

Decision No. 15604.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
The People of the State of California,
on relation of the California Highway
Commission, for an order authorizing
the construction of a State Highway
crossing under the tracks of the
Southern Pacific Company and The South
San Francisco Belt Railway, at South
San Francisco, San Mateo County,
California.

ORIGINAL

Application No. 11,630.

Paul F. Fratessa, for Applicant.
F. W. Mielke, for Southern Pacific Company.
P. J. Shaw, for The South San Francisco
Belt Railway Company.
F. A. Cunningham for the City of
San Francisco.

SQUIRES, COMMISSIONER:

O P I N I O N

In this application the California Highway Commission requests authority to construct a highway under the tracks of Southern Pacific Company and The South San Francisco Belt Railway at South San Francisco, San Mateo County, California, and also asks that this Commission apportion the cost of the improvement.

At the hearing, which was held in San Francisco, October 20th, 1925, it was stipulated by and between the respective parties that public necessity and convenience requires the construction of this crossing.

The underpass requested is that of the so-called Bay Shore Highway which is now being graded from a point imme-

diately south of the proposed crossing to Broadway, Burlingame, and which will eventually be extended southward to San Jose. Because of its direct routing, offering the shortest distance between San Francisco and Peninsular points, the road will become a very important trunk line highway, capable of carrying heavy high speed traffic. While the southerly terminus of the present grading contract is Burlingame, it is expected that by the time the underpass, which is the subject of this proceeding, is constructed, the road will be ready for travel as far South as San Mateo.

From San Francisco to the site of the proposed crossing the new highway will replace, in a general way, the existing San Bruno Road, a paved County Highway now leading to a connection with the main peninsular highway at San Bruno. At South San Francisco, however, the route of the new State Highway will intersect the tracks and proceed directly across the marsh, while the existing County Road now proceeds southward parallel with and to the west of the Southern Pacific Company's tracks, crossing them at grade at Linden Avenue, some four thousand feet beyond the proposed undergrade, and a second time at grade near San Bruno Station.

From a point south of the underpass on the new highway it is proposed to build a lateral connecting with this County Road a short distance east of the existing crossing at Linden Avenue. Such a connecting road will do away with the necessity for the grade crossing at Linden Avenue, as the small amount of local traffic originating in the triangle lying between the Southern Pacific main line tracks and the San Bruno branch tracks can be conveniently and adequately served by existing crossings. The crossing at Linden Avenue is an unusually hazardous one and

is now protected by a human flagman.

The proposed underpass consists of a steel and concrete structure with 4% approach grades, providing a forty-foot driveway and an eight foot sidewalk. The deck proposed at present will carry six tracks of Southern Pacific Company and two of The South San Francisco Belt Railway, but the abutments will be so constructed and the grade lines laid in such a way that the Southern Pacific Company may in the future utilize its entire right of way for tracks. In addition to this 120 foot extension of the subway, which is entirely for the benefit of Southern Pacific Company, and which is estimated to increase the cost of the structure \$30,000, there are also two items of exclusive benefit to the California Highway Commission which should also be considered in the gross estimate. Immediately north of the railroad right of way and within the limits of the subway approaches, the proposed highway will pass through a section of high ground requiring a considerable cut. It is contended that in the event a grade crossing were being constructed, it would still be necessary to remove a certain portion of this cut and that the cost of so doing is not properly a portion of the subway cost. There appears to be merit in this contention. The Commission has in the past given consideration to theoretical grade lines in determining the apportionment of cost of grade separations, and it is therefore proper that the expense of removing this 30,000 yards of material, which is estimated to cost \$1.00 per yard, be eliminated from the gross estimate. It also appears that the Highway Commission can utilize the material removed from the subway excavation on its adjacent fills, and that the Commission has agreed to allow a credit of 49 cents per cubic yard for the material

so used, that being the unit price for similar material under the present grading contract. Deducting the 30,000 cubic yards, which the railroad company claims to be without the limits of the subway excavation, there appears to be 34,000 cubic yards of subway material which, at 49 cents per yard, is worth \$16,660. to the highway, and that amount should also be eliminated from the gross estimate.

The applicant has filed an estimate of the cost of constructing this underpass, the total of which is \$280,096. This includes the above-mentioned items of direct benefit to one of the parties. Southern Pacific Company agreed that the estimate was reasonable but was of the opinion that an item of \$2,000. for taking care of the Belt Line during construction should be increased to \$3,700. The item "Concrete paving between Engineer's Station 244 + 50 and 254, \$16,350." was also questioned, but it appears that on account of the grade of the subway being below sea level between these stations, this paving is a structural part of the subway and is not a portion of the roadway paving. It is not the intention to pave the Bay Shore Highway with concrete at the present time. This sum of \$280,096., increased by \$1,700. as suggested above, appears then to be a reasonable gross estimate and that sum will be used in apportioning the cost of making this improvement. After deducting the amounts of the several direct benefits set forth in preceding paragraphs, a balance of \$205,136. remains to be divided according to the obligations of, and the intangible benefits received by, each of the parties. This sum will hereinafter be referred to as the "net cost."

