

Decision 83 10 075 OCT 19 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Santa)	
Barbara to relocate an at-grade)	
crossing of the Southern Pacific)	Application 82-12-66
Transportation Company railroad)	
tracks from Santa Barbara Street)	
to Garden Street in the City of)	
Santa Barbara.)	
_____)	

ORDER DENYING MOTION TO PERMIT LATE-FILING OF PROTEST

By motion filed August 15, 1983, Scenic Shoreline Preservation Conference, Inc. (Scenic Shoreline) requested that it be permitted to late-file a protest to Application (A.) 82-12-66. The application was filed with the Commission by the City of Santa Barbara (City) on December 30, 1982; copies of the application were sent to other persons on December 27, 1982, as evidenced by a certificate of service by mail attached to the application; and noticed in the Commission's Daily Calendar on January 4, 1983. Under the provisions of Rule 8.3 of the Commission's Rules of Practice and Procedure, the period for timely filing of a protest to A.82-12-66 expired 30 days after the matter was noticed in the Commission's Daily Calendar, which date was February 3, 1983.

In its motion, Scenic Shoreline alleges that it "did not receive a copy of the application and was unable to investigate the application and submit a protest within the thirty-day time for filing". We note that the certificate of service by mail attached to the application indicates only that two copies of the application were served on Southern Pacific Transportation Company, the affected railroad.

Responding to the motion by letter of August 19, 1983, City alleges that this application was discussed with Frederick Eissler, President of Scenic Shoreline, in January of 1983 and on March 18 and June 15, 1983. Further, it is stated that Mr. Eissler addressed City's Environmental Review Committee regarding this matter on April 15, 1983. It is therefore apparent that, regardless of when Scenic Shoreline actually obtained a copy of A.82-12-66, it was fully aware of the fact that the application was filed since at least sometime in January, 1983.

Even assuming that Scenic Shoreline did not become aware of the fact that A.82-12-66 had been filed until the end of January, it nevertheless waited approximately 7½ months beyond this date to file its motion. The August 15, 1983 filing date for the motion would also be only slightly less than 7½ months beyond the date for timely filing a protest.

No reasonable basis has been provided for the noted 7½ month delay in filing of the motion. The motion of Scenic Shoreline to permit late-filing of a protest to A.82-12-66 will therefore be denied.

Findings of Fact

1. Application 82-12-66 was filed with the Commission on December 30, 1982.
2. A certificate of service by mail dated December 27, 1982 indicates only that two copies of the application were served on Southern Pacific Transportation Company, the affected railroad.
3. Application 82-12-66 was noticed in the Commission's Daily Calendar on January 4, 1983.
4. Frederick Eissler, President of Scenic Shoreline, received effective notice of the application in January of 1983.
5. The motion to permit late-filing of protest to A.82-12-66 was filed on August 15, 1983, some 7½ months after both the period allowed for timely filing of a protest and the date by which Scenic Shoreline had received effective notice of the application.

Conclusions of Law

1. The period for timely filing of a protest to A.82-12-66 expired on February 3, 1983.

2. The motion of Scenic Shoreline to permit late-filing of a protest to A.82-12-66 should be denied.

IT IS ORDERED that the motion of Scenic Shoreline Preservation Conference, Inc. to permit late-filing of a protest to Application 82-12-66 is denied.

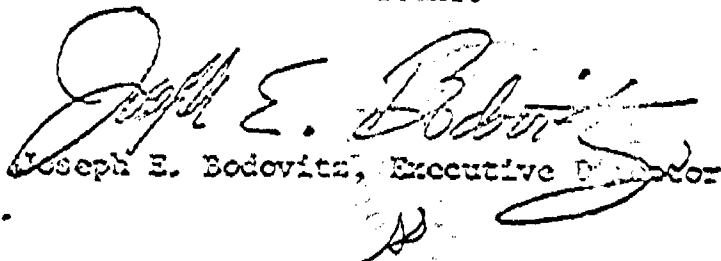
This order becomes effective 30 days from today.

Dated OCT 19 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director