

ORIGINAL

Decision No. 47024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN PACIFIC COMPANY for an)
order authorizing the construction)
at grade of a spur track across)
Highway Route #4 of California)
State Highway System, formerly known)
as County Road #13 in the Town of)
Brentwood, County of Contra Costa,)
State of California.)

Application No. 25327
1st Supplemental

R. S. Myers, for applicant.
George D. Moe, for Department of Public Works,
State of California.
E. G. Poss, for Division of Highways, District IV.

O P I N I O N

By Decision No. 35925, issued November 5, 1942, in the above entitled and numbered proceeding, Southern Pacific Company was authorized to construct a spur track at grade across State Highway Route 4 near Brentwood, Contra Costa County, to serve Rosenberg Bros. & Co. The decision provided that the authority therein granted was limited in time to the duration of the war and for six months thereafter.

The First Supplemental Application herein alleges that Brentwood Irrigated Farms has acquired the interest of Rosenberg Bros. & Co. in said spur track and the facilities served thereby, has expanded its facilities at that location and has plans for further substantial expansion in the near future. Applicant requests that the Commission authorize the construction and maintenance of said spur track without restrictive date.

The application was submitted at a public hearing held at San Francisco on December 13, 1949, before Examiner Gregory. Representatives of the Department of Public Works and of the Division

of Highways, District IV, of the State of California, appeared and stated the position of those agencies with respect to the authority sought by applicant. Charles B. Weeks, superintendent of Brentwood Irrigated Farms, testified concerning the facilities now served by the spur track and the plans of his organization for future development. William E. Eastman, Assistant Superintendent, Western Division, Southern Pacific Company, described the switching movements over the crossing, including the safety measures employed in making such movements.

The evidence shows that the spur track was constructed pursuant to the authority conferred by Decision No. 35925 of this Commission, and that the Division of Highways issued to applicant its Encroachment Permit No. C-44130 (approved November 12, 1942), granting permission to construct the track in conformance with the conditions set forth therein and as contained in the Commission's decision. The Encroachment Permit provides, among other matters, that the tracks and appurtenances thereto shall be removed from the state highway "within six months after the termination of the present war emergency".

The spur track is now owned by Brentwood Irrigated Farms, a Nevada corporation, which maintains a fruit and vegetable processing plant approximately one mile east of the town of Brentwood and north of the Southern Pacific Company's line between Tracy and Port Costa and of State Highway Route 4. The spur track was originally constructed to serve the packing plant of Rosenberg Bros. & Co. on property leased by it from Balfour Guthrie Investment Company. That plant was subsequently destroyed by fire and the lease was cancelled. In 1943 Balfour Guthrie Investment Company sold the property to Brentwood Irrigated Farms, which erected

buildings on the site for the purpose of packing and shipping fruits and vegetables grown in the locality.

In 1947, Brentwood Irrigated Farms spent \$6,000 to double track the spur from a point some 75 feet back from the highway to the plant, so that at the present time 14 refrigerator rail cars can be spotted for loading at one time. During the 1949 season about 500 cars of perishable fruits and vegetables were loaded at the plant for movement by Southern Pacific Company and some 30 cars of inbound freight were received, consisting of fertilizers, spray materials and items used in connection with the operation of the plant. The heaviest movement occurs from June to about November first, with hardly any activity during the other portions of the year.

Weeks testified that his organization plans to spend about \$15,000 on new equipment in the summer of 1950 and that in two or three years it is planned to build a new deciduous fruit plant on the spur and eventually remove present operations in the town of Brentwood to the plant site. About three years ago his concern paid \$250 to raise the spur to the level of the highway which had been regraded. He testified that when he authorized these expenditures he was not aware of the temporary nature of the Encroachment Permit issued by the Division of Highways to the Southern Pacific Company. If required to discontinue using the spur, he stated, it would mean that, after packing, the produce would have to be trucked to Brentwood over the highway and loaded on the rail cars at that point. To load 200 cars of tomatoes, counting four truckloads per car, would involve 800 entrances and departures on Highway 4, with consequent increased hazard.

In 1949 there were 17 switches between 10 a.m. and 4 p.m. and three switches between 1 a.m. and 5 a.m. over the crossing, or a total of 40 movements, counting a switch as including both the inbound and outbound movement. The movements averaged about two per day during the season and were handled by the switching engine stationed at Drentwood. On approaching the crossing the engine is brought to a complete stop and is flagged over the highway by one or two of the train crew. Since installation of the crossing there has been only one accident. This, according to Eastman, occurred late one night in 1944 when a motorist ran past the flagman and into an outbound locomotive and was injured. The crossing is also protected by two Standard No. 1-A signs (G.O. No. 75-B).

The position of the Department of Public Works and the Division of Highways was developed through testimony of E. G. Poss, assistant district engineer of District IV at San Francisco, and also by a statement for the record made by George D. Moe, representing the Department of Public Works of the State of California. They objected to any order of this Commission without a specific date of termination, for two reasons; first, because of difficulties alleged to have been experienced in recovering protection costs at other locations or costs of removing abandoned crossings; second, because plans for widening or relocating Highway 4 would not crystallize for several years. They indicated, however, that the Division of Highways might not be unwilling to grant a permit for a further five year period.

Upon consideration of the record herein we have concluded that the restrictive date provision of our former order should be removed and that applicant should be granted authority to continue the spur track in existence until such time as conditions may

warrant other action by the Commission. Such an order will in no way be prejudicial to whatever jurisdiction the Department of Public Works or the Division of Highways may appropriately exercise in the premises, and will operate to set this matter at rest until the need for further consideration of the problem arises.

In the event that State Highway 4 is widened at the location of this crossing, applicant will be expected to arrange for financing the cost of any necessary construction in the track area as well as the cost of whatever signal protection may be found at that time to be necessary.

O R D E R

Public hearing having been held in the above entitled and numbered proceeding, evidence having been received and considered, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Southern Pacific Company, the applicant herein, be and it is hereby authorized to continue in existence the spur track hereinbefore authorized to be constructed by Decision No. 35925 in this proceeding, and to maintain the same at its sole cost and expense.

(2) Protection of said crossing shall continue to be afforded in the manner and by the means now provided in said Decision No. 35925, that is to say:

- a. By two Standard No. 1-A crossing signs (G.O. No. 75-B).
- b. 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 acting as flagman.

This authorization shall become void if the above conditions are not complied with, and may be revoked or modified if public convenience, necessity, or safety so require.

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

Dated at San Francisco, California, this 27th day of December, 1949.

R. E. Dunning
Justice J. Calver
Justice H. L. ...
Permitt ...
COMMISSIONERS