

ORIGINAL

Decision No. 28245.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of Application of SOUTHERN
PACIFIC COMPANY for an order authorizing
the construction at grade of a spur track
across the State Highway in the vicinity
of Thomann Station, County of Napa, State
of California.

Application No. 20081.

In the Matter of Application of SOUTHERN
PACIFIC COMPANY for an order authorizing
the construction at grade of a spur track
across the right of way and track of the
San Francisco, Napa and Calistoga Railway
at Thomann Station, in the County of Napa,
State of California, for an order fixing
the compensation or damages to be paid for
the acquisition of the right to cross the
railroad of the San Francisco, Napa and
Calistoga Railway, and for a final order
of condemnation.

Application No. 20136.

H. W. Hobbs, for applicant.

Nathan F. Coombs and Clyde E. Brown, for San
Francisco, Napa and Calistoga Railway, protestant.

Lowell Palmer, Assistant District Attorney of Napa
County, appearing in behalf of Board of Super-
visors of Napa County, protestant.

R. P. Duffy, for the Department of Public Works,
Division of Highways, State of California,
interested party.

Robert E. Reed, for the Department of Public Works,
State of California, interested party.

WARE, COMMISSIONER:

The above entitled matters were consolidated for
hearing and decision, and both matters were heard, and submitted
without argument or briefs, at a public hearing in the City of
Napa on October 30, 1935; and both matters are now ready for
Opinion and Order.

In Application No. 20081, supra, applicant seeks an

order authorizing the construction at grade of a spur track across the State highway in the vicinity of Thomann Station, located on its railroad between Napa and Calistoga, Napa County, California.

In Application No. 20136, supra, applicant seeks "an order authorizing the construction at grade of a spur track across the right of way and track of the San Francisco, Napa and Calistoga Railway at Thomann Station, in the County of Napa, State of California" and "an order fixing the compensation or damages to be paid for the acquisition of the right to cross the railroad of the San Francisco, Napa and Calistoga Railway, and for a final order of condemnation."

The following is a categorical statement of facts adduced at the hearing: Applicant has for many years operated an interstate and intrastate freight railway service, and as a part thereof has maintained rails and train service since 1880, paralleling the highway, on the easterly side thereof in the vicinity of Thomann Station, all in Napa County, California.

Protesting electric railway was built about 1908 and has since operated in the territory involved herein, paralleling the highway, on the westerly side thereof, between said Thomann Station and points northerly thereof.

During all of said operations by applicant, there has existed a spur industrial track at Thomann extending across said highway and the tracks of the said electric railway in a westerly direction from applicant's main line to Sutter Home Winery (Crossing No. AB-62.1-C), which was for many years an operating winery and which has adjoined the tracks of said electric railway on the westerly side thereof.

Approximately 600 feet southerly from said Sutter Home Winery, and also situated westerly from the protestant's

tracks, is the site of Napa Valley Cooperative Winery which now affords applicant its motive for constructing the spur which is the objective of the instant applications. This winery anticipates shipping over the existing and proposed facilities of the applicant company approximately 112 cars of wine annually. Said winery needs convenient and adequate rail transportation and favors that which will be most available, expeditious and economical.

Approximately 90 per cent of wine shipments from the vicinity involved are destined to the Atlantic Seaboard. It is roughly estimated that the haul from Thomann to Ogden, Utah, (the end of applicant's interstate line), would gross the railroad approximately \$175 per car. To effectuate the spur contemplated herein, a generous over-all estimate of its entire cost to the Southern Pacific Company is \$3,450, and to the Napa Valley Cooperative Winery \$1,146. The length of the spur herein proposed is 759 feet.

Applicant company also proposes, in the event that it should prevail in the instant applications, to remove the spur above mentioned extending to Sutter Home Winery and which has been unused for six years last past. It is also agreed to extend the proposed spur in a northwesterly direction from the property of Napa Valley Cooperative Winery and generally paralleling the tracks of the protesting electric railway approximately 600 feet to the property of Sutter Home Winery at any future date that the shipping of the latter winery might demand. From the standpoint of hazard to the vehicular traffic on the highway involved, the proposed spur offers no greater potentialities than the existing one which will be removed.

