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Decision 93769 NOV 13 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY for
Authority to Construct, Maintain,
and Operate a Spur Track Within
Wood Street in the City of Oakland,
County of Alameda, State of California.

Application 60645
(Filed June 12, 1981)

O P I N I O N

The Atchison, Topeka and Santa Fe Railway Company (AT&SF) requests authority to construct, maintain, and operate a spur track at grade in and across Wood Street in Oakland, Alameda County.

The Commission is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Sections 21000 et seq. The site of the proposed project has been inspected by the Commission staff.

The proposed spur track will spring from AT&SF's existing lead track located in the center of Wood Street and will replace a spur track presently located in Wood Street southerly of West Grand Avenue. The track will serve the facilities of Markstein Beverage Company which are presently under construction. The project site is within an existing rail-served industrial area.

Notice of the application was published in the Commission's Daily Calendar on June 16, 1981. No formal protests to construction of the spur track and grade crossing have been received.

By Resolution No. 59515 C.M.S., dated February 17, 1981, the Oakland City Council granted AT&SF permission to construct, maintain, and operate the proposed spur track in Wood Street.

AT&SF is opposed to several of the conditions included in Oakland's written permission on the ground that these conditions are beyond Oakland's jurisdiction to impose. AT&SF also states that it has attempted to no avail to negotiate conditions which it believes to be fair, proper, and within Oakland's jurisdiction. Therefore, AT&SF has requested an ex parte order of the Commission authorizing construction, maintenance, and operation of the spur track with the matter to be set down for hearing to adjudicate questions concerning validity of the conditions imposed by Oakland's Resolution No. 59515 C.M.S.

By letter of July 10, 1981, Oakland stated that it wishes to protest approval of Application 60645 by the Commission unless AT&SF is willing to conform to all conditions imposed in Oakland's Resolution No. 59515 C.M.S. Oakland further states its position that the imposed conditions are fair and within its jurisdiction. Oakland also states that it supports AT&SF's proposal for the proposed spur track upon the condition that AT&SF agree to or be ordered to comply with each and every condition included in Oakland's Resolution No. 59515 C.M.S.

It is clear from the statements of AT&SF and Oakland that there is no dispute concerning the need for installation of the spur track and crossing, the location of the rail facilities, or the details of construction. The only disagreement concerns the conditions imposed on AT&SF by Oakland's Resolution No. 59515 C.M.S., which conditions have the primary purpose of protecting Oakland against future costs and potential liability which might result from installation of the spur track and crossing. Since construction details are not in dispute, an interim order authorizing construction of the spur track and crossing will not prejudice the position of Oakland with regard to the issues in dispute. AT&SF also states that Markstein Beverage Company has an imminent need for rail service and requests that the usual 30-day effective date on an order be waived.

In view of the need for rail service by the industry to be served and the fact that there is no objection by Oakland to construction of the spur track per se, we will grant AT&SF's request for an order authorizing construction, maintenance, and operation of the spur track to be effective on the date signed. Absent agreement of the parties, matters concerning the conditions imposed by Oakland's Resolution No. 59515 C.M.S. will be resolved by further order of the Commission.

Findings of Fact

1. AT&SF requests authority under Public Utilities Code Sections 1201-1205 to construct, maintain, and operate a spur track at grade within and across the easterly half of Wood Street in Oakland, Alameda County.
2. The proposed spur track and crossing are required to provide rail service to Markstein Beverage Company.
3. Public convenience and necessity require construction of the proposed spur track and crossing.
4. In consideration of the minimal train and vehicular traffic, the requirements for public safety at the crossing may be met by the installation of one Standard No. 1-R crossing sign (General Order 75-C) on the easterly side of Wood Street and flagging of the crossing.
5. The Oakland City Council approved Resolution No. 59515 C.M.S., dated February 17, 1981, granting AT&SF permission to construct, operate, and maintain a spur track in Wood Street.
6. AT&SF is opposed to several of the conditions imposed by Oakland in Resolution No. 59515 C.M.S. on the ground that those conditions are beyond the jurisdiction of Oakland to impose.
7. Oakland is opposed to granting of the application unless AT&SF agrees, or is ordered, to conform to the conditions which it has imposed in Resolution No. 59515 C.M.S.

