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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California, Department of Transportation for an order authorizing the installation of railroad warning devices at an existing crossing of North Frontage Road over a spur track wholly owned by the Central Contra Costa Sanitary District near the cities of Concord and Martinez in the County of Contra Costa.

Application No. 58936
(Filed June 14, 1979)

Susan K. Johann, Attorney at Law, for State of California, Department of Transportation, applicant.

Leland E. Butler, Attorney at Law, for The Atchison, Topeka & Santa Fe Railway Company, respondent.

Jay S. McCoy, for Central Contra Costa Sanitary District, interested party.

Robert W. Stich, for the Commission staff.

O P I N I O N

The California Department of Transportation has applied for an order authorizing the installation of railroad warning devices at a crossing of North Frontage Road over a spur track owned by the Central Contra Costa Sanitary District (Sanitary District), located approximately 2,000 feet north of Buchanan Airfield, in Concord. The railspur extends a mile and a quarter southeasterly from the main line of the Santa Fe; the crossing is 1,750 feet from where the spur terminates in a disposal area maintained by the Sanitary District. The road is bounded on the west by a fence and a locked gate and just east of the crossing by a barricade and a flood control

channel. There are three train movements a week at speeds of approximately ten miles an hour. The application alleges that protection should consist of a Public Utilities Commission (PUC) Standard No. 9 in the northeast quadrant and a PUC Standard 9-A in the southwest quadrant.^{1/}

There is no crossing listed in Commission records at this location and the staff argued that ^{a public} the crossing does not exist until a pleading is filed with this Commission to request that it be declared a public crossing. The Commission representative argued that the application should be dismissed. A public hearing was requested, scheduled, and held on November 19, 1979, in San Francisco, before Administrative Law Judge Edward G. Fraser. Testimony was received from three witnesses, two from the Department of Transportation and one from the Commission staff. SS

An Associate Right-of-Way Agent with the State Department of Transportation testified as follows: The crossing is located on land owned by the Sanitary District, which is to be part of a state freeway project. The purchase price is still under negotiation, although right of entry to start work was granted on February 15, 1973 (Exhibit 1); the proposed North Frontage Road extends in an east-west direction and is blocked at the western boundary by a fence and a locked gate; it terminates just east of the proposed crossing at a barricade which blocks entry to a flood control channel; the channel will be bridged and North Frontage Road extended for more than a mile to Solano Way over a period of two or more years.

^{1/} A No. 9 installation is a post with "Railroad Crossing" on wood crossarms at the top, with two flashing red lights, and with gates which descend when a train approaches. The gates have red lights also, and the 9-A installation has two additional red lights on a cantilever arm extended over the roadway. (Commission General Order No. 75-C.)

The gate and fence were installed to keep the public away from the treatment plant of the Sanitary District, which is located next to the road. The project engineer testified that construction started about May 1973; the tracks were installed about mid-1974 and the road was paved in June 1975. Six-foot chain link fences were constructed by the State to keep unauthorized personnel away from the Sanitary District installations. He further testified that the only traffic allowed on the road consists of Sanitary District vehicles on the way to, or from, the dump.

A transportation engineer testified that the North Frontage Road intersection is not on the Commission list of public crossings. He placed 3 letters and 2 Commission staff memos in evidence. The first letter, dated June 13, 1974 (Exhibit 3), is from Santa Fe's engineering department to the District Director of the Department of Transportation. It refers to the North Frontage Road project as a "future PUC crossing" and recommends minimum signal protection. Next is a June 18, 1975 letter (Exhibit 4), between the same parties, which refers to it as a new crossing and suggests an "on site" meeting. Exhibit 5 is a March 12, 1979 letter, between the same parties, with a March 1, 1979 letter and sketch attached. The March 12 letter notes that the crossing will be used by the public and that the crossing must be approved by this Commission prior to construction and use.

Exhibit 6 is a staff memo dated May 29, 1979 which concerns a meeting held on May 17, 1979 between representatives of the Sanitary District, Department of Transportation, Federal Highway Administration, and the State PUC. A discussion was held on possible federal funding of the gate and signal light installation. It was also noted that the Department of Transportation would apply to have the crossing opened as

soon as the installation of gates was approved by the Federal Highway Administration. The last memo (Exhibit 7) is dated July 25, 1979. It concerns a July 23, 1979 meeting between a staff engineer and a representative from the Sanitary District regarding the automatic protection to be installed at proposed Commission Crossing No. 2-1168.0-C, North Frontage Road. It was noted that the road was constructed, but not used by the public, and that the road would not be open to the public for a minimum of 3 to 5 years. The witness testified that previous testimony indicates that the crossing will not be open to the public for an indefinite period and the letters and memos indicate that everyone concerned must have been aware that Commission authority must be obtained before a crossing can be opened to public use.

Discussion

This application seeks an order to authorize the installation of railroad warning devices at an existing railroad crossing on private property, which is not yet used by the public, and has never been identified as a public crossing. The road is blocked at both ends and use is restricted to a few employees of the Sanitary District.

The application was filed under Sections 1201-1205 of the Public Utilities Code, which deal with Commission authority to regulate public crossings and private crossings in public use (Section 1202.3). The North Frontage Road crossing is on private property and is fenced to prevent public entry. The Commission has no authority to authorize railroad warning devices at this crossing.

Findings of Fact

1. This application was filed to institute the process of obtaining financial aid from the federal government for installation of approved crossing protection.
2. North Frontage Road intersects a seldom-used spur track on private property.
3. North Frontage Road is closed by a locked gate west of the crossing and by a barricade and flood channel to the east.
4. Entry is restricted to designated employees of the Sanitary District.
5. Public access has been restricted to secure the property of the Sanitary District from trespassers.
6. North Frontage Road and the crossing are part of a freeway construction project scheduled for completion during the 1980's.
7. The crossing will not be open before 1982, when North Frontage Road is extended to Solano Way, a street in the city of Concord.
8. The crossing is neither used by, nor open to, the public.


Conclusions of Law


1. The Commission has jurisdiction over rail crossings with public highways or roads and over rail crossings on private roads used by the public.
2. The Commission has no jurisdiction to order that railroad warning devices be installed at a railroad crossing on private property, which is inaccessible to the public due to a locked gate and barricade.
3. The application should be dismissed.


O R D E R

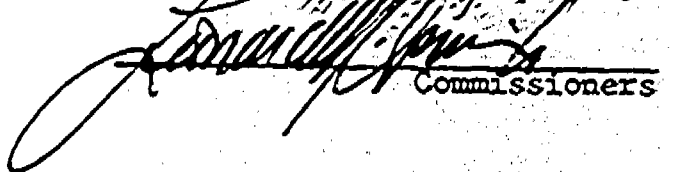
IT IS ORDERED that Application No. 58936 is dismissed.
The effective date of this order shall be thirty days
after the date hereof.

Dated APR 15 1980, at San Francisco, California.



President






Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.