

ORIGINAL

Decision No. ✓

Decision No. 2745

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of the)
 SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS,)
 a corporation, for permission to con-)
 struct and maintain a spur track at) Application No. 1822.
 Twenty-second and Brush Streets, in the)
 City of Oakland, Alameda County, Cali-)
 fornia.)
)

W. H. Smith, for applicant.
 Martin Bekins, in propria persona.
 R. J. Williams, for protesting
 property owners.

GORDON, Commissioner,

O P I N I O N

In this application the Commission is asked to make its order granting permission to applicant to construct a spur track from its Twenty-second Street line in Oakland across part of Twenty-second Street and across Brush Street into private property, to serve a concrete warehouse now being erected by Martin Bekins. It is contemplated to later on extend this track to serve other industries in that vicinity. Applicant filed with its application a copy of a resolution passed by the City Council of Oakland at a meeting on August 2, 1915, which resolution granted to said Martin Bekins permission, upon certain conditions, to construct and maintain this track; and it appears that Mr. Bekins requested the applicant to undertake the construction and installation of this spur.

Under ordinary conditions, and where the necessary permit from the local authorities has been obtained and no general objection to the granting of the application appears to the Commission, permission is granted in such cases ex parte and without a normal hearing. In this case, however, objection was made to

the granting of the application by certain property owners at Twenty-second and Brush Streets in Oakland. In addition, the rather anomolous condition presented itself to the Commission that if this application were granted this spur track would be built and operated over by the applicant, while the holder of the permit from the City Council of Oakland, and the owner of the spur, would be a private individual and not a public utility.

The application was, therefore, set down for a hearing. At this hearing Mr. R. J. Williams appeared for the protesting property owners, on the southwest corner of Twenty-second and Brush Streets. He claims that this property is worth between thirty and forty thousand dollars, and that it will be damaged by reason of the construction of this spur to the extent of at least five thousand dollars. He asks that the Commission either refuse its permission for the construction of this spur or award damages in his favor to the extent claimed by him.

The Commission has no power to award damages in such a case, and an action for damages, if the spur is constructed, will have to be taken to the courts. Under section 43 of the Public Utilities Act the Commission has the exclusive power to refuse its permission or grant it upon such terms and conditions as it may deem practicable, and it may prescribe the manner, including the particular point of crossing, and the terms of its installation, operation, maintenance, use and protection.

An investigation by the engineering department establishes the facts that the Williams property is assessed for Five Thousand Nine Hundred Dollars (\$5,900), and the improvements thereon for Four Hundred Dollars (\$400), these improvements consisting

of an old frame dwelling two stories in front and one in the rear, of about six rooms, and a shed. The Bekins property, which is to be served by this spur, is assessed for Twenty-three Thousand Dollars (\$23,000). It does not appear to me how the Williams property can be seriously injured by the building of this spur. The investigation also shows that it is impracticable to serve the warehouse by a spur constructed in a location different from the one shown on the map attached to the application. Physical conditions, especially as far as questions of curvature are concerned make a change of location impracticable.

There was also introduced at the hearing an ordinance passed by the City Council of Oakland, establishing the limits of what is designated as the industrial district of that city. This ordinance and the map outlining this district show that the location of this proposed spur track falls within the limits of that district. It is my opinion that the construction of industrial spurs in this part of the city is a necessity and in the best interests of the city of Oakland, and I recommend to the Commission that from this point of view this application be granted.

As far as the status of the permit granted by the City Council is concerned, both the applicant and Mr. Bekins agreed that petition would be made to the City Council to transfer this permit to the applicant, who then would not only construct and operate over this spur but also become the owner thereof. This transfer has been made by the City Council, and there has been filed with the Commission Resolution No. 11290, of August 30, 1915, permitting the construction and maintenance of this spur under certain conditions.

I therefore recommend that this application be granted, and submit the following form of order.

O R D E R

SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS, a corporation, having on August 4, 1915 applied to the Commission for permission to construct a spur track in and across Twenty-Second and Brush Streets, in the City of Oakland, Alameda County, California, and a public hearing having been held, and it appearing that this application should be granted, subject to the conditions hereinafter specified,

IT IS HEREBY ORDERED, That applicant be and is hereby granted permission to construct its spur track at grade in and across Twenty-Second and Brush Streets, in the City of Oakland, Alameda County, California, to serve the warehouse property of Martin Bekins, subject to the following conditions, and not otherwise, viz:

(1) The entire expense of constructing this spur track in and across Twenty-second and Brush Streets, together with the cost of its maintenance thereafter in these streets, shall be borne by the applicant.

(2) The track shall be constructed in compliance with the terms of the permit granted by the City Council of Oakland in its Resolution No. 11290, of August 30, 1915.

(3) The street crossing shall be constructed of a width and type to conform with that in Twenty-second and Brush Streets in the immediate neighborhood of this spur track.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation,

maintenance and protection of said spur track 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.

Dated at San Francisco, California, this 7th day of September, 1915.

Max Heller

H. H. Stanford

W. G. Lusk

Francis R. DeLoe

Commissioners.