

Decision No. 15637.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
NORTHWESTERN PACIFIC RAILROAD COM-
PANY for permission to construct
and maintain an industrial spur
track across the Toll Road, in the
City of San Rafael, County of Marin,
State of California.

ORIGINAL

Application No. 11,693.

R. W. Palmer and M. L. Gillogly, for Applicant.
E. G. Poss, for California Highway Commission.
J. L. Martinelli, for the City of San Rafael.
Jos. X. Hawkins, for J. P. Grady.
E. X. Evans, in propria persona.

BY THE COMMISSION:

O P I N I O N

Northwestern Pacific Railroad Company, a corporation,
filed the above-entitled application with this Commission on the
14th day of September, 1925, asking for authority to construct an
industrial spur track across the "Toll Road" in the City of San
Rafael, County of Marin. It appears that this road is under the
jurisdiction of the California Highway Commission and as that
Commission withheld its permission to construct the crossing pend-
ing decision by this Commission, the matter was set for public
hearing. Such hearing was held by Examiner Satterwhite at San
Rafael on October 26, 1925. At this time the interested parties
were heard and the matter was submitted.

The crossing applied for is that of a spur track to
serve a building material storage plant of Mr. J. P. Grady, and
is located within the corporate limits of the City of San Rafael
about 900 feet south of Irwin Street on the highway connecting
San Rafael with San Quentin and the northerly terminus of the
Richmond-San Rafael Ferry and Transportation Company. This high-

way was recently taken over by the California Highway Commission.

The property to the south of the highway at this point is owned by the Northwestern Pacific Railroad Company and is adjacent to their main line south of San Rafael. The property to the north of the highway is sub-divided and occupied by a number of industries. One spur track is already in existence across the Highway, having been constructed some years ago to serve the property occupied by S. Cheda and Company just west of the property of E. C. Evans and Son, which the proposed spur is intended to serve. East of the Evans property is an undeveloped tract owned by the City of San Rafael and beyond this is another large undeveloped tract, both of which tracts are suitable for industrial use. All of this property has access to water transportation and is capable of being served by rail providing access to the main line of applicant can be had across the highway.

Daily traffic on the highway for the year ending March 31, 1925, is set forth on Highway Commission's Exhibit No. 1. It appears from an analysis of this data, that traffic on the highway is subject to substantial seasonal variations and that Sunday traffic is much larger than week day traffic. The approximate number of vehicles using the highway during the summer is 700 on week days and 2,200 on Sundays. During winter months the traffic averages about 300 vehicles a day on week days and about 800 vehicles on Sundays. A large part of this traffic moves during the afternoon and on week days reduces to practically nothing after the departure of the last boat of the Richmond-San Rafael Ferry, about 9:40 P.M. On Sundays and Holidays boats are operated later in the evening to care for the increased traffic.

The record shows that the industry will require about four to five loaded cars daily, which will ordinarily result in about four train movements over the crossing on week days. The industry is not concerned as to the time of day that delivery is

made. At present the railroad performs its switching in this vicinity between the hours of 7:00 P.M. and 7:00 A.M., generally doing some switching in the evening and in the early morning.

Mr. E. G. Poss, Assistant Engineer for the Highway Commission, stated the general policy of that Commission to be opposed to the creation of any additional grade crossings by reason of the hazard and inconvenience caused to highway traffic. Highway Commission's Exhibit No. 2 shows the general lay-out at the proposed point of crossing and Mr. Poss recommended that the railroad company consider plans for serving all of the industrial sites east of the highway by means of a spur track so located as to create a minimum number of crossings in this vicinity. No specific plan, however, was submitted for the serving of the property under consideration other than that proposed by applicant.

Mr. M. L. Gillogly, Superintendent for the Northwestern Pacific Railroad Company, testified that plans had been considered in a general way for serving substantially all of the property on the east side of the highway by the construction of only one grade crossing but that the cost of such a plan would be prohibitive, in view of the present and future prospective developments.

In the matter of protection, witness for applicant recommended the usual crossing sign, stating that in view of the slow speed of train movements and their usual flagging rule, no hazard should exist at the crossing. He objected to the restriction of switching to certain hours because it might, at some time, work an operating hardship on the company. Mr. Poss recommended that switching be confined to daylight hours only, because of the hazard to vehicles of freight cars being backed over the crossing at night without adequate illumination.

