

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

ORIGINAL

Decision No. 3717

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application  
of THE ATCHISON, TOPEKA, AND SANTE  
FE RAILWAY COMPANY for authority  
to lay down, construct, maintain,  
and operate a spur track in and  
along Spear Street, and across the  
tracks of United Railroads of San  
Francisco, in the City and County  
of San Francisco, State of  
California.  
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Application No. 2396.

E. W. Camp for applicant.  
W. M. Abbott for United  
Railroads of San Francisco.

GORDON, Commissioner.

O P I N I O N.

In this application, filed with the Commission on July 7, 1916, one of the same questions is raised as in Application No. 1624, decided by the Commission on May 21, 1915, and reported on page 998, volume 6, of the Opinions and Orders of the Railroad Commission of California. In that application, The Atchison, Topeka, and Sante Fe Railway Company asked permission to cross three streets in San Francisco; namely, Howard, Folsom, and Harrison Streets, and a double track line of the United Railroads on each of these streets. Permission had been secured from the city to cross these streets, but the applicant and the United Railroads were unable to agree as to the terms of the track crossings. The United Railroads had submitted a contract covering these crossings to The Atchison, Topeka, and Sante Fe Railway Company, but that company had refused to sign it on account of three clauses which appeared in it.

In this case a crossing of Folsom Street and one double track line of the United Railroads are involved.

Substantially the same contract has been submitted to the applicant in this instance, but there is here only one clause to which the applicant objects. In the opinion in the other application that clause was set forth at length, and since it is exactly the same in this case, it may be quoted here:

"The parties hereto expressly covenant and agree that, in the event of a collision between their engines, trains or cars at said crossings, or in the event of accident or injury to person or property at or near said crossings, caused by the negligence or misconduct of the employees of any of said parties, or by defective equipment used by any of the said parties, the party whose employees and/or equipment are alone at fault shall be solely responsible for, and shall settle and pay, the entire loss, damage or injury caused thereby and shall save the other party hereto harmless therefrom. In the event that such collision or damage or injury to person or property is caused by the fault of employees of both the party of the first part and the parties of the second part, their heirs, successors, and assigns, or in the event that the cause of such collision or damage or injury to person or property is so concealed that it can not be determined whose employee or employees was or were at fault, or in the event that defective equipment of the party of the first part and the parties of the second part, their heirs, successors and assigns, contributed to said collision, injury or damage, then the amount of the damage shall be borne equally by the parties legally determined to be jointly liable; the subject of this provision being to apportion responsibility for damage between joint tortfeasors because of the absence of a right of contribution between them under the law.

"Each party hereto covenants and agrees that it will forever indemnify and save harmless the other party hereto, his or their heirs, successors and assigns from and against any and all claims, demands, liabilities or judgments for or by reason of any change, loss or injury the risk of which is herein assumed by such party, and also from and against any and all claims, demands, liabilities and judgments on account

of any death or injury or damage to person or property the liability for which is herein assumed by such party; and such party agrees to pay, satisfy, and discharge all costs, charges, and expenses that may be incurred and any judgments that may be recovered by reason thereof."

The Commission in deciding the other application, in regard to this clause, said:

"It is not a part of the Commission's duties to award damages in case of accidents on or between carriers. If a collision or accident should occur the courts would determine the responsibility and the amount of damages, and while the Commission has approved agreements having similar clauses, in contracts previously signed and submitted to it for approval, it cannot undertake to include such matters in cases of this character, where it is called upon to decide all the terms under which the tracks of one company shall cross the tracks of another."

I see no reason why the Commission should now change its position therein set forth.

As to the other matters involved in this application, it appears that the spur track is needed to serve industries in the vicinity; that the City and County of San Francisco has granted permission for Folsom Street to be crossed; and that the crossing of the tracks will be operated in such a manner that all trains on the switch track and all cars on the United Railroads' track will come to a full stop before passing over the intersection, and no hazard will be incurred by granting this application. I therefore recommend that this application be granted in the following form:

O R D E R.

THE ATCHISON, TOPEKA, AND SANTE FE RAILWAY COMPANY, a corporation, having applied to the Commission for permission to

construct a spur track at grade in and along Spear Street, across Folsom Street and across the tracks of the United Railroads on that street, and a public hearing having been held; and it appearing that this application should be granted subject to certain conditions,

IT IS HEREBY ORDERED, That The Atchison, Topeka, and Santa Fe Railway Company be, and the same hereby is, granted permission to construct a spur track in and along Spear Street and across Folsom Street and the tracks of the United Railroads at the points and in the manner shown by the map attached to the application; said crossings to be constructed subject to the following conditions, viz.:

(1) The entire expense of constructing the crossing of Folsom Street shall be borne by applicant, together with the expense of its maintenance thereafter in good and first-class condition for the safe and convenient use of the public. The crossing of the tracks of the United Railroads shall be made upon the same terms as those outlined in the Commission's order (Decision 2406) in Application No. 1624, to which reference is hereby made.

(2) The Railroad Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance, and protection of said crossings 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 28th day of September, 1916.

Max Thelen

H. Hornland

Chas. Gordon

Francis R. DeWitt

Commissioners.