Decision 03-01-042 January 16, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The City of St. Helena, Town of Yountville, County of Napa, Napa Valley Vintners Association, Complainants, vs. Napa Valley Wine Train, Inc., Defendant.	Case 88-03-016 (Filed March 7, 1988)

ORDER GRANTING REHEARING OF DECISION 01-06-034

In D.01-06-034, we granted, in part, the petition filed by the City of St. Helena ("St. Helena"), for modification of prior decisions concerning the Napa Valley Wine Train, Inc. ("Wine Train"). We concluded that the Wine Train's passenger excursion service does not constitute regulated transportation and, in providing such service, the Wine Train is not functioning as a public utility.

On July 19, 2001, Wine Train filed an application for rehearing of D.01-06-034, alleging that (1) the decision unlawfully reverses prior, final adjudicatory determinations and unlawfully gives retroactive effect to such revised findings; (2) the decision violates Public Utilities Codes section 1709 by its failure to apply the doctrine of res judicata to the subject controversy; (3) the decision violates Public Utilities Code sections 211 and 216 by finding that the Wine Train's passenger services do not constitute regulated transportation; (4) the decision violates Public Utilities Code section 1705 by making findings for which

there is no substantial evidentiary support; and (5) the decision purports to modify a decision in a manner that was not the subject of the petition before the Commission. In response, the City of St. Helena contends that the Wine Train is not a public utility and that its claims of legal error are without merit.

We have reviewed each and every allegation of error raised in the application for rehearing and are of the opinion that applicants have demonstrated good cause for rehearing.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case has a long and complicated history. On March 7, 1988, St. Helena, City of Napa, Town of Yountville, County of Napa, and Napa Valley Vintner's Association ("complainants") filed a complaint against the Wine Train alleging violations of the Public Utilities Code, the Commission's Rules of Practice and Procedure, the Federal Railroad Safety Act of 1970 ("FRSA"), and the California Environmental Quality Act ("CEQA").[1] Complainants argued that the Wine Train was a public utility and that the Commission should assert jurisdiction over the Wine Train. In D.88-04-015, the Commission ordered the Wine Train to show cause why it should not be required to submit to the jurisdiction of the Commission with respect to its proposed passenger train service. (City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.88-04-015] (1988) 1988 Cal. PUC LEXIS 217.)

During this same period of time, the Interstate Commerce Commission ("ICC") (now the Surface Transportation Board) was considering a petition filed by the Wine Train for an order declaring that its operations were not subject to the Commission's jurisdiction. The Commission participated in that proceeding, arguing that the Wine Train passenger service was purely intrastate

[1] As early as September 1987, the Commission's Advisory and Compliance Division ("CACD") informed the Wine Train that it was subject to the jurisdiction of the Commission, that it must submit an initial assessment of possible environmental effects of its proposed passenger operations, and that the Commission would be acting as lead agency.

and, thus, was subject to the Commission's economic regulation. (See Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1988) 4 I.C.C.2d 720, 1988 ICC LEXIS 216.) Ultimately, the ICC and the Commission issued conflicting orders on the same date, July 8, 1988.

The ICC held that the Wine Train was an interstate carrier and that, even if its passenger operations were purely intrastate, there was complete federal preemption of any economic regulation of the Wine Train. The Commission's authority was limited to enforcing compliance with local safety, zoning, land use and "other so-called non-economic regulation." (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1988) 4 I.C.C.2d 720, 1988 ICC LEXIS 216, *14.) Although the decision refers to preemption of "economic" regulation, this encompassed more than just setting rates. The ICC stated that under 49 U.S.C. 11501(b)(2), as amended by the Staggers Rail Act, the only way a state could regulate intrastate rail operations by interstate carriers was to obtain federal certification. Because California had not sought certification, California was precluded from exercising its jurisdiction over the franchising, scheduling, and pricing of freight or passenger operations. (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1988) 4 I.C.C.2d 720, 1988 ICC LEXIS 216, *14-*15.)

In response to the Commission's argument that CEQA required an environmental review of the Wine Train, the ICC pointed out that CEQA requires state agencies to take into account environmental considerations in their decision-making process. "However, since the CPUC had no power to regulate the Wine Train's operations and thus no decision making role here, CEQA is inapplicable." (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1988) 4 I.C.C.2d 720, 1988 ICC LEXIS 216, *15.)[2]

In contrast, the Commission's decision held that the Wine Train's passenger service was subject to the Commission's jurisdiction with respect to

[2] Request for reconsideration of the ICC's decision was denied in Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1989) 5 I.C.C.2d 1122, 1989 ICC LEXIS 18.)

economic, safety, and environmental matters. (City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.88-07-019] (1988) 1988 Cal. PUC LEXIS 364, *9, *16.) The Commission ordered the Wine Train to refrain from instituting passenger service until it complied with all applicable requirements of CEQA, as well as all other applicable rules, regulations, and general orders of the Commission, and until it was authorized to commence service by the Commission. (Id. at p. *17.)

