

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of  
WM. G. HENSEAW, doing business as a  
railroad corporation, under the name  
and style of Crescent City Railway Com-  
pany, for permission to construct a  
track of said corporation at grade  
across the tracks of Southern Pacific  
Railroad Company and Southern Pacific  
Company at Bloomington, San Bernardino  
County, California.  
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Application No. 809.

A P P E A R A N C E S

E. L. Carnahan, for applicant,  
George D. Squires, for Southern Pacific Company  
and Southern Pacific Railroad Company,  
Frank Carr, for Pacific Electric Railway Company,  
Paul Shoup, for Pacific Electric Railway Company.

REPORT OF THE COMMISSION

GORDON, Commissioner.

CRESCENT CITY RAILWAY COMPANY, applicant in the above  
entitled matter, is the owner and in possession of a standard  
gauge single track railway extending from the City of River-  
side, Riverside County, California, in a general northwesterly  
direction to a point south of and adjacent to the tracks of the  
Southern Pacific Railroad Company, in the village of Bloomington,  
and operates said railway as a common carrier for the trans-  
portation of persons and property thereover.

On October 24, 1913 applicant filed its petition  
with the Commission, stating that it desired to extend and  
construct its line of railway through the village of Bloomington,  
San Bernardino County, California, in a general northeasterly

direction, a distance of about three and one-half ( $3\frac{1}{2}$ ) miles, to the City of Rialto in the County of San Bernardino.

In the construction of this extension it is necessary that applicant's tracks intersect and cross the tracks of the Southern Pacific Railroad Company at Bloomington, and application was made to the Commission for permission to construct said crossing.

Ordinarily when one railroad company seeks to construct its tracks over and across the tracks of another railroad company, this Commission does not require that a public hearing be had in the matter, providing the parties at interest have come to an agreement among themselves and filed in conjunction with the application a copy of said Agreement. In such cases the Commission generally grants the application ex parte after an investigation has been made and in its order and authorization provides for the public safety and convenience.

Applicant requested permission to construct its track at grade across the tracks of Southern Pacific Railroad Company, but did not file with the application a copy of the required Agreement entered into between the two companies, but stipulated "That your petitioner and said companies have agreed as to the location of said crossing and that same should be at grade, but they have not agreed nor cannot agree as to the rights to be granted to and obligations to be imposed upon each of said parties in the construction, operation and maintenance of said crossing." Consequently, the matter was set for public hearing in the City of Los Angeles on Wednesday, November 12, 1913, at 10 o'clock A.M., at which all parties at interest were present and gave such testimony as was relevant.

The Pacific Electric Railway Company through its President, Mr. Paul Shoup, and its Attorney, Mr. Frank Carr,

requested permission to intervene in this matter, stating that the Pacific Electric Railway Company is proposing to construct a line of railway from Rosena, San Bernardino County, on its San Bernardino extension, to Bloomington and across the line of the Southern Pacific Railroad Company, and the reason for the intervention of said Pacific Electric Railway Company was that it also desired a crossing of the tracks of the Southern Pacific Company at Bloomington, and that inasmuch as the Pacific Electric Railway Company was at present operating the passenger cars and traffic on the Crescent City Railway, and that if the operating rights over the lines of applicant which it now has should be cancelled, that the intervenors would still desire to cross the tracks of Southern Pacific Railroad Company at Bloomington and would extend and construct their own line into the City of Riverside, thus causing two crossings over the tracks of the Southern Pacific Railroad Company at Bloomington, providing the Commission would not allow both the Pacific Electric Railway Company and the Crescent City Railway Company to use the same crossing. Intervenor's stated that they were willing to pay one-half of the cost of the crossing and one-half of the cost of maintenance thereafter.

Applicant opposed the application of Pacific Electric Railway Company to participate in the construction and ownership of this crossing for the reason that it had not been definitely established that Pacific Electric Railway Company would construct the line from Bloomington to Rosena, as stated by Counsel for the intervenors, and further, for the reason that in the future should the Crescent City Railway Company desire to issue bonds on its property, it would desire a continuous, unbroken line of sole ownership from Riverside to Rialto.

