance and pursue enforcement of existing CPUC jurisdictional rules and regulations, and (d) recommend improvements in state or federal laws or regulations necessary to prevent future derailments or to facilitate emergency response.

It is intended that any recommendations be designed to operate in concert with the existing state-federal railroad safety enforcement scheme.

We institute this investigation pursuant to our general regulatory authority. We are a federally certified agency under the Federal Railway Safety Act and are thereby an active participant in the joint federal-state safety endeavor. Our findings in this investigation will assist the Federal Railroad Administration with pursuing its regulatory duties to ensure safe operation of railroads. The goal, most simply stated, is to gather the facts surrounding the two derailments, including emergency responses, and to find solutions to reduce the chance of future occurrence. Possible solutions include federal legislative or regulatory action, state legislative action or orders from this Commission.

Before Commission staff and other interested parties distribute their recommendations, and before hearings begin, Southern Pacific must respond to some preliminary questions. Our investigation will be more orderly and expeditious if parties addressing issues in this investigation have the benefit of the railroad's responses as they prepare their recommendations and conclusions. Accordingly, Southern Pacific shall submit a compliance filing to the Commission within 35 days which responds to the items listed in Appendix A.

A prehearing conference will be held in San Francisco on Friday, October 11, 1991, at 9:30 a.m. before Administrative Law Judge Robert L. Ramsey, for setting dates to exchange prepared testimony and conduct hearings, and generally defining the scope and course of this investigation. Railroads, public agencies, emergency response organizations and others interested in the outcome of this investigation are encouraged to attend the prehearing conference.

Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists, in that two derailments involving toxic substances recently occurred

within a very short time span, which justifies our action today under Public Utilities Code section 306(b).

II. THE TWO RECENT TOXIC SUBSTANCE DERAILMENTS

On July 14, 1991, seven cars and one locomotive of a Southern Pacific freight train derailed near Dunsmuir at Milepost 327.9 on the Southern Pacific's Shasta Division, Black Butte, Subdivision. The derailment caused significant environmental damage as a result of a chemical release; local citizens were evacuated and significant local economic hardships occurred. Further, this latest accident indicates a consistent derailment history in a localized 10-mile area dating back to 1972.

Just two weeks later, on July 28, 1991, a Southern Pacific freight train derailed 14 cars near Sea Cliff in Ventura County at Milepost 388.6 on the Southern Pacific's Santa Barbara Division, Coast Line Subdivision, which exposed a local community to a toxic substance release, causing significant citizen evacuations and extended closure of Highway 101.

III. APPLICABLE RULES AND REGULATIONS WHICH SOUTHERN PACIFIC MAY NOT HAVE SATISFIED

This investigation is instituted to determine what caused the derailments, whether Southern Pacific was reasonably prepared to respond to the derailments, and what steps could have been taken both before and after the derailments to mitigate the effects and ensure that the response was adequate. The initial information available to the Commission's Safety Division raises questions about whether Southern Pacific was operating in a manner consistent with ensuring rail safety and in accordance with applicable rules and regulations. We are particularly interested in reviewing Southern Pacific Transportation Company's Operations, Emergency Allocation and Response Plan and/or related corporate guidelines and its System Safety Plan for its California operations. Under such a plan a documented safety management program is developed and administered by a

railroad's management to identify, analyze and control accident trends and to address local safety hazards (e.g. track sections more prone to derailments) that may impact specific local sections along California lines.

We issue this investigation for the purpose of determining whether existing orders of the Commission, including General Orders 22-B and 108, were violated. For example it must be determined whether applicable accident/incident reporting rules were followed and whether the railroad's operating rules are or were incomplete or inconsistent with other managerial instructions. We will also investigate whether section 7681 of the Public Utilities Code may have been violated (i.e. whether operations may have been conducted or ordered conducted that were contrary to official operating instructions). If the Commission finds good cause to believe Section 7681 was violated, it will forward its findings to appropriate law enforcement agencies so appropriate action can be initiated.

