

Decision No. 25895.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY for an order
authorizing the abandonment and clos-
ing of an existing crossing at grade
of a county highway and the Southern
Pacific Railroad near Tipton, Tulare
County, California, designated
B-258.4.)

Application No. 18615.

E. W. Hobbs, for Applicant Southern Pacific Company.

Leroy McCormick, Assistant District Attorney, for
County of Tulare, Protestant.

WARE, COMMISSIONER:

O P I N I O N

In this application, Southern Pacific Company requests an order authorizing it to permanently close to public use and travel a grade crossing in Tulare County, designated as Crossing No. B-258.4. A public hearing was held at Visalia on February 17, 1933.

The crossing which applicant proposes to close is located on its main Valley Line between San Francisco and Los Angeles, about two miles north of the Town of Tipton and eight miles south of the City of Tulare. On July 15, 1918, by Decision No. 5578, in Application No. 3778, the Commission authorized the construction of this crossing as a part of the State Highway. At that time the highway southerly from the City of Tulare was constructed parallel and adjacent to the westerly side of the railroad right of way and recrossed to the easterly side at the crossing involved in this

application. During the past year a new State Highway, lying entirely on the easterly side of the railroad, has been constructed, and the old route on the westerly side of the track (including the crossing) has been relinquished to the County. Subsequent to this relinquishment the State Department of Public Works made application (Application No. 18120) to close this crossing, which was granted by Ex Parte Order No. 24774, dated May 16, 1932. Later the County of Tulare petitioned the Commission to set aside its ex parte order and thereupon the Commission dismissed the application (No. 18120) on November 21, 1932, on the ground that the applicant no longer had jurisdiction over the crossing.

As a county road, this old highway carries purely local traffic, and it is the contention of Southern Pacific Company that such travel as now uses the crossing could, with equal convenience, cross the track to the new State Highway at a crossing located one and one-half miles northerly from Crossing No. B-258.4, and identified as Crossing No. B-256.8.

In support of this position, the railroad company presented two traffic counts, one (Exhibit 6) showing the time and the license numbers of all cars passing over the crossing in question (No. B-258.4) and the other (Exhibit No. 7) showing similar information for all cars passing along the old State Highway at a point opposite Crossing No. B-256.8. From this exhibit it appears that during the period from 9:00 A.M. to 4:00 P.M., on February 7, 1933, forty cars used the old State Highway crossing (No. B-258.4) and that all but two of these cars passed the northerly crossing (No. B-256.8) a short time before or after they were checked at the southerly crossing. Similarly, the check taken opposite the northerly crossing indicates that only one car passed this point, which was apparently destined to a point between the two crossings.

The County of Tulare presented Exhibit No. 8, illustrating

the roads and the ownership of all property in the vicinity of the railroad and highway. This exhibit shows that between the two crossings there are but four parcels of property bordering the old State Highway; that said four parcels are owned by one family; and that one of the four parcels is adjacent to the northerly crossing. The testimony shows that there is but one house having access to this mile and one-half of old State Highway and that this house is not occupied at this time.

Exhibit No. 8 also shows a proposed east and west road which would intersect the old State Highway between the two crossings and connect it with another north and south road, known as the Oakland Colony Road, located about two miles west of the railroad. A petition requesting this road was filed with the Board of Supervisors of Tulare County the day before this hearing. Indefinite testimony as to the existence of a private lane along the route of this proposed road was attempted but no definite statement was elicited that such a road exists.

It is claimed by the County that the crossing (B-258.4) which Southern Pacific Company proposes to close is necessary in order to permit an outlet from the farms located along the Oakland Colony Road and to the west thereof to the State Highway and particularly to reach the paved road to Porterville, which leads directly east from the crossing involved (B-258.4). From an inspection of Exhibit No. 8, it is concluded that these property owners have access to the State Highway by way of other crossings, particularly over a crossing (B-258.8) one-half mile south of old State Highway crossing (B-258.4). From this latter crossing a county road extends several miles to both the east and west and furnishes direct access to the Oakland Colony and other north and south roads in the district. With respect to the road to Porterville, the evidence

shows (Exhibit No. 6) that during the seven-hour period but five vehicles used the crossing enroute to or from the Porterville road and that each of these vehicles passed the northerly crossing.

