

Decision No. 16 873.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
THE WESTERN PACIFIC RAILROAD COMPANY
for permission to construct six spur
tracks at grade across certain public
streets in the City of San Francisco,
State of California, and across the
tracks of the Market Street Railway
Company, situated on certain of said
streets.

ORIGINAL

Application No. 12,401.

C. W. Dooling, for Western Pacific Railroad.
Ivores R. Dains for Market Street Railway Company.

WHITSELL, COMMISSIONER:

OPINION ON REHEARING

This is an application by The Western Pacific Railroad for permission to construct spur track crossings across several streets in the City and County of San Francisco and across the tracks of Market Street Railway Company on certain of these streets. A public hearing was held on March 17, 1926, as a result of which the permission sought was granted by the Commission in its Decision No. 16,320, dated March 29, 1926. Market Street Railway Company, objecting to one of the conditions of that order, filed a petition for rehearing which being granted a further hearing was held at San Francisco on May 10, 1926.

Condition No. 3 of that portion of the Commission's order pertaining to the Market Street Railway crossings reads as follows:

"(3) All trains, motors, or cars of Market Street Railway Company shall stop before going over said crossings and shall not proceed thereover until it has been ascertained that it is safe to do so."

Market Street Railway Company claimed that the carrying out of this condition would impose an onerous, burdensome and unlawful requirement upon its operation of street cars on these streets. It was contended that slight, if any, hazard to its cars and the public using its cars would exist at any of the proposed crossings, and that Condition No. 2 of the Commission's Decision, requiring flagging of all Western Pacific movements over the crossing was ample protection. Petitioner stated that permanent orders to its motormen required slow movements over all special work and that, as these orders would apply likewise to the new crossings, cars would be under control.

It appears that during the night hours petitioner operates few cars in the territory involved, service on Brannan Street being discontinued entirely after 6:00 P.M. Restriction of Western Pacific switching to the night hours, and suspension during the day of the condition requiring street cars to stop, would result in little interference with Market Street Railway Company operation, but since it is also claimed that the amount of switching over the spur tracks for the first few years of operation will be very small, such restriction does not appear to be warranted at the present time. However, as stated in the original opinion, The Western Pacific Railroad Company should not regard the omission of such restriction as a permanent condition.

It is my opinion that the provision requiring Market Street Railway cars to stop can be safely dispensed with for the present, but the suspension of this condition should also be regarded as temporary until such time as frequency of switching or other changed conditions warrant its restoration.

Market Street Railway Company also points out that the proposed agreement between itself and The Western Pacific Railroad Company covering the operation of these crossings requires that said agreement shall not become effective until approved by this Commission and requests that the Commission at this time approve the agree-

ment. There appearing no reason for withholding such approval it is recommended that it be given and the adoption of this opinion by the Commission considered as such approval insofar as said agreement is not inconsistent with this or any other effective order of this Commission affecting said crossings.

O R D E R

Market Street Railway Company having filed with this Commission on April 17, 1926, its Petition for Rehearing requesting that the Commission's Decision No. 16,320 in the above entitled proceeding be suspended, said Petition having been granted and a rehearing held at San Francisco on May 10, 1926, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that Condition No. 3 of the second portion of the Commission's Order in Decision No. 16,320 be rescinded.

In all other respects the Commission's Decision No. 16,320 dated March 29, 1926, shall remain in full force and effect.

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 10th day of June, 1926.

H. B. Brandegee

C. Seaver

Leon Whitell

Commissioners.