Decision No. 15880

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a corporation, for authority to construct a spur track across Quint or "Q" Street, "R" and "S" Streets, in the City and County of San Francisco, and across Jerrold or Tenth Avenue in said City and County, under an existing track of the Southern Pacific Company which crosses said Jerrold Avenue between "Q" Street and Rankin or "R" Street.	Application No. 11349.
In the Matter of the Application of SOUTHERN PACIFIC COMPANY for an order authorizing the construction at grade of two spur tracks, one across a portion of Newcomb Avenue and across Quint, Rankin, Selby and Toland Streets, and one across Newcomb Avenue, Quint Street, McKinnon Avenue, Jerrold and Rankin Streets and Innes and Galvez Avenues, in the City and County of San Francisco.	Application No. 11445.

J. R. Hayden and Platt Kent, for The Atchison, Topeka and Santa Fe Railway Company,

H. W. Hobbs and F. W. Mielke, for Southern Pacific Company.

C. H. Healy, for City and County of San Francisco, Observer.

DECOTO, COMMISSIONER:

O P I N I O N

The Atchison, Topeka and Santa Fe Railway Company, sometimes herein called the Santa Fe, filed Application No. 11349 on the 1st day of July, 1925, asking for permission to construct a spur track along Jerrold Avenue in the City and County of San Francisco, from a connection with the present Santa Fe-Southern Pacific Company joint track in Quint Street westerly to Toland Street,

366

crossing Rankin Street and Selby Street at grade and the Southern Pacific main line tracks at separated grades. Applicant also seeks a determination by this Commission as to proper vertical overhead clearance to be allowed where said spur track crosses under Southern Pacific main line tracks.

Southern Pacific Company filed Application No. 11445 on the 17th day of July, 1925, asking, as amended by the filing of Application No. 11596, for permission to construct a spur track at grade across Newcomb Avenue, Quint Street, McKinnon Avenue, Jerrold Street, Rankin Street, Innes Avenue and Galvez Avenue.

A public hearing on these applications was held on September 14th, 1925, at which time the matters were submitted. By stipulation, the record of both proceedings is available for either proceeding, and the applications, covering related matters, are consolidated for the purpose of decision.

The spur tracks for which permission to install crossings is herein asked, are proposals of competing carriers to provide industrial track service to substantially the same portion of the Islais Creek Reclamation District, bounded roughly by Napoleon Street on the North, Barneveld Avenue on the West, McKinnon Avenue on the South and Southern Pacific Company's main line tracks on the East.

The load track proposed by the Santa Fe is laid out from Quint Street westerly along the northerly sidewalk area of Jerrold Avenue to the east line of Toland Street, crossing the westerly half of Quint Street, Rankin Street and Selby Street at grade, and crossing under the main line of the Southern Pacific Company in the northerly sidewalk area of the existing grade separation at Jerrold Avenue. It is to be noted that this spur takes off from the so-called joint Quint Street Southern Pacific-Santa Fe Lead, which is operated under agreement alternately by both companies.

The Southern Pacific spur takes off from that company's east-bound main line track at a point near Oakdale Avenue, thence parallels the main line to a point on the south line of Evans Avenue, crossing at grade Newcomb Avenue, McKinnon Avenue, Quint Street, Jerrold Street, Innes Avenue, Rankin Street and

567

Galvez Avenue.

Southern Pacific Company protests the granting of the Santa Fe application on the grounds that the spur track sought by Southern Pacific will serve the district amply and with a minimum of expense. Southern Pacific Company further refers to the fact that the franchise from the City and County of San Francisco was not secured by the Santa Fe for its spur prior to the filing of application, while Southern Pacific filed such franchise with its application.

Santa Fe contends that the spur as proposed by them will adequately serve the territory and that their application should be given prior consideration because it was filed with this Commission ahead of the application of Southern Pacific Company.

