

ORIGINALDecision No. 18063.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of the CITY OF OAKLAND to extend
and construct 89th Avenue across
the tracks of the Southern Pacific
Company and Central Pacific Rail-
way Company.

Application 13,333.

Eugene K. Sturgis, for Applicant.
E. J. Foulds, for Southern Pacific
Company.

WHITSELL, COMMISSIONER:

O P I N I O N

In this proceeding, the City of Oakland requests permis-
sion to construct 89th Avenue at grade across the tracks of electric
suburban lines owned by Central Pacific Railway Company, a subsid-
iary of the Southern Pacific Company and operated by the Southern
Pacific Company in the City of Oakland, Alameda County, California.

A public hearing was held in this matter in Oakland, January
27, 1927.

It was stipulated that the briefs submitted by the City of
Oakland and by the Western Pacific railroad Company in Application
No. 12,948, and the current time tables of the East Bay Electric Div-
ision of the Southern Pacific Company be considered in evidence in
this proceeding. The briefs refer to the assessment of cost of in-
stallation of the crossing of a public street at grade over the tracks
of the railroad.

Eighty-ninth Avenue extends from East 14th Street in a northeasterly direction to Dolling Street, a distance of about 3,300 feet except across the Southern Pacific Company's right-of-way for its Dutton Avenue suburban electric line. The right-of-way at this location is about 115 feet wide.

The first crossing to the southeast of 89th Avenue is at 90th Avenue, a distance of about 290 feet, while to the northwest the first crossing is 87th Avenue, a distance of about 560 feet. Ninetieth Avenue is a 100-foot highly improved street and offers a connection between East 14th Street and Foothill Boulevard which are major east and west highway arteries. Eighty-seventh Avenue is a 50-foot improved street extending from East 14th to Dolling Street and takes the aspect of a local street. The map attached to the application shows the street layout in the general vicinity of the crossing applied for.

The proposed crossing of 89th Avenue is for the purpose of giving the people living between the railroad right-of-way and Dolling Street, a direct outlet to East 14th Street instead of by way of Dolling Street and 90th Avenue or by way of Dolling Street and 87th Avenue. There are about eight or nine families who will benefit by the installation of this crossing.

The record shows that the speed of trains is slow at 89th Avenue for the reason that 90th Avenue is a station stop for the electric trains going in either direction and the limited number of freight train movements are at slow rates of speed in this vicinity. Furthermore, the official time table restricts the speed of trains across 90th Avenue to ten miles per hour.

The territory tributary to the proposed crossing is comparatively level and is only partially built up at this time. Traffic on the highway in approaching the tracks would have a fairly good view of approaching trains from either direction.

On account of the comparatively small volume of vehicular traffic anticipated, it appears that a grade separation is not justified at this time and that no special protection of this crossing, if constructed, is necessary other than the usual crossing signs.

The proposed crossing would afford considerable convenience to the residents on 89th Avenue to the north of the crossing and I am of the opinion that the application should be granted.

Subsequent to the hearing in this proceeding the Commission has rendered its Decision No. 17952, dated February 2, 1927, in Application No. 12948, referred to in the above mentioned stipulation. In this decision it is stated that

"the Commission has ample power to assess the entire cost of the construction of a crossing of a city street and a railroad to either party to the proceeding as the circumstances may dictate and to impose such conditions as to it may seem just and reasonable as to the maintenance and protection of such crossing."

Applicant's question as to the Commission's power to assess all or any portion of the cost of constructing a crossing is answered in the Decision above referred to. The conditions in this proceeding with regard to assessment of cost appear to be comparable with those in Application No. 12948.

The following form of order is recommended:

O R D E R

The City Council of the City of Oakland having made application for permission to construct a public street at grade across the tracks of Southern Pacific Company and Central Pacific Company at 89th Avenue, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision;

IT IS HEREBY ORDERED that permission and authority be and it is hereby granted to the City Council of the City of Oakland, County of Alameda, State of California, to construct 89th Avenue at grade

across the tracks of Southern Pacific Company at the location hereinafter particularly described and as shown by the map attached to the Application.

Parcel 2. Beginning at a point on the southwestern projection of the southeastern line of 89th Avenue, at the most Eastern corner of the parcel of land described in the Deed made by Mary Quimby, a widow, to the City of Oakland, a municipal corporation, dated April 10, 1913 and recorded April 24, 1913 in Liber 2147 of Deeds, page 161, Alameda County Records; and running thence northwesterly in a direct line, 50 feet to the most Northern corner of said Parcel of land so conveyed; thence northeasterly along the southwesterly projection of the northwestern line of 89th Avenue, 115.272 feet, more or less, to the northeastern boundary line of the parcel of land conveyed by R. W. Hoover to Southern Pacific Company, a corporation, by deed dated October 5, 1910 and recorded May 31, 1911 in Liber 1879 of Deeds, page 450; thence southeasterly along said northeastern boundary line of said parcel of land so conveyed, 50 feet to the southwesterly projection of the southeastern line of 89th Avenue; and thence southwesterly along said southwestern projection of the southeastern line of 89th Avenue, 115.272 feet, more or less, to the point of beginning.

The above crossing shall be identified as Crossing No.

C 13.94.

Said crossing shall be constructed subject to the following conditions and not otherwise:

(1) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion of said crossing outside of lines two (2) feet outside of the outside rails shall be borne by applicant. The maintenance of that portion of the crossing between lines two (2) feet outside of the outside rails shall be borne by Southern Pacific Company. No portion of the cost herein assessed to applicant for the construction or maintenance of said crossing shall be assessed by applicant, in any manner whatsoever, to the operative property of Southern Pacific Company.

(2) The crossing shall be constructed of a width not less than forty (40) feet and at an angle of ninety (90) degrees to the railroad and with grades of approach not greater than two (2) per

cent; shall be constructed substantially in accordance with Standard No. 3 as specified in General Order No. 72 of this Commission; shall be protected by two crossing signs substantially in accordance with the type shown as Standard No. 2 as specified in G.O. No. 75 of this Commission and shall in every way be made safe for the passage thereon 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 crossing.

(4) 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.

(5) 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 foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

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

Dated at San Francisco, California, this 14th day of March, 1927.

[Signature]
[Signature]
[Signature]
[Signature]
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Commissioners.