

DECISION NO. 82846 CASE NO. _____ APP. NO. 54520

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ORIGINAL

Decision No. 82846

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 drill track and }
an industrial spur track in, upon and }
across Marlborough Avenue in the City of }
Riverside, County of Riverside, State of }
California. }

Application No. 54520
(Filed December 18, 1973)

O P I N I O N

The applicant requests authority to construct, maintain and operate an industrial drill track and an individual spur track in, upon and across Marlborough Avenue in the City of Riverside, County of Riverside.

Applicant has filed a motion, December 18, 1973, pursuant to Rule 17.1(e) 2(A) of the Commission's Rules of Practice and Procedure. Applicant seeks a Commission Order determining that the construction of the industrial drill and spur tracks in and across said Marlborough Avenue is included under the categorical exemptions established in the Guidelines for Implementation of the California Environmental Quality Act of 1970. Article 3 of said Guidelines, as amended December 17, 1973, in Sections 15101 through 15112, sets forth 12 classes of projects to be exempt from the provisions of the Environmental Quality Act of 1970. Construction of a new rail-street crossing does not appear to belong in any of these exempt classes.

Section 15113 of Article 3, Relation to Ministerial Projects reads:

"Section 21080 of the Public Resources Code as added by Chapter 1154, Statutes of 1972, exempts all ministerial projects and activities of public agencies from application of the CEQA. The matter of what is or is not a ministerial project is up to the determination of each public agency, based on an examination of the applicable laws and ordinances."

Since the action which may be exercised by this Commission in response to this application falls outside the scope of Ministerial Project as defined in Section 15032 of said Guidelines, the proposed project should not be construed to be exempt under said Section 15113.

Section 15114 applies location restrictions to the exempt status of certain of the 12 exempt classes and is not applicable to this project. The remaining two sections of said Article 8 require prior Commission action to increase the enumerated exempt classes, and do not apply to this application.

The applicant, by letter to the Public Utilities Commission dated January 17, 1974, forwarded a copy of the November 23, 1973 minutes of the City of Riverside Environmental Protection Commission, said minutes showing that the Environmental Assessment for this project was accepted as submitted.

The application includes a certified copy of a resolution of the City Council granting permission to construct, maintain and operate said tracks.

The applicant states that "it is desired to construct said tracks to serve McKesson Chemical Company". It is an industrial warehouse and the rail connection is necessary to support the business operations of said warehouse.

Applicant also asserts that because of existing grade conditions at this location, installation of an overhead or under-grade crossing is not practicable.

Applicant requests that the proposed crossing be assigned the number P.U.C. BJ-544.91-C and be protected by two P.U.C. Standard No. 3 flashing light signals.

Notice of the application was published in the Commission's Daily Calendar on December 20, 1973, and no protests have been received.

Rule 15(d) of the Commission's Rules of Practice and Procedure states:

"Applications for ex parte action shall set forth the basis for such requests,..."

Although the application does not explicitly meet this rule, such basis may be inferred. Under this circumstance, a public hearing is not necessary.

FINDINGS

After consideration, the Commission finds:

1. The proposed crossing construction is outside the exemptions contained in said Article 8 - Categorical Exemptions, CEQA Guidelines and applicant's motion for categorical exemption should be denied.

2. Environmental Assessments were made by J. F. Davidson Associates for the McKesson Chemical Company and by the City of Riverside Planning Department. The Riverside City Council on December 18, 1973, determined that the above project will have no significant effect on the environment and is thus exempt from the requirement of an Environmental Impact Report.

3. The City states it is the Lead Agency as defined in said Guidelines, Sections 15030 and 15064. The Commission has considered the Negative Declaration in rendering its decision on this project.

The Commission accepts said Negative Declaration and finds that:

- (a) The environmental impact of this proposed action is insignificant.
- (b) The planned construction is the most feasible and economical that will avoid any environmental impact.
- (c) There are no known irreversible environmental changes involved in this project.

4. The construction of said drill track was previously authorized by this Commission in its Decision No. 74774 dated

October 8, 1968, as extended by Decision No. 76542 dated December 16, 1969. The authorization granted expired without having been exercised within the time period given.

5. The proposed construction would not be adverse to the public interest.

6. Southern Pacific Transportation Company should be authorized to construct an industrial drill track and an industrial spur track at grade across Marlborough Avenue in the City of Riverside, County of Riverside, at the location and substantially in accordance with the plan set forth in the application, to be identified as Crossing No. BJ-544.91-C.

7. Construction of the rail crossings should be equal or superior to Standard No. 2 of General Order No. 72-B with tops of rails flush with finished roadway.

8. Width of crossing construction measured at right angles to the street should be not less than 40 feet.

9. Finished grades of approach should conform to the existing roadway.

10. Clearances, including any curbs, should conform to General Order No. 26-D. Walkways should conform to General Order No. 118.

11. Protection, governed by General Order No. 75-C, at the crossing of Marlborough Avenue, should be by two Standard No. 8 flashing light signals.

12. Construction expense of the crossing and installation of automatic protection should be borne by the applicant.

13. Maintenance cost of the crossing within lines two feet outside of rails should be borne by the applicant. Maintenance cost of the automatic protection should be borne by the applicant. Maintenance cost of the crossing outside lines two feet outside of rails should be borne by the City of Riverside.

14. No train, engine or car should be operated over the crossing until the protection ordered herein is installed and operative.

CONCLUSIONS

On the basis of the foregoing findings, we conclude that the application should be granted as set forth in the following Order:

ORDER

IT IS ORDERED that:

1. The application is granted conditioned on the findings and conclusions set forth above.
2. 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 three years unless time be extended or if above conditions are not complied with. Authorization may be revoked or modified, if public convenience, necessity or safety so require.

The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 7th day of MAY, 1974.

President
William J. Sturgeon, Jr.

[Signature]

[Signature]
Commissioners

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

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