Counsel for Southern Pacific Company made a motion that application of Santa Fe be dismissed because franchise from City and County was not filed with application. This motion was denied. The consent of this Commission is separate and distinct from and not contingent upon consent of a political subdivision. While it is true that the Commission's Rules of Procedure require that

> "If the application is filed by a railroad for a crossing within the limits of an incorporated city or town there shall be attached to the original copy of the application a certified copy of the franchise, or portion thereof, which gives to the railroad the right to cross the public highway in question",

it is always within the discretion of the Commission to waive or suspend its rules when good cause appears. One of the purposes of the rule above quoted is to expedite the work of the Commission in passing upon applications for track crossings by providing evidence of consent on the part of the political subdivision concerned, so that if in the judgment of the Commission, after investigation, a public hearing is not necessary, the matter may be disposed of by an "ex parte" order. If, however, there is some related condition that must be determined by this Commission before terms of the franchise or permit from the Political Subdivision can be precisely stated, it is both appropriate and proper for the Commission to waive compliance with the above quoted rule, to

accept the application and to make its decision before requiring the political subdivision to act upon the terms of its permission. Such a related condition is presented in the case of the present Santa Fe application, namely, the amount of impairment of overhead clearance which this Commission will permit where the proposed spur would cross under the main tracks of Southern Pacific Company, this clearance in turn determining the amount and manner in which the elevations of the track in Jerrold Street would vary from the official street grades. Under these circumstances it would be little short of an arbitrary action on the part of the Commission to refuse to consider this application of the Santa Fe on its merits.

Counsel for the Santa Fe urged that because of priority of filing, the application of that carrier should be given first consideration. Such priority of filing should be controlling in crossing matters, only when all other factors entering into the decision are equal. Such is not the case in this instance.

In determining grade crossing applications such matters as the present and probable future public hazard, and the present and probable future public convenience and necessity are among the considerations that must be given greatest weight.

Inasmuch as most of the land in this district is marshy or under water at the present time, no present need exists for either of the tracks, and by the same reason the crossings requested are all over either lightly travelled or so-called paper streets. The record shows, however, that a reclamation district has been formed for the purpose of filling in all of this property and rendering it suitable for industrial use and there can be no doubt as to the potential need for industrial spur track facilities in this area.

A comparison of what may become the important crossings in the future is of value in determining the relative merits of these two applications. The Santa Fe spur crosses Rankin Street, Selby Street and a portion of Quint Street, of which only the two last named appear to lie so as to attract any considerable traffic; Rankin Street being physically blocked by the Southern Pacific trestle.

The Southern Pacific spur will cross Quint Street, Jerrold Street and Galvez Avenue, all of which are open under the Southern Pacific trestle and may become important streets in the tract. It is thus apparent that the track proposed by Southern Pacific Company will cross at grade twice as many potentially important streets as will the track proposed by the Santa Fe.

The Santa Fe expressed a willingness to permit joint operation by other carriers over the track which they propose. This track is well located for joint operation with Southern Pacific, as it takes off of a joint lead on which the machinery of joint operation already exists. The Southern Pacific, on the other hand, has stated that it does object to joint operation on the spur proposed by it.

It appears that either drill track is physically capable of serving the same territory with railroad spur track facilities. The present hazard is almost nil, likewise the present public convenience and necessity. The future hazard, it appears, will be less on the Santa Fe track than on the Southern Pacific track, because of the smaller number of potentially important streets crossed. Future public convenience and necessity will be better served by the Santa Fe track because of the availability of joint user privilege whereby industries in the area may have access to more than one trunk line carrier by use of a single facility.

It is concluded, therefore, after a careful consideration of all of the evidence, that the application of The Atchison, Topeka and Santa Fe Railway Company should be afforded prior consideration and granted. However, there is nothing in this record which would appear to justify a denial of permission to the Southern Pacific Company to construct its spur track, provided it can be so constructed as not to interfere with the Santa Fe track herein authorized.

Evidence was adduced at the hearing as to vertical clearances between the bottom of the steel work of the Southern Pacific Company's bridge at Jerrold Avenue and various datums and levels, for the purpose of determining whether the track of the Santa Fe should be laid with clearance less than required in General Order 26-a. There is a clearance of 22 feet above present ground level, which

370

is approximately at the same elevation as high tide and six feet below City Datum. It is proposed to fill in the ground at this location to an elevation about 4 feet above City Datum. A track constructed at the latter elevation would, therefore, have a clearance of only 12 feet. Mr. F. D. Kinnie, Engineer for the Santa Fe, testified that at present the Santa Fe operates a spur similar to this with a 17' 6" overhead clearance with suitable tell-tales and suggested a clearance of 18 feet, which required a 6 foot depression below the level to which it is proposed to fill the property. In his opinion, a shrinkage of about 4 feet will occur after filling this property, which would then place the track in a two foot depression, and even this depression will make necessary the use of a pump to care for drainage waters. He stated, however, that a 22 foot clearance could be obtained by the use of a 6 foot depression and that there are no physical obstacles to such a plan. Mr. J. B. Dawson, Engineer for the Southern Pacific, presented a plan, (S.P.Exhibit 1) showing details of a crossing in which a clearance of 22 feet above the Santa Fe tracks is provided.

