

EMR

Decision No. 15121

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
The City of Los Angeles for an Order )  
granting Permission to the City of )  
Los Angeles to construct a Railroad )  
Track in Anaheim Street across a )  
certain track of the Pacific Electric )  
Railway Company, at Grade, and deter- )  
mining and prescribing the manner and )  
the terms of installation, operation, )  
maintenance, use, and protection of )  
such crossing. )

Application No. 9712.

Jess E. Stephens, City Attorney, Clyde M. Leach  
Assistant City Attorney and Milton Bryan, Deputy  
City Attorney, for the City of Los Angeles and  
the Los Angeles Harbor Commission.  
A. S. Halsted and Fred E. Pettit, for the Los  
Angeles and Salt Lake Railroad Company.  
Frank Karr, for the Pacific Electric Railway Company.  
E. W. Camp, Hill & Morgan, and M. W. Reed, for the  
Atchison, Topeka and Santa Fe Railway Company.  
Harry J. Bauer, of Bauer, Wright & McDonald, W. K. Barnard,  
Burt Keinley, and F. P. Cole, for the Greater Harbor  
Committee of Two Hundred of Los Angeles Chamber of  
Commerce.  
E. E. East, for the Los Angeles County Grade Cross-  
ing Committee.  
Samuel Storrow, for the Municipal League of Los Angeles.  
John R. Berryman, for Automobile Club of Southern California.  
George A. Damon, for the Regional Planning Commission.  
Lou Johnson, Secretary, for the Wilmington Chamber of  
Commerce.

SHORE and DECOTO, Commissioners,

SUPPLEMENTAL OPINION.

A petition was filed by the Greater Harbor Committee of  
Two Hundred of the Los Angeles Chamber of Commerce on May 5, 1925.

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requesting that the permission heretofore granted by the Commission in its Decision No. 13663 in the above entitled proceeding be vacated, annulled and set aside. The Commission, on May 9, 1925, ordered that this matter be reopened and further hearings were had on May 14th and June 11, 1925.

The above entitled application was originally filed on January 22, 1924, the applicant being the City of Los Angeles by its Board of Harbor Commissioners. The purpose of the application was to enable applicant to construct its tracks at grade across Anaheim Road at McFarland Street in the Wilmington District and at grade across the tracks of Pacific Electric Railway Company at Anaheim Road in order to make a connection with the tracks of the Santa Fe and Los Angeles Harbor Railway Company (a subsidiary of The Atchison, Topeka and Santa Fe Railway Company) north of Anaheim Road thereby enabling the Santa Fe to have access via this route into the Harbor district in accordance with the provisions of an agreement entered into, dated August 4, 1923, between the Santa Fe and Los Angeles Harbor Railway Company and the Board of Harbor Commissioners of the City of Los Angeles.

A temporary permit for the proposed crossing for a period of two years, was granted by the Commission by its order dated June 9, 1924 (Decision No. 13663) in which the Commission stated:

"The construction of a railroad at grade across a thoroughfare with a traffic of more than 12,500 vehicles daily is a very serious matter and should not be permitted if there can be found any reasonable plan of avoiding or eliminating it. In this case not only has a plan been found whereby this grade crossing can be eliminated, but the applicant proposes to proceed as rapidly as possible to put that plan in effect and requests authority for the proposed grade crossing only as a temporary expedient until the legal and physical obstacles of the permanent plan can be overcome."

The plan referred to in that language was a proposal to construct a viaduct on Anaheim Road over Dominguez Creek, approximately 4,550 feet east of the proposed grade crossing on Anaheim

Road at McFarland Street.

At the hearings had on May 14th, and June 11th, of this year, a voluminous record was adduced much of which was a repetition of the record at the prior hearing in this proceeding. A description of the conditions is quite fully discussed in the prior decision of the Commission above referred to and it need not be repeated here.

The conditions appear to have been changed from their status a year ago only by the following important factors:

(1) There has been filed the joint application of the County of Los Angeles, City of Los Angeles, City of Long Beach, Board of Harbor Commissioners of the City of Los Angeles and Los Angeles and Salt Lake Railroad Company (Application No. 11048) for an Order authorizing the construction of a viaduct over Dominguez Creek on the Anaheim Road and approving an agreement of the above mentioned parties relative to the apportionment of the cost of said viaduct. The Commission in Decision No. 14919 granted this application approving the plans of the viaduct submitted and apportioning the cost of the construction in accordance with the agreement reached by the parties.

