

ORIGINAL

Decision No. 74048

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California Department of Public Works for an order authorizing the temporary alteration of two crossings at grade and construction of a crossing at separated grades whereby State Route 4-SC1-280 will be carried under tracks of the SOUTHERN PACIFIC COMPANY in the CITY OF SAN JOSE, herein referred to as "Virginia Street Underpass.")

Application No. 48797
 Filed September 19, 1966;
 Amended January 18, 1967.

ORDER GRANTING MOTION TO STRIKE INTERROGATORIES
 AND DENYING MOTION FOR ORDER TO REQUIRE ANSWERS
 TO INTERROGATORIES

On February 20, 1968 the State of California Department of Public Works (Department) filed copies of the 532 interrogatories submitted by mail to Southern Pacific Company on February 19, 1968. In response thereto Southern Pacific Company, on March 4, 1968, filed its "Motion to Strike Interrogatories and in the Alternative, Objections to Interrogatories." On March 11, 1968 Department filed its "Motion for Order to Require Answers to Interrogatories, Supporting Declaration, and Memorandum of Points and Authorities In Opposition to Southern Pacific Company's Motion to Strike Interrogatories and, in the Alternative, Objections to Interrogatories."

At the opening of the hearing in this matter at San Jose on March 12, 1968 counsel for Southern Pacific and the Department presented oral argument directed to the aforesaid interrogatories.

and motions.¹ On March 22, 1968, pursuant to permission granted by the examiner at the hearing, Southern Pacific Company filed its "Memorandum of Points and Authorities in Opposition to Motion for Order to Require Answers to Interrogatories."

Section 1701 of the Public Utilities Code provides that all hearings, investigations and proceedings shall be governed by Division 1, Part 1, of the Code and by Rules of Practice and Procedure adopted by the Commission. Nowhere in the applicable sections of the Code nor in the Commission's Rules of Practice and Procedure is there provision for the serving or filing of written interrogatories. Section 1794 of the Code provides for the taking of depositions. It appears that such of the information sought by Department as may be readily available might be obtained by the taking of a deposition as provided in that section.

IT IS ORDERED that:

1. The motion of Southern Pacific Company to strike the interrogatories filed on February 20, 1968 by the State of California Department of Public Works is granted.

¹ By ex parte Decision No. 72179, dated March 21, 1967, Department was authorized to construct the underpass proposed in this proceeding. The decision stated that Southern Pacific and Department were not in agreement as to apportionment of the cost of maintaining the underpass structure and that such cost would be apportioned by further order of the Commission. Subsequent negotiations failed to result in agreement and the matter was scheduled for hearing to receive evidence on the question of apportionment. Hearings were held before Examiner Bishop in San Jose on March 12-15, 1968, inclusive. Adjourned hearings are scheduled for May and June.

2. The motion of the State of California Department of Public Works for an order to require Southern Pacific Company to answer said interrogatories is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 30th day of APRIL, 1968.

John E. Mitchell
President

William L. Simons, Jr.

Augusta

Fred P. Morrisey
Commissioners

Commissioner William Simons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.