PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAFETY DIVISION
Railroad Safety Branch

RESOLUTION SR-34
January 21, 1992

R E S O L U T I O N

RESOLUTION SR-34. ESTABLISHMENT OF A USER FEE TO BE PAID BY ALL RAILROAD CORPORATIONS OPERATING IN CALIFORNIA TO FINANCE THE PUBLIC UTILITIES COMMISSION'S RAIL SAFETY ACTIVITIES, AS REQUIRED BY PUBLIC UTILITIES CODE SECTION 422, AS AMENDED BY SENATE BILL 152.

SUMMARY

This resolution establishes the initial fee to be paid by all railroad corporations in California as required by Public Utilities Code Section 422, as amended by Senate Bill 152.

This user fee is to finance the $2,280,000 appropriated by the Legislature in Assembly Bills 151 and 684 for the six month period from January 1, 1992 to June 30, 1992 for the Commission's rail safety activities. The annual fees for fiscal year 1992-93 will be considered before June 30, 1992 and will be based on the Commission's 1992-93 budget.

BACKGROUND

On October 9, 1991, the Governor signed Senate Bill (SB) 152, to amend Public Utilities Code Sections 421, 421.5, 422, 423, 424 and 99315.5, and add Sections 765.6 and 765.9.

This legislation requires the Commission to establish a fee to be paid by railroad corporations to recover the amount equal to the Commission's annual budget for investigation and enforcement of rail safety activities. This portion of the Commission's annual budget was previously funded by the Transportation Planning and Development Account and the State Highway Account in the State Transportation Fund. Prior to the passage of this legislation, all railroad corporations were exempt from paying user fees.

The Commission is required to establish the initial fee by January 31, 1992, and must commence collection of the fee on February 1, 1992. On or before January 15, 1992, railroad corporations as a group may submit a proposed plan of allocation to the Commission which shall be considered in establishing the allocation method.

To determine the proper fee, the Commission is authorized by Section 422 (h) of the Public Utilities Code to:

> "utilize gross intrastate revenues; terminals located within the state; loaded car miles traveled within the state; fuel consumption; or any other measure deemed to be appropriate in allocating the fee among railroad corporations." (emphasis added)

The Safety Division (staff) informed all railroad corporations operating in California by letter on November 1, 1991 of Senate Bill 152's passage and its effects. The letter informed the railroads that the staff would be conducting informational meetings on November 19 in Sacramento and on November 21 in Los Angeles. The purpose of the meetings was to disseminate information and to receive comments from the railroad industry regarding the staff's proposed allocation method for the user fee.

Enclosed with the letter was a questionnaire containing possible allocation categories to assist the staff in determining an equitable formula. Information requested included revenues, track miles, operating mileage, number of terminals and yards, loaded car-miles, revenue-ton miles, fuel consumption and number of employees.

DISCUSSION

The allocation method presented herein is to recover the initial fee of $2,280,000 appropriated by the Legislature in Assembly Bills 151 and 684 for the six-month period ending June 30, 1992.

Staff examined several different allocation methods, including the specific ones identified in SB 152. However, staff encountered difficulty as some railroad corporations failed to provide the requested data. Many did not respond to the questionnaire, and those that did respond were unable to provide all the information requested. Due to the incompleteness of the information, staff developed an initial formula based solely on gross revenues generated within the state, including a minimum fee to be paid by all.

Staff met with the railroads that elected to attend the November 19 and 21 meetings in Sacramento and Los Angeles and presented the initial formula. A consensus of reaction from the Class I railroads was that gross revenues was not a good allocation criterion because it did not establish the sense of equity that the railroads desired. The Class I railroads at that time indicated that they believed they would be able to reach consensus on equitable criteria for the allocation of their portion of the fee.

At the meetings, no railroad objected to staff's proposal to split the allocation between the Class I railroads and the shortline railroads by using gross revenues as the criterion. Also, no objections were raised to the proposal to have a minimum fee for the shortlines. Staff found that, due to the considerable variability between the large railroads and the small railroads in other criteria such as track miles and locomotive miles, gross revenue was the most equitable allocation criterion for the Class I/shortline split. Based on 1990 gross revenues, the Class I railroads' share of the fees would be 98% ($2,234,400), and the shortline railroads' share would be 2% (45,600).

Representatives of the shortline railroads indicated that their primary concern was to have the formula be affordable to all of the railroads. Consequently, the criterion of gross revenues was accepted as at least the most important criterion for the allocation formula.

A follow up meeting on December 6th in San Francisco was scheduled to review the Class I railroads' proposal and to consider options for the shortline railroads. At the December 6th meeting the Class I railroads presented their agreement to pay the following percentages as their portion of the total fee:

Railroad Company	Percentage of Fee
Southern Pacific	52.5% + $2,500
Atchison, Topeka, & Santa Fe	28.5%
Union Pacific	18.5%
Burlington Northern	0.5%

This proposal was later confirmed by a letter dated December 10, 1991. Southern Pacific's (SP) portion of the fee provides for the amount of $2,500 to be deducted from the total fee to be charged to the Class I railroads. In addition, SP's shortline subsidiaries, Northwestern Pacific Railroad and Visalia Electric Railroad Company are covered under SP's portion of the fee. Atchison, Topeka and Santa Fe's (ATSF) subsidiary Los Angeles Junction Railway is covered under ATSF's fee. The Class I railroad percentages were similar to the percentages developed by staff based on train miles, track miles, number of crossings and gross revenues. Staff, therefore, recommends the adoption of the Class I railroads' percentages as being reasonable and equitable.

