

Decision No. 82698

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
SOUTHERN PACIFIC TRANSPORTATION)
COMPANY for an order authorizing)
the construction at grade of an)
industrial spur track in, upon and)
across Industrial Avenue west of)
the City of Lincoln, County of)
Placer, State of California.)

Application No. 54532
(Filed December 24, 1973)

O P I N I O N

The SOUTHERN PACIFIC TRANSPORTATION COMPANY seeks an order of the Commission authorizing the construction, at grade, of an industrial spur track across Industrial Avenue in Placer County.

By motion filed pursuant to Rule 17.1(c)(2)(c) of the Commission's Rules of Practice and Procedure, applicant seeks an order from the Commission that the construction of the industrial spur track is a ministerial project as defined in the California Environmental Quality Act and the Guidelines issued by the California Resources Agency and, therefore, exempt from the Environmental Impact Report requirements of the California Environmental Quality Act.

The motion will be denied. The construction of a spur track and new grade crossing are not necessarily ministerial projects as set forth in the Guidelines. Section 15032 of the Guidelines defines that ministerial projects include:

"...projects which are undertaken or approved by a governmental decision which a public officer or public agency makes upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority. With these projects, the officer or agency must act upon

the given facts without regard to his own judgment or opinion concerning the propriety or wisdom of the act although the statute, ordinance, or regulation may require, in some degree, a construction of its language by the officer." (Emphasis added)

The Commission has the jurisdiction and discretion to act with judgment or opinion on matters of railroad crossings at grade. Sections 1201 and 1202 of the Public Utilities Code provides the Commission with the jurisdiction and discretionary powers.

Section 1201 provides:

"No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

(Former Sec. 43(a)." (Emphasis added)

Section 1202 provides:

"The commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa."

By a second motion filed pursuant to Rule 17.1(e) of the Commission's Rules of Practice and Procedure, applicant seeks an order from the Commission that the construction of the industrial spur track is included under the categorical exemptions established in the Guidelines issued by the California Resources Agency.

The motion will be denied. The construction of an industrial spur track and a new grade crossing are not projects included in the categorical exemptions set forth in the Guidelines. Section 15116 of the Guidelines^{1/} provides that the Commission shall list those specific activities under its jurisdiction which fall within each class of exemptions with the caveat that these lists must be consistent with both the letter and the intent expressed in the classes.

^{1/} Guidelines, Art. 2 (Categorical Exemptions) 15116. "Application to Public Agencies. The classes listed in this article are broadly drawn, as are the examples given with each. Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each class, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes."

In promulgating Rule 17.1 we gave specific attention to the matter of grade crossings. The specific categorical exemptions listed in Rule 17.1(m) do not make any reference to the construction of industrial spur tracks or grade crossings. Rather, the reference to grade crossings is limited to alterations of existing crossings.^{2/} The effect of the motion, if granted, would be to add a new categorical exemption.

Pursuant to the requirement of Rule 17.1(n)(1)B2, the staff examined the site of the proposed spur track and crossing and submitted its report thereon.

According to the staff report, the proposed construction lies within an area rapidly changing from open agricultural to an industrial area and is designed to provide rail service to Western Electric Company's new facilities. Industrial Avenue is located northwest of the City of Roseville and runs generally north and south, paralleling State Sign Route 65 and the Southern Pacific Transportation Company's tracks. The north and south ends of Industrial Avenue join State Sign Route 65. The south end is near the underpass Crossing C-108.2-B; the north end is approximately one mile south of Lincoln's city limits. Industrial Avenue at the proposed crossing is an asphalt-concrete two-lane road approximately 24 feet wide. Vehicle speeds on the road ranged from 45 to 55 (formerly 65) miles per hour.

^{2/} Rule 17.1(m), (1)A.5, 6, 7, and (1)B.2.

Traffic safety at the crossing will be provided by Standard No. 9 gate signals. Vehicle emissions should be lowered due to the use of rail service to the warehouse as opposed to all truck service. The proposed crossing will not unreasonably interfere with vehicular traffic on Industrial Avenue. Any additional noise that may be created will not be a significant factor since applicant's main line is in the immediate vicinity of Industrial Avenue. A Formica Plant is located across Industrial Avenue from the Western Electric Company facility.

Applicant states that it is desired to construct the trackage and crossing to serve the Western Electric Company; that because of the existing grade conditions at the project location, installation of an overhead or underground crossing is not practicable. The applicant further states that Western Electric Company is in need of immediate track service and requests waiver of the 20-day waiting period.

A copy of Resolution 73-568, adopted October 23, 1973, by the Board of Supervisors of Placer County authorizing encroachment Permit No. 2976, dated October 23, 1973 was filed with the application. Said permit contains the county's consent for the applicant to construct, maintain, and operate said trackage across Industrial Avenue. The permit also provides for the applicant to assume all construction and maintenance costs.

Notice of the application was published in the Commission's Calendar on December 27, 1973. No protest has been received. A public hearing is not necessary.

F I N D I N G S

1. The request is in the public interest and should be granted.

2. Applicant should be authorized to construct an industrial spur track at grade, across Industrial Avenue in Placer County at the location and in accordance with the plan set forth in the application to be identified as Crossing No. C-112.42-C.

3. Protection should be two Standard No. 9 gate signals (General Order 75-C). The industry to be served requires early rail service. Authority to construct the spur track with interim protection consisting of two Standard No. 1-R signs and protection of all movements by a member of the train crew until the automatic protection can be installed is in the public interest.

4. Construction and maintenance cost of the industrial spur track and installation of the automatic grade crossing protection should be borne by the applicant.

5. Environmental reports were waived by the county due to adopted zoning.

6. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

CONCLUSION

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. Southern Pacific Transportation Company is authorized to construct, maintain, and operate across Industrial Avenue in the County of Placer, an industrial spur track as set forth in its application and the attached print of Sacramento Division Drawing No. S-2351, dated September 14, 1973, as revised October 12, 1973.

2. The crossing, to be identified as Crossing No. C-112.42-C, shall be protected by the installation of two Standard No. 9 automatic gate signals (General Order No. 75-C). 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).

3. Clearances, including any curbs, shall conform to General Order No. 26-D. Walkways adjacent to the crossing shall conform to General Order No. 118.

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

5. Applicant may construct the industrial drill track as authorized herein with interim protection by two Standard No. 1-R crossing signs with all movements over the crossing being protected by a member of the train crew until the installation of the automatic protection.

6. 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 one year unless time be extended or if the above conditions are not complied with. This authorization may be revoked or modified if public convenience necessity or safety so require.

7. The motions made herein by applicant are denied.

8. The Secretary of the Commission shall file a Notice of Determination with the Secretary for Resources and with the planning agencies of any city and county which will be affected by the project.

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

Dated at San Francisco, California, this 3rd
day of APRIL, 1974.

William L. Stearns
President

William J. Quinn

[Signature]

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Commissioners

I obtain

William J. Quinn, Commissioner