In addition, we will determine if there were violations of federal laws and regulations, within our enforcement or investigative jurisdiction, including Title 49 of the Code of Federal Regulations, Parts 215, 229, 231, 232, 213, 217, 219, 220, and 225. If the Commission finds violations of these or other federal regulations, the Safety Division may file a report of violations with the Federal Railroad Administration's Chief Counsel. Also, if it appears that these federal regulations are inadequate to ensure rail safety, the Commission may recommend modifications.

Congress has determined that rail safety is essentially a matter of federal responsibility and, accordingly, much state authority has been preempted. This is particularly so with respect to the identification of hazardous materials. For this reason, the solutions we seek in the investigation are limited to those which are within our jurisdiction.

IV. CRITICAL INFORMATION WHICH SOUTHERN PACIFIC MUST PROVIDE AT THE OUTSET OF THIS INVESTIGATION

We expect our Safety Division to continue its ongoing investigation and to undertake full discovery so that it can present complete evidence on what caused the derailments and whether they could have been prevented or the consequences largely mitigated. Likewise, we encourage public agencies and other parties with an interest in ensuring rail safety to fully participate in and make recommendations to the Commission.

There is some information that is in Southern Pacific's control which is critical to start the inquiry. Accordingly, we will order Southern Pacific to file responses to the items contained in Appendix A as a compliance filing (following the rules for submitting pleadings) with the Commission's Docket Office within 35 days.

The items listed in Appendix A should not be considered an exhaustive list of information which Southern Pacific must produce; these are some of the key preliminary questions that must be answered. The Commission may request additional information at a later date, and the parties to the OII may request additional information by data requests and other discovery methods.

ORDER

1. An investigation is instituted into the adequacy of the Southern Pacific Transportation Company's (Southern Pacific) facilities, equipment, practices, and compliance with applicable laws, rules and regulations relating to the rail transportation. Southern Pacific is the respondent public utility carrier.

2. This investigation is to determine whether Southern Pacific was in compliance with General Orders 22-B and 108 when the two toxic substance releases occurred in July, 1991; whether there were any probable violations of Section 7681 of the Public

Utilities Code which would justify the Commission's referring findings to law enforcement agencies for possible prosecution; and whether there were any violations of federal laws or regulations. If there were violations of Commission rules or orders, this Commission may impose a fine on Southern Pacific under Sections 2108 and 2115 of the Public Utilities Code. If this Commission finds that there were violations of federal safety regulations, it may file a report with the Federal Railroad Administration.

3. Within 35 days from today Southern Pacific shall provide the information listed in Appendix A to this order (except for the one listed item which it must provide within 60 days). It shall file the information as a compliance filing with the Commission's Docket Office, following the Rules of Practice and Procedure applicable to pleadings. If Southern Pacific has uncertainty about what any of the items in Appendix A refer to, or what it is being required to provide, it shall expeditiously contact the Director of the Safety Division for clarification. Southern Pacific is put on notice that it must provide in a timely fashion other information which our staff may request. Discovery motions, should they be necessary in the event that the requisite "meet and confer" efforts fail, shall be expeditiously ruled on by the Administrative Law Judge.

4. The Executive Director shall serve a certified copy of this Order on Southern Pacific by registered mail.

5. A prehearing conference will be held at 9:30 a.m. on Friday, October 11, 1991 before Administrative Law Judge Robert L. Ramsey, at 505 Van Ness Avenue, San Francisco. The purpose of the prehearing conference is to set dates for exchanging prepared testimony, set the initial dates and locations of hearings,

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decide whether to phase the proceeding, answer questions about the scope of the proceeding, and rule on any discovery issues which may arise.

This order is effective today.