It appears that the industry has made an investment of about \$15,000. up to the present time which would be largely wasted if permission for the crossing at the point is withheld. Mr. J. P.

Grady, owner of the industry to be served, stated that he had made this investment at this location on the assumption that the permission of this Commission for such a crossing would be merely a formality, and applicant urged that because of this large investment, the present application should be granted. A similar situation has arisen in several previous proceedings and the Commission has announced that it would give no weight to such argument in determining the necessity for a grade crossing. A full discussion of this policy appears in Decision No. 10,994, (22 C.R.C. 301). No consideration of this feature therefore will be given in this proceeding.

It appears that this industry is of such a character as to require access to both rail and water transportation, and that the surrounding district is of an industrial character. Spur track facilities are therefore essential for its development. The property, however, is bisected by a fairly important link of the State Highway system and the problem before this Commission requires that weight be given not alone to present necessity and hazard but to that of the future as well. Under the present condition of traffic on the highway and on the railroad spur, the crossing can be made reasonably safe. To plan for future development would require at this time a large investment in trackage as well as expensive condemnation suits entirely out of proportion to the benefits to be derived by the industry, and would virtually result in a denial of railroad service to this industry.

If a less expensive means of laying out a crossing to serve this district were at hand, or if the highway traffic were heavier, a conclusion denying this crossing would probably be

justified, but in view of the particular facts brought out in this proceeding, it is concluded after a careful consideration of all of the evidence that the crossing, as applied for, should be granted if reasonable means of protection are provided.

We are of the opinion that adequate protection in this instance requires that no switching should be permitted over this crossing between the hours of 10:00 A.M. and 10:00 P.M. on week days and that switching should be entirely prohibited on Sundays and Holidays. Such restriction will still allow 12 hours out of each 24 during which time the railroad may switch the spur without interfering seriously with the afternoon and evening highway traffic. All movements over the crossing should be properly protected by a flagman.

O R D E R

Northwestern Pacific Railroad Company, having filed the above-entitled application with this Commission on September 14, 1925, asking for permission to construct a spur track at grade across the "Toll Road" in the City of San Rafael, County of Marin, State of California, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore,

IT IS HEREBY ORDERED, that permission and authority be and it is hereby granted to Northwestern Pacific Railroad Company to construct a spur track at grade across the "Toll Road" (California State Highway) in the City of San Rafael, County of Marin, State of California, as follows:

Five feet on each side of a center line described as commencing at a point on the northerly line of the San Rafael and San Quentin Turnpike or Toll Road distant westerly measured thereon thirty-three and one-half feet from the easterly line of the tract of land conveyed by E. C. Evans to E. C. Evans and Sons by deed dated March 10th, 1909 and recorded in the office of the County Recorder of the County of Marin

in Book of Deeds 124 on page 101, thence southerly and parallel with said easterly line of said last mentioned tract of land across the said San Rafael and San Quentin Toll Road to the southerly line thereof.

and as shown by the map (C.E.-48-E-4) attached to the application; said crossing to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the crossing together with the cost of its maintenance thereafter in good and first-class conditions for the safe and convenient use of the public, shall be borne by applicant.

(2) Said crossing shall be constructed substantially in accordance with Standard No. 3, as specified in General Order No. 72 of this Commission and shall be constructed of a width to conform to that portion of said road now graded, with the tops of rails flush with the roadway and with grades of approach not exceeding two (2) per cent; shall 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) Applicant shall, within sixty (60) days, submit a certified copy of a permit from the California Highway Commission for the construction of said crossing at grade and in the event that this is not done, the authorization herein granted for the installation of said crossing shall lapse and shall thereupon become null and void and of no further force and effect.

(4) Applicant shall not operate any train, motor, engine or car over the crossing herein granted between the hours of 10:00 A.M. and 10:00 P.M. of any week day and shall not operate any train, motor, engine or car over this crossing at any time during any Sunday or legal holiday.

(5) No train, engine, motor or car shall be operated over said crossing unless said train, engine, motor or car shall be under full control and unless traffic on the highway be pro-

tected by a member of the train crew or other competent employee acting as flagman, said flagman to be provided with a suitable lighted lantern during the night hours.

(6) Applicant shall erect and maintain on the south side of the crossing a suitable sign directing the attention of trainmen to conditions (4) and (5) as herein specified.

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

(8) If said crossing 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.

(9) 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.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California this 18th day
of November, 1925.

H. B. ...
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Leon Whitehill
Commissioners.