The fact that a spur built a number of years ago with an overhead clearance of 17' 6" is still being operated, does not constitute a basis for allowing such impaired clearances at the present time. It further appears that there are no physical obstacles to securing a 22 foot overhead clearance. As it appears that this drill track will serve a substantial territory and consequently require considerable switching, and that standard clearances therefore should be adhered to if possible, it is concluded that this track should be constructed with overhead clearances in conformity with this Commission's General Order No. 26-a.

The following form of order is recommended:

ORDER

The above numbered applications, having been filed with this Commission, a public hearing having been held, the matters being under submission and ready for decision, therefore,

IT IS HEREBY ORDERED, that permission and authority be and it is hereby

granted to The Atchison, Topeka and Santa Fe Railway Company to construct a spur track at grade across Rankin Street, Selby Street and a portion of Quint Street and Jerrold Avenue in the City and County of San Francisco, State of California, as follows:

> Beginning at a point in the center line of an existing track in Quint Street, at San Francisco, California. Said point lying 22.24 ft. northeasterly from the southwesterly line of Innes Avenue and 22.5 ft. southeasterly from the southwesterly line of Quint St; thence southwesterly on the arc of a curve concave to the north and having a radius of 235.65 ft. a distance of 98.1 ft. to a point in the northwesterly line of Quint St. which is distant 73.51 ft. southwesterly from the southwesterly line of Innes Avenue; thence continuing southwesterly on the arc of a curve concave to the north and having a radius of 235.65 ft. a distance of 201.5 ft. to a point on the northeasterly line of Jerrold Avenue, said point being distant 150.44 ft. northwesterly from the northwesterly line of Quint St; thence continuing southwesterly on the arc of a curve concave to the north and having a radius of 235.65 ft. a distance of 63.0 ft. to a point which is distant 8.5 ft. southwesterly from the northeasterly line of Jerrold Avenue and 213.15 ft. northwesterly from the northwesterly line of Quint St. produced across Jerrold Avenue; thence northwesterly along Jerrold Avenue 8.5 ft. southwesterly from and parallel to the northeasterly line of Jerrold Avenue, and crossing Rankin and Selby Streets, a distance of 1714.85 ft. to the southeasterly line of Toland Street produced across Jerrold Avenue, which is the end.

and as shown by the map (No. 500-254-E) attached to the application; said crossings to be constructed subject to the following conditions, viz:

(1) The entire expense of constructing the 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 applicant.

(2) Said crossings at Quint Street and Jerrold Avenue shall be constructed substantially in accordance with Standard No. 4, as specified in General Order No. 72 of this Commission and shall be constructed of a width to conform to those portions of said streets now graded, with the tops of rails flush with the roadway, and with grades of approach not exceeding three (3) 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. Said crossings at Rankin Street and Selby Street shall be so constructed that grades of approach not exceeding two (2) per cent will be feasible in the event that the construction of roadway along said Rankin Street and said Selby Street

shall hereafter be authorized and so that said grade crossings may be made safe for the passage thereover of vehicles and other road traffic.

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

(4) If said crossings 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.

(5) This order is made upon the express condition that Rankin Street and Selby Street are not now actually constructed and open to travel at the respective points of crossing, and said order shall not be deemed an authorization for the construction of an opening of said street to public use across said railroad tracks.

(6) Nothing in this order shall be construed as an authorization by this Commission for the construction of a track in such a manner as will be contrary to any of the provisions of General Order No. 26-a of this Commission.

(7) Applicant shall permit joint operation of the track which creates the crossings herein authorized upon application by any other railroad corporation which may desire to join in such joint usage, under terms and conditions which shall meet the approval of this Commission.

(8) Applicant shall, before beginning the work of construction, submit a certified copy of a permit or franchise from the City and County of San Francisco, for the construction of said crossings at grade, and in the event that this is not done, the authorization herein granted for the installation of said crossings shall lapse and shall thereupon become null and void and of no further force and effect.