The Wine Train appealed the Commission's decision to the California Supreme Court. The Commission argued that the Wine Train was subject to its jurisdiction. Among other things, the Commission asserted that the Wine Train was a project under CEQA because the Commission has discretionary authority over safety, rates, and the type and quality of service offered by the Wine Train. Although, as a railroad corporation, the Wine Train was not required to obtain a certificate of public convenience under Public Utilities Code section 1001, the Commission asserted broad discretionary authority over the Wine Train pursuant to Public Utilities Code sections 761, 762 and 763. (See Answer of Respondent to Petition for Writ of Review in Napa Valley Wine Train v. Public Utilities Commission, No. S007919, filed December 19, 1988.)[3]

After the California Supreme Court granted review, but before it issued its decision on the merits, the Wine Train, the Commission, and the complainants entered into a Limited Settlement Agreement. (See City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D. 89-08-054] (1989) 1989 Cal. PUC LEXIS 869.) Pursuant to that agreement, the Wine Train was permitted to institute limited passenger services and would prepare an environmental impact

[3] Public Utilities Code section 761 authorizes the Commission to order public utilities to change practices, facilities, services, etc. that are found to be unjust, unreasonable, unsafe, etc. Section 762 authorizes the Commission to order reasonable additions, extensions, repairs, etc. to existing plant and equipment of a public utility. Section 763, which applies to railroad corporations, gives the Commission authority over the scheduling of trains in order to accommodate and transport passengers or freight.

report on those services, regardless of the outcome of the court case. However, the settlement agreement excused the Wine Train from compliance with any mitigation measures unless the Supreme Court upheld the Commission's prior order. (See Limited Settlement Agreement, dated August 23, 1989, at p. 13.)

On February 8, 1990, the D.C. Circuit granted the ICC's request to remand the Wine Train case for reopening and further consideration. (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1991) 7 I.C.C.2d 954, 1991 ICC LEXIS 195, *6, fn. 10.) The ICC was prompted to re-open the case after the D.C. Circuit Court of Appeals issued Illinois Commerce Comm'n v. ICC (D.C. Cir. 1989) 879 F.2d 917. In Illinois Commerce, the court rejected the ICC's broad interpretation of the preemption provisions of 49 U.S.C. § 11501(b)(2) and the Staggers Rail Act. The court pointed out that the central concern of the Staggers Rail Act was reformation of economic regulation of railroads and, thus, 49 U.S.C. § 11501(b)(2) must be interpreted to apply only to intrastate ratemaking. The court held that that the Staggers Act does not preempt state authority to regulate the abandonment of intrastate spur tracks.

On March 19, 1990, the Supreme Court held that the Wine Train passenger service was exempt from CEQA pursuant to Public Resources Code section 21080(b)(10),[4] an express statutory exemption that applies to projects for the institution of passenger service on rail rights-of-way already in use. (Napa Valley Wine Train v. Public Utilities Commission (1990) 50 Cal.3d 370, 383.) Accordingly, the court annulled D.88-07-019. The court noted that the case also involved a jurisdictional dispute between the ICC and the Commission, and that the ICC was reconsidering its decision at the time the court's opinion was filed. However, the court stated that, to resolve this case, the court did not need to resolve the jurisdictional conflict. "Even if the PUC had the power to regulate Wine Train's passenger service, the passenger-service exemption would

[4] Formerly Public Resources Code section 21080(b)(11).

nevertheless make CEQA inapplicable." (Napa Valley Wine Train v. Public Utilities Commission, supra, 50 Cal.3d at p. 373, fn. 2.)[5]

On May 10, 1990, in response to the Supreme Court ruling, Assembly Member Hansen proposed a bill that would abrogate the court's decision. A.B. 4370, also known as the "Hansen Bill," was signed into law on September 30, 1990. The Hansen Bill added section 21080.4 to the Public Resources Code, which abrogated the Supreme Court ruling by stating that CEQA applies to the Wine Train and that the Commission is the lead agency.