Witnesses were placed on the stand by intervenor, and it was demonstrated to the satisfaction of this Commission that intervenor intends in the very near future to construct its line from Rosena to Bloomington and to cross the tracks of Southern Pacific Company with said line, and if operating rights which intervenor now has over the tracks of applicant are annulled, that intervenor will construct its own line from Bloomington into the City of Riverside.

The principal testimony introduced at the hearing was concerning the manner in which the crossing should be made and also as to the apportionment of the cost of constructing, operating, and maintaining the crossing, and proper protective devices. Considerable testimony was given by Engineers of applicant, intervenor and Southern Pacific Railroad Company, as to the feasibility of constructing the tracks of applicant under the tracks of the Southern Pacific Railroad Company by means of a subway. It was clearly demonstrated that drainage conditions and the topography of the land would preclude such construction, and it is my opinion that the only feasible crossing at this place is a grade crossing protected by a standard interlocking plant. I am also of the opinion that the intervenor, Pacific Electric Railway Company, should be allowed to cross the tracks of the Southern Pacific Railroad Company, using therefore the same crossing that applicant now desires this Commission to authorize, and that they, the Pacific Electric Railway Company, should be allowed to participate in the cost of construction of said crossing and the necessary protective devices, and that they should be joint owners with applicant of this crossing. If Pacific Electric Railway Company is not allowed to participate in the construction and ownership of this crossing, it will be necessary that another crossing be

established in the immediate vicinity, probably within a distance of not more than 100 yards, which would be very undesirable not only to the Southern Pacific Railroad Company but also to applicant, intervenor and the traveling public.

Considerable testimony was introduced as to the apportionment of the cost of constructing, operating and maintaining the crossing, and proper protective devices. This question has previously been presented to the Commission for consideration, but in nearly every case the parties at interest have reached an agreement among themselves prior to the hearing. However, the Commission has been asked to prescribe a rule which the railroad companies may follow in the future relative to the apportionment of these costs, and I will now confine myself to a consideration of this question.

The Public Utilities Act gives this Commission the authority to determine and prescribe the manner, including the particular point of crossing, and terms of installation, operation and maintenance, use and protection of every crossing of one railroad by another railroad or street railroad, and to order or abolish any such crossing and to require where in its judgment it will be practicable to make grade separation, and to prescribe the terms upon which such separation shall be made, and the proportion in which the expense of the alteration or abolition of said crossings or separation of said grades shall be divided between the railroad or street railroad or corporation affected.

The expense imposed on a short and weak line is very often a hardship, when it is necessary that an interlocking plant be installed and operated by an attendant both day and night. It is not so much the first cost of the construction of the plant as it is the yearly cost of operation and maintenance, which is a charge on the income of the road.

When a railroad company lays down its track it does so by virtue of a franchise derived from the State, and which it holds for the public benefit, and subject to such future regulations, police, and otherwise which may for the proper care of the public interest be imposed from the same source. Had the right of way of the first road which was crossed by the tracks of the other roads, without the imposition of large burdens, been based solely upon the advantages of priority in time, it is not difficult to see that the development of the State might have been by such a policy seriously retarded. Seniority cannot be taken as a basis of determination, discarding other conditions. There may arise cases where it will constitute an element proper to be considered, and speaking generally, if the Commission finds two railroads in operation upon the ground without special contract burdens between themselves, they must be dealt with on a basis of practical equality. Corporations as well as citizens are subject to the police power of the State. Should it be held that before any railroad could be laid across a railroad previously constructed, the damage from any inconvenience such company might suffer on account of having to submit to and observe police regulations in regard to the conduct of its business thereafter should first be ascertained and paid by the new road, it would amount to a practical prohibition of the construction of new roads in the State.

Regardless of seniority, the junior road has just as much right to do business as a corporation as the senior road. It acquires its power from the State to perform the functions of a corporation for the use of the public, and when required by the police powers to install safety devices while performing the functions of a corporation, a basis for the apportionment of expenses must be determined which is fair and equitable.

It must be borne in mind, however, that a railroad which is constructed and operated will be unduly burdened by having to share the expense of another road which seeks to cross its tracks and which will in no way increase the revenue of the senior road, and which may add greatly to its operating expenses by means of reducing speed and other precautionary safety measures, and I am of the opinion that unless extenuating circumstances can be shown which will tend to alter normal conditions, that the road seeking to cross should bear the entire expense of constructing and maintaining the crossing, and also constructing such interlocking plants or other safety devices as may be necessary, and that the cost of operating and maintaining the interlocking plant or other safety device should be borne equally between the two roads.

