

Decision No. 84168

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 drill track in, upon
and across Railroad Avenue in the
County of Alameda, State of
California.

Application No. 55012
(Filed July 3, 1974;
amended October 4, 1974)

Harold S. Lentz, Attorney at Law, for applicant.
Glen L. Moss, Attorney at Law, for STAC (San
Lorenzo Traffic Action Committee); Steven A.
McAdam, for Save San Francisco Bay Area;
Mrs. Janice B. Delfino, for Ohlone Audubon
Society; Mrs. John Partridge, for Bay School
PTA; and Ms. Christine Quiles, for East Bay
Subcommittee, San Francisco Bay Chapter,
Sierra Club; protestants.
Fitzgerald, Abbott & Beardsley, by Philip M.
Jelly, Attorney at Law, for Crow-Spieker #9
and #10; Ben H. Zuppan, Attorney at Law, and
Herbert G. Crowle, for County of Alameda;
and Glenn A. Forbes, City Attorney, for City
of San Leandro, Interested parties.
Ira R. Alderson, Jr., Attorney at Law, and
Patrick J. Power, for the Commission staff.

O P I N I O N

Southern Pacific Transportation Company (applicant) seeks an
order of the Commission to authorize the construction, at grade, of
an industrial drill track across Railroad Avenue in Alameda County.

This 200-foot spur track will connect with a 1,000-foot railroad line on a 21-acre parcel developed by Crow-Spieker and extend rail service to various tenants presently served by truck.

The city of San Leandro is the lead agency for the construction of the warehouse facilities to be served by the industrial spur track. During November of 1972 the city of San Leandro issued an Environmental Impact Report (EIR) and the project was approved by the city on November 28, 1972. Two large buildings were constructed on the site during 1973, and a long stretch of private track to be connected with the main line of the Southern Pacific Transportation Company was constructed during 1974. Five tenants were in the new buildings when on July 3, 1974 applicant applied for authority to connect its main line with the Crow-Spieker spur. The Alameda County Board of Supervisors and the San Lorenzo Traffic Action Committee (San Lorenzo is an unincorporated community which borders the tracks of the Southern Pacific Railroad) requested a public hearing and requested that the Commission issue an EIR after requiring applicant to file an Environmental Data Statement. An Examiner's Ruling was issued on August 15, 1974 which denied the need for an EIR and provided for the scheduling of a public hearing, which was held on September 27, October 31, November 1, 7, 8, 1974 in San Leandro, and on December 9, 1974 in San Francisco before Examiner Fraser. The matter was submitted December 9, 1974. Testimony and documentary evidence were provided by applicant, Crow-Spieker, the Commission staff, Alameda County, and the San Lorenzo Traffic Action Committee. Several members of the public either testified or made statements.

Applicant provided a scale drawing of the proposed spur and testimony that it will extend off the main line in a gradual curve to accommodate the largest and heaviest cars used by the railroad. Photographs reveal the spur will extend over an open, level, vacant lot with a few bushes. The photos also show Railroad Avenue at the proposed crossing. It is a dirt road about 12 feet wide, extending 1,100 feet northerly from Grant Avenue to a locked gate in a fence. The spur will cross the road about 250 feet from the gate. A signal engineer testified that two No. 8 flashing light signals will cost \$16,400 installed. A No. 9 automatic gate installation, added to the flashing lights, will increase the cost to \$17,600. He also testified that a switch and block signals will control all train movement on the main line and spur. When the switch is open to permit a train to enter or leave the spur track, block signals on each side of the spur will turn red and stop all trains on the main line until the switch is closed and the track is safe.

Crow-Spieker provided the following testimony from a vice president of the company, who is also an engineer and project director of the San Leandro Business Park, the development to be served by the spur. He prepared the application to the city of San Leandro and the EIR which was accepted and approved by the City Planning Commission during a public hearing on November 9, 1972; all requirements were satisfied as noted in a letter dated November 28, 1972 from the San Leandro Planning Commission to the Trammell Crow Company Project Director; the original Environmental Data Statement noted that a rail line was to be constructed and that the premises would be served by rail in accord with the master plan; construction started in 1973 and two buildings have been completed along with a rail spur, which will connect with the Southern Pacific main line if this application is granted. The Master Plan was altered and accepted by the city on

June 29, 1974. Under the amended plan the western half of the development was sold to the county and the remaining area is to be occupied by four buildings. Of the two completed buildings one has a capacity of 110,750 square feet, with a rail line along the northern side, and the second has a capacity of 79,000 square feet. The tenants leased these buildings with the understanding that rail service would be provided. Additional testimony was provided by the general manager of a tenant of the building next to the rail spur. The tenant has occupied 72,000 square feet as a warehouse since February of 1974; all merchandise comes in by truck at the present time; from July 1 to November 1, 1974 an estimated 125 incoming loads and 25 outgoing; all trucks use Grant Avenue in each direction; if the rail spur becomes operative, truck service will substantially decrease as most loads will move by rail.