In May 1990, the consulting firm of Earth Metrics completed a draft environmental impact report ("EIR") that was initiated pursuant to the limited settlement agreement. Comments on the EIR raised issues about the adequacy of the EIR.[6]

On July 18, 1991, the ICC reversed its prior rulings regarding the Wine Train. Again, the Commission participated in that proceeding. The Commission argued that the Wine Train's passenger service is wholly intrastate and that the Stagger's Act does not preempt California's authority to regulate the Wine Train's passenger service. (See Opening Statement of the Public Utilities Commission of the State of California, Finance Docket No. 31156, filed May 24, 1990.) The ICC held that the Wine Train's passenger operations are essentially intrastate, and that its freight operations do not make its intrastate passenger operations subject to ICC jurisdiction. The ICC also noted that, just as states could regulate the discontinuance of passenger trains, they might also regulate the commencement of intrastate passenger trains as well as other aspects of service. However, the ICC stated that whether state approval is needed to start up passenger operations is a question for the CPUC and the California courts to

[5] Because the Limited Settlement Agreement called for an environmental review of the Wine Train's passenger operations, such review proceeded in spite of the Supreme Court ruling.

[6] There were questions regarding the credibility of the environmental document because Earth Metrics was paid by and reported directly to the Wine Train.

decide. (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1991) 7 I.C.C.2d 954, 1991 ICC LEXIS 195, *31, fn. 38.)

In July 1991, the Commission and the Wine Train signed a Memorandum of Understanding with the Wine Train regarding a second EIR. The second EIR was to be prepared by the consulting firm of Environmental Science Associates. In August 1991, CACD formed a Technical Advisory Committee ("TAC") of responsible agencies (including St. Helena, the Town of Yountville, and the City and County of Napa) and interested parties to provide input on the EIR. Although this was not required by CEQA, the TAC was formed to allow interested parties greater participation in the EIR process. The TAC met monthly during the period of the preparation of the EIR.

On July 21, 1993, the Commission certified a final EIR ("FEIR") for the Wine Train project. (See City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.93-07-046] (1993) 50 Cal.P.U.C.2d 377, 50 Cal. PUC LEXIS 566.) Among other things, the preferred alternative in the FEIR contemplated that the Wine Train would stop at stations along the way.

Three years after the FEIR had been certified, on June 19, 1996, the Commission approved the project and ordered the Wine Train to comply with extensive mitigation measures. (City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.96-06-060] (1996) 66 Cal.P.U.C.2d 602.) In that decision, the Commission specifically addressed the issue of state versus local jurisdiction. ALERT, a coalition formed by complainants, had recommended that language be included in the decision on the respective role of state and local authorities. The Commission stated: "We declare the interurban operation of the Wine Train between Napa and St. Helena, including the stops provided in the Proposed Project, to be one of statewide, rather than merely municipal concern." (D.96-06-060, 66 Cal.P.U.C.2d at p. 610.)

Relying on Harbor Carriers, Inc. v. City of Sausalito (1975) 46 Cal.App.3d 773 and Orange County Air Pollution Control District v. Public Utilities Commission (1971) 4 Cal.3d 945, the Commission further stated:

> [W]e view our authority in this proceeding as concurrent with that of any local agency affected by operation of the Wine Train. That is, we may approve this project pursuant to CEQA, . . . with the expectation that a local agency may impose reasonable local ordinances, such a relate to building code restrictions; but such local agency (municipality or otherwise) may not deny the Wine Train the right to perform such operations or stops.

(D.96-06-060, 66 Cal.P.U.C.2d at p. 610.)

On rehearing, the Commission addressed ALERT's contention that the Commission had erred in asserting paramount jurisdiction over the Wine Train. In a detailed discussion of jurisdictional principles, the Commission once again concluded that "the stops connected with the Wine Train are a matter of statewide concern." (City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.96-11-024] (1996) 69 Cal.P.U.C.2d 243, 245.) The Commission then clarified its prior decision by replacing the above-quoted paragraph with the following:

> Considering the Harbor Carriers decision, we view our authority in this proceeding as paramount to that of any local agency affected by operation of the Wine Train. However, local agencies may exercise concurrent jurisdiction over the Wine Train's operations to the extent that that regulation is not inconsistent with the holdings of the Commission.

(Id. at 246.)

