

Decision No. 82043**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Southern Pacific Transportation
Company for authority to relocate
passenger station, to remove exist-
ing passenger station building and
appurtenances from public service
and replace with new passenger
station building, to extend and
modify passenger station tracks,
and to remove several tracks and
discontinue crossing watchmen at
Crossing E-0,13, Fourth Street,
at San Francisco, California.

Application No. 53498

Harold S. Lentz, Attorney at Law, for Southern Pacific
Transportation Company, applicant.

Mrs. Joyce Reese, for Holly O'Konski, President of
League of Women Voters of The Bay Area; J. L. Evans,
for United Transportation Union California Legal
Board; Robert M. Holstein, Attorney at Law, for
United Transportation Union; and David W. Jones,
Gordon Lewin, Christopher Lovelock, and Carl Smith,
for Peninsula Commute and Transit Committee;
protestants.

Robert C. Levy, for City and County of San Francisco,
Department of Public Works; Melvin R. Dykman,
Attorney at Law, for State of California, Department
of Public Works; Walter Stall, for Metropolitan
Transportation Commission; and Philip Bruce Rafal,
for Supervisor Ronald Pelosi; interested parties.

Lionel B. Wilson, Attorney at Law, for the Commission
staff.

ORDER RESCINDING DECISION NO. 81448
AND GRANTING HEARING

On August 3, 1973, Southern Pacific Transportation Company (SP) filed Application No. 53498 seeking authority from this Commission to relocate its San Francisco passenger station from Third Street to Fourth Street. Service of this application and an amendment thereto was made on the City and County of San Francisco and on the State of California, Department of Public Works. In addition, pursuant to a letter from the Commission dated November 16, 1972, Appendix A hereto, numerous other governmental agencies and persons were given notice of the application, and their comments were invited. No unfavorable comments were received as a result of this letter, and none of the addressees requested a hearing. The Commission did receive correspondence from individual patrons of applicant expressing concern over various aspects of the proposal.

On March 27, 1973 the Commission issued its ex parte opinion and order approving the relocation (Decision No. 81188, Commissioner Moran dissenting), effective as of the date of signing. It recited that no protests had been received and found that a public hearing was not necessary.

A petition for rehearing was filed on April 6, 1973 on behalf of Peninsula Commute and Transit Committee (Peninsula) raising objections to the relocation proposal, and asserting lack of notice of the application as a reason for not having protested earlier.

SP moved to strike and dismiss the petition for rehearing. This motion was denied and the petition for rehearing was granted by Decision No. 81448, dated May 30, 1973 (Commissioners Sturgeon and Vukasin dissenting).

On June 20, 1973, SP moved to dismiss the petition and for an order annulling and setting aside Decision No. 81448. Argument on this motion, as well as a prehearing conference, was held on June 28, 1973.

For the reasons stated herein the Commission is of the opinion that Decision No. 81448 was an improper grant of rehearing, that Decision No. 81448 must be rescinded, and that Decision No. 81188 must remain in full force and effect.

The basic law governing this Commission's power to grant rehearings is found in Section 1731 of the Public Utilities Code, which is quoted in part:

"After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear"
(Emphasis added)

Section 1731 gives the Commission the discretion to grant or deny a petition for rehearing, but does not provide any discretion on the part of the Commission as to who may file such a petition. Under Section 1731, rehearing may only be sought by "...any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected,...."

Peninsula was not a "party to the action or proceeding", since it made no effort to intervene, protest, or ask for a hearing and did not formally notify the Commission of its position in opposition to the application until after the issuance of Decision No. 81188, which granted the application ex parte.

Peninsula's assertion that it had no notice of the application provides no legal standing for its subsequent petition for rehearing. Such basis could only be derived from a duty on the part of someone to provide notice to Peninsula. No such duty exists.