There was no substantial reason advanced at the hearing that would preclude intervenor in this case from joint ownership of the crossing, and I recommend the following form of Order:

O R D E R

COMPANY

CRESENT CITY RAILWAY, a corporation, having on October 24, 1913 filed with the Commission an application for permission to construct its main line track at grade across the tracks of Southern Pacific Railroad Company and Southern Pacific Company at Bloomington, San Bernardino County, California, and a public hearing having been held upon the application at Los Angeles, California, on November 12, 1913, at which time the Pacific Electric Railway Company intervened, asking that the Commission allow it to participate in the construction and ownership of said crossing, and at which hearing

all parties interested were present, and testimony concerning the matter was given, including the practicability of avoiding a grade crossing and also the intervention of Pacific Electric Railway Company in the joint ownership of said crossing; and it appearing to the Commission that the physical and topographical conditions indicate that it is impracticable to avoid a grade crossing at said proposed point of crossing, and that the Pacific Electric Railway Company should be allowed to share in the construction and ownership of said grade crossing; and it further appearing that the proper division of cost of said grade crossing, together with necessary interlocking device to protect same, is that applicant and intervenor shall each bear one-half of the total cost of installing the crossing, together with the necessary interlocking device; and it further appearing that applicant and intervenor should be granted permission to construct their track at grade across the tracks of Southern Pacific Railroad Company and be permitted to operate over same.

IT IS HEREBY ORDERED that permission be hereby granted Crescent City Railway <sup>Company</sup> and Pacific Electric Railway Company to construct jointly a single main line track at grade across the tracks of Southern Pacific Railroad Company and Southern Pacific Company in the village of Bloomington, San Bernardino County, California, at a point 142 feet west of the westerly side of the Southern Pacific Company's depot at Bloomington, as shown by the map and profile attached to the application and subject to the following conditions, viz:

(1) Applicant and intervenor shall provide suitable crossing frogs and timbers for the construction of said crossing, and shall thereafter maintain same in good and first-class



condition, for the safe operation of trains and cars there-  
over, and the cost of installing and maintaining the crossing  
shall be divided equally between applicant and intervenor.

(2) For the protection of said crossing applicant and  
intervenor shall at their own expense within nine (9) months  
after the date of this Order construct and install a first-  
class standard interlocking device of such plan and design as  
shall conform with this Commission's General Order No. 33,  
and the entire cost of constructing and installing said in-  
terlocking device shall be divided equally between applicant  
and intervenor.

Said interlocking device shall thereafter be  
operated and maintained in accordance with this Commission's  
General Order No. 33, and also in accordance with such other  
rules and regulations as this Commission may issue in this  
matter; and the expense of maintaining and operating said  
interlocking device after the installation thereof shall be  
divided as follows:

One-half of the expense of maintaining and operating  
said interlocking device shall be borne by Southern Pacific  
Company and the other one-half shall be borne equally by ap-  
plicant and intervenor.

(3) After the installation of the crossing frogs above  
provided for, and up to the time the interlocking device  
hereinbefore specified has been completed and placed in  
operation, under the authority of this Commission, all engines,  
motors, trains or cars of either applicant or intervenor shall  
before proceeding over the crossing come to a full stop within  
fifty (50) feet thereof, and shall not proceed over the cross-  
ing until the conductor or other employe has first gone thereon

and ascertained that it is safe to proceed, and until proper signals have been given by whistle and bell.

All engines, motors, trains and cars of Southern Pacific Company shall be operated over the crossing until the interlocking device above provided for is completed and placed in operation under control and at a speed not exceeding fifteen (15) miles per hour, providing proper signals are given by whistle and bell within sufficient distance before reaching the crossing, to advise employes of applicant and intervenor of such approach.

(4) 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 Order is hereby approved and ordered filed as the opinion and order of the Railroad Commission.

Dated at San Francisco, California, this 3rd day of December, 1913.

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*H. D. Townsend*

*W. L. Gordon*

*Edwin V. Edgerton*

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Commissioners.