Protesting electric railway, yearning for a portion of

the patronage and revenue which it is contemplated will be developed from the wine shipments of Napa Valley Cooperative Winery, has offered to build a spur from its tracks into said cooperative property, which will involve a distance of approximately 300 feet, at an over-all cost of \$500 to said electric railway, it being understood that the industry would furnish the grade for said spur. No estimate of the cost of said grade was offered.

More significant than the last proposal was the proposal of the electric railway to arbitrarily allocate \$25 per car for its short haul service from said cooperative winery to the interchange of applicant's tracks at Napa Junction, a distance of approximately 25 miles. The distance from Napa Junction to Ogden, Utah, is approximately 750 miles.

An unsuccessful effort was made to effectuate a joint arrangement between the two railroads involved herein. Southern Pacific Company has definitely concluded that it will not countenance any division with the electric railway of the haul or revenues involved in this contemplated freight movement. In a word, it is definitely opposed to short hauling itself. Without commenting upon the justiceability of the electric railway's proposal, it is sufficient to say that this Commission is without any jurisdiction to order or compel such contemplated divisions.

It is timely to observe that these lines, paralleling as they do many miles of common territory, should effectuate the economies in operation that are so patently realized through consolidation or joint operation. As both railroads are presently operating, they display a woeful, unwarranted and wasteful duplication of operative costs and functions. It is at once in the public interest, as well as in the carriers' interest, to terminate this duplication forthwith.

Referring specifically to Application No. 20081, the Department of Public Works, Division of Highways of the State of California, on June 5, 1935, issued its permit bearing No. 42008, contingent upon the approval of this Commission, and therein granted unto Southern Pacific Company permission:

"to construct a spur track at grade across the Rutherford-Calistoga road at a location 2100+ ft. southerly from the southerly limits of the Town of St. Helena; also remove existing spur track which crosses said road at grade at a location 1200+ ft. southerly from said town limit line, IV Nap 49-C.

The crossing shall be installed with no super-elevation in the rails. Top of rails shall be fitted to grade of existing pavement in such manner that there will be no discomfort to traffic on the road. An engine shall be run over the crossing as needed to secure maximum settlement before pavement is placed to complete the crossing. The end of curve from the new lead shall be not closer than 4 ft. from the edge of and at right angle to the paved portion of the highway.

The type of crossing shall conform to standard No. 3-B of General Order No. 72 of the Railroad Commission of the State of California.

The grantee shall install and maintain two California Railroad Commission Standard No. 1 crossing signs or equal.

The existing crossing shall be entirely removed and the crossing area repaved with a type of pavement similar to adjacent pavement.

Pavement shall be placed under inspection of the grantor and the cost of such inspection shall be borne by the grantee."

Said Department in said permit also specified as conditional thereto that said Southern Pacific Company should effect the removal and installation involved therein at its own cost; should similarly thereafter maintain the constructed spur and the pavement within the lines two feet outside of the rails thereof; and should also pave all portions of the highway involved in the spur track to be removed.

Applicant agreed in open hearing that, if it is permitted to construct and utilize the proposed spur, it will flag all movements over the same, and to and from the property of Napa Valley Cooperative Winery so as to effectuate full stops before entering the highway and the tracks of the electric railway.

It is obviously not practicable or feasible, in the event of the installation of said spur crossing, to construct the same on any other plan than at grade.

A complete summation of the foregoing impels the conclusion that the shippers will enjoy a more direct, adequate, expeditious and economical transportation of their freight over the existing rails and proposed spur of the applicant than they would enjoy by any other existing or proposed service available to them. It is in the public interest that the proposed spur be constructed.

Applicant, in its petition, also asked the Commission for an order fixing the compensation or damages to be paid for the acquisition of the right to cross the railroad of protestant, San Francisco, Napa and Calistoga Railway, pursuant to Section 43, Sub-sections a, b and c, of the Public Utilities Act of the State of California. No evidence was submitted relating to this phase of the petition. Moreover, the Commission's authority to determine the damage to protestant resulting from the establishment of said crossing is subject to question. Therefore, in granting applicant the right to construct this spur and effect this crossing, our action is not to be taken as a determination of the right of applicant to take property of protestant

without compensation.

