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Decision 92-10-059

October 21, 1992

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jim Seymour, Application for Rehearing )  
of Resolution T-14803, Advice Letter )  
31, granting Bay Area Cellular )  
Telephone Company's request to add a )  
cellular radiotelephone cell site in )  
the San Francisco/San Jose Geographic )  
Service Areas at Almaden. )

Application 92-07-022  
(Filed July 2, 1992)

ORDER DENYING REHEARING OF RESOLUTION T-14803

On July 2, 1992, Jim Seymour filed an application for rehearing of Resolution (Res.) T-14803. In Res. T-14803 the Commission approved Bay Area Cellular Telephone Company's (BACTC's) Advice Letter (AL) 131, in which BACTC requested authorization to add the "Almaden" cell site to its cellular system. Res. T-14803 denied Seymour's protest to AL 131.

Seymour asserts that in granting BACTC a conditional use permit for the Almaden site the City of San Jose improperly exempted the site from environmental review under the California Environmental Quality Act (CEQA). (Pub. Resources Code §§ 21000 et seq.) According to Seymour, the Commission's authorization of the site, despite the allegedly improper local review, violates Commission Rule of Practice and Procedure 17.1, which requires the Commission to adhere to CEQA. In addition, Seymour alleges that the Commission's authorization violates General Order (GO) 159 which declares that action is needed to require proper environmental review of cellular sites.

We have carefully considered all arguments presented by Seymour, and are of the opinion that good cause for rehearing has not been demonstrated.

In GO 159, the Commission expressly delegates discretionary review authority over cellular expansion sites to the local jurisdictions. Under the GO 159 Standard Review procedure cellular carriers first receive local permits required to construct the cell site, and then file an advice letter with the Commission declaring that all local permits have been received. (GO 159, §§IV, V.) The Commission's Standard Review process is ministerial, and advice letters are approved where all local permits have been obtained and the GO 159 procedures have been followed. (GO 159, § V.D.(1).)

GO 159 has an advice letter protest procedure which Seymour utilized to protest the authorization of BACTC's Almaden site. (GO 159, § V.) However, under the protest procedure the Commission may only reject an advice letter after protest on the grounds that local permits were not received. (GO 159, § V.D.(2)(b).) Under GO 159 the Commission cannot independently review the judgement of local authorities pursuant to an advice letter protest.

Because BACTC demonstrated that it had all necessary local permits, the Commission was not only legally justified in approving AL 131, but had no discretion to do otherwise. Furthermore, the Commission did not violate any CEQA rules or procedures, since all Commission actions were ministerial and therefore exempt from CEQA requirements. (Pub. Resources Code § 21080 (b)(1).)

Seymour also argues that it was premature for the Commission to approve BACTC's Almaden site because Seymour has a court action against the City of San Jose currently pending which challenges the permits granted by the City. There is no error in the Commission granting authorization based on local permits which are currently valid and have not been revoked. We are concerned, however, about the possibility of an eventual court decision invalidating the permits. Thus, in the event that Seymour's court challenge to the City's approvals is successful we will require BACTC to inform the Commission of the judgment.

Furthermore, we will allow Seymour to return to the Commission to file a complaint against BACTC if BACTC operates the Almaden site without valid local permits.

**THEREFORE, IT IS ORDERED that:**

1. Seymour's application for rehearing of Res. T-14803 is denied.

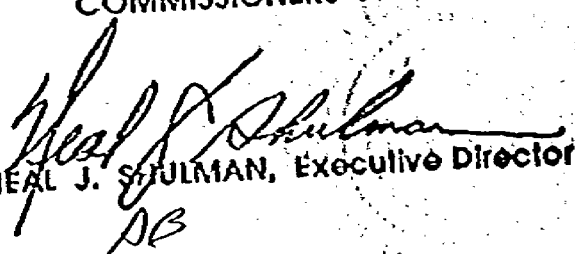
2. In the event that Seymour's court challenge to the City of San Jose's approval of the Almaden site is successful, BACTC shall inform the Supervisor of the Environmental Section of the Commission Advisory and Compliance Division. In addition, if the local permits for the Almaden site are invalidated, Seymour may return to the Commission to file a complaint against BACTC.

This order is effective today.

Dated October 21, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
NEAL J. SHULMAN, Executive Director  
JB