

Decision No. 40836

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF VERNON, Complainant

v.

SOUTHERN PACIFIC RAILROAD COMPANY,  
Defendant.

Case No. 4909

ORIGINAL

ORDER OF DISMISSAL

On August 4, 1947 the City of Vernon filed a pleading, in the form of an application, requesting that Southern Pacific Railroad Company be ordered to change and rebuild the grade of its roadbed, tracks and other structures and facilities in Alameda Street, so that the entire width of that street in Vernon can be paved and used for vehicular traffic. The pleading was docketed as a complaint and a copy forwarded to defendant, in accordance with Rule 13 of the Commission's procedural rules. (California Administrative Code, Title 20, Sec. 13.)<sup>(1)</sup>

(1) "13. Procedure Upon Filing of Complaint. Upon the filing of a formal complaint, the Commission shall immediately mail a copy thereof to each defendant. This copy shall be sent by way of information only, and each defendant shall be allowed five days within which to point out to the Commission in writing such defects in the complaint as, in the opinion of the defendant, require amendment. The Commission will then give consideration to the defects, if any, so enumerated.

Trivial defects shall be disregarded. Should the Commission, however, be of the opinion that the defects brought to its attention are so vital that the complaint should be amended, the Commission will require the complainants to amend the complaint.

Wherever the Commission is of the opinion that the complaint is sufficient, it shall formally serve a copy thereof upon each defendant, requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten days from the date of service of such order, provided that the Commission may, in particular cases, require the answer to be filed within a shorter time."

According to the allegations of the complaint "Wolfskill Lane", now Alameda Street, has been a dedicated highway since 1869, in which year defendant's predecessor commenced an action to acquire an easement along that street. Commissioners appointed by the court found that plaintiff was entitled to use for railroad purposes a thirty-foot strip of land along that street, and such report was confirmed and ordered recorded by the presiding judge in August of 1869.

The complaint alleges on information and belief that neither the State, the county, nor any municipality was made a defendant or had any judgment or decree entered against it taking or condemning any right for the purpose of vesting an easement for railroad purposes, and that neither Southern Pacific Railroad Company nor its predecessor ever applied for or obtained a franchise along Alameda Street.

It is alleged that after the City of Vernon was incorporated in 1905, portions of Alameda Street were paved and curbed; that the street has become congested because of increased volume of vehicular traffic; and that the City Council of the City of Vernon has adopted a resolution declaring that public interest and necessity require that the entire width of Alameda Street in Vernon should be paved and used for vehicular traffic. As heretofore indicated, the complaint requests an order requiring defendant to change and rebuild the grade of its roadbed, tracks and other structures and facilities.

Counsel for defendant submitted a statement of alleged defects, taking the position that the complaint contains no allegations showing jurisdiction in the Commission to make the requested order, and pointing out certain other alleged defects.

On September 11, 1947 a copy of the statement of alleged defects was forwarded to counsel for complainant, who was advised that Commission consideration of a possible dismissal would be delayed for fifteen days, in order that complainant might reconsider the

pleading, and indicate whether complainant desired to file an amended complaint or to rely upon the present pleading. The Commission has received no reply to that communication, and an amended complaint has not been filed.

Under section 60 of the Public Utilities Act, a complaint may be made "setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission; \* \* \*."

The complaint does not allege a violation of any statute or of any rule or order of the Commission. Nor are there any allegations showing that the Commission has jurisdiction to make the requested order. Questions relating to title to property or right of way, the necessity of obtaining franchises, or the validity or effect of the 1869 court proceedings, involve legal questions which must be determined by some tribunal other than the Commission.

Good cause appearing, IT IS ORDERED that the complaint in Case No. 4909 is hereby dismissed for failure to state a cause of action within the jurisdiction of the Commission.

Dated, October, California, this 21st, day of October, 1947.

James D. Huls  
Justice F. Cravens  
R. E. Duggan  
Kenneth Patten  
Commissioners