Decision 03-10-024 October 2, 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 MODIFYING DECISION 03-01-042 AND DENYING REHEARING

In Decision ("D.") 03-01-042, the Commission granted an application for rehearing of D.01-06-034 filed by the Napa Valley Wine Train, Inc. ("Wine Train"). In D.01-06-034, the Commission had granted the City of St. Helena's ("St. Helena's") request to modify 1996 decisions dealing with the Commission's jurisdiction over the Wine Train (D.96-06-060 and D.96-11-024). The Commission concluded in D.01-06-034 that, in providing passenger services, the Wine Train was not a public utility. In response to the Wine Train's application for rehearing, the Commission reversed D.01-06-034, thus leaving intact the public utility status of the Wine Train's passenger services, and the Commission's jurisdiction over those services.

On February 18, 2003, St. Helena filed the instant application for rehearing of D.03-01-042. St. Helena states that, although it would not normally apply for rehearing of a decision granting rehearing, it is doing so in this case

because the decision denies St. Helena's petition for modification. St. Helena contends that the decision errs because (1) the conclusion that the Wine Train is a public utility is contrary to law and (2) the decision contains no findings of fact or conclusions of law as required by Public Utilities Code section 1705. On March 4, 2003, the Wine Train filed a response to the application for rehearing. The Wine Train asserts that the claims made by St. Helena are without merit.

We have reviewed each and every allegation of error raised in the application for rehearing and are of the opinion that St. Helena has not demonstrated good cause for rehearing. However, we will modify D.03-01-042 to include findings of facts and conclusions of law on the denial of St. Helena's petition for modification.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. 1988 to 1996

This proceeding began on March 7, 1988, when 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"). 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 services.

(City of St. Helena v. Napa Valley Wine Train, Inc. [D.88-04-015] (1988) 1988 Cal. PUC LEXIS 217.)[1]

On July 8, 1988, the Commission issued a decision holding that the Wine Train's passenger service was subject to the Commission's jurisdiction with respect to economic, safety and environmental matters. (City of St. Helena 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. (D.88-07-019, 1988 Cal. PUC LEXIS 364, at p. *17.)

The Wine Train appealed the Commission's decision to the California Supreme Court.[2] On March 19, 1990, the Supreme Court held that the Wine Train's passenger service was exempt from CEQA pursuant to Public Resources Code section 21080, subdivision (b)(10), 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.

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[1] During this same period, the Interstate Commerce Commission ("ICC") (now the Surface Transportation Board) was considering whether the Commission's regulation was preempted by federal law. Ultimately, the ICC held that the Wine Train's passenger operations are essentially intrastate. For a complete discussion of the background of this case, including the ICC proceeding, see D.03-01-042 at pp. 2-10.

[2] 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 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 report on those services, regardless of the outcome of the court case. (See Limited Settlement Agreement, dated August 23, 1989, at p. 13.)

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.

On July 21, 1993, after the preparation of two environmental impact reports ("EIRs"), the Commission certified a final EIR ("FEIR") for the Wine Train project. (See City of St. Helena v. Napa Valley Wine Train, Inc. [D.93-07-046] (1993) 50 Cal.P.U.C.2d 377.) Among other things, the preferred alternative in the FEIR contemplated that the 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 v. Napa Valley Inc. [D.96-06-060] (1996) 66 Cal.P.U.C.2d 602; 1996 Cal. PUC LEXIS 776.) 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 as 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, "the stops connected with the Wine Train are a matter of statewide concern." (City of St. Helena 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 p. 246.)

B. 1999 to Present

On January 14, 1999, St. Helena filed a complaint with the Commission (C.99-01-020) alleging that the Wine Train is 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 ground that St. Helena was seeking an advisory

opinion. (See City of St. Helena 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.

