

Decision No. 83479**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of )  
 establishing a list for the fiscal )  
 year 1974-75 of existing and pro- )  
 posed crossings at grade of city )  
 streets or county roads most )  
 urgently in need of separation, or )  
 projects effecting the elimination )  
 of grade crossings by removal or )  
 relocation of streets or railroad )  
 tracks, or existing separations in )  
 need of alteration or reconstruction )  
 as contemplated by Section 2402 of )  
 the Streets and Highways Code. )

Case No. 9663  
 (Filed February 13, 1974)

OPINION AND ORDER DENYING REHEARING  
 AND AMENDING DECISION NO. 83066

On February 13, 1974, the Commission instituted an investigation for the purpose of establishing, by July 1, 1974, the 1974-75 railroad-highway grade separation priority list (priority list) as required by Section 2402 of the Streets and Highways Code. Approximately 137 projects were nominated for placement on the priority list by the Commission staff, various local agencies, the California Highway Commission and the railroads. After nine days of hearings, the Commission issued Decision 83066 on June 25, 1974, establishing a list of 69 projects. This decision also set forth the criteria relied on in establishing the priority list.

Petitions for rehearing were filed by the Southern Pacific Transportation Company (Southern Pacific) on July 3, 1974, and the City of San Leandro (San Leandro) on July 5, 1974. These petitions allege error in a number of respects. After review of the record and consideration of each of petitioners' arguments therein, we find that good cause for rehearing of this matter has not been shown; the

petitions must therefore be denied. However, some arguments raised by petitioners do merit discussion and. Decision No. 83066 should be amended in certain respects.

I.

In Finding No. 6 of Decision No. 83066, we found that the Ridge Route Drive project in Orange County was on private property, that before any work can be performed on it the city or county would have to take it over, and that we would, for the purposes of the priority list, consider it to be a "proposed separation." Reconsideration of the record with regard to this project does not persuade us that the above characterization should be modified. However, as Southern Pacific alleges, eligible projects for the priority list do not include "proposed separations."

Section 2400 of the Streets and Highways Code defines projects as including either the alteration or reconstruction of existing grade separations; the construction of new grade separations to eliminate existing or proposed grade crossings; or the removal or relocation of highways or railroad tracks to eliminate existing grade crossings. Projects do not include "proposed separations." Accordingly, although we reaffirm our treatment of the Ridge Route Drive crossing as a "proposed separation", we must also conclude that, so characterized, it is not an eligible project and should therefore be deleted from this year's priority list.

II.

In Finding No. 4(c) of Decision No. 83066 we declined to place the Farallon Drive and the March Lane projects on the 1974-75 list. Southern Pacific alleges error in numerous respects with regard to these exclusions. Insofar as error is alleged with regard to our considering the probability of funding and degree of local support as factors in evaluating these and other projects, the arguments will be rejected.

However, insofar as Southern Pacific alleges error with respect to our characterizing the Farallon Drive project as being "at issue" in another Commission proceeding, its claim is valid. Rehearing of Decision No. 82182, by which we authorized the Farallon Drive crossing, was denied May 29, 1974 by the issuance of Decision No. 82932. The project was therefore not "at issue" in another Commission proceeding when the instant Decision No. 83066 was issued on June 25, 1974.

Furthermore, after reconsideration, we now recognize merit in Southern Pacific's more general argument that a particular project's status as being "at issue" does not bear upon the urgency of the need for separation. The primary concern in establishing the priority list is to determine which projects are most urgently in need of separation. The fact that there are pending applications before the Commission involving these same projects does not directly bear upon this question, and would, if applied to all projects as a basis for exclusion, restrict the number and scope of eligible projects in a manner not consistent with Section 2400 of the Streets and Highways Code. Accordingly, to this extent, we must agree with Southern Pacific's argument.

However, notwithstanding this agreement, it is clear that there was strong opposition expressed by both the City of San Leandro with respect to Farallon Drive and the City of Stockton with respect to March Lane. This opposition does bear upon the urgency of the need for separation. We are therefore of the opinion that despite our concurrence with Southern Pacific's arguments as noted above, exclusion of both projects from the priority list was nonetheless proper and should be reaffirmed.