(2) An agreement dated April 16, 1925, between the City of Los Angeles by its City Council and the Atchison, Topeka and Santa Fe Railway Company. In this agreement the Santa Fe agrees to pay the City of Los Angeles one-eighth of the cost of the Dominguez Slough viaduct, providing such sum shall not exceed \$61,000. and providing one duct or bay of said viaduct be set aside for the Santa Fe's use as an entrance to the harbor if the Dominguez Slough plan is finally adopted and made effective for all railroad lines. Santa Fe further agrees to use the Dominguez Slough route when all rail lines entering the harbor use that route thereby removing

the existing grade crossings on Anaheim Road. It is further agreed that the above mentioned \$61,000. is to be refunded by the City of Los Angeles to the Santa Fe at the expiration of seven years if the Dominguez Slough route is not finally adopted by the other railroads within that time. It is also agreed that the said \$61,000. may, under certain circumstances, be used for certain other purposes as, for example, to apply on the Santa Fe's portion of the elimination of the proposed grade crossing at Anaheim Road and McFarland Street.

(3) On April 21, 1925, the City Council of the City of Los Angeles by resolution instructed the City Attorney to at once commence the necessary proceedings looking towards the early vacation of grade crossings on Anaheim Road by Southern Pacific Company and Pacific Electric Railway Company.

(4) There was introduced through the testimony of Mr. Charles J. Colden, President of the Board of Harbor Commissioners, the applicant herein, a resolution of the Board dated May 18, 1925, requesting that the Railroad Commission cancel without option the temporary permit for the grade crossing on Anaheim Road at McFarland Street which had been granted on its own application by the Commission in Decision No. 13663.

Mr. Colden stated that his Board had now committed itself to an expenditure of \$70,000 in the construction of the Dominguez Slough viaduct and that they did not want now to spend an additional \$75,000.00 on a grade crossing at Anaheim Road and McFarland Street, which under the provisions of the temporary permit granted would only be available for about a year. Moreover, they did not want to join in a grade crossing which might later involve an additional large expenditure on their part for the separation of grades at that point. He further stated that should a permanent route of entrance to the harbor be made by the Santa Fe by way of McFarland Street such a plan would interfere with the efficiency of

the operations within the harbor district.

It is a somewhat anomalous situation in this proceeding to find the applicant, the Board of Harbor Commissioners, by formal resolution and by the testimony of its President, requesting the revocation of the temporary permit previously granted by the Commission on its application. However, as no formal petition for the withdrawal of its application was presented by the applicant, the hearing was proceeded with to a conclusion in order that all available information and facts might be in evidence so that the issues might be decided upon their merits.

The City Council of the City of Los Angeles passed a resolution approving the granting of the temporary permit for the crossing of Anaheim Road at McFarland Street by the Railroad Commission but this resolution was not supported by any oral testimony. Mr. Jess E. Stephens, City Attorney, appeared on behalf of both the City Council and the Board of Harbor Commissioners and stated that he did not take a position in support of one recommendation as against the other but desired only to present all the facts in evidence that were available.

Testimony was given by Mr. R. B. Ball, the Chief Engineer of the Santa Fe Coast lines to the effect that his Company did not want to incur a large expenditure to make use of the Dominguez Slough route into the Harbor District because of alleged hazard of overflow, in time of flood, from the flood control channel in which event it was claimed the railroads using that route would be subject to interruption of traffic during such flood conditions. Mr. Ball, however, indicated that if all of the other railroad lines used the Dominguez Creek viaduct route, his Company would be willing to take its chances with the rest in respect to the flood hazard, but that he was unwilling to recommend that his Company

alone should underwrite the risk. A statement was filed by Mr. Charles E. Leeds, Consulting Engineer of the Committee of Two Hundred, contradicting Mr. Ball's theory of hazard of overflow at flood times and calling attention to the voting by the County of Los Angeles of two bond issues, one for \$4,500,000. and one for \$35,000,000. for flood control and conservation, that the construction program for flood control above Dominguez Junction is well under way, and that these flood control plans have been approved by the U. S. Board of Engineers for Rivers and Harbors. Witnesses for the Santa Fe pointed out that even though they started at this time to secure a connection to the harbor by the Dominguez Slough Route no less than two years would elapse before the necessary right-of-way could be secured and the physical construction be completed and urged that in the meantime it be given temporary access to the harbor. All parties joined in expressing their common desire that the Santa Fe be given access to the harbor by some route and the entire proceeding broadly resolves itself into a determination of the manner in which that access should be permitted.

The Commission must determine first what weight should be attached to the position taken by the applicant in requesting a cancellation of the temporary permit heretofore granted on its application for a grade crossing over Anaheim Road at McFarland Street.