On September 16, 1999, St. Helena filed a petition for modification of D.96-06-060 and D.96-11-024. St. Helena's petition asked the Commission to declare that the 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, the Commission issued D.01-06-034. The decision reversed the position the Commission had taken on jurisdictional issues relating to the Wine Train since 1987 -- a position that the Commission advocated before the ICC, the DC Circuit Court of Appeals, and the California Supreme Court. The decision found that St. Helena failed to make a case that the underlying facts had changed in any material way. Nevertheless, relying in large part on the Commission's decision in the Re California Western Railroad, Inc. [D.98-01-050] (1998) 78 Cal.P.U.C.2d 292; 1998 Cal. PUC LEXIS 189,[3] the decision declared that the Wine Train's passenger service was not public utility transportation. In addition, the decision deleted the ordering paragraph in D.96-11-024 that clarified that the Commission had "paramount jurisdiction" over the Wine Train and modified the jurisdictional language in D.96-06-060. (See D.01-06-034 at pp. 17-18.)

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

On July 19, 2001, the Wine Train filed an application for rehearing of D.01-06-034 alleging legal error in the decision on a number of grounds, including the public utility status of the Wine Train. St. Helena responded that the Wine Train is not a public utility and that its claims of legal error are without merit.

In D.03-01-042, the Commission granted Wine Train's application for rehearing and reversed D.01-06-034. The Commission denied St. Helena's petition for modification, but determined that further hearings should be held to give St. Helena the opportunity to specify the particular relief it seeks, other than modifying the public utility status of the Wine Train.

On February 18, 2003, St. Helena filed the instant application for rehearing of D.03-01-042.

II. DISUSSION

A. Whether Maintaining the Public Utility Status of the Wine Train Is Contrary to Law

St. Helena contends that the decision errs in concluding that the Wine Train is a public utility. In support of this contention, St. Helena argues that the Wine Train's operations are indistinguishable from other excursion trains, sightseeing vessels, and sightseeing buses. On the contrary, as we pointed out in D.03-01-042, the record in this case does not support the determination made in D.01-06-042 that the Wine Train's operations are indistinguishable from other non-public utility excursion services. That is precisely the reason we reversed D.01-06-042. (D.03-01-042 at pp. 13-15.)

St. Helena did not present any new facts regarding the Wine Train's passenger operations. The proposed project that Commission approved in 1996, as reflected in the FEIR (certified in D.93-07-046), and as authorized by D.96-06-060 and D.96-11-024, is not the same as California Western Railroad's excursion service known as the "Skunk Train." The Wine Train project envisioned up-

valley stops and connections with buses that would transport passengers to wineries and other points of interest. Moreover, the environmental documents indicated that the environmentally preferred alternative was a phased project, beginning with four trains per day, with winery stops along the way and at least one up-valley stop, with the potential advantage of displacing automobile traffic.

The main similarity between the Wine Train and other excursion services is that they all may fairly be designated as a "recreational" services. That fact alone, however, is not dispositive of public utility status. Prior cases on this issue also include an analysis of whether the transportation in question involves a continuous loop or a round trip, as compared to point to point transportation. (See, e.g., Re California Western Railroad, Inc. (1998) 78 Cal.P.U.C.2d 292; Western Travel Plaza, Inc. (1981) 7 Cal.P.U.C.2d 128; and Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Commission (1962) 57 Cal.2d 373.)[4] Here, the 1996 decisions indicate that the project as approved would involve point to point transportation.

St. Helena further alleges that in D.03-01-042 (at page 16), the Commission simply deems the Wine Train to constitute transportation, and does not distinguish between the Wine Train's service and any other excursion service. St. Helena ignores the fact that D.03-01-042 maintains the status quo that existed prior to St. Helena's petition for modification, which was based on the record in this case from its inception through the 1996 decisions. The issue here is whether St. Helena has presented any facts demonstrating that the proposed Wine Train project is so similar to other excursion services that, as a matter of law, the Commission does not have jurisdiction over the Wine Train's passenger services. St. Helena has not done so.

