

Decision No. 84736

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Butte  
for an order authorizing the con-  
struction of grade separation  
structure and the elimination of  
crossing at grade by erection of  
structure at Southern Pacific  
Milepost C-179.5 and County Road  
No. 26311 Midway.

Application No. 55392

OPINION AND ORDER  
DENYING PETITION TO REOPEN PROCEEDING

By ex parte Decision No. 84056 dated February 4, 1975, effective February 24, 1975 on Application No. 55392 filed December 16, 1974, we authorized Butte County to construct the subject grade crossing. There were no protests to the application. On April 8, 1975 petitioner E. Richard Meline filed a Petition to Revoke Order Authorizing Construction which we deem to be a Petition to Reopen Proceeding for the purpose of taking testimony in opposition to the application. Butte County requests that the petition be dismissed.

Petitioner claims he was unfamiliar with the Commission's procedures and was not aware of the application until sometime in January 1975. Petitioner alleges that on January 21, 1975, he was deluded by the County Director of Public Works (denied by that official) into thinking the Commission would not hear his protest to the granting of the application because the official told petitioner that petitioner had exhausted his remedies in trying to stop the project when petitioner appeared before the County Board of Supervisors in an unsuccessful effort to stop the project. Petitioner claims the county violated the Commission's code of ethics (Rule 1 of the Commission's Rules of Practice and Procedure) in stating in its

application that the daily average traffic count at the crossing was 5,000 vehicles when the county knew the count was stale and was approximately 50 percent less due to the relocation, in the late summer of 1974 after the count was made, of the campus of Butte College which had generated a substantial amount of traffic at the crossing. Petitioner also claims the same violation on the part of the county in not disclosing to the Commission during the 1974-75 grade separation priority list hearings that the count of 5,000 vehicles which it submitted in the case would probably be subject to a downward change due to the imminent relocation of the college. The Commission placed the crossing 16th on that priority list (Decision No. 83066). Petitioner alleges that he appeared at the 1975-76 grade separation priority list hearing with a petition signed by 500 persons residing in the county objecting to the separation project. Due to the decrease in the volume of traffic the Commission listed the crossing as 64th on the 1975-76 grade separation priority list (Decision No. 84530). Petitioner makes no claim of injury or damage by reason of his not being heard or by reason of the construction of the project, though from responsive pleadings by the county it is indicated that some of petitioner's land may be in the process of being taken through eminent domain proceedings for use in the separation project. The county claims it has changed its position in reliance on Decision No. 84056 in that it has entered into an agreement for the design of the overpass.

#### Findings

1. There is no statutory or procedural requirement that affected property owners be served with a copy of an application before the Commission seeking approval to construct a grade separation; therefore, petitioner's position that he had late knowledge of the application is no grounds for reopening the case.

2. A petition to reopen a case for the purpose of taking further testimony should outline in detail what that testimony will be.

3. The facts set forth in the petition offer no ground for reopening the case for further testimony.

4. Petitioner has not shown why he objects to the grade separation nor to what extent, if any, he will be injured or damaged by the project.

The Commission concludes that the petition should be denied.

IT IS ORDERED that the petition of E. Richard Meline to revoke order authorizing construction is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 5th  
day of AUGUST, 1975.

William L. Lymon President  
Veronica L. Stedman  
Robert D. Holmes  
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.