

ORIGINAL

Decision No. 42279

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN PACIFIC RAILROAD COMPANY)
and SOUTHERN PACIFIC COMPANY for)
authority to alienate or encumber)
part of their operative property)
appurtenant to one of their main)
lines of railroad, in accordance with)
action numbered 37206, in the Superior)
Court, Santa Barbara County, California;)
and to determine what, if any, reservation)
therein or exceptions thereto the public)
interest might require.)

Application No. 29625

E. J. FOULDS, for the applicants.
HOLLOWAY JONES and PAUL L. PORTERFIELD, for the
Department of Public Works.

O P I N I O N

In effect the applicants (hereinafter sometimes referred to as the Railroad), pursuant to Section 51(a) of the Public Utilities Act, seek permissive authority from this Commission to dispose of the right of access to a portion of their right of way located in Santa Barbara.

A public hearing was held at San Francisco on October 5, 1948, before Examiner R. K. Hunter.

This proceeding was commenced by the Railroad after the State of California, acting by and through the Department of Public Works, had filed an action, in the Superior Court of the State of California, in and for the County of Santa Barbara, seeking to condemn the right of access from a freeway being constructed by the State known as U. S. Highway 101 to a portion of the Railroad's right of way located in the City of Santa Barbara, but reserving to the Railroad the right of access from said highway to the right

of way for the purpose of maintaining and operating the railroad. The effect would be to deprive the traveling and shipping public of said right of access.

The property involved in this proceeding is a portion of the Railroad's coast line right of way between San Francisco and Los Angeles. This said portion is approximately 30 feet wide and is located in the City of Santa Barbara between the southeasterly lines of Punta Corda Street and San Buena Ventura Street. U. S. Highway 101, which will be a freeway at this point, abuts along almost the entire length of the northerly line of the Railroad's right of way between these two streets. The right of access between said highway and said portion of the right of way is the subject of this application. No streets open to public travel actually cross the said portion of the right of way.

It would appear, from certain statements made by counsel at the hearing and from certain documents filed in the action in the Superior Court, copies of which have also been filed with this Commission, that a question was raised as to the necessity of a railroad securing permission of the Commission under Section 51(a) of the Public Utilities Act, to dispose of property necessary or useful in the performance of its duties to the public, when the People of the State of California had filed a condemnation proceeding in the Superior Court of California seeking to acquire title to such property. However, the record indicates that the question actually at issue is of a slightly different character.

At the outset of the hearing, the Department of Public Works appeared specially on behalf of the People of the State of California and stated, through counsel, that it had no objection

to the applicants asking this Commission for authority to alienate or encumber part of their operative property, but, that it questioned the jurisdiction of this Commission to determine what, if any, reservations or exceptions the public interest might require in connection with the property involved. It also questioned the right of the Commission to make any reservations or exceptions contrary to the purpose and effect of the relief sought in said condemnation action. However, the Railroad's position is that these questions are not here involved.

This record shows that no reservations or exceptions need be made, other than those already made, to enable the Railroad to perform its duties to the public, that it hopes to be able to agree with the Department of Public Works as to the consideration to be paid for the access rights involved, and that, possibly, transfer thereof may be made either out of court without condemnation judgment by the Superior Court, or by stipulation filed in the Superior Court covering the agreement of the parties involved.

Normally, in a matter of this kind, the transfer of property is effected by agreement between the Railroad and the Department of Public Works, or, if a condemnation action has been brought, by the filing of stipulations covering the details of the transfer. The record indicates that the reaching of an agreement between the parties is not only possible, but probable. In effect, therefore, the Railroad here requests permissive authority to alienate to the State of California certain access rights to its right of way, but is not certain as to whether these rights are necessary or useful in the performance of its duties to the public.

The right of way with right of access from the highway

for the purpose of maintaining and operating the railroad is necessary to enable the Railroad to adequately serve the public. The evidence indicated no need to preserve said right of access to the traveling and shipping public.

In view of the nature of the evidence submitted by the Railroad, counsel for the Department of Public Works, at the conclusion of the hearing and in the memorandum of points and authorities filed subsequently, withdrew objection to this Commission making an order authorizing the Railroad to alienate to the State of California the right of access sought to be acquired in the condemnation action. The evidence submitted by the Railroad shows that it is seeking authority from this Commission to do so. The granting of such an authorization will remove any question as to the validity of the title the State of California may acquire.

After reviewing the evidence of record the Commission is of the opinion that the Railroad should be granted permissive authority to dispose of the property in question.

O R D E R

A public hearing having been had and, based upon the evidence adduced and the conclusions set forth in the opinion,

IT IS ORDERED that Southern Pacific Railroad Company and Southern Pacific Company be, and they are hereby authorized to alienate to the State of California the right of access from U. S. Highway 101 to that portion of their right of way located in the City of Santa Barbara between the southeasterly line of Punta Gorda Street and the southeasterly line of San Buena Ventura Street, reserving, however, the Southern Pacific Railroad Company and Southern Pacific

Company, the right of access from said highway to said portion of the right of way for the purpose of maintaining and operating the railroad.

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

Dated at San Francisco, California, this 30th day of November, 1948.

J. E. Dintman
Justus F. Calkins
Justus F. Calkins

COMMISSIONERS