Prior to and at the December 6th meeting, staff received additional comments from representatives of the shortline railroads. These comments indicated a desire to have a uniform fee based on operational criteria and gross revenues in a 50/50 proportion. For establishment of the initial fee, staff does not have sufficient data from all shortline railroads to base 50% of the fee on operational criteria, such as track miles, as proposed by one shortline railroad. Staff proposes the use of gross revenues to proportion the shortline railroad portion of the fee as an objective and verifiable criterion and designed to be affordable.

Staff determined that the initial fee for each shortline railroad would be 0.17% of its 1990 annual gross revenues or $250, whichever is greater.

Staff mailed copies of its report on the proposed allocation method to all railroads on December 19, 1991 and requested that comments or alternatives to the proposal be submitted by January 6, 1992. Three comments were received from the shortlines. Yolo Shortline Railroad Company recommended that the $250 minimum fee be eliminated, Central California Traction Company recommended that the fees be based strictly on gross revenues and Modesto and Empire Traction Company recommended that 50% of the shortline fees be allocated in proportion to gross revenues, and 50% in proportion to operable track miles owned and maintained in California.

Staff has determined that a $250 minimum would be a fair and equitable amount for all railroads to pay. Eliminating the minimum fee would mean that a higher percentage rate would be needed to recover this portion of the fee.

It was mentioned earlier that staff does not have the sufficient information from all the shortlines in order to base the fee on operational criteria. The initial fee is based on verifiable criterion, gross revenues, and designed to be affordable to all. Future allocation procedures may adopt this alternative if it is determined to be verifiable and equitable to all shortlines. Although it may prove to have merit, this allocation method cannot be used at this time.

Staff also received comment from Southern Pacific that staff's report did not clearly indicate the Class I subsidiaries will be covered under their portion of the fees. We have resolved this concern in this Resolution. Furthermore, Southern Pacific presents its position that the fee should fund only those activities of the Commission's Railroad Operations and Safety Section and not for the railroad crossing program which primarily benefits vehicular traffic. However, the $2,280,000 appropriated by the Legislature in ABs 151 and 684 includes the railroad crossing program.

Other than the railroad corporations' participation in the meetings, and the above mentioned comments to the staff allocation procedure report, no other proposed plan of allocation was submitted to the staff as of January 15, 1992.

FINDINGS

1. The allocation procedure for the railroad user fee consists of two methods: one for the large (Class I) railroads and one for the small (Class II and III or shortline) railroads.

2. The total fee due the Commission should be divided between the Class I and shortline railroads proportionate to their total gross revenues generated within the state.

3. Based on 1990 gross revenues, staff has determined that the Class I railroads' share of the fees would be 98%, and the shortline railroads' share would be 2%.

4. Class I railroads have reached agreement among themselves to pay the following percentages as their portion of the total fee:

Railroad Company	Percentage of Fee
Southern Pacific	52.5% + $2,500
Atchison, Topeka, & Santa Fe	28.5%
Union Pacific	18.5%
Burlington Northern	0.5%

5. The amount of $2,500 from Southern Pacific's portion of the fee is deducted first from the total fee chargeable to the Class I railroads before the percentages are applied. Southern Pacific's fee will also cover the fees of its subsidiaries, Northwestern Pacific Railroad and Visalia Electric Railroad Company.

6. Atchison, Topeka and Santa Fe's fee covers the fee of its subsidiary Los Angeles Junction Railway.

7. These percentages are similar to the percentages developed by staff for each Class I railroad based on train miles, track miles, number of crossings and gross revenues.

8. The percentage allocation agreed to by the four Class I railroads are reasonable and equitable.

9. The shortline railroad portion of the fee should be proportioned according to each shortline railroad's annual gross revenues generated in California.

10. The initial fee for each shortline railroad shall be 0.17% of its 1990 annual gross revenues or $250 whichever is greater.

11. The allocation procedures in determining subsequent user fees may incorporate operational criteria if it is found to be more equitable to all companies.

12. The railroad corporations as a group did not submit a proposed plan of allocation to the Commission by January 15, 1992.

THEREFORE, IT IS ORDERED that:

1. The allocation procedure to be applied to all railroad corporations operating in California to finance the Commission's rail safety activities, as required by Public Utilities Code Section 422, as amended by Senate Bill 152, shall consist of two methods: one for the large (Class I) railroads and one for the small (Class II and III or shortline) railroads.

2. The total fee shall be divided between the Class I and shortline railroads proportionate to their total gross revenues generated within the state in calendar year 1990.

3. The fee shall be proportioned 98% to the Class I railroads and 2% to the shortlines.

4. All Class I railroads shall pay the following percentages as their portion of the total fee:

Railroad Company	Percentage of Fee
Southern Pacific	52.5% + $2,500
Atchison, Topeka, & Santa Fe	28.5%
Union Pacific	18.5%
Burlington Northern	0.5%

5. The amount of $2,500 from Southern Pacific's portion of the fee shall be deducted first from the total fee chargeable to the Class I railroads before the percentages are applied.

6. Southern Pacific's fee shall cover the fees of its subsidiaries Northwestern Pacific Railroad and Visalia Electric Railroad Company.

7. Atchison, Topeka and Santa Fe's fee shall cover the fees of its subsidiary Los Angeles Junction Railway.

8. The shortline railroad portion of the fee shall be proportioned according to each shortline railroad's annual gross revenues generated in California.

9. Each shortline railroad shall pay 0.17% of its 1990 annual gross revenues or $250, whichever is greater.

10. The initial fee established by this Order shall be for the six-month period ending June 30, 1992. Each railroad shall pay its share of the fee no later than April 30, 1992.

11. All railroad companies shall respond to all data requests from staff in determining future allocation procedures.

The effective date of this Resolution is today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 21, 1992. The following Commissioners approved it:

NEAL J. SHULMAN
Executive Director

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