Ordinarily it would appear that the case should be dropped at this point and the temporary permit immediately set aside, revoked and annulled; but in the present instance although the Board of Harbor Commissioners on behalf of the City of Los Angeles is the applicant, the evidence shows that the Atchison, Topeka and Santa Fe Railway Company or its subsidiary has an important interest in the case, and that the public convenience and necessity

is involved in securing transportation to and from the harbor district of Los Angeles in connection with the Santa Fe system. Accordingly the Commission is disposed to consider the situation as broadly as the evidence will permit, and in its order will endeavor to provide a means of meeting the requirements of public convenience and necessity, and of enabling the Santa Fe to serve the harbor district in harmony with the plans of the Board of Harbor Commissioners, the applicant herein, provided the applicant will accept a temporary permit in accordance with the terms and conditions therein stated.

The evidence presented by the Greater Harbor Committee of Two Hundred, including the testimony of its Vice President Maynard McFie, the testimony of Charles J. Colden, the President of the Board of Harbor Commissioners, the testimony of Robert M. Allan, the Chairman of the Public Utilities Committee of the City Council of the City of Los Angeles, all goes to show that responsible city authorities and business organizations have given great thought in working out a plan of harbor development that will meet the needs of the harbor for many years to come. The development of the Dominguez Slough Viaduct and the plan of bringing the railroads into the harbor district by that route is one of the most important steps in that direction. This Commission should avoid, so far as possible, issuing any order which would be utilized by any railroad company, and particularly by a railroad company seeking its first entrance into the harbor district, to frustrate the plans of harbor development which have been worked out by these city authorities in conjunction with responsible public organizations. The Santa Fe should be prepared to use the Dominguez viaduct route as soon as the viaduct has been completed, which has been estimated by its own representatives to require about two years' time. The Santa Fe, however, appears to be unwilling to agree that it will

use the Dominguez Slough viaduct route unless and until the Southern Pacific Company and the Pacific Electric Railway Company also use that route. This Commission cannot be governed in its opinion by the terms of the Santa Fe's policies as affected by the actions of some other and competitive railroads wherein a matter of public convenience and necessity is at stake. Moreover the Southern Pacific Company and the Pacific Electric Railway Company have been operating into the harbor across Anaheim Road at grade for a period of years and it is not reasonable that the method of access by a new railroad now seeking access for the first time should be determined entirely by the operations of railroad companies long established in that district. It is not appropriate to raise the question at this time, much less to decide it, as to whether or not the Railroad Commission can or should exercise jurisdiction over the removal of the Southern Pacific Company or the Pacific Electric Railway Company to the Dominguez Slough viaduct. The manner in which certain other railroads operate across Anaheim Road to reach the harbor certainly is not a sufficient reason or basis for this Commission authorizing new additional hazardous conditions as applied to the operations of a railroad now seeking entrance to the harbor when a more desirable and less hazardous route is available. On the other hand there would not appear to be any justification for refusing to permit temporary access by the Santa Fe to the harbor by the McFarland Street route pending the time that a more satisfactory means of access can be physically developed provided that the granting of such a permit can be surrounded by satisfactory guarantees as to the fulfillment of the terms and intent of the Commission's order, and provided also that the governing body of the Harbor District, the Board of Harbor Commissioners, the applicant herein, has a reasonable opportunity to consider the terms on which it is willing to accept a permit to lay



its tracks across Anaheim Road for the use and benefit of the Santa Fe Railway Company.

In view of all the evidence in this case, it appears that the temporary permit heretofore granted in Decision No. 13663 should be set aside, revoked and annulled, and that in its place a temporary permit should be granted to the applicant, the City of Los Angeles through its Board of Harbor Commissioners, for a period of two years from the date hereof or to such other date as the Commission may find by a supplemental order as the time at which the Dominguez Slough viaduct shall have been completed to a point which will permit of the operation of a railroad by the Santa Fe Company over that route, such temporary permit being made subject to its acceptance by the applicant and to the filing of certain stipulations and agreements on the part of the applicant and of the Santa Fe as would tend to insure the fulfillment of the terms and intent of this Commission's order, and of the abolition of the crossing as provided.

#### O R D E R .

Petition having been filed by the Greater Harbor Committee of Two Hundred of the Los Angeles Chamber of Commerce requesting that Order heretofore made by the Commission in its Decision No. 13663 in the above entitled matter, be vacated, annulled and set aside, the Commission having reopened said proceeding for further hearing and determination, further hearings having been had, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that the Order of this Commission heretofore made in its decision No. 13663 dated June 9, 1924, be and it is hereby set aside, revoked and annulled, and

IT IS HEREBY FOUND AS A FACT that public convenience and necessity require the establishment of temporary crossings at grade

at the points applied for in this application hereinbefore mentioned, pending the construction of a viaduct on Anaheim Road over Dominguez Creek and the completion of said viaduct to a point which will permit of the operation of a railroad thereunder by the Atchison, Topeka and Santa Fe Railroad Company or its subsidiary, the Santa Fe and Los Angeles Harbor Railway Company, subject to the terms and conditions provided herein, therefore

