

ORIGINAL

Decision No. 13081

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the matter of the application of
The Atchison, Topeka & Santa Fe Rail-
way Company, a corporation, for author-
ity to construct a spur track across,
in and along the Cox Ferry County Road,
near Merced, County of Merced, State of
California.)
Application No. 9471

In the matter of the application of
Southern Pacific Company for an order
authorizing the construction at grade
of a spur track across Cox Ferry Road,
in the vicinity of Merced, County of
Merced, State of California.)
Application No. 9475

Platt Kent, for applicant, The Atchison, Topeka
and Santa Fe Railway Company.

F. W. Mielke, for applicant, Southern Pacific
Company.

C. S. Woody, for Yosemite-Portland Cement Company.

WHITTLESEY, COMMISSIONER:

O P I N I O N

In Application No. 9471, The Atchison, Topeka and Santa Fe Railway Company asks permission to construct a spur track across the Cox Ferry Road in the vicinity of Merced at two locations for the purpose of serving the Yosemite-Portland Cement Company's plant. In Application No. 9475, Southern Pacific Company asks permission to construct a spur track across the same Cox Ferry Road at a third location to serve the same industry.

Public hearings were held on these applications on December 7 and December 17, 1923, in San Francisco, it being stipulated by the interested parties that both matters be consolidated for

the purposes of hearing and decision.

The industry for which the spur track service is sought in these applications is constructing a large cement mill adjacent to the Cox Ferry Road approximately two miles northwesterly from Merced. The tract of land on which the cement mill is being built has a frontage of approximately one-fourth mile on the easterly side of the Cox Ferry Road and extends easterly approximately one mile to the right of way of the Yosemite Valley Railroad. There has already been constructed a track connection to the Yosemite Valley Railroad along the northerly side of the cement company's property over which a portion of the raw material necessary in the manufacture of the cement will be received, these raw materials being shipped from a point in the mountains reached by the Yosemite Valley Railroad. The cement company desires in addition to this track connecting with the Yosemite Valley Railroad, spur track connections with both the Santa Fe and the Southern Pacific for the purpose of shipping out its manufactured cement as well as for the purpose of shipping in fuel oil and miscellaneous supplies.

The Santa Fe proposes to serve the Yosemite-Portland Cement Company's plant by constructing a spur track diverging from its main line immediately east of its crossing over the Cox Ferry Road, thence curving northerly and crossing the Cox Ferry Road about two hundred feet north of the main line crossing, thence extending along this County road near its westerly side to a point immediately south of the cement company's property, thence recrossing the road and entering the private property of the cement company.

The Southern Pacific's Oakdale branch parallels the Cox Ferry Road at this location and is located immediately west thereof. Both this branch of the Southern Pacific and the Cox Ferry Road cross the main line of the Santa Fe at grade approximately

one mile south of the cement company's property. The crossing of the two railroads is protected by an interlocking plant. The Southern Pacific proposes to serve this industry by diverging from its Oakdale branch immediately north of the cement company's property, thence crossing the Cox Ferry Road and entering the industry's private property near its northwesterly corner. The Board of Supervisors of the County of Merced has granted franchises to both carriers for the construction of the tracks as above indicated.

The Cox Ferry Road is a north and south county road which carries only a moderate traffic. A check of this traffic taken for three days between the hours of 6:00 a.m. and 6:00 p.m. by the interlocker towerman at the intersection of the main line of the Santa Fe with the Oakdale branch of the Southern Pacific showed as follows:

Sunday	October 21, 1923	390 vehicles
Wednesday	October 24, 1923	356 vehicles
Sunday	October 28, 1923	318 vehicles

Railroad movements over the proposed spur tracks would, it is estimated, vary from two to four switches per day for each railroad. The cement company expects to produce approximately 2,700 barrels or about twelve carloads per day.

Testimony was introduced by the Santa Fe to show that a serious effort has been made to endeavor to reach this industry without the construction of grade crossings, first, by endeavoring to acquire a right of way across the private property intervening between the cement company's plant and the Santa Fe's right of way but that this could not be purchased for any reasonable sum of money, and, second, by constructing the railroad along the easterly side of Cox Ferry Road but that due to the opposition on the part of the owners of the property fronting on the Cox Ferry Road the county has been unwilling to grant a franchise for a track on that side of the road. As an alternative the Santa Fe proposes

the route indicated in its present application thereby crossing the Cox Ferry Road at two locations approximately one mile apart and following along on the westerly side of the highway the intervening distance. The Santa Fe estimates that under this plan, the construction of this spur will cost approximately \$50,000. The Southern Pacific estimates that the spur track proposed by it will cost approximately \$8,000. Witness for Southern Pacific Company admits that no effort was made by that company to select a location which would minimize the total number of grade crossings necessary to give reasonable service to the plant of the Yosemite-Portland Cement Company.

