

ORIGINAL

Decision No. 4076

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of)
VALLEJO AND NORTHERN RAILROAD COMPANY,)
a corporation, for an order permitting)
the crossing at grade of its tracks with) Application No. 407.
the tracks operated by the Southern)
Pacific Company at and in the Town of)
Suisun, Solano County, California.)
.....)

John P. Coghlan, Receiver, and T.T.C. Gregory, for applicant.

George D. Squires, for Southern Pacific Company.

B. L. Gregg, for Town of Fairfield.

T. W. Chester, for Town of Suisun.

GORDON, Commissioner,

SECOND SUPPLEMENTAL OPINION.

The First Supplemental Opinion and Order in this Application, reported at page 631, Volume 6 of the Opinions and Orders of the Railroad Commission of California, reviews the previous order of the Commission and the subsequent proceedings bearing on this application, and it is unnecessary to go into the subject again. It is sufficient to say that the original order granted applicant permission to cross under the Southern Pacific tracks; that the expense of the crossing was divided between the applicant, the Southern Pacific Company, the Town of Suisun and the Town of Fairfield; and that permission was granted for a temporary crossing at grade pending the installation of the subway. The supplemental order required the subway to be completed by December 31, 1916.

The Vallejo and Northern Railroad Company, now owned by the Northern Electric Railway Company was at the last hearing, and still is, in the hands of the Receiver, Mr. J. P. Coghlan, who filed a supplemental application on December 15, 1916, asking for a

further extension of time in which to install the subway; the reason being that he has no funds available to cover the proportion of the expense which applicant was required to pay under the order. A hearing was had on the supplemental application on January 8th.

In the previous supplemental order the Commission said:

"The operation as carried on over the Southern Pacific tracks at present, is under the protection of a flagman stationed there at all times, at an expense paid equally by the Northern Electric and the Southern Pacific companies. The general manager of the Northern Electric, who was formerly division superintendent of the Southern Pacific on this division, testified that in his opinion this method of operation was comparatively free from danger, and the attorney for the Southern Pacific Company stated that the operating officials of his company did not feel that the operation of the crossing was dangerous, and that he felt, further, that neither company would feel justified in spending the amount of money necessary for a subway to serve the infrequent operation now rendered by the Northern Electric."

Although the Southern Pacific now opposes a further extension of time no evidence was offered, nor does it appear, that operating conditions have changed since this was written.

I am entirely willing to recommend an extension of time to enable the matter to be handled by the officials of the reorganized road rather than by the Receiver as it appears probable that the reorganization of the road will be affected at no very distant date; but I am entirely unable to agree with Counsel for Applicant that after the reorganization of the road is completed its officials will, then, consider whether or not they will be justified in making the necessary expenditures for a subway. The Commission granted permission for the grade crossing to be installed here as a temporary expedient to enable applicant to secure an entrance to Suisun at an early a date as possible. Since that time business in Suisun has been adjusted to fit the new line, and we have had ample testimony to show that the track cannot now be removed or the service abandoned, without working considerable hardship upon the merchants and residents of Suisun as well as those who live in the vicinity and trade there.

As I look at it applicant accepted the responsibility of paying its proportion of the cost of the subway when it installed the temporary crossing, and it is now too late to balance the earnings of the Suisun business against its proportion of the subway expense. Neither is it fair now to ask that the Commission's order be modified to permit a permanent crossing at grade, since the operation of the line for three years has materially changed the conditions under which the original application was considered, and it is no longer possible to balance the hazard such a crossing would create with the public benefit to be derived therefrom. At the time of the first hearing on the matter this was considered and a grade crossing was denied. The hazard of a permanent grade crossing would be no less today, but the establishment of the temporary crossing, the construction of the line to Suisun, and the consequent re-arrangement of business has vastly increased the public interest. This increased interest, however, can not be used to justify, at the present time, with no other conditions changed, a type of crossing which the Commission refused to consider when the matter was first brought to its attention, even though it is possible that applicant expected to make a greater use of the crossing than it has actually made. To re-state the matter in another way; when the applicant undertook to secure an entrance into Suisun across the tracks of the Southern Pacific it assumed a risk that the venture would not be profitable. If it is now found to be unprofitable it cannot refuse the responsibility, since to do so would either create a permanent hazard, if the grade crossing were made permanent, or would seriously disarrange the business interests at Suisun it has built up by means of a temporary crossing if service were abandoned.

I believe the committee now engaged in working out a reorganization plan should consider the obligation to pay part

of the cost of the subway exactly as it considers any other obligation of the road- a franchise obligation for instance- and when it is again in the hands of the security holders the construction of the grade separation should be commenced at once.

I recommend the following form of order:-

SECOND SUPPLEMENTAL ORDER.

J. P. COGELAN, Receiver for the Vallejo and Northern Railroad Company, having applied to the Commission for an extension of time in which to complete the subway ordered to be constructed, and a public hearing having been held, and it appearing that some extension of time should be granted,

IT IS HEREBY ORDERED, That applicant be hereby granted an extension of time until the property of which applicant is receiver shall again be operated by its security holders; provided that any change in the conditions surrounding this crossing, in the operation of trains or in the physical condition, shall be sufficient justification for the Commission to order the construction of this subway at an earlier date; and provided further that the Commission reserves the right to make such further orders regarding this crossing as to it may seem right and proper.

All the other conditions and requirements of the original order and the supplemental opinion and order shall remain in full force and effect.

The foregoing second supplemental opinion and order are hereby approved and ordered filed as the second supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of January, 1917.

Arthur Gordon
Edwin O. Egan
Francis R. Walker
Commissioners.