

ORIGINAL

Decision No. 88555 MAR 7 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of the City of San Diego, a
municipal corporation, to construct
a grade separation under the San
Diego and Arizona Eastern Railway
Company's track at Smythe Avenue,
in the City of San Diego.

Application No. 56003
(Filed October 10, 1975)

ORDER OF DISMISSAL

This application, filed October 10, 1975, requests authorization to replace two existing railroad grade crossings (Nos. 36-13.8 and 36-14.0) in the city of San Diego across the track of the San Diego and Arizona Eastern Railway with an underpass at Smythe Avenue in the city of San Diego.

The correspondence file in this matter indicates that no hearing was requested immediately because of negotiations regarding engineering problems between the city and the railroad, and because of the city's funding difficulties. The Commission's Director of Transportation finally wrote to the city on May 6, 1977, reviewing progress of the file and stating that if the city's proposal for the underpass could not be completed, the matter should be dismissed without prejudice.

This correspondence apparently produced agreement that the matter should go to hearing. A hearing was set for October 13, 1977, but then the city requested, and was granted, a continuance to February 2, 1978. We have now received a request from the city that the February hearing be canceled and that the proceeding be reset for a date approximately six months from now, to allow time for completion of Interstate Commerce Commission (ICC) hearings regarding the abandonment of the railroad line (ICC Docket No. AB 16).

Upon receipt of this request, the February 2 hearing was canceled.

We note that the proposed abandonment is the subject of some controversy and could well produce post-decisional litigation. This, added to the fact that this application was filed in 1975, means that a more appropriate course of action is to dismiss this application without prejudice. It may be refiled after the ICC case concerning the railroad abandonment and any subsequent litigation on that subject is concluded.

We realize that the city remains actively interested in replacing two railroad grade crossings with an underpass, but we believe that, with the ICC abandonment matter currently under consideration, the city's request for a six-month continuance is unrealistic, and if another hearing date is set as requested, the most likely result will be yet another request for a continuance or an order removing the proceeding from the calendar.

IT IS ORDERED that this application is dismissed without prejudice. It may be refiled after a final determination is made by the Interstate Commerce Commission on the abandonment of the San Diego and Arizona Eastern Railway, and after any post-decisional litigation on the subject of such abandonment.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 7th day of MARCH, 1978.

Robert B. Brown
President
William J. Brown
Verdon L. Steyer
Joseph D. Powell
Clare J. DePaul
Commissioners