

Decision No. 15792.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of application of Southern Pacific Company for an order authorizing the construction at grade of a spur track across State Highway (known as Monterey Road), in the vicinity of Coyote Station, County of Santa Clara, State of California.

ORIGINAL

Application No. 11,347.

Henry E. Hobbs, for Applicant.
John L. McNab and W. H. Ford for Niles
Sand, Rock & Gravel Company.
Paul F. Pratesse, for California Highway
Commission.

WHITSELL, COMMISSIONER:

O P I N I O N

In this application, Southern Pacific Company requests permission to construct a spur track across a State Highway at a point in Santa Clara County in the vicinity of Coyote about twelve miles south of San Jose.

Public hearings were held in San Francisco, August 17, 1925, and October 31, 1925, at which the California Highway Commission appeared and protested the construction of a grade crossing at this point.

In the vicinity of the proposed crossing, a trunk State Highway, sometimes known as the Coast Highway, is constructed parallel and adjacent to the easterly side of the right-of-way of the main line of the Southern Pacific's Coast Route.

In the bed of Coyote Creek, which lies across the Highway from the track and distant approximately one thousand feet, there is a deposit of gravel, extending for several miles along

the creek. The gravel is of good quality and can be economically excavated, washed and handled. Several pits have been opened at various times and one large pit, that formerly owned by E. B. and A. L. Stone but now operated by the Bay Development Company, a mile and a half north of the proposed crossing, is reached by a spur track crossing the Highway near Coyote Station. The crossing requested in this application is that of a spur track to serve a new pit which Niles Sand, Gravel and Rock Company, a well established concern operating pits and quarries at several points in the State, proposes to establish. To avoid placing the switch of this spur in its main line track, the railroad proposes to extend one of the side tracks at Coyote southerly a distance of 6700 feet along its right-of-way to form a drill track. From a point near the southerly end of this drill track, a spur leading across the highway is proposed, connecting with a system of tracks which the rock company plans to construct on its property. The grade of both the highway and the track would be practically level and the angle of crossing would be approximately 35 degrees. Visibility would be partially obscured by an orchard on one side of the highway and a row of walnut trees along the other.

This highway is the main coast route between San Francisco and the southern portion of the state and in addition to a heavy local travel, it also carries a large volume of through traffic. Counts taken during July, 1925, indicate a usual week day traffic of about 3000 vehicles during the fifteen hours ending at 9:00 P.M., increasing to 4000 on Saturday and 5500 on Sunday. These vehicles move generally at high speed as the country for several miles in each direction along the highway is flat and the road has few curves and slight grades.

Under a plan proposed by the California Highway Commission, the second crossing of the highway in the vicinity could be avoided by utilizing the present crossing and constructing an extension of

existing trackage southerly along the west bank of Coyote Creek to the property of the Niles Rock, Sand and Gravel Company. Such a track would be about one mile in length and while apparently physically practical, involving no excessive construction costs, it would cross the property of several different owners, one of whom is a competitor of the industry now seeking track service. Right-of-way for this track would probably be quite expensive and, as the railroad may not in such a case have the right of condemnation, it is possible that some of it could not be obtained at any price.

The construction of such a connecting track would apparently obviate the necessity of constructing the 6700 feet of drill track parallel to the main line and the costs of the two methods of reaching the gravel pit, exclusive of right-of-way, are therefore comparable. In fact, it is probable that the actual construction costs of the plan proposed by the highway engineers would be less than that proposed by applicant.

The construction of a railroad track of any kind over trunk highways presents a problem which should have very thorough study. The traveling public is entitled to the free use of an important traffic artery, with the minimum of interference and hazard. But on the other hand the industrial development of the community must not be unduly restricted and when this development, through the extension of railroad facilities which are essential thereto, conflicts with such free use of the highway, due consideration should be given to the relative importance of each. Stated another way, there are two conflicting factors of public interest involved; one relating to the convenience and safety of the users of the highway, and one relating to the economical production and distribution of various commodities for the public's use.