IT IS HEREBY FURTHER ORDERED that permission be and it is hereby temporarily granted to the City of Los Angeles by its Board of Harbor Commissioners, in the County of Los Angeles in the State of California, to construct and maintain a railroad track at grade across I Street, Young Street, K Street, Grant Street, J Street and Anaheim Road as shown on the map attached to the application, and to temporarily construct a railroad track at grade crossing tracks of the San Pedro Line of the Pacific Electric Railway Company at McFarland Street and Anaheim Road, near Wilmington in the City of Los Angeles, County of Los Angeles, State of California, as shown on the map attached to the application, said crossings to be constructed subject to the following conditions and not otherwise:

(1) The Board of Harbor Commissioners of said City of Los Angeles shall file its acceptance of the temporary permission herein granted for the construction of said crossings, within ninety (90) days from the date of this order.

(2) The Board of Harbor Commissioners of the City of Los Angeles shall file with this Commission within ninety (90) days from the date of this order a joint stipulation and agreement executed by the City of Los Angeles, by its Board of Harbor Commissioners, and by The Atchison, Topeka and Santa Fe Railroad Company and its subsidiary, the Santa Fe and Los Angeles Harbor Railway Company,

whereby said City of Los Angeles, by its Board of Harbor Commissioners, shall agree to remove its tracks from, and abolish, said temporary crossings over Anaheim Road upon the expiration of the term for which this temporary permit is granted, and whereby the Atchison, Topeka and Santa Fe Railroad Company and the Santa Fe and Los Angeles Harbor Railway Company shall agree not to oppose directly or indirectly the removal of said tracks from and the abolition of said crossings over Anaheim Road at the expiration of the term for which this temporary permit is granted. Said joint stipulation and agreement shall include a satisfactory statement of some plan, method or condition, whereby the business developed by The Atchison, Topeka and Santa Fe Railroad Company, or its subsidiary, the Santa Fe and Los Angeles Harbor Railway Company in the harbor district by its operations under the provisions of said temporary permit shall be adequately taken care of thereafter and whereby the said The Atchison, Topeka and Santa Fe Railroad Company, or its subsidiary, the Santa Fe and Los Angeles Harbor Railway Company will, upon the abolition of the crossings temporarily authorized herein, continue to have access to the harbor district of the City of Los Angeles without crossing Anaheim Road at grade.

(3) The entire expense of constructing said 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 applicant.

(4) Said crossings of said streets shall be constructed 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 and with grade of approach not exceeding two per cent. (2%); 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.

(5) Said crossing of Anaheim Road shall be protected by crossing gates to be installed at the expense of the applicant. The cost of maintaining of said gates thereafter shall be borne equally by applicant and the Pacific Electric Railway Company.

(6) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossings.

(7) Said crossings at the junction points of the existing municipal railway tracks with the Pacific Electric Railway Company's San Pedro Line and the junction of Pacific Electric Railway Company's Wilmington - Long Beach Line with its San Pedro Line shall be protected by an interlocking plant built substantially in accordance with the Plan (C E 6598) filed in this proceeding as Pacific Electric Railway Exhibit No. 1.

(8) Said interlocking plant shall conform to Commission's General Order No. 53.

(9) The cost of installation of said interlocking plant shall be borne as follows: forty-five per cent. (45%) by the Applicant and fifty-five per cent. (55%) by Pacific Electric Railway Company.

(10) Maintenance of said interlocking plant shall be based on such an agreement as may be arrived at by the parties in interest, a copy of which shall be filed with the Commission. If interested parties are unable to agree, division of the maintenance shall be apportioned by this Commission in a Supplemental Order.

(11) The Highway crossing gates hereinbefore ordered shall be operated from the interlocking tower.

(12) The authorization herein granted for the installation of said crossings shall lapse and become void two (2) years from the date of this order, or at such date prior to that time at which this Commission shall find and indicate in a Supplemental Order that the Dominguez Creek viaduct shall have been completed to a point which will permit the operation of a railroad by The Atchi- 112

son, Topeka and Santa Fe Railway Company, or its subsidiary, the Santa Fe and Los Angeles Harbor Railway Company over that route; whereupon said crossings shall be abolished by applicant, municipal tracks shall be removed from Anaheim Road by applicant and the necessary functions for this track shall be removed from the interlocking tower, which shall thereafter be maintained, including the crossing gates, by Pacific Electric Railway Company.

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

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

This Order shall become final and effective upon the fulfillment of the conditions numbered "(1)" and "(2)" above.

For all other purposes the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of June, 1925.

H. B. Brundage  
C. Weaver  
Ernest Shore  
George D. Squires  
Frederick

Commissioners.