On January 14, 1999, St. Helena filed a complaint with the Commission (C.99-01-020) alleging that the Wine Train was not operating as a public utility pursuant to Public Utilities Code section 212, and that, even if the Wine Train were to operate in the manner authorized by the Commission in D.96-06-060 and D.96-11-024, it would not be a public utility. According to the

complaint, the Wine Train was demanding that the city approve a proposed train station in St. Helena on the ground that the city was preempted by authority of the Commission. St. Helena objected to the proposed station, based on the negative impacts it would have on St. Helena. On August 6, 1999, the Commission dismissed the complaint on the basis that St. Helena was seeking an advisory opinion. (See City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.99-08-018] (1999) 1999 Cal. PUC LEXIS 515.) St. Helena then filed an application for rehearing of D.99-08-018, which is still pending.[7]

On September 16, 1999, St. Helena filed a petition for modification of D.96-11-024, which is the focus of the instant decision. The specific modifications requested by St. Helena actually modified both D.96-06-060 and D.96-11-024. St. Helena's petition asked the Commission to declare that Wine Train's passenger service is not "transportation" under Public Utilities Code section 211 and, thus, the Wine Train is not a public utility under section 216. St. Helena also urged the Commission to delete language in the 1996 decisions relating to the Commission's "paramount jurisdiction," to state that the Commission's authority is limited to the role of lead agency for purposes of environmental review, and to conclude that local agencies have paramount jurisdiction. (See D.01-06-034, mimeo, at pp. 3-4.)

On June 19, 2001, we issued D.01-06-034. Although we found that St. Helena failed to make a case that the underlying facts had changed in any material way, we modified prior decisions in this case based, in large part, on our decision in Re California Western Railroad, Inc. [D.98-01-050] (1998) 78 Cal.P.U.C.2d 292, 1998 Cal. PUC LEXIS 189.[8] We declared that the Wine Train's passenger service is not public utility transportation. In addition, we

[7] We expect to rule on that application in the near future. However, we note that St. Helena makes essentially the same argument in its complaint that it makes in its petition to modify, i.e., that the Wine Train is not operating as a public utility.

[8] D.98-01-050 held that the California Western Railroad's excursion service, known as the "Skunk Train," was not a public utility.

modified D.96-11-026 and D.96-06-060 to indicate that local agencies may exercise concurrent jurisdiction over the Wine Train's operations. (See D.01-06-034, mimeo, at pp. 17-18.)

On July 19, 2001, the Wine Train filed the instant application for rehearing of D.01-06-034. St. Helena filed its response on August 3, 2001.

II. DISCUSSION

A. Whether the Commission's 1996 Decision Approving the Wine Train and Ordering Mitigation Was Dependent on the Wine Train's Public Utility Status

At the outset, we will address an issue that, although referenced only briefly by the parties, is significant to our regulation of the Wine Train. In D.01-06-034, we stated that, according to St. Helena, the issue of the Commission's jurisdiction over the Wine Train as a public utility "was immaterial to D.96-06-060, which was predicated on the Commission environmental review authority pursuant to Public Resources Code Section 21080.4." (D.01-06-034, mimeo, at p. 9, quoting St. Helena's Reply Brief, filed Aug. 31, 2000, at p. 2, fn.1.) While we did not expressly adopt that argument, the decision appears to assume that, even if our assertion of jurisdiction over the Wine Train as a public utility was erroneous, we still had authority to approve the project pursuant to CEQA. Upon further analysis, we now conclude that approval of the project and the mitigation measures adopted D.96-06-060 were and are dependent on the Wine Train's public utility status. This is based on the language of the Hansen Bill, its legislative history, the statutory framework of CEQA, and the history of this case.

The Hansen Bill amended the CEQA statute as follows:

> (a) Notwithstanding paragraph (10) of subdivision (b) of Section 21080, this division applies to a project for the institution of passenger rail service on a line paralleling Sate Highway 29 and running from Rocktram to Krug in the Napa Valley. With respect to

> that project, and for the purposes of this division, the Public Utilities Commission is the lead agency.
>
> (b) It is the intent of the Legislature in enacting this section to abrogate the decision of the California Supreme Court "that Section 21080, subdivision (b)(11), exempts Wine Train's institution of passenger service on the Rocktram-Krug line from the requirements of CEQA" in Napa Valley Wine Train, Inc. v. Public Utilities Com., 50 Cal. 3d 370.
>
> (c) Nothing in this section is intended to affect or apply to, or to confer jurisdiction upon the Public Utilities Commission with respect to, any other project involving rail service.

(Pub. Resources Code § 21080.4.)

The Hansen Bill expressly states that the intent of the legislature in enacting the bill was to abrogate the decision of the California Supreme Court in Napa Valley Wine Train v. Public Utilities Commission, supra.[9] The Supreme Court determined that the Wine Train project was exempt from CEQA pursuant to Public Resources section 21080(b)(10), a statutory exemption for passenger rail service, and did not reach the jurisdictional issue. Thus, the purpose of the bill was to make CEQA applicable to the Wine Train. However, the language of the bill does not indicate any clear intent to confer jurisdiction on the Commission.