It is the contention of Southern Pacific Company that the cost of this work is properly chargeable to five different parties, the Highway Commission, the County of San Mateo, the City of

South San Francisco, Southern Pacific Company and The South San Francisco Belt Railway Company, and that an equitable distribution of the cost would be to assess each one-fifth. While it is true that the site of the proposed subway is within the limits of South San Francisco, and that its construction will probably eliminate a grade crossing of a County Road, which is also within the said City Limits, I am of the opinion that the public interest in this grade separation is the same whether it be represented by one political subdivision or by three; or, stated conversely, the mere fact that this subway is located in an incorporated city, and that a county instead of the State has jurisdiction over the road, which at present crosses the railroad tracks at grade, does not diminish the railroad companies' respective obligations, and it should have no effect on the amounts these companies should be required to pay. It must also be considered that in the present case The South San Francisco Belt Railway Company is not benefited by the elimination of the grade crossing, as Southern Pacific Company is, and for that reason, the latter company should bear a relatively larger portion of the cost.

Since the one subway crosses under the tracks of two railroads and the same approaches serve for both crossings, it is apparent that each company has an interest in the entire structure, and for the purpose of determining the relative amount of this interest, a method of apportioning according to the number of tracks in existence appears to be fair. The Belt Railway has two tracks and Southern Pacific Company six. The former company may therefore be said to have an interest in one-fourth of the "net cost" of the structure, which portion amounts to \$51,284., and the Southern Pacific has an interest in three-fourths of the

"net cost", which portion amounts to \$153,852. It is these amounts, therefore, which should be used in determining the equitable proportions to be borne by the respective companies.

The obligation of railroad companies to provide the public with safe means of crossing their tracks has been pointed out in previous decisions of this Commission, and it may be well to quote the following paragraphs from Decision No. 14244, in the matter of the crossing of La Cienega Boulevard under tracks of Pacific Electric Railway Company in the City of Los Angeles, (25 C.R.C. 552):

"A line of railroad is primarily constructed for the purpose of engaging in that business for profit. The establishment of such a line of railroad becomes, of itself, a barrier to what would otherwise be a free and safe means of access for vehicular travel between the two portions of the territory divided by the railroad, and which, by the construction of the railroad, becomes limited.

"It is a well established principle that the railroad incurs an obligation to reduce to a minimum the hazard at any of the crossings of the established lines of travel of the public, and the obligations of a carrier to participate to the extent of 50 per cent of the cost of completely eliminating such grade crossings at established highways has become almost customary; nor is the railroad's obligation decreased in such a case because of the fact that highway traffic development has increased, subsequent to the establishment of a railroad, to such an extent that grade crossing elimination, which originally was not justified, later becomes necessary.

"It is thus evident that the railroad's obligation to provide reasonably safe access across its tracks is a continuing obligation, and it cannot expect to wholly escape the burden of providing safe highways, in addition to those already constructed at the time of the original railroad construction, which development of the community it serves demands such additional highways."

In the above cited decision, 25% of the cost of the project was assessed to the railroad company and it appears reasonable that for the purpose of determining the portion of the cost to be borne by The South San Francisco Belt Railway Company, a

similar percentage should be used and therefore twenty-five per cent of the portion representing the South San Francisco Belt Railway Company's interest in the subway, should be assessed to that Company. Reduced to money, this amounts to 25% of \$51,284. or \$12,821.

The Southern Pacific Company's interest in the subway is affected by other conditions. When the Bay Shore Highway is opened and the connecting cross road constructed, there appears to be no reason why the existing dangerous crossing at Linden Avenue cannot be closed and this railroad company will receive considerable and substantial benefit by being relieved of further risks at this point as well as the cost of maintaining this crossing and an expensive flagging service.

It appears that in selecting the location for the subway the alignment of the highway rather than the possibility of economical construction, was the determining factor. Six tracks of Southern Pacific Company are crossed at the proposed site, while but three exist at the Linden Avenue grade crossing, and it may be that it would cost somewhat less to build a subway at the latter point. However, the present record does not disclose what this difference in cost, if any, would amount to, and it therefore must be presumed that any difference in the cost as between the two sites is so small as to be inconsequential to the parties.

When grade separations have resulted in the elimination of grade crossings, the Commission has in many instances assessed one-half of the cost of such separation to the railroad company and there appears no valid reason why a similar division should not obtain in this instance. Dividing the hereinbefore mentioned sum of \$153,852. equally between applicant and Southern Pacific Company would amount to \$76,926. to each.