8. There is no dispute between AT&SF and Oakland concerning the need for installation of the spur track and crossing, the location of the rail facilities, or the details of construction.

9. The conditions in dispute concern possible future costs and liability which Oakland might incur as a result of construction of the spur track and crossing.

10. Construction of the spur track and crossing will not prejudice the position of Oakland with regard to the issues in dispute.

11. Markstein Beverage Company, the industry to be served, has an imminent need for rail service.

12. Oakland has no objection to construction of the proposed spur track, per se.

13. The Commission is the lead agency for this project under CEQA, as amended.

14. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

15. The activity is not covered by the requirements set forth in CEQA, and therefore the Guidelines (14 Cal. Admin. Code - Div. 6) concerning the evaluation of projects and the preparation and review of environmental documents do not apply.

Conclusions of Law

1. AT&SF should be granted authority to construct, maintain, and operate a spur track at grade in and across Wood Street in Oakland, Alameda County, to the extent set forth in the following interim order.

2. The usual 30-day effective date on an order should be waived as the industry to be served has an imminent need for rail service.

3. Issues concerning the conditions imposed on AT&SF by the Oakland City Council in Resolution No. 59515 C.M.S., dated February 17, 1981, should be resolved by agreement of the parties or, should the parties fail to agree, by further order of the Commission.

O P I N I O N

IT IS ORDERED that:

1. The Atchison, Topeka and Santa Fe Railway Company (AT&SF) is authorized to construct, maintain, and operate a spur track at grade in and across the easterly half of Wood Street in Oakland, Alameda County, to be identified as a portion of existing Crossing 2K-12.19-C of West Grand Avenue.

2. Construction of the crossing shall be equal or superior to Standard No. 1 of General Order 72-B.

3. Clearances shall conform to General Order 26-D. Walkways shall conform to General Order 118.

4. Protection at the crossing shall be one Standard No. 1-R crossing sign (General Order 75-C) to be installed on the east side of Wood Street. No on-rail vehicle shall operate over the crossing of the easterly half of Wood Street unless it is first brought to a stop and traffic on the street protected by a member of the crew, or other competent employee of the railroad, acting as flagman. The flagman shall place a minimum of two fuses on each side of the track prior to entry of the on-rail vehicle into the crossing.

5. Written instructions shall be issued by the railroad to trainmen, operating over the crossing, to comply with the flagging instructions. A copy of the instructions shall be filed with the Commission within 30 days after installation of the crossing. A suitable sign shall be installed on the east side of Wood Street, calling the attention of trainmen to the flagging instructions.

6. Construction expense of the crossing and installation cost of the signs shall be borne by applicant.

7. Maintenance of the crossing shall conform to General Order 72-B. Maintenance cost of the signs shall be borne by applicant.

8. Within 30 days after completion, under this order, applicant shall advise the Commission in writing.

9. If neither AT&SF nor Oakland has further requested that the matter be set for public hearing to resolve issues concerning the conditions imposed on AT&SF by Oakland Resolution No. 59515 C.M.S., by one year from the date of this order, it will be assumed that the parties have resolved the issues in dispute and this order will become the final order of the Commission.

10. A copy of any agreement entered into between the parties concerning terms to be imposed by Oakland on AT&SF as a condition to construction and maintenance of the Wood Street crossing shall be filed with the Commission.

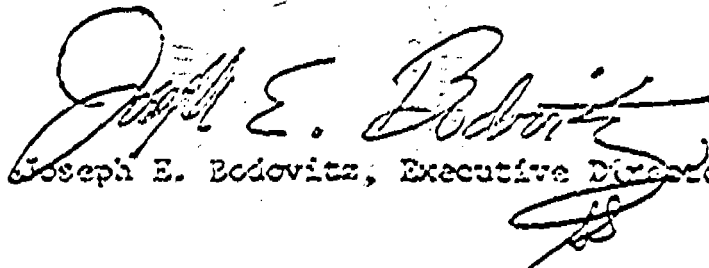
This authorization shall expire if not exercised within one year unless time be extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

This order is effective today.

Dated NOV 13 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
FRSCILLA C. CREW
Commissioners

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


Joseph E. Bodovitz, Executive Director