(9) 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.

IT IS HEREBY FURTHER ORDERED, that permission and authority be and it is

hereby granted to Southern Pacific Company to construct a spur track at grade across Newcomb Avenue, McKinnon Avenue, Quint Street, Jerrold Avenue, Innes Avenue, Rankin Street and Galvez Avenue, in the City and County of San Francisco, State of California, as follows:

> Beginning at a point on the southwesterly line of Newcomb Avenue, distant thereon 161 feet, more or less, southeasterly from the southeasterly line of Quint Street; thence northerly a distance of 98 feet, more or less, to a point on the northeasterly line of Newcomb Avenue, distant thereon 104 feet, more or less, southeasterly from the southeasterly line of Quint Street; thence continuing through private property to a point on the southeasterly line of Quint Street, distant thereon 55 feet, more or less, southwesterly from the southwesterly line of McKinnon Avenue; thence northerly on a curve concave to the right with a radius of 716 feet, crossing the intersection of Quint Street and McKinnon Avenue, a distance of 157 feet, more or less, to a point on the northeasterly line of McKinnon Avenue, distant thereon 15 feet, more or less, northwesterly from the northwesterly line of Quint Street; thence continuing through private property to a point on the southwesterly line of Jerrold Street, distant thereon 167 feet, more or less, southeasterly from the southeasterly line of Rankin Street; thence northerly crossing Jerrold Street a distance of 92 feet, more or less, to a point on the northeasterly line of Jerrold Street, distant thereon 122 feet, more or less, southeasterly from the southeasterly line of Rankin Street; thence continuing through private property to a point on the southwesterly line of Innes Avenue, distant thereon 10 feet, more or less, southeasterly from the southeasterly line of Rankin Street; thence northerly crossing the intersection of Innes Avenue and Rankin Street, a distance of 151 feet, more or less, to a point on the northwesterly line of Rankin Street, distant thereon 52 feet, more or less, northeasterly from the northeasterly line of Innes Avenue; thence continuing through private property to a point on the southwesterly line of Galvez Avenue, distant thereon 240 feet, more or less, northwesterly from the northwesterly line of Rankin Street; thence northerly crossing Galvez Avenue a distance of 92 feet, more or less, to a point on the northeasterly line of Galvez Avenue, distant thereon 285 feet, more or less, northwesterly from the northwesterly line of Rankin Street.

and as shown by the map (Coast Division No. 15399-Sheet 1), attached to the application; said crossings to be constructed subject to the following conditions, viz:-

(1) The entire expense of constructing the 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 applicant.

(2) Said crossings at McKinnon Avenue, Jerrold Avenue and Quint Street shall be constructed substantially in accordance with Standard No. 4, as specified in General Order No. 72 of this Commission and shall be constructed of a width to conform to those portions of said streets now graded, with the tops of rails flush with the roadway, and with grades of approach not exceeding

four (4) 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. Said crossings at Newcomb Avenue, Innes Avenue, Rankin Street and Galvez Avenue shall be so constructed that grades of approach not exceeding two (2) per cent will be feasible in the event that the construction of roadway along said Newcomb Avenue, Innes Avenue, Rankin Street and Galvez Avenue shall hereafter be authorized and so that said grade crossings may be made safe for the passage thereover of vehicles and other road traffic.

(3) Said crossings at Jerrold Avenue shall be constructed at an elevation which will permit railroad tracks to be laid along and upon the northerly sidewalk area of Jerrold Avenue with a vertical clearance of twenty-two (22) feet between top of rail of said railroad tracks to be laid along Jerrold Avenue and the bottom of steel of the girder supporting Southern Pacific Company's main line tracks where the latter cross Jerrold Avenue.

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

(5) If said crossings 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.

(6) This order is made upon the express condition that Newcomb Avenue, Innes Avenue, Rankin Street and Galvez Avenue are not now actually constructed and open to travel at the respective points of crossing, and said order shall not be deemed an authorization for the construction of an opening of said streets to public use across said railroad tracks.

(7) 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.

The foregoing Opinion and Order are hereby approved and ordered filed

275

as the Opinion and Order of the Railroad Commission of the State of California.

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 20th day of January, 1926.

H. D. Brundige

C. L. Seavey

George D. Squires

Edwin Jeffery

Commissioners.

376