Recapitulating the several computations discussed in the foregoing paragraphs, the matter may be stated as follows:

Estimated cost of project per App's Exhibit No.3	\$280,096
Increase in cost of taking care of Belt Ry. tracks	<u>1,700</u>
Gross estimated cost	\$281,796
Estimated cost of portions entirely for benefit of California Highway Commission:	
Excavating to theoretical grade	\$30,000.
Subway excavation used as fill	<u>16,660.</u>
	\$46,660
Estimated cost of portion entirely for benefit of Southern Pacific Company:	
Extra length of Barrel	<u>\$30,000.</u>
Total direct benefits	<u>76,660</u>
"Net cost" of subway to be apportioned	\$205,136.

Portion of "Net Cost" to be Divided Between Applicant and the Respective Railroads:

S.S.F. Belt Ry. Co.	2 tracks or 25%	\$51,284.
Southern Pacific Co.	" or 75%	<u>153,852.</u>
Total	8 " or 100%	\$205,136.

Apportionment of "Net Cost":

S.S.F. Belt Ry. Co.	assessed	25%	of its interest	\$12,821.
Southern Pacific Co.	"	50%	" " "	76,926.
California Highway Com.	"	75%	" Belt "	38,463.
"	"	50%	" S.P. "	<u>76,926.</u>
				\$205,136.

There is not much likelihood that the actual cost of the several so-called direct benefits can be definitely determined even after the project is completed, but all of the estimates appear to have been prepared with the same relative degree of accuracy and since they are thus comparable, they have been combined in the following summary, with the intangible benefits which have been obtained by apportionment of the estimated

"net cost" of the subway, with resulting percentages as shown:

	<u>Appor- tionment Net Cost</u>	<u>Direct Benefits</u>	<u>Total Apportionment</u>	<u>Per Cent of Total Cost</u>
To California High- way Commission	\$115,389.	\$46,660.	\$162,049.	57 1/2%
To Southern Paci- fic Co.	76,926.	30,000.	106,926.	38%
To S.S.F. Belt Rail- way	12,821.	-	12,821.	4 1/2%
	<u>\$205,136.</u>	<u>\$76,600.</u>	<u>\$281,796.</u>	<u>100%</u>

It appears that the owners of The South San Francisco Belt Railway have made certain right of way concessions to the Highway Commission, in consideration of which the latter at the hearing announced its willingness to assume any costs of the subway which may be properly assessed to that railway company. This, of course, is a matter of agreement between these parties and if the amount herein assessed to the Belt Railway has already been paid to applicant by valuable considerations, this decision should not be construed as requiring that these amounts be paid again or in any other manner.

It should also be noted that the percentages, as above developed, are contingent upon the closing of the existing crossing at Linden Avenue, and a further order should be entered in the proceeding under which that crossing was opened (Application No. 849) providing that at such time as the subway herein authorized is constructed and the connecting road built, this grade crossing shall be closed.

The following form of order is recommended in the present proceeding:

O R D E R

People of the State of California on relation of the California Highway Commission, having made application for an order authorizing the construction of a crossing under the tracks of Southern Pacific Company and South San Francisco Belt Railway Company, at South San Francisco, San Mateo County, and apportioning the cost thereof, a public hearing having been held and the matter having been submitted, is now ready for decision:

IT IS HEREBY ORDERED, that the people of the State of California on relation of the California Highway Commission be and they are hereby authorized to construct a crossing under the tracks of Southern Pacific Company and ^{The} South San Francisco Belt Railway Company, at South San Francisco, San Mateo County, as hereinafter specified, subject to the following conditions:

(1) Said crossing shall be constructed at a location approximately at engineer's station 75+03.76 on the railroad.

(2) Said crossing shall be constructed substantially in accordance with the plan filed by applicant as Exhibit No. 1 in this proceeding. Said crossing shall be more specifically constructed in accordance with detail plans which shall hereafter be submitted to and approved by this Commission.

(3) The cost of constructing the under grade crossing, including all work estimated on sheet two of Applicant's Exhibit No. 3, shall be apportioned on the basis of four and one-half (4½%) per cent to The South San Francisco Belt Railway Company, thirty-eight (38) per cent to Southern Pacific Company and fifty-seven and one-half (57½) per cent to the applicant.

(4) The cost of future maintenance of the superstructure shall be borne by The South San Francisco Belt Railway Com-

pany and Southern Pacific Company, each company bearing the cost of maintenance of the portion under its own tracks.

(5) The cost of future maintenance of the remainder of the structure, including the drainage thereof, shall be borne by the applicant.

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

(7) If said crossing shall not have been installed within two years from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(8) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing 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.

For all other purposes this order shall become effective twenty (20) days from the making thereof.

The foregoing opinion and order are hereby approved and order filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day
November
of ~~October~~, 1925.

H. B. Brundage
C. S. Smith
George D. Spence
Ernest C. Crot

Commissioners.