

Decision No. 73430**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of San Jose, a municipal corporation of the State of California, for permission to construct a public street at grade across existing tracks of the Southern Pacific Company's E X Line in a location west of Monterey Road and south of existing Hillsdale Avenue.

Application No. 48699
(Filed August 10, 1966)

ORDER OF DISMISSAL

By this application, as amended, the City of San Jose (City) seeks authority to construct a public crossing over the Lick Branch of Southern Pacific Company (Southern Pacific). The location of the proposed crossing is in the southeastern portion of said city, south of Capitol Expressway, and about one and one-half miles from the junction of the branch with Southern Pacific's Coast main line.

On August 16, 1966, the Commission's staff forwarded a copy of the application to Southern Pacific's general manager with a request for the company's views concerning the proposal. On November 2, 1966, Southern Pacific advised the Commission it found it necessary, for stated reasons, to oppose the application. The matter was then scheduled for public hearing, to be held on February 16, 1967.

On January 27 and February 2, 1967, City requested a continuance for cogent reasons, to April 25, 1967, which was granted. On April 14, 1967, City requested that the matter be removed from the Commission's calendar to permit further exploration of the possibility of agreement with Southern Pacific which would render public

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hearing unnecessary. The request was granted. Letters were received from City on June 16 and July 19, 1967, indicating that negotiations were still in progress.

On September 15, 1967, the Commission informed City that unless the latter advised the Commission not later than October 10, 1967 that:

- (1) the parties had reached an agreement, Southern Pacific had withdrawn its objection to the proposal and decision in the matter might be issued without hearing, or
- (2) the parties had been unable to reach an agreement and the Commission was requested to again schedule the matter for public hearing, or
- (3) the parties had been unable to reach an agreement and the Commission was requested to dismiss the application,

it would be assumed that City did not desire to pursue the matter further and Application No. 48699 would be subject to dismissal for lack of prosecution.

On September 19, 1967, City, through its city attorney, responded as follows:

"I have been informed that we are in a position to execute an agreement covering the above matter as soon as it is forwarded to us from the Southern Pacific Company. In the event that an impasse over the agreement occurs, the City would, of course, wish to proceed with a hearing."

No further advice in the premises has been forthcoming from City since receipt of the quoted letter.^{1/}

It is obvious from the foregoing recital that the Commission has been more than reasonable in granting extensions of time to applicant to enable it to reach an agreement with Southern Pacific

^{1/} On September 15, 1967, City filed an amendment to its application. In the amendment the technical description of the proposed crossing area was revised, but no substantial change in the crossing location appears to be involved.

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regarding the proposed grade crossing. The terms of our letter of September 15, 1967 have not been met. The application should be dismissed for lack of prosecution. When City shall have either reached an agreement with Southern Pacific or indicated that it is ready to proceed to hearing it may file a new application.

IT IS ORDERED that Application No. 48699 is dismissed for lack of prosecution.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 31 day of DECEMBER, 1967.

[Signature]
President

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Commissioners