

Decision No. 16728

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
City of South San Francisco for
permission to construct at grade a
public street over the tracks of the
Southern Pacific Company in South
San Francisco, San Mateo County,
California.

ORIGINAL

Application No. 849.

In the matter of the application of
The People of the State of Califor-
nia, on relation of the California
Highway Commission, for an order au-
thorizing the construction of a State
Highway crossing under tracks of the
Southern Pacific Company, etc.

Application No. 11630.

A. J. Scampini and John F. Davis, for the
City of South San Francisco.

Paul F. Fratessa, for the State Highway Commission.

F. W. Mielke, for the Southern Pacific Company.

J. W. Coleberd and J. E. McCurdy, for certain citizens
and interested property owners.

P. J. Shaw, for The South San Francisco Belt Railway.

H. A. Postlethwaite, for the City of San Bruno and the
United Building & Development Company.

P. R. Thompson, for South San Francisco Chamber
of Commerce.

McCutchen, Olney, Mannon & Greene, by R. L. Lipman,
for the Spring Valley Water Company.

BRUNDIGE, COMMISSIONER:

OPINION ON REHEARING

In Application No. 11630, the California Highway Commis-
sion requested authority to construct a highway under the tracks of
the Southern Pacific Company and the South San Francisco Belt Rail-
way at South San Francisco, San Mateo County, California, and also

asked that this Commission apportion the cost of the improvement.

The underpass requested is that of the so-called "Bay Shore Highway", which has now been graded from a point immediately south of the proposed crossing to Broadway, Burlingame, and which will eventually be extended southward to San Jose. 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 Peninsula 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 4000 feet beyond the proposed new grade and a second time at grade near San Bruno Station.

A public hearing in said Application No. 11630 was held in San Francisco on October 20th, 1925, and on the evidence presented thereat, the Commission, on November 7th, 1925, rendered its decision (No. 15604) authorizing the applicant to construct the subway and apportioning the cost between the parties.

On November 17th, 1925, and November 27th, 1925, the Southern Pacific Company filed petitions for rehearing and modification of the Commission's Decision No. 15604, insofar as the apportionment of cost was concerned. The Commission, on December 15th, 1925, granted the petitions and by its order set aside its Decision No. 15604, and reopened the matter for further hearing.

At the original hearing testimony was presented to the effect that upon completion of the subway under Southern Pacific Company's tracks, a lateral road, leading from its easterly end to

a connection with the existing county road immediately east of the present grade crossing of these tracks, would be constructed. It was the judgment of the Commission that this road, if constructed, would serve public convenience and necessity as well as the existing parallel road which follows the westerly side of the tracks from the built-up portion of South San Francisco to the Linden Avenue crossing, and a supplemental order (Decision No. 15621) was therefore entered in the proceeding under which authorization had been granted to construct Linden Avenue crossing (Application No. 849), providing that if and when the subway and this lateral road were constructed the Linden Avenue crossing would be closed. Following its supplemental order, the Commission was in receipt of communications from the Cities of South San Francisco and San Bruno and other corporations and individuals protesting the closing of this crossing and in order that the Commission might have before it all the facts, a further hearing in this proceeding (Application No. 849) was ordered.

The two above entitled applications were thereupon consolidated for the purpose of hearing and decision, and public hearings held in San Francisco on January 12th, 26th and 27th, 1926.

Counsel for the property owners protesting the closing of the Linden Avenue crossing presented a motion at one of the hearings to vacate the supplemental order (Decision 15621) in Application 849. Two grounds were urged in support of the motion. First, that the property owners along Linden Avenue were possessed of a vested interest in the Linden Avenue grade crossing by virtue of their holdings

as to have been legally entitled to notice of the public hearing held preliminary to the Commission's Decision 15621, and that no such notice was given. Secondly, that since the said supplemental order was made as an incident to Decision 15604, (Application No. 11,630) authorizing construction of the sub-way, which has since been set aside, the said supplemental order should also be set aside. It is my opinion that these arguments are unsound.

At the hearings on January 26th and 27th, considerable testimony was introduced by the Cities of San Bruno and South San Francisco and property owners, showing the existence of public convenience and necessity for the continuance of the grade crossing at Linden Avenue. It developed that the plan outlined at the first hearing on Application No. 11630, for the construction of a new lateral road leading from the easterly end of the proposed subway to a connection with the existing county road immediately east of the present Linden Avenue grade crossing, had been abandoned for the present time. For these reasons, I am of the opinion that the supplemental order of the Commission in Application No. 849 should be rescinded.

The proposed underpass consists of a steel and concrete structure of 4 per cent approach grades, providing a 40-foot driveway and an 8-foot sidewalk. The deck proposed at present will carry six tracks of the 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. This will entail a 120-foot extension of the subway.

In addition to this extension, which is entirely for the benefit of the Southern Pacific Company, and which is estimated to increase the cost of the structure \$30,000., Southern Pacific Company contends that the cost of so extending the barrel of the subway to

care for future trackage is not an item to be charged exclusively to the railroad, in view of the fact that the subway is being constructed with a width of driveway sufficient to take care of future increase in vehicular traffic. It appears reasonable to include the expense of extending the barrel as a part of the cost of the subway or at least in that portion in which the Highway Commission and Southern Pacific Company exclusively participate.