A staff engineer testified briefly and recommended that two Standard No. 1-R crossing signs be installed. An engineer from the County Road Department testified Railroad Avenue bears northerly from Grant Avenue to a gate and fence which parallels San Lorenzo Creek. The creek is the responsibility of the Alameda County Flood Control District. A road runs along the creek on the opposite side of the fence. A certified record from the County Assessor was placed in evidence which indicates that Railroad Avenue is "neither assessed nor taxed on the current assessment roll". The county engineer testified that members of the public occasionally drive over Railroad Avenue. He further testified that the street has apparently been used as a public thoroughfare since it was dedicated in 1914. The record indicates that San Leandro Business Park is within the city limits of San Leandro. Railroad Avenue is not within the city limits.

Four San Lorenzo residents testified for the San Lorenzo Traffic Action Committee. All requested that the Commission become the lead agency on the rail spur project and that an Environmental Data Statement be prepared and an EIR filed. Varied reasons were given. A lady who lives across the SP track from the proposed spur cited vibration and noise, with its possible effect on the wildlife in the area. Another testified that a Citizens Advisory Committee has several transportation corridors under consideration, including one which is to include Railroad Avenue, and although these corridors are mere proposals and may never be adopted, an EIR is being prepared. She testified that the council may recommend one corridor or reject all three, but its recommendation is not binding on any governmental agency. A third witness testified that she was also appearing for the Ohlone Audubon Society; she has seen varied species of birds in the area of Railroad Avenue, since most of the surrounding area is covered by streets and buildings; there are indications of mice and other small animals near Railroad Avenue and whether they will be affected by the spur is an environmental issue. The final witness emphasized that EIRs should be required on all projects before action is taken by any regulatory or governmental agency. Statements were made by several members of the public. All favored the filing of an EIR. It was noted that traffic may be increased along Grant Avenue if the spur is installed and that switching operations may be noisy and block Grant Avenue for prolonged periods. There is nothing in evidence to support either contention. The staff suggested that Railroad Avenue be paved its entire length. We are only concerned with the crossing and cannot extend our authority to order the resurfacing of Railroad Avenue.

Discussion

The principal issue is whether the extension of the rail spur is part of the project approved by the city of San Leandro. The original EIR filed with the city during October of 1972 describes the proposed project as follows:

"C. Description of Proposal. (Including reference to other application forms, drawings, etc., where appropriate.) Development of 42 acres of currently unimproved industrially zoned (I-2) property. Proposed project consists of construction of streets, rail line, utilities and storm and sewer drainage systems with ultimate construction of a group of rail-served warehouse and service buildings in general accordance with the proposed master plan for the project." (Emphasis added.) (Exh. 7, Part 1, Para. C.)

It is obvious that the project was to be served by rail from its inception. The extension of the rail spur is therefore an integral part of the project approved by the city of San Leandro.

Rule 17.1 ((n), B.3.) of the Commission's Rules of Practice and Procedure provides that the Commission is the lead agency on new railroad crossings where a public agency is not carrying out the project. It is argued that this rule requires the Commission to become the lead agency where the road crossed by the track is used by the public and not as private property. Rule 17.1 was adopted to implement the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 et seq.) and the Guidelines (Sections 15000 et seq., Administrative Code). The Guidelines provide the principles and criteria under which the Act is to be applied. Rule 17.1 is to support rather than conflict with the provisions of CEQA.

Sections 21067,^{1/} 21165, and 21166 (Public Resources Code) of CEQA indicate that there will be only one EIR and lead agency even where approval may be required from two or more public agencies. Section 15065(b)^{2/} of the Guidelines provides that on private projects the lead agency is the entity with the greatest responsibility for approving the project as a whole. In the present situation the city of San Leandro is the agency with the maximum interest and control. It is the lead agency. The fact that Railroad Avenue is just outside the city limits of San Leandro does not alter the basic rule. CEQA and the Guidelines were adopted to protect the environment by requiring one EIR to be prepared on each project likely to affect it.^{3/} Proponents cannot be required to provide a succession of EIRs for public agencies remotely involved. Large projects may involve activities under the jurisdiction of five or more agencies. If separate EIRs are required by each regulator, projects will be unreasonably delayed; while those who seek to postpone a project will be encouraged to raise the environmental issue before each agency in succession.