In the absence of direct testimony as to the economic necessity for opening this gravel pit, the fact that a concern which is now extensively engaged in the gravel and rock business has in-

vested a considerable amount of money and is willing to invest much more in the project, can be taken as sufficient evidence that a market for the product exists and that the public will benefit by the resulting development of this natural resource.

On the other hand, the construction and operation of a railroad track at grade across such an important highway will result in a substantial hazard and inconvenience to the traveling public. The proposed crossing would be over a high speed highway out in the country at a considerable distance from a closely built-up area. At such a location, the driver of a vehicle may usually be expected to assume that he has an open road before him or that, if danger exists, he will receive adequate warning thereof. There is also a hazard peculiar to tracks of this nature when both forward and backward switching movements across the highway are necessary and where many times a long train of cars is shoved ahead of the engine. The engine of a train is equipped with certain devices for warning and protecting persons who find it necessary to be in the vicinity of railroad tracks and when the engine proceeds first across a highway the public usually receives the benefit of these devices. In addition to this, the man in direct control of the movement of the train is at the danger point and it is highly probable that an accident could often be prevented by quick action on the part of the engine-man whereas if this action depended on the passing of signals through two or three different trainmen, it would come too late to be effective. It is true that the railroads' rules provide that a man ride on the head car of a train being shoved over a grade crossing but it is not apparent how he can do much to prevent accidents except to warn pedestrians or other slow moving traffic.

While it is stated that the number of movements over the crossing would in most cases be but four per day and that these would probably occur in daylight hours, it is possible that more

frequent switching would at times be necessary and that as the time of switching would depend on the arrival of local freight trains, night movements over the highway might even be required. The hazard offered by the presence of a dark colored railroad car standing or moving across a high-speed, heavily travelled highway at night is apparent. The record shows that any restriction as to hours of switching or number of train movements over the crossing would place a hardship on the industry and the railroad.

As previously stated the public is interested in both the development of its natural resources as represented by this gravel pit and also in preserving its highways as free as possible from hazards and obstructions. The interests of the public represented by the highway are usually of greater importance than those involved in the construction of a railroad track primarily designed to serve a private business. The ideal solution of the problem, where public convenience and safety through the free use of a highway is weighed against public necessity as represented by industrial development, is that in which the maximum benefit to the public obtains. If in the present case the crossing at grade of the State Highway by this spur track can be adequately and effectively protected in such a manner that the public will enjoy nearly the same degree of safety as at present with minimum curtailment of its use of the highway and at the same time the industry is permitted to develop its property, the grade crossing is justified.

This spur track is a private track serving a private business requiring a concession from the public in order to serve that business and the price of that concession should be safety to the public. The obligation of the railroad to reduce the hazard and inconvenience to the public is therefore great and everything that is reasonably and economically possible to provide protection and avoid blocking the crossing must be done.

In considering the form of protection required at this

crossing it is at once evident that the hazard is approximately the same for both northbound and southbound highway traffic and the protection afforded each should be the same. It is fundamental that, to be effective, the warning must be given a sufficient distance in advance of the actual danger point to permit the high speed vehicular traffic to come to a stop with safety. If human flagmen are used for the purpose they should be two in number, each stationed an ample distance back along the highway from the crossing and equipped with proper flags and lights. If automatic flagmen be used they also should be two in number, one on each side of the track and on the proper side of the highway and so designed and operated as to give an effective warning well in advance, both as to time and distance, of the presence of danger. The time of warning should be given special consideration. Human flagmen would naturally give warning only when actual danger existed but an automatic flagman protecting against switching movements is apt, unless properly controlled, to give many false warnings and in a situation like the present become more of a nuisance than a protection. In order, therefore, that the automatic flagmen suggested above give warning at all times when danger exists yet only when danger does exist, it is recommended that if installed they be manually controlled, and the acceleration of the banner begin approximately thirty seconds in advance of the actual entrance of the train upon the crossing, continue to operate during such time as the train is on the crossing and cease operation immediately upon the passage of the last car.