Moreover, it is well established that CEQA does not grant an agency new powers independent of the powers granted by other laws. "CEQA is intended to be used in conjunction with discretionary powers granted to public agencies by other laws. . . . CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws." (CEQA Guidelines § 15040(a) and

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[9] This is also supported by the bill's legislative history. (See, e.g., Assembly Committee on Natural Resources, June 18, 1990 hearing, at p. 1 ["According to the author's office, this bill has been introduced to overturn a state Supreme Court decision . . . wherein the court found that a project called the Napa Valley Wine Train was exempt from CEQA."].)

(b).) As stated in Friends of Davis v. City of Davis (2000) 83 Cal.App.4th 1004, 1014-1015:

> The Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the ordinance rather than vice versa. . . . The Guidelines note that CEQA does not grant an agency new powers independent of the powers granted by other laws. [Citation.] Rather, the exercise of an agency's authority under a particular law must be within the scope of the agency's authority provided by that law and must be consistent with express or implied limitations provided by other laws.

CEQA only applies to "discretionary projects proposed to be carried out or approved by public agencies." (Pub. Resources Code § 21080(a).) Thus, unless a government agency has independent discretionary powers over a project, CEQA is not applicable. Although the agency with primary responsibility for carrying out or approving the project is usually designated as the lead agency, such designation does not bestow any approval authority on the agency. Rather, the lead agency designation is a result of the agency's approval authority. "A lead agency is the California government agency that has the principal responsibility for carrying out or approving a project and therefore the principal responsibility for preparing CEQA documents." (CEQA Deskbook, 1999 Edition, at p. 13. Emphasis added.)

This interpretation of CEQA is supported by the Supreme Court's decision in Napa Valley Wine Train v. Public Utilities Commission, which states that the reason complainants asked the Commission to assert jurisdiction was "to fulfill a statutory predicate for ordering the Wine Train to comply with CEQA." (Napa Valley Wine Train v. Public Utilities Commission, supra, 50 Cal.3d at p. 375, fn. 6.) Although Public Resources Code section 21065 sets out a broad definition of the term "project," "no statutory provision makes CEQA's substantive provisions applicable to a private project unless the project is to be 'approved by [a] public agenc[y].' " (Napa Valley Wine Train v. Public Utilities

Commission, supra, 50 Cal.3d at p. 375, fn. 6, quoting Pub. Resources Code § 21080(a).) As applied here, CEQA would not be applicable to the Wine Train project at all if the Commission did not have some discretionary authority to approve the Wine Train's proposed passenger service.

Because the Hansen Bill was enacted as an amendment to the CEQA statute, it is not reasonable to interpret it as implicitly granting the Commission jurisdiction over the Wine Train, the authority to approve the Wine Train, or the authority to order mitigation. If the Legislature had intended to grant the Commission jurisdiction over the Wine Train, it could have done explicitly in an amendment to the Public Utilities Code.

B. Whether the Decision Violates Public Utilities Code Section 1705 By Making Findings For Which There Is No Substantial Evidentiary Support

Wine Train contends that the decision violates Public Utilities Code section 1705 by making findings for which there is no substantial evidentiary support. In particular, Wine Train objects to the decision's findings that the Wine Train's passenger service does not constitute point-to-point transportation between cities, the Wine Train's passenger service cannot be distinguished from the Skunk Train, and the public utility purpose of the proposed St. Helena station is de minimus.

We find some merit to the Wine Train's argument. The decision concludes, "St. Helena has failed to make a case that the underlying facts have changed in any material way." (D.01-06-034, mimeo, at p. 8.) The proposed project approved by the Commission in D.96-06-060 contemplated operations between Napa and St. Helena, with stops in North Napa, Yountville, Rutherford and St. Helena. (D.96-06-060, 66 Cal. P.U.C.2d at p. 607.) The Commission also declared "the interurban operation of Wine Train between Napa and St. Helena, including the stops described in the Proposed Project, to be one of statewide,

rather than merely municipal concern." (D.96-06-060, 66 Cal. P.U.C.2d at pp. 610, 631, Finding of Fact No. 8.)