The County also points out that the closing of Crossing No. B-258.4 would create a pocket as there is no outlet from the southerly end of the old State Highway other than this crossing. Exhibit No. 8 shows a right of way for a road along the westerly side of the railroad to a connection with Crossing No. B-258.8 one-half mile south, and, while the title of the County to its right of way is questioned, it is apparent that such a road would provide an outlet.

The Commission's records indicate that the northerly crossing (No. B-256.8) was authorized by the Commission in Decision No. 10490, in Application No. 7431, dated May 22, 1922. The crossing was installed to furnish access from the district lying east of the track to the State Highway, which was then constructed on the westerly side of the railroad. With the construction of the new highway on the easterly side, it would appear that this need no longer exists. The count taken by the railroad shows that during the seven hours but four vehicles used this crossing.

With respect to the physical conditions at the two crossings, there is little difference. Both crossings have open view conditions and the track area in each case is well paved. The grades of approach at the northerly crossing (No. B-256.8) are lighter than those at the old State Highway crossing (No. B-258.4) and the distance between the crossing and the highway intersection is greater at Crossing No. B-256.8, which is an advantage. The old State Highway crossing (No. B-258.4) is now equipped with a wigwag, however, and the expense of moving or installing a wigwag at the northerly crossing (No. B-256.8) is hardly justified by the amount of traffic.

After careful consideration of this record I am of the opinion that there is not sufficient traffic to and from the district west of this track to warrant both crossings, and the Commission should order one closed. It is my judgment that the southerly crossing is better located to take care of traffic needs and if the County desires to retain the southerly crossing (No. B-258.4), it should be allowed to do so on condition that it close the other (No. B-256.8).⁽¹⁾ If the County elects to close the old State Highway crossing (No. B-258.4), the wigwag should be moved to Crossing No. B-256.8.

The following form of order is recommended.

O R D E R

Southern Pacific Company having applied to the Commission for an order authorizing the permanent closing of the crossing of its tracks, known as Crossing No. B-258.4, located at a point approximately two miles north of Tipton, Tulare County, which was heretofore authorized by the Commission in Decision No. 5578, in Application No. 3778, and which is located one and one-half miles south of Crossing No. B-256.8, a public hearing having been held, and the matter being submitted and ready for decision,

It is hereby found as a fact that public convenience and necessity no longer require the maintenance of both of said crossings, Nos. B-256.8 and B-258.4.

⁽¹⁾ Subsequent to the hearing the County indicated that it prefers that the northerly crossing (No. B-256.8) be closed instead of the one covered in the Southern Pacific Company's application (No. B-258.4), but desires that a pedestrian crossing for the convenience of school children be established.

IT IS HEREBY ORDERED that the Southern Pacific Company be authorized to permanently close Crossing No. B-258.4 to public use and travel unless the County of Tulare shall, within sixty (60) days from the effective date of this order, file satisfactory evidence with the Commission that it has legally abandoned Crossing No. B-256.8 and effectively closed same to public use by vehicles.

The above authority is granted subject to the condition that upon closing of said Crossing No. B-256.8 to vehicular travel, applicant shall provide turnstiles in its right of way fences and that pedestrians shall at all times have the right to cross the railroad right of way and tracks at this point (Crossing No. B-256.8).

Nothing in this Decision shall be construed as modifying in any other respect the conditions in Decision No. 5578 in Application No. 3778, or in Decision No. 10490 in Application No. 7431.

The effective date of this Order shall be twenty (20) days from the date hereof.

The foregoing Opinion and Order is 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 18th day of May, 1933.

Ch. L. Harvey
Leon White
W. J. Carr
W. B. Harris
W. B. Harris
Commissioners.