

ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Decision No. 2806

J. L. MURPHEY,  
 Complainant,  
 - vs -  
 SOUTHERN PACIFIC COMPANY,  
 Defendant.  
 .....

Case No. 851.

J. L. Murphey, for complainant.  
George D. Squires, for defendant.

GORDON, Commissioner,

O P I N I O N

The complainant in this case, J. L. Murphey, is the owner of a large ranch 3.2 miles southeast of Turlock and adjoining the east line of the Southern Pacific Company's right of way on that company's so-called San Joaquin Valley Line. Mr. Murphey complains that he is in immediate need of a spur track to be constructed opposite his ranch on the north side of defendant's right of way, but that defendant has refused to construct or permit the construction of such a spur track at the point designated. According to the complainant this spur is required to economically ship the produce of his ranch over defendant's railway, and will also be used for the shipment of cattle and other freight, and will be of great benefit not only to him but to many of his neighbors. He states that he has offered to defendant to perform all reasonable requirements and is willing to assume his share of the expense of construction, but that the defendant gives as a reason for its refusal that the nearest siding at Delhi is only a short distance from complainant's farm, and that the putting in of an additional switch between Delhi and Turlock would tend to increase the hazards of train operation. Complainant asserts that it is not practicable for him to haul freight to and from Delhi, for the

reasons that the siding is located in soft sand, that there is no station house or freight house at that point, that no stock yards or cattle chutes are provided, and that no agent is located there. It is further stated by complainant that unless this spur is constructed he will suffer great injury and damage.

In its answer to the complaint defendant makes a general denial to many of the complainant's assertions, admits that it declined to construct the desired spur, and avers that the facilities at Delhi are adequate to serve the needs of complainant. The defendant further objects to the construction and maintenance of the proposed spur on the grounds that it would necessarily make railroad operation at that point more dangerous, and states that a spur in the proposed location would serve few, if any, shippers other than the complainant.

The case was heard in Turlock on September 17, 1915.

The crossing over the Southern Pacific Company's track leading to complainant's ranch is 2.5 miles from the Delhi siding and 3.2 miles from the freight and passenger depot at Turlock. The Southern Pacific Company's track between Turlock and Delhi is part of a single track high-speed line over which about twenty passenger and freight trains operate each day. There are no speed limitations on this stretch of track and all trains are protected by electric block signals. Along the west side of and immediately adjoining the right of way between Turlock and Delhi runs the new macadamized state highway. It developed at the hearing that the complainant ships or receives no freight whatever at the siding at Delhi, but hauls all goods and produce to and from Turlock. There can be no question that the complainant is in a fortunate situation as far as first-class wagon road connections with his ranch is concerned; and under ordinary conditions two to three miles' haul from a ranch to the nearest railroad station is by no means considered a hardship, and is not considered prohibitive with regard to cost of team haul.

The sections of the Public Utilities Act which bear upon this case read as follows:

"Sec. 25. (a) Every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks or railroad of such corporation or person, shall make such connection and provide such switches and tracks as may be necessary for that purpose and deliver and receive cars thereover; provided, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation.

(b) Under the conditions specified in the proviso in sub-section (a) hereof, every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby."

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"Sec. 39. (a) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in section 25 of this act, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section 25, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have the power to prescribe. Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof to be determined by the commission after notice to the interested parties and a hearing thereon; provided, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense.

It is clear that under the language of Section 25 (a) and (b) as quoted above, the Commission can order the construction of spur tracks or connections with private tracks only if installation and use can be had "without materially increasing the hazard of the operation of the railroad," and provided "that the business



which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation."

The two questions before the Commission, then, are (1), will the installation and maintenance of this proposed spur materially increase the hazard of operation? and (2), will the business which may reasonably be expected by the defendant from the proposed spur justify defendant's share of expense to be incurred in connection with the construction and maintenance of the proposed spur?

The first question was gone into in considerable detail at the hearing, and there is no doubt in my mind that the introduction of a spur into a single track high-speed main line, especially if the spur be connected with the main track at one end only, is poor railroad practice and hazardous to operation. This is particularly true of a line with as much train movement as occurs on this one.

Safety of operation and compliance with Southern Pacific signal standards would necessitate the rearrangement of the electric signal wiring in this block and require the installation of an additional signal to properly protect this spur. Aside from the cost of the spur proper, this is expensive and would cost in the neighborhood of one thousand dollars. While the complainant is willing to pay part of the cost of this spur, he cannot be expected to share the signal expense. This expense, however, should not be overlooked by the Commission in considering the probable burdens and benefits to the carrier to be expected from the construction of such a spur. I have come to the conclusion that the construction in this case, without signal protection, would materially increase the hazard of operation.

With reference to the amount of business the defendant would secure by reason of the construction of this spur, it is in evidence that no new business whatever would come to the railroad.

The freight from complainant's ranch, which at present moves over Southern Pacific rails, would, however, be handled more conveniently and perhaps more economically from the standpoint of the shipper, even if the saving in the cost of wagon haul would not be as great as complainant seems to believe.

The testimony at the hearing as to the amount of freight tonnage originating on complainant's ranch is indefinite. Taking all possible shipments together, and based on the production of wine grapes, sweet potatoes, dried fruit, Egyptian corn, etc. in the last two years, it appears that from 1,000 to 1,200 tons of freight might possibly be shipped annually from this spur, in addition to several carloads of live-stock. This averages less than one carload per week. More than one-half of this tonnage consists of wine grapes, shipment of which must be made within a short period of a few weeks, and all of which represents only a short haul for the railroad company.

No testimony was offered at the hearing tending to show that there would be freight shipments from this spur by anyone except the complainant, and I am of the opinion that but very few, if any, other shippers would make use of this spur.

It would not seem reasonable, considering cost and physical conditions, to order a spur track built under these circumstances.

While, therefore, I am of the opinion that the Commission is not justified, in this case, in ordering defendant to build and maintain this proposed spur on its own right of way at this time, I wish to point out that the defendant is entirely at liberty to enter into a so-called industrial spur track agreement with the complainant under the ordinary and usual terms. If under such an agreement this spur is built into complainant's private property under terms satisfactory to both parties, the permission of this Commission need not be obtained.

I recommend the following form of order:

ORDER

J. L. MURPHEY, having filed with this Commission his complaint, and praying that an order be made by this Commission requiring the Southern Pacific Company to construct or permit the construction of a spur track in the location referred to in the foregoing opinion, under such conditions as the Commission might prescribe; and defendant having filed its answer, and a hearing having been held in this case, at which both complainant and defendant were represented; and it appearing to the Commission that the construction and maintenance of this proposed spur track would increase the hazard of operation of defendant's line of railroad at this point; and that the business reasonably to be expected by the defendant by reason of the construction and maintenance of this spur would not justify defendant's share of the expense;

IT IS HEREBY ORDERED, That the complaint be and the same is hereby dismissed without prejudice.

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 5th day of October, 1915.

W. H. ...

Alex ...

Edwin C. Edgerton

Francis ...

Commissioners.