

Decision No. 41966

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
THE WESTERN PACIFIC RAILROAD COMPANY  
to construct, operate and maintain a  
crossing of switching lead track over  
the joint Southern Pacific Company-The  
Western Pacific Railroad Company switch-  
ing lead track serving the Beechnut  
Packing Company, and others, near San  
Jose, County of Santa Clara, State of  
California.

Application No. 29531

E. L. VAN DELLEN, for applicant.  
R. S. MYERS, for Southern Pacific Company, protestant.

O P I N I O N

In the above-entitled application The Western Pacific Railroad Company requests the permission of this Commission, pursuant to the provisions of Section 43(a) of the Public Utilities Act, to construct, operate, and maintain a crossing, at grade, of a switching lead track over the joint Southern Pacific Company - The Western Pacific Railroad Company switching lead track serving the Beechnut Packing Company, and others, near the City of San Jose, County of Santa Clara, State of California, more particularly described in Exhibit "A" attached to the application. A public hearing was held before Examiner R. K. Hunter at San Francisco on August 20, 1948.

In Decision No. 41604 in Application No. 29344 The Western Pacific Railroad Company was authorized to construct one additional spur track at grade across South Seventh Street and across Phelan Avenue near San Jose, at the location described in that application, subject to the conditions set forth in the order.

The Southern Pacific Company entered an appearance protesting the granting of the present application.

The Western Pacific Railroad Company introduced evidence tending to show that the crossing would not involve any unusually or extremely hazardous operational conditions; that there were a number of crossings of the same or a similar character already in existence and in operation in the same area and that there was no record of any crossing accidents in connection with their operation. The Western Pacific also showed that in addition to the authority granted in Decision No. 41604 it had been granted an easement over the property intended to be served by the proposed spur.

The Southern Pacific Company contended the area could be served by the proposed spur track with less hazard and greater safety by taking a lead or spur track off of the presently existing Southern Pacific - Western Pacific joint drill track. However, the record shows that the handling of carload traffic in the manner suggested by the Southern Pacific Company would involve more crossings and more junctions than under applicant's proposal. Moreover, before a switching lead could be constructed from the joint Western Pacific - Southern Pacific drill track, easements or rights of way would have to be procured over private property. There was no evidence indicating that this could be

accomplished without resorting to condemnation proceedings and resulting delay in establishing service to the new area.

Montgomery Ward & Co. have a new warehouse on the property intended to be served. This Company hopes to have rail service available by September 1, 1948, to avoid the serious inconvenience of having to truck its merchandise between the new warehouse and team tracks.

The Operations and Safety Division of the Transportation Department of this Commission introduced and read into the record certain conditions calculated to promote safe operation of the crossing in the event it were authorized.

It is our opinion, after carefully considering all of the testimony introduced at the hearing, that the crossing at grade can be operated, subject to the conditions referred to above, with reasonable safety and a minimum of hazard. It is clear that there is an urgent need for this service. The authority requested should be granted.

#### O R D E R

A public hearing having been held in the above-entitled proceeding, and based upon the evidence received and the conclusions set forth in the preceding opinion.

IT IS ORDERED:

(1) That The Western Pacific Railroad Company be and it is hereby authorized to construct, operate, and maintain a crossing, at grade, of a switching lead track over the joint Southern Pacific Company-The Western Pacific Railroad Company switching lead track serving the Beechnut Packing Company, and others, where the joint track crosses Seventh Street just north of Phelan Avenue, near the City of San Jose, Santa Clara County, State of California, subject to the following conditions:

- a. In the use of the said crossing, the locomotives, motors, cars or trains operating on the joint Southern Pacific Company-The Western Pacific Railroad Company drill track shall have precedence at all times. Locomotives, motors, cars and trains of The Western Pacific Railroad Company when operated on The Western Pacific Railroad Company switching lead shall be brought to a stop when approaching the said crossing at a distance of not less than ten feet or more than fifty feet therefrom before going upon or over the tracks of the joint Southern Pacific Company-The Western Pacific Railroad Company drill track. The locomotives, motors, cars and trains of Southern Pacific Company and The Western Pacific Railroad Company, when operating on the joint Southern Pacific Company-The Western Pacific Railroad Company drill track, shall be brought to a stop not less than ten feet or more than fifty feet from the said rail crossing before going upon or over the track of The Western Pacific Railroad Company switching lead. In the event that locomotives, motors, cars or trains of either Southern Pacific Company or The Western Pacific Railroad Company have approached the crossing and made the stop as herein required and any locomotives, motors, cars or trains are approaching on the conflicting route within a distance which will render them in any way liable to conflict with the movement about to be made over the crossing, such movement shall not be made until the locomotives, motors, trains or cars approaching upon the conflicting route have been brought to a stop.
- b. Copies of operating bulletins issued by the Southern Pacific Company and The Western Pacific Railroad Company governing the use of the said crossing under the conditions herein outlined shall be filed with the Commission before operation over the said rail crossing at grade.

- c. The entire expense of constructing and thereafter maintaining the crossing in first class condition for safe and convenient railway use shall be borne by the applicant.

(2) That within thirty days after completion pursuant to this order, applicant shall so advise the Commission in writing. This authorization shall become void if not exercised within one year unless time be extended or if above conditions are not complied with.

(3) That the Commission reserves the right to make such further orders, relative to 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, necessity or safety demand such action.

This order shall become effective 10 days from the date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of August, 1948.

R. E. Indurana  
Justus F. Coenen  
Robert F. Lavelle  
Harold P. Hale  
Benjamin H. Potter  
COMMISSIONERS