The following form of Order is recommended.

ORDER

A public hearing having been held and the matters being under submission,

IT IS HEREBY ORDERED that Southern Pacific Company is hereby authorized to construct a spur track at grade:

I. Across State Highway (designated as Road IV-Nap-49-C), in the vicinity of Thomann Station, County of Napa, State of California, at the location more particularly described in Application No. 20081 and as shown by the map (Western Division Drawing No. T-109, Sheet No. 5 Revised), attached thereto and made a part thereof, subject to the following conditions:

- (1) The above crossing shall be identified as Crossing No. AB-62.0-C.
- (2) The entire expense of constructing and thereafter maintaining the crossing between lines two (2) feet outside of the rails, in good and first-class condition for safe and convenient use of the public, shall be borne by applicant.
- (3) Said crossing shall be constructed equal or superior to the type shown as Standard No. 3 in our General Order No. 72, and shall be constructed without superelevation and of a width to conform to that portion of said highway now graded, with the tops of the rails flush with the pavement and with grades of approach not exceeding two (2) per cent and shall be protected by 2 Standard No. 1 Crossing Signs, as prescribed in our General Order No. 75-A.
- (4) No train, engine, motor or car shall be operated over said crossing unless said train, engine, motor or car shall be first brought to a stop and traffic on the highway protected by a member of the train crew or other competent employee.

- (5) Applicant shall, at its sole expense, remove the track and abolish the crossing located approximately 750 feet northwest of the crossing herein authorized (No. AB-62.1-C), and shall repair the roadway to conform to the adjacent paving.
- (6) Applicant shall, within thirty (30) days thereafter, notify this Commission in writing of the completion of the installation of said crossing and of its compliance with the conditions hereof.
- (7) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof, unless further time is granted by subsequent order.
- (8) The Commission reserves the right to make such further orders, relative to the location, construction, operation, maintenance and protection of said crossing, as to it may seem right and proper, and to revoke its permission if, in its judgment, public convenience and necessity demand such action.

II. Across the main line track of San Francisco, Napa and Calistoga Railway, in the vicinity of Thomann Station, County of Napa, State of California, at the location more particularly described in Application No. 20136, and as shown by the map (Western Division Drawing No. T-109, Sheet No. 6), attached thereto, subject to the following conditions:

- (1) The entire expense of constructing and thereafter maintaining the crossing in good and first-class condition shall be borne by applicant.
- (2) All trains, motors, cars or engines of applicant approaching the crossing must be brought to a full and complete stop and must not proceed thereafter until it has been definitely ascertained that no trains, cars or motors are approaching on the conflicting route within a distance which would in any way render them liable to conflict with the movement about to be made.

- (3) When operating over said crossing, the trains, cars or motors of San Francisco, Napa and Calistoga Railway will approach the crossing at a speed that will enable them to stop before reaching said crossing and in case trains, motors, engines or cars are approaching on the conflicting route, the trains, cars or motors of San Francisco, Napa and Calistoga Railway will be brought to a stop and will not proceed thereafter until such time as the trains, motors, cars or engines approaching on the conflicting route have been brought to a stop.
- (4) Applicant shall, at its sole expense, remove the track crossing at grade located approximately 750 feet north west of the crossing herein authorized and shall replace the track of San Francisco, Napa and Calistoga Railway in conformity with the adjacent track.
- (5) Applicant shall, within thirty (30) days thereafter, notify this Commission in writing of the completion of the installation of said crossing and of its compliance with the conditions hereof.
- (6) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof, unless further time is granted by subsequent order.
- (7) The Commission reserves the right to make such further orders, relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke such permission if, in its judgment, 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.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 12th day of November, 1935.

~~Walter H. Moore~~

W. A. Linn

Walter H. Moore

Stuart R. Linn

Commissioners.