In order that there may be no possibility of cars or equipment being shoved out onto the highway by any other than Southern Pacific employees, a derail on the east side of the highway is recommended, this derail to be kept locked at all times excepting during actual passage of trains over the crossing with a Southern Pacific lock.

Precation should also be taken that cars or trains are not allowed to stand across the highway and that they be kept moving while occupying any portion of the highway right-of-way. To this end switches should be lined in advance of any train movement across the highway. It is hoped that this can be accomplished by instructions and rules issued to trainmen but if not some form of interlocking of switches later may have to be resorted to.

Highways of the importance of this one should not be burdened with a multiplicity of spur track crossings and as there appears to be a possibility, though somewhat remote, that other crossings in this vicinity may be required in the future, a stipulation should be made by the owner of the tracks that he will permit and by Southern Pacific Company that they will operate cars over this crossing to serve any other person or industry upon payment of a reasonable portion of the actual cost of constructing same and that the owner will agree to granting such other person or industry such rights to construct track and operate cars over his property as may be reasonably necessary to reach the property or business of such other person or industry.

With conditions covering all the above suggestions, I believe this application can be granted and the following form of order is recommended:

ORDER

Southern Pacific Company, a corporation, having filed the above-entitled application with this Commission asking for authority to construct a spur track at grade across a state highway in the vicinity of Coyote, County of Santa Clara, State of California, as hereinafter set forth, a public hearing having been held, the Commission being apprised of the facts, the matter being submitted and ready for decision,

IT IS HEREBY ORDERED, that permission and authority be and it is hereby granted to Southern Pacific Company to construct a spur track at grade across the State Highway designated, in the vicinity of Coyote, County of Santa Clara, State of California, as follows:

Beginning at a point on the southwesterly right of way line of the State Highway, known as Monterey Road, distant thereon 1630 feet, more or less, southeasterly from the easterly line of Sycamore Avenue, produced; thence in a northerly direction on the arc of a curve to the right having a radius of 573.7 feet, a distance of 260 feet, more or less, to a point on the northeasterly line of said Monterey road, said point being distant thereon 1390 feet, more or less, southeasterly from the easterly line of Sycamore Avenue;

and as shown by the map (Coast Division Drawing 14817) 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 condition 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, or better as specified in General Order No. 72 of this Commission and shall be constructed of a width to conform to that portion of said state highway now graded, with the tops of rails flush with the pavement, and with grades of approach not exceeding one (1) per cent; 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.

(3) A derailing switch shall be installed at the easterly boundary of said highway and said derail shall at all times excepting during actual movement of trains across the highway be kept locked in such a position that any car, train or engine moving toward the highway from the easterly side thereof will be derailed.

(4) Two automatic flagmen of a type and installation in

accordance with plans or data approved by the Commission shall be installed and maintained for the protection of said crossing. Said automatic flagman shall be controlled manually and shall be operated for a period of thirty (30) seconds in advance of the passage of any locomotive, motor or car over said crossing, and during the occupancy of said crossing by any locomotive, motor or car, but shall not be operated at other times.

(5) Southern Pacific Company and the owner of the industry for whose benefit this crossing is authorized, shall before actual construction of said crossing is undertaken, file with the Commission a stipulation or stipulations containing provisions that, upon payment to them of a reasonable portion of the cost of constructing said crossing and track, permission will be granted by them to such other person, persons or corporation as may desire to use said track, the right to operate over same and the right to construct a track across such portions of said owner's land as may be reasonably necessary to reach the property or business of such other person, persons or corporation and the right to operate cars over same.

(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 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.

(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.

The effective date of this order shall be twenty (20) days from the date hereof.

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 22^d day of December, 1925.

H. B. Brundage

George W. Spence

Ernest C. Smith

Leon Whitell

Commissioners.