^{1/} "'Lead Agency' means the public agency which has the principal responsibility for carrying out or approving a project. . . ."

^{2/} "If the project is to be carried out by a nongovernmental person, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. . . ."

^{3/} The lead agency principle provides that "not more than one EIR shall be prepared in connection with the same underlying activity. . . ." (15061(f).)

Applicant's motion to have the extension of the spur declared a Ministerial Project under Section 15032 of the Guidelines must be denied. The extension of a rail spur could be ministerial under certain circumstances, but not when a railroad crossing is involved. A Ministerial Project is loosely defined as one which must be approved without consideration of the "propriety or wisdom of the act" (Section 15032). The Guidelines suggest (15073) that each agency determine what is ministerial within its jurisdiction. Railroad crossings involve multiple issues of cost, safety, protection, maintenance, and need. The determination of whether a crossing is needed requires the exercise of judgment or decision and is therefore a Discretionary Project under Section 15024 of the Guidelines.

The motion of the San Lorenzo Traffic Action Committee to disqualify the hearing examiner for cause is denied. The Commission noted in a 1958 decision that:

"There is no provision in the Public Utilities Act relating to the disqualification of a Commissioner or Examiner. Therefore these motions have no basis in law. . . . Litigants are not thus free to pick and choose among adjudicating officials. Furthermore, the Commission makes the decision, not the Examiner."
(San Diego Gas & Electric Co. (1958) 56 CPUC 219, 220.)

Findings

1. The extension of the rail spur over Railroad Avenue is an integral part of the San Leandro Business Park project approved by the city of San Leandro in 1972. The spur location is just outside of the San Leandro city limits.

2. The lead agency is the city of San Leandro and the project has already been authorized after an EIR was filed and approved.

3. The extension of the rail spur which is the subject of this proceeding was considered in the final EIR approved by the city of San Leandro and was an integral part of the project subject to the EIR. This is no justification for Commission interference where the environmental issue has already been resolved by an authorized agency.

4. The Commission has considered the final EIR in rendering its decision on this project and finds that:

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

5. The proposed crossing and Railroad Avenue are in an unincorporated area of Alameda County. Railroad Avenue is a road used by the public.

6. The proposed construction will provide rail service to an industrial area that is still under construction.

7. Applicant should be authorized to construct an industrial spur track, at grade, across Railroad Avenue in the county of Alameda at the location and substantially as shown by the plan attached to the application.

8. Costs of constructing the crossing should be borne by the applicant.

9. The crossing protection should be two Standard No. 1-R crossing signs (General Order No. 75-C).

10. Dimensions, configurations, clearances, and walkways should be substantially in accordance with the plan set forth in the application and comply with applicable rules and general orders of the Commission.

Conclusions of Law

1. The motion for a determination that the extension of the rail spur over Railroad Avenue is a ministerial project under CEQA is denied.

2. The motion to disqualify the hearing examiner for cause is denied.

3. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The Southern Pacific Transportation Company (applicant) is authorized to construct an industrial spur track across Railroad Avenue in the county of Alameda at the location and substantially as shown by the plan attached to the application.

2. The crossing, to be identified as Crossing No. L-18.38-C, shall be protected by two Standard No. 1-R signs (General Order No. 75-C).

3. Costs of constructing the crossing shall be borne by the applicant.

4. Construction of the crossing shall be equal or superior to Standard No. 1 (General Order No. 72-B). Crossing widths shall conform to the existing street with tops of rails flush with the street.

5. Clearances shall conform to General Order No. 26-D. Walkways shall conform to General Order No. 118.

6. Maintenance of the crossing shall be in accordance with General Order No. 72-B.

7. Within thirty days after completion pursuant to this order applicant shall so advise the Commission in writing.

8. This authorization shall expire if not exercised within two years unless time be extended or if the above conditions are not complied with.

9. This authorization may be revoked or modified if public convenience, necessity, or safety so require.

The effective date of this order shall be ten days from the date hereof.

Dated at San Francisco, California, this 4th
day of MARCH, 1975.

I dissent.

Leonard Ross Commissioner

Vernon L. Stinson
President
William J. Lyons
[Signature]

Commissioners