

ORIGINAL

Decision No. 14 261

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
NORTHWESTERN PACIFIC RAILROAD COMPANY
for permission to construct a second
track crossing certain streets at
grade between San Anselmo and Fairfax,
in the County of Marin, State of Cali-
fornia.

Application No. 10384.

Stanley Moore and Ralph W. Palmer, for applicant.
Henry E. Greer, for the County of Marin and
Fairfax School District.
Geo. H. Harlan and Thos. C. Jordan, for Fairfax
Lumber Company.
D. M. Willis, pro se protesting.

WHITTLESEY, COMMISSIONER:

O P I N I O N .

In this proceeding, the Northwestern Pacific Railroad Company seeks authority to install its second track at grade across Saunders and San Anselmo Avenues, in the town of San Anselmo, and Fairfax Lane, near the City limits of San Anselmo, Marin County.

To secure a proper and complete understanding of the issues presented, it seems desirable to review the history of this matter. On May 5th, 1924, the Northwestern Pacific Railroad Company filed an application (No. 10045) requesting authority to construct a second main track at grade across five thoroughfares between San Anselmo and Manor, and a spur track at grade across a street in Fairfax. This application recited that

on April 8th, 1924, the Board of Supervisors of Marin County had denied the Northwestern Pacific's petition to build these second and spur tracks at grade across streets outside corporate limits of San Anselmo. By letter dated June 5, 1924, the District Attorney of Marin County indicated to the Commission that the opposition of the Board of Supervisors did not extend to the second track, but only to the spur track at Fairfax. This was later confirmed by testimony offered in the present proceeding. On June 16, 1924, this situation was brought to the attention of the applicant in an informal manner and it was suggested that an amended application be filed eliminating the contested spur track at Fairfax, in order that the application to construct the second track crossing could be considered and determined without undue delay. This suggestion appeared to be acceptable, and the representative of applicant indicated that the matter would be rushed, in order to secure early permission by the Commission. Notwithstanding the applicant's seeming anxiety for haste, no further word was received from it for nearly two months, when, on August 13, 1924, the present application was filed. On the same day the railroad filed two other applications in connection with this general subject (Applications No. 10385 and No. 10386) and requested the withdrawal of the former application (No. 10045.)

Public hearings in this matter were had on September 11, 1924, and it then appeared that two of the crossings, (at Saunders and San Anselmo Avenues) are within the corporate limits of San Anselmo, the testimony showing that by resolution dated March 10th, 1924, the Board of Trustees of that town granted applicant franchise covering these two crossings. Fairfax Lane is an un-

incorporated territory and was declared not to be a County road by the Board of Supervisors of Marin County in a resolution dated July 8, 1924, which also declared that the County authorities were not interested in the application so far as it related to Fairfax Lane. Since the testimony showed, however, that Fairfax Lane had been continuously and unrestrictedly open to public travel for a period exceeding ten years, it will, for the purposes of this decision, be treated as a public crossing.

There is no need for exhaustive examination of the evidence relating to the desirability or necessity of this second track. The growth of traffic in this interurban territory demands such a track for expeditions and safe operation, and its construction would, in any event, be necessary in case the growth of traffic should necessitate a twenty-minute service; in short, on its merits alone, the application should be granted - a conclusion supported by the evidence introduced herein, as well as by the entire absence of opposition to the proposed construction. In the ordinary case, therefore, our approval of such proposed construction would be given without further comment.

This is not an ordinary case, however, for at the hearing it appeared from the testimony of applicant's own witnesses that this company had already installed the crossings in question, and that it had even been operating trains thereover for some two weeks prior to the hearing. It is provided by Section forty-three of the Public Utilities Act that "No public road, highway or street shall hereafter be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway or street at grade ... without having first secured the permission

of the Commission". The purpose of this provision is self-evident, and need not be restated here. Prior to its enactment the so-called "Grade Crossing" problem had been the source of increasing difficulty each year. The local authorities were unable to cope with the dangers which had come with the great increase in the use of motor vehicles over the highways, and the carriers themselves welcomed the creation of a statewide control over the intolerable situation. One of the most important factors entering into such control has been the requirement that no new grade crossings might be constructed without authority from the regulatory body first being obtained, and this Commission has always regarded the responsibility thus placed upon it as one of the most important of its functions in connection with the regulation and control of public utilities. It is a function intimately connected with the broad jurisdiction possessed by the Commission over the more general questions of safety of operations.

No justification or explanation was offered by Applicant to excuse its failure to comply with this important requirement of the Public Utilities Act. Pending final decision upon the main question involved in this Application, we issued our Preliminary Order, (Decision No. 14054) allowing this track to remain temporarily, but requiring the protection of operations over it by means of the immediate stationing of human flagmen at each of the crossings involved. This Order also took cognizance of the increased hazard occasioned by double track operations at the crossing located at or near Engineer's Station 598, in Fairfax, and directed that human flagmen be maintained thereat, in addition to the particular crossings mentioned in the Applica-

tion.

In this connection it should be mentioned that none of these crossings has a completely unobscured view; that at some the grade of approach is sharp, and that at others the volume of traffic is heavy and growing. It is the experience of this Commission that the mere establishment of double track operations increases the hazard at crossings by the danger of one train obscuring the approach of another. In the ordinary case, we might well have directed the cessation of operations over this unauthorized track or even its removal, but since, as mentioned above, it appeared in this instance that public convenience would be served by this construction, it was felt that service should continue over the track in question under proper temporary protection by human flagmen pending a careful consideration of the question of adequate permanent protection.

The nature of the permanent protection which we shall require has now been determined, and it being our opinion that with such protection these crossings should be authorized, the following order is recommended:

O R D E R

Northwestern Pacific Railroad Company, a Corporation, having made application for authority to install its second track at grade across thoroughfares in the County of Marin, more specifically described hereinafter, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and now being ready for decision,

IT IS HEREBY ORDERED that permission and authority be, and it is hereby granted to Northwestern Pacific Railroad Company to maintain its second track at grade across Saunders Avenue, and

San Anselmo Avenue, in the Town of San Anselmo, and Fairfax Lane, at Pastori Station, all in the County of Marin, State of California, as shown by the map (Exhibit "B") attached to said application; subject to following conditions, viz:

(1) Said crossings shall be maintained of a width and type of construction to conform to those portions of said streets now graded, with the top of rails flush with the pavement, shall be protected by suitable crossing signs, and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(2) Automatic flagmen shall be installed and maintained for the protection of each of said crossings; and also at that certain other crossing heretofore constructed as a passing track at or near Engineer's Station 598, as shown on exhibit "B" attached to application, all at the expense of applicant. Said automatic flagmen shall be of a type approved by the Commission, and shall be installed in accordance with plans or data approved by the Commission.

(3) Human flagman protection shall be maintained, in accordance with our Preliminary Order (Decision No. 14054) dated September 13, 1924, until said automatic flagmen are installed and operating.

(4) 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.

This order shall become effective two (2) days after

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the making thereof.

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 17th day of November, 1924.

Chas. H. Sawyer

H. W. Anderson

Irving Martin

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