### III.

In the petition for rehearing filed by the City of San Leandro, error is alleged in a number of respects with regard to the Commission's exclusion of crossing No. L-14.9 (State Highway No. 112) from the priority list. To the extent that San Leandro

takes exception to the validity of considering the probability of funding and degree of local support as factors, we must reject its arguments.

We do note that San Leandro now alleges that the City is willing and able to share in the cost of a separation and is in total support of the project's prompt commencement. However, this statement of support made by the City on rehearing appears as a matter of first impression in this proceeding.

Crossing No. L-14.9 was nominated for the 1974-75 priority list by the California Highway Commission. Although the City appeared at the hearings, review of the record clearly indicates that this appearance was made solely for the purpose of opposing Southern Pacific's nomination of Farallon Drive and not in support of Crossing No. L-14.9. Accordingly, the exclusion of Crossing No. L-14.9 was neither improper nor in error.

#### IV.

Southern Pacific also alleges error in the Commission's application of the adopted criteria. Specifically, Southern Pacific alleges that, notwithstanding its arguments with regard to the validity of the criteria, the list has not been established in conformity with these criteria. While it appears that the list does, in certain instances, vary from that which Southern Pacific feels is a strict application of the criteria, we must decline to modify or grant rehearing with regard to the entire list as sought in Southern Pacific's petition.

By enacting Section 2402 of the Streets and Highways Code, the Legislature, in addition to requiring that the Commission establish this year's list by July 1st, made several substantial changes as to the manner in which the list was to be established and with respect to the allocation of funds thereunder. After establishing the priority list as required by former Section 189 of the Streets and Highways Code for the six month period up to July 1, 1974, the task was undertaken to establish a list for the

period between July 1, 1974 and July 1, 1975 pursuant to Section 2402 of the Streets and Highways Code. After nine days of hearings during which appearances were entered on behalf of approximately fifty cities, counties, state and local agencies and the railroads, the Commission issued Decision No. 83066 on June 25, 1974, establishing this year's priority list and the criteria therefor.

At this point in time it must be presumed that local agencies are presently proceeding with their programs in reliance on the subject priority list. Rehearing of Decision No. 83066 or extensive modifications in the list itself would almost certainly result in substantial delays in the completion of those projects.

Furthermore, we must recognize the legislative mandate in Chapter 8 of the Streets and Highways Code (Sections 2400, et seq.) to establish the priority list by July 1, 1974. Serious questions regarding our compliance with this mandate would undoubtedly arise by the grant of any rehearing now. Such questions could, in turn, seriously jeopardize any allocations for the coming year.

Contrasted against these negative consequences, we recognize that Southern Pacific's examples, evidencing a misapplication of the adopted criteria, have not caused challenges to be made by the agencies directly affected. Thus, while there may be some inconsistencies in the establishment of this year's priority list, no injury has been shown to result therefrom. We must therefore reject the notion that further proceedings are either necessary or desirable at this time.

V.

One additional point requires discussion, although not raised by any of the parties. A review of Decision No. 83066 indicates that the quotation of Section 2400 (b)(3) of the Streets and Highways Code appearing at pages 3 and 4 of the decision is in error. This misquotation should be corrected.

THEREFORE, IT IS ORDERED that:

1. Appendix C to Decision No. 83066 is hereby amended to delete the separation project, designated as Crossing No. 2-187.6, Ridge Route Drive, in Orange County and assigned priority number 53, from the 1974-75 annual priority list of highway-grade separation projects.

2. Finding No. 4(c) of Decision No. 83066 is hereby amended to read as follows: (deletions noted)

"c. A public agency's support, lack of support, or opposition in regard to a project under its jurisdiction bears upon the degree of urgency of that project and for this reason and the reason set out in Finding 4.a., as well as the fact that the projects are at issue in other Commission proceedings, we have declined to place the Farallon Drive project and the March Lane project on this year's list."

3. The quotation of Section 2400(b)(3) of the Streets and Highways Code appearing at page 4 of Decision No. 83066 is hereby amended to read as follows:

"(3) The removal or relocation of highways or railroad tracks to eliminate existing grade crossings."

4. In all other respects rehearing or reconsideration of Decision No. 83066 is hereby denied.

5. The suspension of Decision No. 83066, previously imposed by Decision No. 83334, is hereby vacated. Except as modified herein, the provisions of Decision No. 83066 shall be in full force and effect as of the date hereof.

KJ C.9663

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 24th day  
of SEPTEMBER, 1974.

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

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