

FD- 30400

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SERVICE DATE

JUL 22 1986

INTERSTATE COMMERCE COMMISSION

DECISION NO. 25

Finance Docket No. 30400

SANTA FE SOUTHERN PACIFIC CORPORATION - CONTROL - SOUTHERN
PACIFIC TRANSPORTATION COMPANY

Decided: July 18, 1986

The Commission has received a letter from Congressman George Miller of California, requesting that Contra Costa County municipalities and East Bay Regional Park District (EBRPD), as parties to this proceeding, be permitted to cross-examine Commission staff on its preparation of the Supplemental Environmental Assessment (SEA). EBRPD has also submitted a letter, in which it argues that cross-examination of staff is the only means available to it for making its views known to the Commission.

The Commission's regulations, at 49 CFR 1105.10(h), provide for cross-examination of Commission staff responsible for preparing an environmental document "only where good cause is shown. Good cause contemplates, among other things, a showing that normal written commenting procedures are inadequate."

No showing of good cause has been made here. EBRPD merely asserts that its written comments are likely to be ignored. It also claims that the Commission has failed "to secure and consider environmental information before reaching a decision on the merger" and that the merger review process "has been completed."

These assertions are wholly without basis. The SEA clearly provided for the submission of written comments. See SEA at iv. Moreover, the merger case has not been decided. The Commission will meet to discuss and vote on the merger at a public conference on July 24, 1986. No decision on the merger has been or will be made prior to that conference.

Contrary to EBRPD's assumption, its comments on the SEA as well as those of all other parties, have become part of the record and will be considered. Moreover, EBRPD's opportunity to make its views known to the Commission has not been confined to the recently-filed comments. Rather, its comments in response to the initial environmental assessment and those of other concerned parties, were taken into consideration by Commission staff in preparing the SEA.

The requests for cross-examination will be denied. This decision will not significantly affect the quality of the human environment or energy conservation.

It is ordered:

The requests for cross-examination of Commission staff are denied.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee
Secretary

(SEAL)

COMMISSIONER LAMBOLEY, dissenting:

Given the importance of this proceeding and the complexity of the environment issues raised, I would grant the request for cross-examination.