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 it 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. It is proper in this case that the cost of such grading, estimated at 21,230 yards, with a unit price of 50 cents a yard, be eliminated from the gross estimate and considered as a direct benefit to the applicant.

It is claimed by the Highway Engineer that the utilization of the material excavated from the subway in forming highway embankment is now problematical. In its former decision this Commission allowed a credit of 49 cents per yard for the entire amount of the subway excavation below the theoretical grade line. In view of the uncertainty as to the economic use of this material by the Highway Commission, it appears reasonable to allow credit for only such portion as is used in the highway embankment. The price and disposition of this material can properly be adjusted by the parties in interest at the time of construction, but failing in this a supplemental order by the Commission can be issued.

Southern Pacific Company, in its petition for rehearing, raised the issue as to whether or not the cost of moving Spring Valley Water Company pipe line should be considered as a part of the subway cost. This pipe line is maintained along one side of the old County Road and the Commission has in the past held that public utilities maintaining pipe lines under franchise in public highways should bear the cost of relocating same when the construction of a subway required such relocation. Conclusive evidence was introduced by the Water Company, however, to the effect that the pipe line existed prior to the public highway and I am of the opinion that it is proper to include any necessary expense incurred for its relocation as a part of the subway cost to be herein apportioned.

The applicant has filed an estimate of the cost of construction of this underpass, the total of which is \$280,096. This includes the above mentioned items of direct benefit to one or two, but not all, of the parties. The 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 \$3700. 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 \$229,504. 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".

Since the 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 the Southern Pacific Company six. The deck under the Southern Pacific main line tracks is required to be heavier construction than that under the tracks of the Belt Railway. This fact should be reflected in the apportionment of the cost between the parties. I am of the opinion that as between the two companies, the Belt Line may properly be said to have an interest in one-fifth of the "net cost" of the structure, which portion amounts to \$45,901. and the Southern Pacific Company has an interest in four-fifths of the "net cost", which portion amounts to \$183,603. It is these amounts, therefore, that should be used in determining what expense is to be borne by the respective companies.

After a careful consideration of the evidence in this application, I am of the opinion that a fair distribution of the cost of this project requires that the railroads pay an amount equal to thirty per cent of their respective interests, and the California Highway Commission pay the balance of the cost.

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

ESTIMATED COST OF PROJECT:

Per Applicant's Exhibit No. 3		\$280,096.
Increase in cost of taking care of Belt tracks		<u>1,700.</u>
Gross estimate used in Decision No. 15604		\$281,796.
Reduction due to lowering price of grading above theoretical grade line:		
21230 Cu.Yds. at \$.50	\$10,615.	
Contingencies 10%	<u>1,062.</u>	<u>11,677.</u>
Gross Estimated Cost		\$270,119.

DIRECT BENEFITS:

To Highway Commission		
Excavating to theoretical grade	\$10,615.	
To Southern Pacific Company and California Highway Commission		
Extra length of Barrel	<u>30,000.</u>	
Total Direct Benefits		\$ 40,615.
"Net cost" of Subway	104	\$229,504.

DETERMINATION OF RAILROADS' INTERESTS:

S.S.F.Belt Ry. 20% of "Net cost"	\$45,901.	
Total Belt Ry. Interest		\$45,901.
S.P. Company 80% of "Net cost"	183,603.	
Extra barrel	<u>30,000.</u>	
Total S.P.Co. Interest		\$213,603.

ASSESSMENTS:

	<u>Amount</u>	<u>Per Cent</u>
S.S.F.Belt Ry.		
30% of its "Interest"	\$13,770.	4.1%
Southern Pacific Co.		
30% of its "Interest"	64,080.	23.7%
California Highway Commission.		
70% of Belt "Interest"	32,131.	
70% of S.P. "Interest"	149,523.	
Grading to theoretical grade	<u>10,615.</u>	
Total to Highway	\$192,269.	71.2%
TOTAL ESTIMATED COST	\$270,119.	100%

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 consideration, this decision should not be construed as requiring that these amounts be paid again or in any other manner.

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

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 rehearing having been granted by the Commission on its Decision No. 15621 in Application No. 849, the matters having been consolidated for further hearing, public hearings having been held, the matters having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that the Commission's Decision No. 15621 in Application No. 849 be and the same is hereby revoked, and

IT IS HEREBY FURTHER 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, including all work estimated on sheet two of Applicant's Exhibit No. 3, shall be apportioned on the basis of four and ten one-hundredths (4.10) per cent to South San Francisco Belt Railway Company; twenty-three and seventy one-hundredths (23.70) per cent to Southern Pacific Company, and seventy-one and twenty one-hundredths (71.20) per cent to applicant.

(4) The cost of future maintenance of the superstructure shall be borne by The South San Francisco Belt Railway Company 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 ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 14th day of May, 1926.

H. A. Brundage
C. Henry
Frank J. Scott
Leon Whitell

Commissioners.