The environmentally preferred alternative was a phased project, beginning with four trains per day[10] and implementation of winery stops along the right-of-way and a minimum of one up-valley stop, with shuttle service to wineries." (D.96-06-060, 66 Cal. P.U.C.2d at p. 608.) That alternative was responsive to surveys indicating that winery visitors and train riders would use the train and shuttles as their means of travel in and around Napa Valley if the train were allowed to stop up-valley. According to the FEIR, the phased project would allow testing of the Wine Train as a mode of transportation, "which can best be tested after up-valley stops are implemented." (FEIR, Vol. I, March 1993, at p. S-7.) The phased project "would allow train operations to increase as monitoring information substantiates that impacts do not exceed thresholds of significance established in the EIR . . . ." (FEIR, Vol. I, March 1993, at p. S-7.) In contrast, the FEIR concludes that the limited service under the settlement agreement (three trains a day with no stops) would not have the potential advantage of displacing automobile traffic. (D.96-06-060, 66 Cal. P.U.C.2d at p. 608.)

There is little in the record to support the finding that the proposed project, which contemplated up-valley stops and use of the train as an alternative to automobile travel, is not point-to-point transportation. The decision describes the Wine Train's passenger service as a "round trip excursion service," traveling "from point of departure in a continuous loop back to the same point" (D.01-06-034, mimeo, at pp. 11, 14.) However, as stated above, the proposed project contemplates stops. Moreover, the fact that the Wine Train is described as a recreational, excursion service does not mean that it does not function as a public utility. The Wine Train has always been described as recreational. Indeed, in

[10] The Commission determined that the Wine Train could immediately operate up to five trains a day. (D.96-06-060, 66 Cal. P.U.C.2d at pp. 612, 632, Finding of Fact 14.)

asserting that the Wine Train was not interstate transportation, both the Commission and St. Helena (as well as other local entities and citizen groups) argued before the ICC that the Wine Train was an excursion service for tourists. (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1991) 7 I.C.C.2d 954, 1991 ICC LEXIS 195, *16-*19.) Similarly, the FEIR describes the Wine Train as a "recreational transportation system" that "could serve as an alternative to private automobiles for persons touring the Napa Valley." (FEIR, Vol. I, March 1993, at p. S-3.) The designation of the Wine Train as a recreational excursion service did not preclude the Commission from asserting jurisdiction over it as a public utility in 1988, nor in 1996.

D.01-06-034 is largely based on the finding that the Wine Train's excursion service cannot be distinguished from the Skunk Train in any meaningful way. (D.01-06-034, mimeo, at pp. 11-14, 16, Finding of Fact 1.) We conclude that the record does not support this finding. First, because the application to deregulate the Skunk Train was unopposed, no factual record was developed in that case. (See Re California Western Railroad, Inc. [D.98-01-050] (1998) 78 Cal.P.U.C.2d 292.) Second, as stated above, D.96-06-060 explicitly found that "the interurban operation of Wine Train between Napa and St. Helena, including the stops described in the Proposed Project, to be one of statewide, rather than merely municipal concern." (D.96-06-060, 66 Cal. P.U.C.2d at pp. 610, 631, Finding of Fact No. 8.) There are no such findings in the Skunk Train decision.

Similarly, we find that the record does not support that finding that the public utility purpose of the proposed St. Helena station is de minimus. (See D.01-06-034, mimeo, at pp. 14-15, 16, Finding of Fact 4.) Among other things, this finding ignores the significance of an up-valley stop in the FEIR's designation of the environmentally preferred alternative.

C. Whether Wine Train's Proposed Passenger Service Constitutes Regulated Transportation

The Wine Train contends that the decision violates Public Utilities Code sections 211 and 216 by finding that the Wine Train's passenger service does not constitute regulated transportation. Public Utilities Code section 211 defines a "common carrier" as "every person and corporation providing transportation for compensation to or for the public or any portion thereof," and includes "every railroad corporation . . . operating for compensation with this state." (Pub. Util. Code § 211(a).)[11] Public Utilities Code section 216(a) defines a "public utility" to include "every common carrier, . . . where the service is performed for . . . the public or any portion thereof."

Based on the record before us, we find that there are no grounds for modifying our prior decisions. The proposed Wine Train passenger service, as set forth in the FEIR and approved in D.96-06-060, constitutes point-to-point transportation under Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Commission (1962) 57 Cal.2d 373.[12] Our approval of the project and order concerning mitigation was based on the operation of the Wine Train as a common carrier railroad corporation pursuant to Public Utilities Code section 211 and a public utility pursuant to Public Utilities Code section 216.

[11] "Railroad corporation" includes every corporation or person owning, controlling, operating, or managing "any railroad for compensation within this State." (Pub. Util. Code § 230.)