[4] In the Skunk Train case, the Commission found that even though the train did not transport people in a continuous loop, the operation was comparable to excursion buses or boats. (Re California Western Railroad, Inc., supra, at p. 295.)

St. Helena criticizes the reasoning of the decision in a number of other respects. In particular, St. Helena disputes that relevance of footnote 12 in D.03-01-042, which states that the ICC determined in 1991 that the Wine Train's future operations would constitute "transportation" under federal law. St. Helena argues that the ICC could not have contemplated the Wine Train's operations as constrained by D.96-06-060. St. Helena further contends that the Commission repeats this "legal error" on page 19 of D.03-01-042 when it notes that St. Helena originally asserted in 1988 that the Wine Train was a public utility. (See St. Helena's Application for Rehearing at p. 4.) St. Helena contends that it is irrelevant whether the Wine Train's operations in 1988, or 1991, would have constituted public utility activities. St. Helena continues: "What matters is whether the Wine Train's operations as authorized by D.96-06-060 constitute public utility activities." (St. Helena's Application for Rehearing at p. 4.)

While St. Helena is technically correct that the most pertinent decisions are those made in 1996, there is nothing to show that the nature of the Wine Train's passenger service changed over the years. It was always considered to be "recreational." Nevertheless, no party or agency suggested that the Wine Train was not a regulated entity until St. Helena filed its complaint in 1999 (C.99-01-020).

After noting that D.03-01-042 concludes that St. Helena failed to establish grounds for a petition for modification, St. Helena states: "In effect the Commission is saying that there is no remedy for its legal error in deeming the Wine Train a public utility." (St. Helena's Application for Rehearing at p. 4.) St. Helena points to its complaint, filed in 1999, which alleged that the Wine Train was not operating as a public utility. (See C.99-01-020.) That complaint was dismissed on the ground that St. Helena was seeking an advisory opinion. (D.99-08-018 at p. 6.) Thus, St. Helena complains that the Commission apparently

believes that the jurisdictional issue cannot be raised by complaint or by petition for modification.

The issue of the dismissal of St. Helena's complaint is addressed in our order disposing of St. Helena's application for rehearing of D.99-08-018, that we are also issuing today. Regarding the petition for modification, even when St. Helena was granted the relief it was requested, in D.01-06-034, the Commission found that St. Helena had failed to make a case that the underlying facts had changed in any material way (D.01-06-034 at p. 8) and had failed to establish the factual predicate for granting a petition for modification (D.01-06-034 at p. 16, Conclusion of Law No. 1). In D.03-01-042, the Commission simply reiterates that finding. In any event, St. Helena was permitted to raise the jurisdictional issue and the Commission addressed the merits of that issue in both D.01-06-034 and D.03-01-042.

B. Whether the Decision Errs in Failing to Include Findings of Fact and Conclusions of Law

St. Helena alleges that the decision errs in failing to include findings of facts and conclusions of law as required by Public Utilities Code section 1705. Section 1705 provides that a decision issued after a hearing "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."

Decisions on applications for rehearing do not generally require findings of fact and conclusions of law. However, in this case, as St. Helena argues, the decision granting rehearing also denied St. Helena's petition for modification. Thus, in reversing the original decision granting the petition for modification, the decision disposes of the petition. While we do not necessarily conclude that findings of fact and conclusions of law are required under these circumstances, we have decided that we should modify D.03-01-042 to include such findings and conclusions.

III. CONCLUSION

For all of the foregoing reasons, the Commission should deny rehearing, but modify the decision to include findings of fact and conclusions of law on the denial of St. Helena's petition to modify the 1996 Wine Train decisions.

Therefore **IT IS ORDERED** that:

1. D.03-01-042 is modified by adding the following text at the end of the section entitled "Conclusion" on page 20:

Findings of Fact

1.) The Wine Train's proposed project that we authorized in D.96-06-060 and D.96-11-024 included at least one up valley stop.

