

Decision No. 6687.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of an application of
 the PEOPLE OF THE STATE OF CALIFORNIA
 on the relation of the Department of
 Engineering for an order authorizing
 the construction of a crossing over
 the tracks and portal of the tunnel
 of the Nevada County Narrow Gauge
 Railway Company at Town Talk Tunnel
 in Nevada County.)
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) Application No. 4742.
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W. S. Caruthers, for State Highway Commission.
 E. H. Armstrong, District Attorney, for
 Nevada County.
 Searls & Searls, for Nevada County Narrow
 Gauge Railroad Company.

DEVLIN, COMMISSIONER.

O P I N I O N

In this application the State Highway Commission seeks permission to construct an overhead bridge over the tracks and portal of the Nevada County Narrow Gauge Railway Company at Town Talk Summit near Nevada City, California, and asks the Commission to apportion the expense of construction between the Highway Commission and the railroad company. A public hearing was held at Nevada City on September 11, 1919, at which all interested parties were represented.

The road on which this crossing is desired will be, when completed, a main lateral of the state highway system extending from Auburn to Nevada City and will also be the main thoroughfare between Grass Valley and Nevada City, in place of the existing county road, which crosses the railroad at grade about four hundred

and fifty feet southwest of the crossing under consideration. The testimony shows that the existing grade crossing on the county road is in an exceedingly dangerous location and has been protected by the railroad company, at the Commission's suggestion, with an automatic flagman. No objection was advanced by the railroad company to the construction of the proposed overhead bridge, providing the existing grade crossing on the county road could be closed. The closing of this dangerous crossing was assured by the county authorities and is desired by the Commission in connection with its general policy, as set forth in the syllabus of Decision No. 6201 in Case No. 1287 (W. Elliott Judge vs. County of Contra Costa and the Oakland, Antioch and Eastern Railway) and Case No. 1291 (Cowell-Portland Cement Company vs. County of Contra Costa and the Oakland, Antioch and Eastern Railway). It is the policy of the Commission not only to prevent the construction of new grade crossings that are not necessary, but to have closed such existing crossings, the use of which is not necessary to public convenience. There appears to be no reason why the portion of the application asking permission to construct the overhead bridge should not be granted and the existing grade crossing closed when the bridge is completed.

The proper division of the cost of the bridge is not so easily disposed of, as the railroad company objected strongly to being assessed with any of the cost.

The railroad company bases its contentions largely on two factors, as follows:

1. It fears that it will still be forced to maintain the existing grade crossing and signal, for a small local travel, after the overhead crossing is finished.
2. It maintains that its financial condition is such that it can not stand such an assessment.

The first of these objections is overcome by the assurance of the county officials that the crossing will be officially abandoned when the new highway is completed; in fact, I recommend that the closing of this crossing be made a part of the order in this case.

The superintendent of the Nevada County Narrow Gauge Railroad Company testified that after meeting bond redemption in 1918 the company had a deficit of about \$2,600.00 and that the deficit for 1919 would be much larger. Upon looking over the annual reports of the company, I find that dividends were paid for the past four years on the 2502 shares of common stock, as follows:

1915 - 6% -	\$15,012.00
1916 - 8% -	20,016.00
1917 - 5% -	12,510.00
1918 - 2% -	5,004.00
Average - 5 $\frac{1}{2}$ % -	10,635.50 a year

A deficit would not have been shown for 1918, if a more conservative dividend policy had been followed. I do not think it necessary to go into a more searching analysis of the company's finances, at this time, but believe that the facts show that, normally, the company should be able to bear its share of such public improvements as may come ^{up} from time to time. The plea of financial difficulties saves no ordinary citizen from paying such street or other assessments as may be levied against his property. In this particular case, the company is to be released from maintaining a dangerous grade crossing, at which one accident might easily result in damages exceeding its share of the cost of the proposed bridge. I feel that, under the circumstances in this case, the usual policy of the Commission of assessing the cost of a separation of grades fifty (50) per cent to the Highway Commission and fifty (50) per cent to the interested railway company, as set forth in Decision No. 5082

of the Commission, is reasonable. I can see no extraordinary conditions that might make a different apportionment necessary in this case.

I recommend the following form of order:

O R D E R

The People of the State of California, on relation of the Department of Engineering, having applied for permission to construct an overhead crossing over the tracks and portal of the tunnel of the Nevada County Narrow Gauge Railroad Company at Town Talk Summit, Nevada County, California, and having asked the Railroad Commission to apportion the cost of the same, and a public hearing having been held, and it appearing to the Commission that this application should be granted subject to certain conditions and that the expense of this construction should be divided equally between the parties, in accordance with the following order;

IT IS HEREBY ORDERED, That the People of the State of California, on relation of the Department of Engineering, be and the same hereby are granted permission to construct a state highway over the tracks and portal of the tunnel of the Nevada County Narrow Gauge Railroad Company at Town Talk Summit, at the point more particularly shown by the map attached to the application, subject to the following conditions:

(1) The overhead bridge shall in all clearances conform to the Railroad Commission's General Order No. 26.

(2) The expense of the construction of said overhead crossing, on the plans filed with the application, shall be borne fifty (50) per cent by the Nevada County Narrow Gauge Rail-

road Company and fifty (50) per cent by the State Highway Commission.

(3) The existing grade crossing on the present county road, between Nevada City and Grass Valley, situated about four hundred and fifty feet southwest of the proposed overhead bridge, shall be officially abandoned by the County Board of Supervisors and fenced and closed to public travel, after the overhead bridge and new highway will have been completed.

(4) The Commission reserves the right to make such further orders relative to this crossing as to it may seem right and proper.

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 29th day of September, 1919.

Edwin O. Egerton
H. J. ...
Frank R. ...
H. T. ...

Commissioners.