

BP

Decision No. 83445

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

S.T.A.C. (San Lorenzo Traffic
Action Committee),

Complainant,

vs.

Case No. 9773

SOUTHERN PACIFIC TRANSPORTATION
COMPANY, CROW SPIEKER #9, a
partnership, and CROW SPIEKER #10,
a partnership,

Defendants.

ORDER OF DISMISSAL

Complainant is an organization of persons in the area affected by defendants' proposed railroad track in the township of San Lorenzo, near the city of San Leandro, Alameda County. Complainant alleges that this track will cross a public street, Railroad Avenue. By this complaint, complainant seeks to prevent action by defendants on this project until an Environmental Impact Report has been filed and complainant has an opportunity to be heard thereon.

Defendant railroad has an application on file for construction of this industrial drill track (Application No. 55012). This application has not yet been set for public hearing.

On August 15, 1974, an Examiner's Ruling was issued in Application No. 55012 indicating that an Environmental Impact Statement had been filed with the City Planning Commission of the city of San Leandro. Said body determined, after public hearing in 1972, that the benefits derived from the proposed industrial subdivision to be served by the spur track outweighed the adverse environmental impact. This Examiner's Ruling further stated there was nothing in the record of Application No. 55012 at that time to justify preparation of a supplementary Environmental Impact Report.

The ruling concluded that the authority sought in Application No. 55012 will not have a significant effect on the environment. A copy of this ruling was mailed to complainant's counsel on August 16, 1974.

The Commission concludes that the complaint herein is more properly considered as a protest to Application No. 55012. It points to an asserted deficiency in said application. No greater or different relief could be granted in this complaint than is available to complainant in Application No. 55012. The complaint herein will be dismissed.

Complainant is advised that it may participate as a protestant in Application No. 55012. Notice of hearing of said application will be given to complainant.

The Examiner and all parties in Application No. 55012 are specifically advised that complainant's argument as to the inadequacy of Application No. 55012 may be raised at the hearing on that matter. Complainant shall be given the opportunity to show that construction of the crossing in question will have a significant effect on the environment. The burden of proving this assertion as an objection to the application will be on the proponent of the argument, just as the burden of proving the issues in the complaint would have been on the complainant. Southern Pacific Transportation Company is put on notice that any construction or preparation for construction of the subject of Application No. 55012 is at its own risk.

IT IS ORDERED that the complaint herein is dismissed.

The effective date of this order is the date hereof.

The Secretary is directed to serve certified copies of this order on complainant and defendants. He shall also mail copies of this order to all persons on the mailing list in Application No. 55012.

EP C.9773

Dated at San Francisco, California, this 11th
day of SEPTEMBER, 1974.

Seamus H. Steenson
President
J. William Jr.
James H. ...

Commissioners

Commissioner William Symons, Jr., being
necessarily absent, did not participate
in the disposition of this proceeding.

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