Actual notice and a copy of the application was sent to the State of California, Department of Public Works, whose plans for a freeway link were directly affected, and to the City and County of San Francisco, within whose boundaries the existing and proposed station are located. The Commission sent out notices of the

application to every city and county through which the trains originating and terminating at the San Francisco terminal pass, as well as to the Boards of Supervisors of the affected counties, the railroad unions concerned, the State Transportation Board, the Metropolitan Transportation Commission, and the Association of Bay Area Governments, (Appendix A). More than four months elapsed between the mailing of this notice and the issuance of Decision No. 81188 which granted the application to relocate.

Further notice of the filing of the application was provided by publication in the Commission's daily calendar, which is reprinted in the legal periodicals.

Peninsula is not by Constitution, statute or Commission rules entitled to either personal notice or a hearing on SP's request for authorization to relocate its San Francisco terminal. In Wood v. Public Utilities Commission (1971) 4 Cal. 3d 288, appeal dismissed, 404 US 391 (1971), certain ratepayers contended that the Commission's authorization, without notice or hearing, of various utilities' credit rules violated due process. This Court held:

"The adoption of the rules in this way did not violate due process and was authorized by the statutes and regulations governing the Commission's procedures.

"In adopting rules governing service and in fixing rates, a regulatory commission exercises legislative functions delegated to it and does not, in so doing, adjudicate vested interests or render quasi-judicial decisions which require a public hearing for affected ratepayers.
(citation omitted)

"Thus, in Public Utilities Com'n of State of Cal. v. United States (9th Cir. 1966) 356 F. 2nd 236, 241, certiorari denied 385 U.S. 816 ... [t]he court stated that 'Public utility regulation, historically, has been a function of the legislature; and the prescription of public utility rates by a regulatory commission, as the authorized representative of

the legislature, is recognized to be essentially a legislative act. [citation omitted] As a ratepayer would have no constitutional right to participate in a legislative procedure setting rates, this right to be heard in a commission proceedings exists at all only as a statutory and not a constitutional right.'" (4 Cal. 3d at 292.)

While the issue in Wood, supra, was credit rules and rates, rather than service and facilities, the same rules of law apply. The legislature has prescribed no requirement that ratepayers be personally notified of a change in facilities or service. Similarly, the Commission's Rules of Practice and Procedure are silent on this subject.

Peninsula makes no allegation that it is a "stockholder or bondholder" of SP's so as to come within the ambit of Section 1731. An assertion that Peninsula is "peculiarly interested" in SP because of its ratepayer relationship must fail, since the California Supreme Court has already decided the meaning of this term contrary to this position. In Jameson v. Pub. Util. Com., S.F. 22845, (January 15, 1972), the Court denied a petition for writ of review by a ratepayer of The Pacific Telephone and Telegraph Company who asserted that his status as ratepayer brought him within the class of one "peculiarly interested" in a utility. The Commission had dismissed his petition for rehearing for lack of standing under Section 1731. Pacific Telephone, D.79189 (1971). Denial of a petition for writ of review of a Commission opinion is a decision on the merits. People v. Western Airlines, Inc., 42 C.2d 621, 630 (1954); So. Calif. Edison v. Railroad Com., 6 C.2d 737, 747 (1936). Since Peninsula does not qualify as a person entitled to file a petition for rehearing under Section 1731, the Commission's Decision No. 81448 was in error and must be rescinded.

Although Peninsula may not file a petition for rehearing of Decision No. 81188 for the reasons previously expressed, it is not without a remedy. Section 1708 of the Public Utilities Code provides:

"The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision."

Under this Section a person who did not seek intervention in a proceeding before the Commission may apply to the Commission for an order rescinding, altering, or amending a Commission decision.

Pellandini v. Pacific Limestone Products, Inc., 245 C.A.2d 744

(1966). In Decision No. 81448 the Commission stated that good cause had been shown to grant a petition for rehearing. While that decision was improper because of the lack of standing of Peninsula under Section 1731, the reasons prompting the Commission to exercise its discretion under Section 1731 are equally valid in prompting us to grant a hearing under Section 1708 to determine whether the order in Decision No. 81188 should be rescinded, altered or amended.

