

Decision No. 82584

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 existing 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
(Filed August 3, 1972)

Additional Appearances

Donald Q. Miller, for himself, protestant.
Thomas M. O'Connor, City Attorney, and
Robert Laughead, for the City and County
of San Francisco; Sara Conner, for League
of Women Voters Bay Area; Michael A.
Willemssen, Attorney at Law, Myron L.
Lambert, David W. Jones, Barry D. Hovis,
Attorney at Law, and John Horan for
Peninsula Commute and Transit Committee;
Bruce A. Miller, for himself; and Gordon,
Welton & Holstein, by Philip R. Weltin,
for U.T.U., interested parties.

O P I N I O N

On August 3, 1972, 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 ex parte Decision No. 81188 approving the relocation, effective as of the date of signing. It found that no protests had been received and found that a public hearing was not necessary. Thereafter a petition for rehearing was filed on April 6, 1973 by Peninsula Commute and Transit Committee (Peninsula) objecting to the relocation proposal 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.

On June 28, 1973 oral argument was held on SP's motion for an order annulling and setting aside Decision No. 81448.

In Decision No. 82043 dated October 24, 1973, the Commission found that under Section 1731 of the Public Utilities Code Peninsula did not qualify as a party to file a petition for rehearing of Decision No. 81448 and therefore that decision must be rescinded. However, the Commission accepted the Peninsula petition under Section 1708 as a request that the Commission rescind, alter, or amend Decision No. 81188 and granted a hearing for that purpose. Decision No. 82043 further provided that (1) Decision No. 81188 not be stayed, (2) that immediate hearings be held on the issues raised by Peninsula, and (3) that the burden of proof to rescind, alter, or amend Decision No. 81188 is on the petitioner.

Hearing was held before Commissioner Vukasin and Examiner Banks on November 12, 1973 in San Francisco.

In its petition to rescind, alter, or amend, Peninsula alleged that it was denied due process, that there are relevant factors not known or present at the time of filing of Application No. 53498, that there is not sufficient reason for relocation of the station at this time, and that there will be an adverse effect on the environment if commuters drive to work rather than avail themselves of the SP commute service.

Peninsula presented the direct testimony of four witnesses to sustain its position.

Under subpoena Mr. W. M. Jaeckle, vice president - engineering and research of SP, testified that the alternatives available to SP were to spend approximately 4 million dollars on a grade separation or to remove the tracks on Fourth Street and relocate the present station. From an economic view with little inconvenience to its commuter patrons it was determined that the best solution was to move the station one block to the west.

SP's assistant to the chief engineer, Mr. T. H. Kruttschnitt, testified at the request of Peninsula on matters not covered by Mr. Jaeckle. He stated that there would be no interruption of service by the movement of the station and that in his opinion relocating the station would not cause a passenger shift to the automobile resulting in additional air pollution.

The administrative assistant to the president of the Board of Supervisors of the city and county of San Francisco, Mr. B. Raful, offered a resolution introduced by one of the San Francisco supervisors for its consideration. Since no action had been taken on the resolution by the supervisors, its introduction as evidence was objected to and it was placed in the Commission's correspondence file.

Peninsula also presented James Vance, a professor of urban geography at the University of California, Berkeley, who testified that the location of a commuter terminal is important with respect to its utilization by the public and that the sum applicant is required to spend should not override all other considerations. The other considerations are the aesthetic value of the new terminal and the convenience to commuters.

The city and county of San Francisco presented Mr. John Woods, the general manager of the San Francisco Municipal Railway, who testified in support of the application and stated that there would be no change in service to Municipal Railway passengers with the station relocation as proposed and that overall congestion in the immediate area would be reduced.

The city and county of San Francisco also had its traffic engineer, Mr. Richard Evans, testify in support of the application. He stated that the station relocation would allow the city to realign its traffic pattern and thereby improve the traffic flow in all directions in the area.

The State of California, Department of Transportation presented Mr. William Zenoni, the chief of project development for District 4, Department of Transportation, who testified in support of the application. He stated that he was vitally interested in an early resolution since it would allow the completion of an on-ramp to the Interstate 280 Freeway at Fourth Street, effect a savings of several millions of dollars of public funds, and return over one million dollars in property to the San Francisco tax rolls.

The Commission staff presented Alex Lutkus, an associate transportation engineer, who testified that the staff's only objection to the original Commission decision granting the application was that the length of the shelter shed at the proposed new station should have been authorized at 360 feet rather than the 145 feet as proposed by SP.

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". (Decision No. 82043.)

Peninsula's assertion that it had no notice of the application and therefore was not afforded due process is without merit. Such an assertion presumes a duty on someone to provide notice to Peninsula. No such duty exists. However, actual notice and a copy of the application were 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 stations are located. The Commission also sent notices of the application to every city and county traversed by trains originating and terminating at the San Francisco terminal, as well as the affected county Boards of Supervisors, the railroad unions concerned, the State Transportation Board, the Metropolitan Transportation Commission, and the Association of Bay Area Governments. More than four months elapsed between the mailing of this notice and the issuance of Decision No. 81188.

