

Decision No. 22415.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CITY OF STOCKTON, a municipal corporation,

Plaintiff and Petitioner,

-vs-

SOUTHERN PACIFIC COMPANY, a corporation,
THE WESTERN PACIFIC RAILROAD COMPANY, a
corporation,

Defendants.

Case No. 1963.

H.W. Hobbs, for Southern Pacific
Company, Defendant.A.S. Hutchinson, for Western Pacific
Railroad Company, Defendant.

J. LeRoy Johnson, for Complainant.

LOUTTIT, COMMISSIONER:

FIRST SUPPLEMENTAL OPINION AND ORDER

This deals with the petition of the City of Stockton filed March 14, 1930, seeking a modification in the Commission's Order of its Decision No. 14403, issued December 26, 1924, in the above entitled proceeding, with respect to the closing of Lindsay Street.

A public hearing was held upon this petition at Stockton on April 23, 1930.

By the terms of the Commission's Order in said Decision No. 14403, the City of Stockton was authorized to construct a grade separation between Miner Avenue and the tracks of the Southern Pacific Company and Western Pacific Railroad Company,

respectively, in the City of Stockton. This order outlines how the grade separation is to be effected, apportions the cost of the improvement and imposes certain conditions upon the interested parties. One of the conditions of this order, being No. 5, reads as follows:

"(5) The existing grade crossing over defendant's tracks on Lindsay and Channel Streets, respectively, shall be abandoned and effectively closed after the subway in Miner Avenue is completed and open to public use."

The subway was constructed pursuant to said order and opened to traffic on November 11, 1926, and all the conditions in this order have been wholly complied with except Condition No. 5 referred to above. The City now asks that the Commission issue a supplemental order modifying the original order in said Decision No. 14403 in so far as it required the closing of Lindsay Street.

With respect to the closing of Channel Street, the City introduced a copy of Resolution No. 9140 (City Exhibit No. 22), which shows that on October 21, 1929, the City Council of the City of Stockton passed and adopted a Resolution of Intention No. 843, among other things, declaring its intention to close Channel Street between the east line of Sacramento Street and a line connecting the northwest corner of Lot 9, Block 229, with the southwest corner of Lot 10, Block 223, which includes the area occupied by Southern Pacific Company's tracks laid in the intersection of Channel and Sacramento Streets but does not include the Western Pacific Company's tracks across Channel Street between Sacramento and Union Streets.

City's Exhibit No. 21, filed in this proceeding on April 2, 1924, shows that for a 24-hour count taken March 18, 1924, 860 vehicles passed over Southern Pacific Company's tracks at the Lindsay Street grade crossings. This exhibit also shows that on this same day 523 vehicles passed over these tracks at Miner Avenue. City's Exhibit No. 23 shows the result of a traffic check taken on Lindsay Street between Sacramento and Union Streets, Tuesday, April 22, 1930, between the hours of 9 A. M. and 9 P. M. This count shows that 503 vehicles passed over the tracks during the 12-hour period.

Southern Pacific Company's Exhibit No. 32 shows that on December 7, 1921, 405 vehicles passed over their tracks at Miner Avenue between the hours of 7 A. M. and 6 P. M., whereas on December 9, 1927, a total of 7,089 vehicles used the Miner Avenue Subway. The company's Exhibit No. 30 shows that 407 vehicles crossed their line on Lindsay Street between the hours of 7 A.M. and 6 P. M., Friday, March 28, 1930.

It is apparent from these traffic checks that through the construction of the undergrade crossing at Miner Avenue a large percentage of the vehicular traffic that theretofore had crossed the tracks at the Lindsay Street grade crossing has been diverted to the subway. The record shows that the only traffic that would be inconvenienced through the closing of the Lindsay Street crossing would be that originating from and destined to points on Lindsay Street, which it appears is a comparatively small volume of traffic.

Both the Southern Pacific Company and Western Pacific Railroad Company opposed the granting of the City's petition seeking a modification of the order which will not require the closing of Lindsay Street over the respective railroad companies' tracks. The carriers take the position that in participating in the cost

of the subway, it was assumed that all the conditions of the Commission's order in this proceeding would be complied with and that it is not reasonable now for the City to ask that it be relieved from the compliance with Condition (5) set forth above.

After carefully considering the record in this proceeding, it appears that the conditions surrounding the justification of the provision requiring the closing of the Lindsay Street crossing over the railroad tracks are practically the same at this time as was the case when the Commission made its order in said Decision No. 14403; therefore, there appears to be no just reason for recommending a modification in the original order. It would seem in public interest as a general policy to close grade crossings wherever conditions justify with due consideration to public need for a crossing over a railroad, especially in such cases as this where considerable sums of money have been spent to effect a safe and convenient means of crossing the tracks. If this policy is not pursued it will become increasingly difficult to justify large expenditures by the carriers to separate grade crossings from which the maximum benefit will not be received.

The following form of order is recommended:

O R D E R

The City of Stockton having filed a petition in the above entitled proceeding seeking a modification of the Commission's order in said Decision No. 14403, with respect to the closing of the Lindsay Street crossing, public hearing having been held and the matter being ready for decision,

IT IS HEREBY ORDERED that the City of Stockton's petition, filed with the Commission on March 14, 1930, seeking a modification of the order, be and it is hereby denied and Decision No. 14403 is hereby affirmed.

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 Francis co, California, this 8th
day of May, 1930.

C. Seaver

Leon Whittell

Thos B. Lott

Commissioners.