[12] When the ICC determined that the Wine Train passenger service was intrastate, and thus not subject to federal regulation, it rejected the position that the Wine Train's excursion service is not "transportation" under federal law. Among other things, the ICC noted that opponents of the project "have focused on current operations, not the more expanded service the Wine Train hopes to provide. (Napa Valley Wine Train, Inc. - Pet. for Declaratory Order (1991) 7 I.C.C.2d 954, 1991 ICC LEXIS 195, *18, fn. 23.)

D. Whether the Decision Unlawfully Reverses Prior, Final Adjudicatory Determinations in Violation of Public Utilities Code sections 1708 and 1709

The Wine Train argues that D.01-06-034 unlawfully reverses prior, final adjudicatory determinations and unlawfully gives retroactive effect to such revised findings in violation of Public Utilities Code sections 1708 and 1709.

Public Utilities Code section 1708 provides:

> The Commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Public Utilities Code section 1709 provides: "In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."

The decision analyzes the Commission's authority to modify its prior decisions on the basis of City and County of San Francisco v. Padilla (1972) 23 Cal.App.3d 388 ("Padilla"). According to Padilla:

> Where a court has jurisdiction over the parties and determines that it has jurisdiction over the subject matter, the parties cannot collaterally attack the judgment on the ground that the court did not have jurisdiction over the subject matter, unless the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond its jurisdiction.

(Padilla, supra, 23 Cal.App.3d at p. 399, quoting Restatement of Judgments,§ 10.) However, because the Commission has continuing jurisdiction to modify its decisions pursuant to Public Utilities Code section 1708, Padilla is not applicable. As stated by the California Supreme Court:

> It is true that the commission's decisions and orders ordinarily become final and conclusive if not attacked

> in the manner and within the time provided by law. [Citations.] This is not to say, however, that such a decision is res judicata in the sense in which that doctrine is applied in courts. [Citations.] The commission has continuing jurisdiction to rescind, alter or amend its prior orders at any time.

(Sale v. Railroad Commission (1940) 15 Cal.2d 612, 616 [interpreting the predecessor to Public Utilities Code section 1708].) Under the same reasoning, section 1709 does not apply when the Commission modifies its own decisions. Rather, section 1709 gives conclusive effect to final Commission decisions in subsequent court proceedings.[13]

The Commission's authority to modify its decisions is discretionary. We have previously stated that nothing in the language of section 1708 prohibits the Commission from revisiting either a legislative or adjudicatory decision, if justified by the circumstances. (See, e.g., Re United Parcel Service, Inc. [D.97-04-049] 71 Cal.P.U.C.2d 714, 720, petition for writ of review denied in Todd-AO Corporation v. Public Utilities Commission, August 20,1997, S061412 [Commission reversed original decision after Supreme Court had denied writ where issue was pending in federal court].) However, the Commission has viewed its authority restrictively, particularly in the case of adjudicatory decisions.

Prior decisions have concluded that, absent extraordinary circumstances, Public Utilities Code section 1708 does not permit the Commission to modify quasi-judicial decisions. (See, e.g., Golconda Utilities Company (968) 68 Cal.P.U.C. 296; Laguna Hills Water Company (1980) 3 Cal.P.U.C.2d 373; Application of PG&E Co. (1980) 4 Cal.P.U.C. 139.) Even in cases involving the Commission's quasi-legislative power, the Commission has stated that it may only modify or rescind a decision if (1) new facts are brought to the attention of the

[13] A number of Commission decisions analyze petitions to modify on the basis of section 1709. However, because section 1708 gives the Commission authority to modify its decisions, a Commission determination to give conclusive effect to a prior decision is more accurately analyzed as an exercise of the Commission's discretion, rather than as an act mandated by section 1709.

Commission, (2) conditions have undergone a material change, or (3) the Commission proceeded on a misconception of law or fact. (See, e.g., Application of So. Pac. Co. 70 Cal.P.U.C.150, 1969 Cal. PUC LEXIS 436; Cal. Manufacturers Assn. v. Cal. Trucking Assn. (1971) 72 Cal.P.U.C. 442; Winton Manor Mutual Water Co. v. Winton Water Co. (1978) 84 Cal.P.U.C. 645.)