It may well be that relevant factors now exist that were not present at the time of filing the application; however, a mere allegation without evidence is not in itself justification to rescind, alter, or amend the order. Peninsula presented no such evidence.

With respect to sufficient reasons for relocation of the station at this time, Decision No. 81188 recognized that new Freeway 280 was located near the station and that Fourth Street had been selected as a freeway on-ramp and overpass. With the present terminal location, commuter trains virtually close Fourth Street during substantial portions of the day. The present traffic is diverted over an undedicated roadway during these periods and crossing protection is provided by flagmen. That method of operation would be insufficient for the additional traffic generated by the freeway structure.

Two methods of dealing with this problem were considered by the Commission: an elevated structure which combined the overpass on-ramp with a crossing separation, or moving the station back one block, effectively eliminating the Fourth Street crossing. The Commission selected the latter alternative, at which time the Department of Public Works was free to begin preconstruction on the simpler and less costly structure. We believe that the substantial addition of realty to the San Francisco tax rolls, the easing of traffic congestion on both Third Street and Fourth Street, plus savings to the taxpayer in erecting a grade separation are sufficient reasons for the station's relocation. This does not mean that the Commission favors this location to one more centrally located at or near Market Street but that of the alternatives present the relocation to Fourth Street is the most feasible and practical.

With respect to the environmental argument, it is alleged that any movement of the station will disrupt and have a negative effect on commuters forcing them to seek alternative methods of transportation and thereby create an adverse effect on the environment. We disagree. The alternate suggestion is that each commuter will switch to a private automobile. There is no factual evidence upon which to base such a conclusion.

We do not doubt that Peninsula and its supporters are sincere and well meaning in their opposition to the granting of the application; however, they offer no concrete substitute proposal for the Commission to consider. Their appeal appears to be more emotional and speculative as to the possible effects on the environment. Thus, they did not meet the burden of proof imposed on them in Decision No. 82043 to convince the Commission that Decision No. 81188 should be rescinded, altered, or amended.

It is our opinion that Decision No. 81188 should be affirmed.

Findings

1. By ex parte Decision No. 81188 the Commission authorized SP to relocate its passenger station in San Francisco from Third and Townsend Streets to Fourth and Townsend.
2. On a petition filed by Peninsula, Decision No. 81448 granted a rehearing of Decision No. 81188.
3. Decision No. 82043 rescinded Decision No. 81448 and accepted Peninsula's petition under Section 1708 of the Public Utilities Code as a request that the Commission rescind, alter, or amend Decision No. 81188.
4. Decision No. 82043 provided that Decision No. 81188 not be stayed; that immediate hearings be held on issues raised by Peninsula; and that the burden of proof to rescind, alter, or amend Decision No. 81188 is on Peninsula.
5. SP's application to relocate its passenger station is supported by the San Francisco Municipal Railway, by the traffic engineer of San Francisco, and by the State Department of Transportation.
6. The Commission staff's objection to the application is the proposed length of the sheds at the new location.
7. Relocation of the station will alleviate traffic congestion in San Francisco, especially during commute hours.
8. Relocation will permit the Department of Public Works to begin construction of the new 280 Freeway on-ramp.
9. Relocation will add substantial realty to the San Francisco tax rolls.
10. There is no evidence that relocation will have an adverse effect on the environment.
11. No evidence was produced by petitioner to further delay the relocation of SP's passenger station.
12. No factual basis has been shown for further delay in the Department of Public Works' construction of the proposed freeway access.

13. No alternate relocation proposals to those considered by the Commission in Decision No. 81188 have been suggested by petitioner.

14. Authorization for relocation will not prejudice future consideration of either a Market Street relocation or a joint terminal.

Conclusion

1. Further delay of the relocation authorized by Decision No. 81188 would produce no procedural or substantive benefit to the public.

2. Decision No. 81188 selected the least objectionable way to deal with the conflicts between freeway related traffic and rail commuter operations.

3. Peninsula offered no alternate proposals for the Commission's consideration.

4. The findings and conclusions in Decision No. 81188 should be affirmed.

5. Decision No. 81188 should be affirmed.

O R D E R

IT IS ORDERED that Decision No. 81188 issued March 27, 1973 authorizing Southern Pacific Transportation Company to construct new passenger station building and appurtenances is affirmed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12th day of MARCH, 1974.

Vernon L. Sturgeon
President
William J. Moran
J. William
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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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 Street
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

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

Association of Bay Area Governments
Claremont Hotel
Berkeley, CA 94705

Metropolitan Transportation Commission
Claremont Hotel
Berkeley, CA 94705

Mr. William S. Weber, Executive Secretary
State Transportation Board
P. O. Box 1139
Sacramento, CA 95805

Mr. D. H. Brey, Legislative Representative
Brotherhood of Locomotive Engineers
926 J Street, Room 903
Sacramento, CA 95814

Mr. James E. Howe, State Legislative Director
United Transportation Union
1127 11th Street, Room 558
Sacramento, CA 95814

Mr. J. C. Givens, Division Chairman
Brotherhood of Railway Clerks
760 Market Street, Room 638
San Francisco, CA 94102

APPENDIX A
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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

/s/ WILLIAM R. JOHNSON
WILLIAM R. JOHNSON, Secretary