IT IS ORDERED that:

1. Decision No. 81448, granting rehearing of Decision No. 81188, is hereby rescinded.
2. Peninsula's petition for rehearing of Decision No. 81188 is hereby received as a petition under Section 1708 of the Public Utilities Code requesting that the Commission rescind, alter, or amend Decision No. 81188
3. Peninsula's petition, as received, is hereby granted.
4. Decision No. 81188 has not been stayed and will not be stayed by this order. Immediate hearings will be held on the issues raised in Peninsula's petition. All persons wishing to participate in the hearings are cautioned that hearings may be scheduled on less than ten days notice.

5. The burden of proving that a decision of the Commission should be rescinded, altered, or amended, pursuant to Section 1708, is on the proponents of this action.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 24th day of OCTOBER, 1973.

Vernon L. Stinson
President
William Lyons - Jr.
J. P. Johnson
[Signature]
[Signature]
Commissioners

COMMISSIONERS
DR. STURGEON, PRESIDENT
VILLIAM BYMONS, JR.
J. P. YUKASIN, JR.
THOMAS MORAN
D. W. HOLMES



DRESS ALL COMMUNICATIONS
TO THE COMMISSION
CALIFORNIA STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102
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2641

Public Utilities Commission

STATE OF CALIFORNIA

November 16, 1972

FILE NO. A.53498

This refers to Application No. 53498, by the Southern Pacific Transportation Company for authority to relocate the San Francisco passenger station from Third to Fourth Streets on Townsend Street. The request was filed with the Commission on August 3, 1972 and an amendment filed on September 28, 1972.

Should you have any comments, position or representation to make with respect to this matter, an early reply would be appreciated.

If you require copies of the application and its amendment they may be requested from:

Harold S. Lentz
Assistant General Attorney
Southern Pacific Transportation Company
One Market Street
San Francisco, CA 94105

Yours very truly,

PUBLIC UTILITIES COMMISSION

By *William R. Johnson*
WILLIAM R. JOHNSON, Secretary

A.53498

San Francisco
November 16, 1972
File No. A.53498

Copies of the attached letter were sent to the following:

Town of Atherton
Town Hall
94 Ashfield Road
Atherton, CA 94025

City of Belmont
City Hall
1365 5th Avenue
Belmont, CA 94002

City of Burlingame
City Hall
501 Primrose Road
Burlingame, CA 94010

City of Menlo Park
City Hall
1683 Sixth Street
Menlo Park, CA 93640

City of Millbrae
City Hall
621 Magnolia Avenue
Millbrae, CA 94030

City of Redwood City
City Hall
Middlefield Road & Jefferson Ave.
Redwood City, CA 94063

City of San Bruno
City Hall
567 El Camino Real
San Bruno, CA 94066

City of San Carlos
City Hall
666 Elm
San Carlos, CA 94070

City of San Mateo
City Hall
330 West 20th Avenue
San Mateo, CA 94403

City of South San Francisco
City Hall
400 Grand Avenue
South San Francisco, CA 94082

Board of Supervisors
San Mateo County
Hall of Justice and Records
401 Marshall Street
Redwood City, CA 94063

City of Mountain View
City Hall
540 Castro Street
Mountain View, CA 94040

City of Palo Alto
City Hall
250 Hamilton
Palo Alto, CA 94303

City of San Jose
City Hall
First and Mission Streets
San Jose, CA 95112

City of Santa Clara
City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

City of Sunnyvale
Library Building
665 West Olive Avenue
Sunnyvale, CA 94086

Board of Supervisors
Santa Clara County
Room 524, County Admin. Building
70 West Hedding
San Jose, CA 95110

Association of Bay Area
Governments
Claremont Hotel
Berkeley, CA 94705

A.53498

Metropolitan Transportation Comm.
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