D.01-06-034 concludes that St. Helena has failed to make a case that the underlying facts have changed in any material way. (D.01-06-034, mimeo, at p. 8.) Nevertheless, that decision modified our 1996 decisions, largely based on our decision in Re California Western Railroad, Inc. (1998) 78 Cal.P.U.C.2d 292, in which we found that the "Skunk Train" is not public utility. We now believe that that decision was in error and not based on the record in this case. Moreover, we recognize that the Wine Train has relied on the Commission's 1996 decisions, which approved the Wine Train's passenger service, on the condition that the Wine Train complied with numerous measures to mitigate potential environmental impacts. (See D.96-06-060, 66 Cal.P.U.C.2d 633, Ordering Paragraph 1.)

Finally, we note that St. Helena was one of the parties that initiated the complaint against the Wine Train. In 1988, St. Helena claimed that the Wine Train's proposed passenger service was subject to the Commission's regulatory jurisdiction. (Napa Valley Wine Train v. Public Utilities Commission, supra, 50 Cal.3d at p. 375.) St. Helena specifically alleged that the Wine Train was a common carrier and a public utility pursuant to Public Utilities Code section 216. St. Helena asserted that the Wine Train was subject to CEQA pursuant to Rule 17.1 of the Commission Rules of Practice and Procedure, which applies to CEQA projects "for which Commission approval is required by law." St. Helena also contended that the Wine Train was violating various provisions of the Public Utilities Code, the Commission Rules of Practice and Procedure, CEQA, and the Federal Railroad Safety Act ("FRSA"). (See Complaint for Violations of Public Utilities Codes, etc., filed by City of St. Helena, et al., March 7, 1988, at pp. 7-10;

see also City of St. Helena, et al. v. Napa Valley Wine Train, Inc. [D.88-07-019] (1988) 28 Cal. P.U.C.2d 352, 1988 Cal. PUC LEXIS 364, *5.)

III. CONCLUSION

For all of the foregoing reasons, we do not believe that St. Helena's petition provides justification for reopening this case. Therefore, we will grant the Wine Train's application for rehearing of D.01-06-034 and will deny St. Helena's petition. Furthermore, we do not intend to revisit the issue of the public utility status of the Wine Train. However, on our own motion, we will hold further proceedings[14] to give St. Helena the opportunity to specify the particular relief it seeks, other than modifying the public utility status of the Wine Train, and to demonstrate whether there is any justification for reopening this case and/or modifying our prior decisions.[15]

The assigned ALJ shall direct St. Helena, and the Wine Train, if applicable, to file a statement of issues for possible consideration at this stage of the proceeding. Such issues may include (1) whether there is any justification for modifying the 1996 decisions, (2) whether the environmental documents in this case should be updated, (3) whether there are any changed circumstances that warrant revisiting the scope of the Wine Train's project, including the St. Helena station, and/or (4) whether the practices or facilities of the Wine Train should be reviewed pursuant to Public Utilities Code sections 761 and 762. The parties shall be given the opportunity to respond to any statement of issues filed by an opposing party. The assigned ALJ shall then determine whether the designated issues justify further proceedings and the scope of any such proceedings.

[14] "Further proceedings" do not necessarily mean further evidentiary hearings. Written filings may be sufficient to resolve the disputes in this case.

[15] The usual procedure in a case such as this would be to simply deny St. Helena's petition for modification and to put the burden on St. Helena to return to the Commission with a revised petition or complaint. However, we have already dismissed a complaint by St. Helena and are now denying St. Helen's petition for modification. Under these circumstances, we believe it is appropriate to give St. Helena an opportunity to demonstrate whether good cause exists for reopening this case without additional procedural steps.

Therefore **IT IS ORDERED** that:

1. Rehearing of Decision 01-06-034 is granted.
2. St. Helena's petition for modification of Decision 96-11-024 is denied.
3. Further proceedings will be held on the Commission's own motion to give St. Helena the opportunity to specify the particular relief it seeks, other than modifying the public utility status of the Wine Train, and to demonstrate whether there is any justification for reopening this case and/or modifying our prior decisions.
4. The assigned ALJ shall direct the parties to file a statement of issues for possible consideration at this stage of the proceeding and shall allow responses to such filings. Such issues may include (1) whether there is any justification for modifying the 1996 decisions, (2) whether the environmental documents in this case should be updated, (3) whether there are any changed circumstances that warrant revisiting the scope of the Wine Train's project, including the St. Helena station, and/or (4) whether the practices or facilities of the Wine Train should be reviewed pursuant to Public Utilities Code sections 761 and 762.
5. The assigned ALJ shall determine whether and to what extent the parties' filings demonstrate the need for further proceedings.

This order is effective today.

Dated January 16, 2003 at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
Commissioners

I abstain.

/s/ SUSAN P. KENNEDY
Commissioner