The Transportation Division of the Commission's Engineering Department submitted a plan (Commission's Exhibit No.1) whereby service could be given to the industry by both of the railroads by the construction of only one grade crossing at a total estimated cost of approximately \$35,000. This plan, however, requires the joint use of approximately one mile of the Southern Pacific Oakdale branch between the crossing of that branch with the main line of the Santa Fe and a point immediately south of the cement company's property. This plan contemplates that such joint operation should be carried under full interlocking protection controlled through the existing interlocking tower at the present railroad crossing. Such a plan of joint operation, however, does not appear to be acceptable to either carrier and particularly to the Southern Pacific whose branch track would be subjected to joint use. The failure of these carriers to willingly cooperate with one another in order to prevent the multiplicity of grade crossings and to reduce the public hazard is to be regretted but it does not appear just that the industry should be denied service altogether in this instance because of this attitude of the carriers.

It is clearly the Commission's duty to prevent the con-

struction of unnecessary grade crossings. The evidence in this case clearly shows that both companies could give a reasonably adequate service to the industry over a single crossing located south of the plant but that adequate service over a single crossing located to the north could not be given due to the fact that the topography of the land is such that the location suitable for the storage of fuel oil can be conveniently reached only by a spur from the south. It therefore appears that the Santa Fe has selected the preferable location for a crossing if only one crossing in the vicinity of the plant were to be permitted. Under the Santa Fe plan, however, a serious disadvantage exists, namely, that the construction and operation of a railroad immediately adjacent to a public vehicular roadway without any barrier between the road and the railroad would be particularly hazardous especially in this case as cars would be moved frequently ahead of the locomotive. Furthermore, because the track would curve across the road from a location so close to the road, the crossings themselves would have such an acute angle as to constitute a greater hazard than would exist if that portion of the track which would be parallel to the county road were located at a greater distance from the road.

If arrangements could be made for the Santa Fe to construct its track along and on the right of way of the Oakdale branch of the Southern Pacific and if further the crossing proposed by the Santa Fe immediately south of the cement company's plant were made available for the joint use of the Southern Pacific it would appear that adequate service for this industry could be given by both carriers with a materially lesser public hazard than under the plans proposed. This would be accomplished either by a joint use of the existing Southern Pacific track or by the

construction of a new track parallel to the existing track. This arrangement would have the further advantage of making use of the existing fence between the county road and the Southern Pacific right of way to separate all the railroad traffic from the roadway traffic. If, however, the two railroads decline to cooperate even to this extent the only alternative left appears to be the granting of the application of the Santa Fe with the provision that a fence be provided between the two proposed crossings of the Cox Ferry Road which will effectively separate the track from the vehicular roadway.

Although the order herein will authorize the Santa Fe to construct its crossings so as to connect with a track either on the county road or on the Southern Pacific's right of way, the Commission will expect the Santa Fe to make an earnest effort to obtain from the Southern Pacific the right to occupy its right of way.

The following form of order is recommended.

O R D E R

The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company having made applications for the construction of certain spur tracks at grade across the Cox Ferry Road in the County of Merced, State of California, public hearings having been held, the Commission being apprised of the facts, the matters being under submission and ready for decision,

IT IS HEREBY ORDERED, that permission be and it is hereby granted The Atchison, Topeka and Santa Fe Railway Company to construct its spur track at grade across the Cox Ferry Road in the County of Merced, State of California, at two points substantially

as requested in Application No. 9471, respectively located approximately 480 feet north of the southwest corner of Section 13, Township 7 South, Range 13 East, to be hereinafter designated as Crossing No. 1, and 4510 feet north of the southwest corner of Section 13, Township 7 South, Range 13 East, to be hereinafter designated as Crossing No. 2, said crossings to be constructed subject to the following conditions:

(1) The entire expense of constructing the crossings, together with the cost of their maintenance thereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(2) Said crossings shall be constructed of a width and type of construction to conform to those portions of said Cox Ferry Road now graded with the top of rails flush with the pavement, and with grades of approach not exceeding two (2) per cent; shall each be protected by a suitable crossing sign and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(3) An automatic flagman shall be installed and maintained for the protection of said Crossing No. 1 at the sole expense of The Atchison, Topeka and Santa Fe Railway Company; said automatic flagman to be of a type and installed in accordance with plans or data approved by the Commission.

(4) A substantial fence not less than four feet in height shall be provided and maintained between said Crossings No. 1 and No. 2, respectively, effectively separating the railroad track from the vehicular roadway along the Cox Ferry Road.

(5) The Atchison, Topeka and Santa Fe Railway Company shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossings.

(6) If said crossings shall not have been installed

within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(7) This order is made upon the express condition that if by supplemental order herein the Commission shall direct that said Crossing No. 2 shall be jointly and equally used by Southern Pacific Company said Atchison, Topeka and Santa Fe Railway Company will not interpose any objection of any nature whatsoever to such joint use of said Crossing No. 2 and the trackage adjacent thereto.

(8) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

IT IS HEREBY FURTHER ORDERED, that the above entitled Application No. 9475 of Southern Pacific Company be and it is hereby denied.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 26th day of January, 1924.

O. Sweeney

H. B. ...

James W. ...

Egerton ...

J. T. Whittney
Commissioners.