

ORIGINAL

Decision No. 81955

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, for authority to construct, have constructed, maintain and operate a lead track and spur track across Derian Avenue in the City of Irvine, County of Orange, State of California.

Application No. 54069  
(Filed May 29, 1973)

O P I N I O N

Applicant railroad seeks an order of the Commission authorizing the construction, at grade, of a lead track and spur track across Derian Avenue in the city of Irvine, county of Orange.

Attached to the verified application, as Exhibit C, is an Environmental Impact Report, Negative Declaration, which applicant states is filed pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure promulgated in Decision No. 81237, Case No. 9452.

Applicant has misconstrued Rule 17.1. The guidelines for implementing the California Environmental Quality Act of 1970 set forth by the Resources Agency define a Negative Declaration as a statement by the public agency that will approve a project.<sup>1/</sup> Rule 17.1, republished by Decision No. 81484 in the above case, provides that where the Commission is the lead agency, and a

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<sup>1/</sup> Guidelines, Sec. 15033. "Negative Declaration. Negative declaration means a statement by the public agency that will carry out or approve a project that a project, although not categorically exempt, would not have a significant effect on the environment and therefore does not require an EIR. The term 'Exemption Declaration' is interchangeable with the term 'Negative Declaration'."

proponent of a project seeks a Negative Declaration, it should be done by filing a motion.<sup>2/</sup> Where a new street crossing by a transportation utility is proposed, the Commission is the lead agency (Rule 17.1(n)(B)(2)). We will consider Exhibit C as if it were a motion made as provided for under the rules and will deny it. We will also refund the \$500 filing fee made under Rule 17.1.

The staff examined the site of the proposed lead and spur track crossing of Derian Avenue since the Commission is the lead agency, and submitted its report thereon August 9, 1973. According to the staff report, the proposed construction is located within the Irvine Industrial Complex and is in an area zoned for industrial development. Derian Avenue, at the location of the proposed crossing, is open to traffic and is fully paved to a width of 44 feet with curbs and gutters in place. A lead track and a spur track cross the street. The spur is not connected to trackage on either side of Derian Avenue since this leads to a presently undeveloped industrial area in the northeast quadrant of the crossing. A second spur, in the southeast quadrant, is connected to the lead track crossing Derian Avenue and has been installed to serve a new industry, Royalty Carpet Mills, Inc., whose building is complete and is in operation. Construction of another industrial building is underway in the southwest quadrant. There are no improvements at present in the remaining two quadrants. There are, however, a number of other crossings in the industrial zoned area providing rail service to various industries.

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2/ Rule 17.1(e) "Motions. (2) A proponent of a project within the purview of CEQA which is the subject of a proceeding before the Commission or any party may file in such proceeding the following motions:

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- (E) A motion to determine whether or not, where the Commission is the lead agency, a Negative Declaration rather than an EIR should be issued in the proceeding."

Approximately two train movements per day, on average, will be made Monday through Friday over the proposed crossing. Similar train operations already exist at the other crossings in the area. Traffic flow on Derian Avenue will be interrupted only during short periods of time.

Applicant states that the proposed tracks are required in order to provide rail service to Royalty Carpet Mills and a developing area which is part of the Irvine Industrial Complex. It is also stated that a separation of grades is not practicable. A map and profile of Division Engineer's Drawing No. L-4-32417 dated May 14, 1973, was attached as Exhibit A to the application.

A copy of Permit Number 35455-E, dated May 22, 1973, issued by the Orange County Road Department, acting on behalf of the city of Irvine was filed with the application. The permit grants authority to the applicant to excavate, fill, or obstruct a county highway.

Notice of the application was published in the Commission's Daily Calendar on May 31, 1973. No protest has been received. A public hearing is not necessary.

It is apparent from the staff's report that the proposed crossing has been installed. While we do not condone such action, under the circumstances, it appears that approval of the action, ex post facto, is in the public interest. However, applicant is placed on notice that such action in the future will not be condoned without prior authorization of justification.

#### Findings

1. The request is in the public interest and the Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

2. Applicant should be authorized to construct a lead track and spur track, at grade, in accordance with the plan set forth in the application.

3. Construction and maintenance of the lead track, spur track, crossing, and installation of the protection should be borne by applicant.

4. In view of Finding No. 1, a \$500 filing fee is not required under Rule 17.1.

We conclude that the application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The Atchison, Topeka and Santa Fe Railway Company is authorized to construct, maintain, and operate across Derian Avenue in the city of Irvine, county of Orange, a lead track and spur track as set forth in its application and the attached Division Engineer's Drawing No. L-4-32417 dated May 14, 1973.

2. The crossing, to be identified as Crossing No. 2-181.66-C, shall be protected by two Standard No. 8 flashing light signals (General Order No. 75-C). Width of the crossing shall not be less than 44 feet. Finished grades of approach shall conform to the existing roadway. Crossing construction shall be equal or superior to Standard No. 2 (General Order No. 72-B). Clearance, including any curbs, shall conform to General Order No. 26-D. Walkways adjacent to the crossing shall conform to General Order No. 118.

3. Applicant shall bear all construction and maintenance costs of the project.

4. Within thirty days after completion, pursuant to this order, applicant shall so advise the Commission, in writing. This authorization shall expire if not exercised within two years unless time be extended or if the above conditions are not complied with. This authorization may be revoked or modified if public convenience and necessity, or safety so require.

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5. The motion considered herein is denied.

6. The Secretary is directed to return the \$500 fee paid by applicant.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 2nd day of OCTOBER, 1973.

William S. Quous, Jr. President  
[Signature]  
[Signature]  
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.