DGX/SAW/tcg 3/9/2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Evergreen Nursery, Complainant, v. North San Diego County Transit District, Defendant.	Case 05-10-008 (Filed January 22, 2004)

ASSIGNED COMMISSIONER'S SCOPING RULING AND SCHEDULE

Background

This complaint involves a request by Evergreen Nursery to preserve a private crossing of the tracks to be used by the North San Diego Country Transit District (Transit District) for its Sprinter service. Evergreen Nursery bases its request on Section 7537 of the Public Utilities Code, which states:

> "The owner of any lands along or through which any railroad is constructed or maintained, may have such farm or private crossings over the railroad and railroad right of way as are reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of the owner. The owner or operator of the railroad shall construct and at all times maintain such farm or private crossing in a good, safe, and passable condition. The commission shall have the authority to determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

Evergreen Nursery maintains a commercial facility on its land located on both sides of the tracks, which run parallel to Loma Alta Creek through Oceanside, and must cross the tracks in order to get to most of its nursery stock. The Transit District has been unable to reach an agreement with Evergreen Nursery on the construction of a private bridge over the tracks, and plans to close the grade-level crossing soon to allow its contractors to raise the tracks by approximately 4 to 8 feet and improve the tracks prior to commencement of the Sprinter Rail Project.

In its answer to the complaint, the Transit District argues that the Commission lacks jurisdiction to require a public transit district to allow for a private crossing. It asserts that after construction of the Sprinter project, an at-grade crossing would not be feasible without additional grading and construction work on either side of the track and a reconstructed bridge over the creek, that Evergreen may have constructed an existing bridge without permit, that the bridge causes flooding along the right-of-way, and that any work in the Loma Creek to facilitate an at-grade crossing would require environmental review and appropriate permits.

The Transit District also claims that an at-grade crossing is infeasible because it would conflict with the Commission's Resolution ST-68, which authorizes the District's deviation from General Order 143-B as it relates to Section No. 4.03, Brake Rates, and other provisions. The Transit District argues that the resolution is based on an understanding that the Sprinter line would have 38 grade crossings, and that the addition of a 39th crossing (at Evergreen's property) could potentially alter the timetables and brake rates that the Commission approved in the resolution. In addition, as a mitigation measure,

the Transit District agreed to provide fencing and other barriers along the right-of-way to prevent unauthorized access between crossings. Therefore, the Transit District argues, it is required by the resolution to prevent access to the right-of-way at the Evergreen property.

Scope of the Proceeding

The dispute between the parties centers on the following issues:

1. Whether a private rail crossing at the Evergreen Nursery is reasonably necessary or convenient in order to connect adjacent lands of the owner.
2. Whether the Commission should require the North County Transit District to allow for a private rail crossing at the Evergreen Nursery.
3. Whether the Commission should require the North County Transit District to construct and maintain at all times such a private crossing in a good, safe, and passable condition.
4. The appropriate place, manner, and conditions under which the crossing should be constructed and maintained, the determination of the cost and expense related to the crossing, and the appropriate allocation of those costs and expenses.
5. Whether any issues raised and/or relief requested in this case are beyond the jurisdiction of the Commission.

Mediation

The parties have agreed to participate in a mediation of the substantive issues involved in this proceeding. At the request of the parties, Kenneth Koss has been assigned to serve as mediator. The parties will report on their progress.

Schedule

In the event that the parties do not successfully settle their differences, the following schedule will apply:

Date	Event
Friday April 28, 2006	Parties distribute prepared written direct testimony
Wednesday May 5, 2006	Parties distribute prepared written rebuttal testimony, if necessary
Thursday May 17, 2006 at 10:00 a.m.	Evidentiary hearing at the San Diego State Office Building, 1350 Front Street, Room B-107, San Diego, California, if necessary. Hearing will continue on May 18, if necessary.
Friday June 9, 2006	Parties file and serve concurrent opening briefs
Friday June 16, 2006	Parties file and serve concurrent reply briefs, if necessary

My goal is to resolve this case as soon as possible and I anticipate that the resolution will not exceed 12 months from the date of filing the complaint, pursuant to Pub. Util. Code § 1701.2(d).[1]

Category of Proceeding

This proceeding is categorized as adjudicatory, and it is determined that hearings are necessary.

[1] Section 1701.2(d) states that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline.

Ex Parte Communications

Pursuant to Pub. Util. Code § 1701.2(b), ex parte communications are prohibited in this proceeding.

Presiding Officer

Pursuant to Rule 6(c) of the Commission's Rules of Practice and Procedure, I designate Administrative Law Judge Weissman as the presiding officer.

IT IS SO RULED.

Dated March 9, 2006, at San Francisco, California.

/s/ DIAN GRUENEICH
Dian Grueneich
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Scoping Ruling and Schedule and all parties of record in this proceeding or their attorneys of record.

Dated March 9, 2006, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.