

ORIGINAL

Decision No. 78144

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of the COUNTY OF FRESNO OF THE)
 STATE OF CALIFORNIA to the Public)
 Utilities Commission of the State)
 of California for an order directing)
 The Atchison, Topeka and Santa Fe)
 Railway Company to place communi-)
 cation facilities underground at)
 the Palm Avenue Crossing of said)
 company's track in the vicinity of)
 Mile Post 2-1001.9, County of)
 Fresno, State of California.)

Application No. 52035
 (Filed July 14, 1970)

Floyd R. B. Viau, for County of Fresno, applicant.
Robert B. Curtiss, for The Atchison, Topeka and
 Santa Fe Railway Company, protestant.
Daniel E. Gibson, for Pacific Gas and Electric
 Company; Louis Possner, for the City of Long
 Beach, interested parties.
Timothy E. Treacy, Counsel, for the Commission
 staff.

O P I N I O N

On March 17, 1970 the Board of Supervisors of the County of Fresno (County) passed and adopted a resolution which created Fresno County Underground Utility District No. 2 (District). The effect of District is to require that all utilities along Palm Avenue between Dakota and Shaw Avenues, a distance of approximately 1.51 miles, be placed underground.

Following the adoption of the resolution creating District The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) filed a lawsuit against County (Fresno County Superior Court Case No. 145533), asking for declaratory relief and for an injunction. A preliminary

injunction was entered in the lawsuit by stipulation enjoining the enforcement of the resolution and ordinance against Santa Fe during the pendency of the lawsuit.

On July 14, 1970, County filed the above-captioned matter.

On August 21, 1970 Santa Fe filed a motion to dismiss the matter which contained 6 items any one of which according to Santa Fe merits dismissal but giving consideration to all 6 items calls overwhelmingly for dismissal.

Public hearing was held at San Francisco on August 27, 1970 before Examiner Gillanders.

In his opening statement, counsel for Santa Fe renewed his motion to dismiss. After hearing the opening statements of the other parties, the Examiner denied the motion to dismiss.

Applicant presented three witnesses who gave testimony and presented a total of 10 exhibits. These witnesses were cross-examined by the parties and applicant rested its case.

At this point, Santa Fe renewed its motion for dismissal. Santa Fe claimed that the evidence shows that the street widening program for Palm Avenue could go forward without Santa Fe complying with the resolution including it within District; that the street can be widened; that there are no poles within the road right-of-way; and that leaving the pole in place would not hold up the project. Santa Fe reiterated its position that this matter is not the proper proceeding in which this Commission should issue an order which is bound to have a broad precedent effect as against not only the Santa Fe but also the other railroads in California.

County resisted the motion to dismiss and asked that the matter be resolved.

Staff counsel stated that the staff believed very strongly that this Commission has jurisdiction in this matter on the basis of aesthetics alone and that the Commission has made itself quite clear on that in the past in matters involving electric and communication facilities. The staff asked that the record be developed and a decision rendered either directing Santa Fe to underground its facilities in this proceeding or that on the basis of the facts undergrounding is not warranted in this case.

In answer to staff counsel, Santa Fe stated it believed that if undergrounding of railroad communication facilities was to be ordered such order should only be handed down after hearings in an investigation on the Commission's own motion in which all of the railroads in California are respondents and all of the cities and counties are respondents.

Having heard the testimony, seen the exhibits, and listened to the arguments, the Examiner took the renewed motion under submission for review by the Commission.

Findings and Conclusions

The Commission finds that:

1. It has jurisdiction in this matter.
2. The street widening program for Palm Avenue can go forward without Santa Fe complying with the resolution of County including it within District.
3. Palm Avenue can be widened.
4. There are no Santa Fe owned poles within the road right-of-way at the location in question.
5. Leaving the existing pole within the borders of District in place would not hold up the project.

6. Applicant utterly failed in its burden of proving that the pole and wires in question are more aesthetically unpleasing or unsafe than those it has recently allowed to be placed in other portions of Palm Avenue.

Based upon the above findings, we conclude that we should not exercise our jurisdiction in this proceeding and that the matter should be dismissed.

O R D E R

IT IS ORDERED that Application No. 52035 is dismissed.

Dated at San Francisco, California, this 5th
day of JANUARY, 1977.

[Signature] Chairman
William J. [Signature]
[Signature]
Vernon L. [Signature]
Commissioners