2.) The Final Environmental Impact Report for the project indicated that the environmentally preferred alternative was a phased project, beginning with four trains per day, with winery stops along the way and at least one up-valley stop, with the potential advantage of displacing automobile traffic.

3.) According to D.96-06-060 and D.96-11-024, the Wine Train's passenger service is regulated transportation and the Wine Train is functioning as a public utility.

4.) St. Helena has failed to demonstrate that the underlying facts have changed in any material way, nor that the Wine Train is pursuing a project different from the one we approved in 1996.

5.) St. Helena has not presented facts showing that the Wine Train's passenger service is indistinguishable from the Skunk Train.

6.) The Commission's authority to reverse prior decisions is governed by Public Utilities Code section 1708.

Conclusions of Law

1.) The adoption of D.96-06-060 and D.96-11-024, and the imposition of mitigation measures, was dependent on the public utility status of the Wine Train's passenger service.

2.) Section 1708 is an exception to the doctrine of res judicata and allows us to modify our prior decisions.

3.) Our authority to modify decisions under section 1708 is discretionary.

4.) In the case of adjudicatory or quasi-adjudicatory decisions, upon which parties have relied to their detriment, our prior cases indicate that we will not modify such decisions absent a showing extraordinary circumstances, changed facts or circumstances, or where we have proceeded under a misconception of law.

5.) St. Helena has failed to establish the factual predicate for a petition for modification under Rule 47(b) of the Commission's Rules of Practice and Procedure.

6.) St. Helena has failed to establish grounds for modifying D.96-06-060 and D.96-11-024, which were based on the status of the Wine Train as a regulated public utility under Public Utilities Code sections 211 and 216.

7.) St. Helen's petition for modification should be denied.

2. St. Helena's application for rehearing of Decision 03-01-042, as modified, is denied.

This order is effective today.

Dated October 2, 2003 at San Francisco, California.

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
Commissioners

President Peevey reserves the right to file a dissent.

/s/ MICHAEL R. PEEVEY
President

Commissioner Kennedy reserves the right to file a dissent.

/s/ SUSAN P. KENNEDY
Commissioner

Commissioners Susan P. Kennedy and Michael R. Peevey, dissenting:

We are voting no on these items because we believe the Commission has no business regulating the Napa Valley Wine Train. And that's because we're in the business of regulating transportation, not amusement park rides.

The Napa Valley Wine Train is entertainment; it is recreation; it is a tourist attraction -- it is not real point-to-point transportation. Customers of the Napa Valley Wine Train travel from Point A to Point A, not from Point A to Point B. Customers never get off the train, from the moment they board until the moment they disembark. And when they disembark, they've enjoyed a meal and some beautiful California scenery, and are at exactly the same spot where they began their ride a few hours earlier.

Much like our jurisdiction over hot air balloons, our jurisdiction over the Napa Valley Wine Train defies common sense. In 1990, legislation was enacted (AB 4370-Hansen)amending the Public Resources Code to designate this Commission as lead agency for the preparation of an environmental impact report on the proposed Wine Train project. This measure clearly refrained from designating the Wine Train as a public utility. We completed the EIR and thereby facilitated the construction of this tourist attraction. Our work is done. To the extent rail safety concerns arise, or the possibility of this project providing bona fide passenger service comes to fruition, we have ample jurisdiction to handle those eventualities without insisting that the Wine Train is now a public utility. In our view, for issues of local impact, such as construction of stations along the line that allow tourists to embark or disembark, local jurisdictions should have the strongest voice in determining what further operations the Wine Train may engage in.

Just because the precursor of this Commission is the Railroad Commission doesn't mean that we should regulate what is essentially a restaurant on wheels.

/s/ SUSAN P. KENNEDY
Susan P. Kennedy
Commissioner

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Commissioner

San Francisco, California
October 2, 2003