

ORIGINAL

Decision No. 83138

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California
Department of Public Works, for an order
for authorization to replace, remodel,
modify, extend or reconstruct 21 existing
grade separation structures and to
construct 3 new structures over and under
the Southern Pacific Transportation
Company's realigned Baldwin Park Branch
Line track, through the cities of
Los Angeles, Alhambra, San Gabriel,
Rosemead, and El Monte, County of
Los Angeles.

Application No. 52968

Anthony J. Ruffolo, George W. Miley, and Melvin R. Dykman,
Attorneys at Law, for California Department of
Transportation, applicant.
Randolph Karr, Attorney at Law, for Southern Pacific
Transportation Company, respondent.
Edward D. Stewart, for the Commission staff.

O P I N I O N

This application was originally filed for the purpose of allowing applicant, the State of California Department of Public Works (DPW), to construct an express busway along the San Bernardino Freeway. To do this, it was necessary to modify or reconstruct 21 existing grade separation structures and to construct 3 new structures over the track of the Southern Pacific Transportation Company (SPT) in certain places.

After two amendments to the application had been filed, the Commission issued an ex parte order (Decision No. 79690 dated February 8, 1972) authorizing such construction. This decision provided, among other things, that railroad service should be suspended during the construction and that the work affecting the railroad should

be completed with 18 months unless the time be extended. The effective date of that order was February 28, 1972.

The Commission subsequently issued Decision No. 81584 dated July 10, 1973 extending the aforementioned time limit to October 31, 1973. The decision also extended the suspension of railroad operations until that date. This decision was the subject of a petition for rehearing filed by SPT, on the ground that it had not consented to any such extension of time by way of an ex parte order. Rehearing was granted by Decision No. 81777 dated August 21, 1973, and a hearing was held on February 1, 1974 before Examiner Meaney.

At the hearing, there was a dispute between DPW and SPT as to the date that the railroad was ready for full operation; however, it is clear from a review of the record presented at the hearing that no matter whose evidence is accepted, the railroad was fully operational by the date of the hearing.

This being the case, DPW asserted at the hearing that all the issues raised in the petition for rehearing were moot. SPT countered by asserting that although it was true the railroad was operational by the date of the hearing, it now sought a finding (not an order) of the Commission as to the date that normal operations commenced. Counsel for SPT stated that it wished this determination because it was within the province of the Commission to determine such a factual issue rather than the Superior Court, where an eminent domain action had been filed against SPT by DPW (No. C-25214 in the Superior Court for the county of Los Angeles) the subject of which is the value of SPT's land taken for the widened freeway easement.

Pursuant to the order of the examiner, the answer of SPT in that case was made Exhibit 2 herein. Paragraph V of that answer alleges, inter alia, that damages will accrue to SPT by reason of the construction of the improvement in the manner proposed by the plaintiff.

Such an allegation at least arguably includes any damages that would result from interference with train operations past the time agreed upon by the parties. If it does not, the Code of Civil Procedure provides for the amendment of any pleading, including an answer (Code of Civil Procedure Sections 472, 473, 576; see discussion, Witkin, California Procedure, Second Edition, Page 2609), and the policy of the courts is to be liberal regarding allowing such amendments (see review of cases, Witkin, California Procedure, Second Edition, Pages 2618-2619). While this Commission has jurisdiction to determine valuation of utility property taken, this jurisdiction was not invoked. Instead, a Superior Court action was filed and the jurisdiction of that court now attaches to such issues.

The question thus placed before the Commission at this point is: Is a finding of the type requested by SPT necessary to the resolution of any issue in this application? The answer is no.

As indicated by its caption, this application seeks authorization to replace, remodel, modify, extend, or reconstruct 21 existing grade separation structures and to construct 3 new structures over and under SPT's realigned Baldwin Park Branch Line track through the cities of Los Angeles, Alhambra, San Gabriel, Rosemead, and El Monte, all of which are in the county of Los Angeles. Such an application includes issues of location of the separations, method of construction, realignment of the track, safety factors, etc.

A subsidiary issue in the case was how long the Commission should authorize suspension of service along the track. While clearly there may have been an issue regarding this suspension of service at the time the petition for rehearing was filed, normal service was restored by the date of the rehearing. Any remaining question as to exactly when such service commenced has to do solely with alleged severance damages resulting from the interruption of service. This is an issue not before this Commission, but before the Superior Court in the aforementioned civil action.

The remaining contentions of counsel have been reviewed and do not require discussion.

Finding

Normal railroad operations were restored to the segment of railroad line which is the subject of this application prior to the hearing in this matter held on February 1, 1974.

Conclusion

The issues before the Commission in this application are moot.

O R D E R

IT IS ORDERED that proceedings in this matter are terminated. The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16th day of JULY, 1974.

Vernon L. Stinson
President
William J. Sweeney Jr.
William J. Sweeney Jr.
William J. Sweeney Jr.
William J. Sweeney Jr.
Commissioners