Dated August 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director
RB

APPENDIX A

1. Provide a copy of the System Safety Plan or similar documents used by Southern Pacific at the time of the derailments to identify derailment trends and local hazards on California lines and near specific local communities (e.g. which would identify the Cantara Loop problem area near Dunsmuir).
2. Provide the train length, tonnage, train makeup and helper locomotive rules adopted since 1976 by Southern Pacific for the local 10-mile grade from Milepost 322.1 to Milepost 332.1 on the Black Butte Subdivision (Cantara Loop), and explain any criteria used to rationalize, justify and support any change in such rules.
3. Provide all guidelines or instructions issued to carrier management, operations officers, and dispatching personnel that feature train length tonnage, empty/load placements that are or were in effect during the same time that the plan and rules addressed above in Items 1 and 2 were and/or are in effect.
4. Provide written practices and procedures for the Western Train Control Center located at Roseville, California which were operative at the time of the derailments for the train dispatcher to make emergency notification to fire and police departments, or other emergency agencies, of those communities threatened by the potential or actual release of toxic substances, fires or medical emergencies occurring on the rail lines which they supervise in California.
5. Provide a description of the formal Southern Pacific public agency response outreach program, in place at the time of the derailments, which describes the program for rail-related emergencies and toxic substances release training in communities along Southern Pacific's California lines.
6. Provide a diagrammed map of all Southern Pacific's right-of-way agreements with utility, petroleum companies and pipelines for the use of the railroad's right-of-way within California.
7. Provide Southern Pacific's official corporate list (in place at the time of the derailments) of specific California locations subject to higher than normal risk of toxic substances exposure or other damage in the event of a trail derailment. This list should include cities, schools, hospitals, military bases, prisons, etc., as well as environmentally sensitive areas like rivers, lakes, drinking water reservoirs, wild life preserves, etc. which would be affected in the event of a release of toxic substances following a derailment.

8. Provide Southern Pacific's Public Emergency Action Plan for response to toxic substance railroad incidents which was operative at the time of the derailments.
9. Provide the name of the individual at the Southern California Gas Company who was notified by Southern Pacific of the derailment at Milepost 388.6 on the Coast Line Subdivision in the vicinity of Sea Cliff, and the date and time such SoCalGas representative was notified. Provide Southern Pacific's official emergency response rules in place at the time of the Sea Cliff derailment on contacting utilities having gas pipelines along tracks in the event of derailments.
10. Provide Southern Pacific's official corporate Emergency Action Plan for response to toxic substance railroad incidents which was operative at the time of the recent derailments.
11. Provide a complete list of chronological events/times for the entire trip of 1WCEUM-13 Extra 9693 EAST from Colton to point of derailment (Cantara train).
12. Provide a complete list of the chronological events/times for the entire trip of 1LABAF-28 Extra 6789 West from point of origin to the point of derailment (the Sea Cliff train).
13. Provide transcripts or records of oral or any other communication between personnel operating trains 1LABAF-28 Extra 6789 West and 1WCEUM-13 Extra 9693 East and dispatching, operating and mechanical department management or others concerning the performance of motive power on this train.
14. Provide an annual account for the years 1985 through 1990 of the number and location of locomotive and car equipment inspector positions located throughout the State of California.
15. Provide the gross tonnage for the years 1985 through 1990 by direction and average train weight over the Black Butte and Mojave Subdivision (may be extrapolated from information filed with the ICC).
16. Provide within 60 days the annual number of helper crews positioned on the Black Butte Subdivision for the years 1985 through 1990. Fully account for and explain the reasons for any material changes in the year-to-year totals.
17. Fully explain any and all mitigating measures identified or implemented thus far to prevent a recurrence of the July 14, 1991 Cantara derailment incident and the July 28, 1991 Sea Cliff derailment incident.

18. Explain Southern Pacific's policy for maintaining, calibrating and locating hot box detectors on its lines located in California, particularly addressing the implementation of its policy for the Southern Pacific Servo bearing detection equipment at Milepost 424.4 on the Coast Line Subdivision.
19. Provide all regular maintenance records and inspection reports relative to locomotive Nos. SP 9693, 9333, 8375 and 7561 since April 14, 1991, including but not limited to daily locomotive inspections for days, each locomotive in use, quarterly locomotive inspections, locomotive failure reports and routine maintenance inspection reports. Provide all results of tests conducted on locomotives, equipment, and track subsequent to and related to the Dunsmuir and Sea Cliff derailments.

END OF APPENDIX A