

ORIGINALDecision No. 48519

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 the BOARD OF SUPERVISORS OF THE)
 COUNTY OF KERN, STATE OF CALIFORNIA,)
 for an Order Authorizing the Con-)
 struction of a Crossing by the)
 County of Kern over the tracks of)
 the Southern Pacific Railroad,)
 approximately 1343.5 feet South of)
 Mile Post 286.8, Kern County,)
 California.)

Application No. 32277

Clayton T. Cochran, Deputy County Counsel, for applicant; J. O. Keavis for McFarland Chamber of Commerce, and M. E. Getchel, Transportation Division of the Public Utilities Commission, interested parties; R. S. Myers, for Southern Pacific Company, protestant.

O P I N I O N

By Decision No. 46633, dated January 8, 1952, in Application No. 32277, this Commission denied an application of the County of Kern to construct a crossing at grade across the tracks and right of way of the Southern Pacific Company at Kern Avenue in the town of McFarland. On April 16, 1952, the County of Kern filed a petition for rehearing alleging the following grounds: (1) in the original hearing the County of Kern did not actively participate but now desires to do so; (2) U.S. Highway 99 which parallels the railroad tracks in the vicinity has been widened and resultantly the physical conditions in the area have been changed to a marked degree; (3) the suggestion of a pedestrian overpass made in Decision No. 46633 no longer is practicable in the light of the changed conditions; (4) the

number of switching movements along the railroad tracks in this vicinity is decreasing; and (5) railroad cars need not be left standing on the tracks in the vicinity of Kern Avenue and the railroad station could well be moved since it has become largely obsolete.

An order granting rehearing was issued May 16, 1952, by Decision No. 47182.

Public hearings were held at McFarland on October 15 and 16, 1952, during which time evidence was adduced. On the last named date the matter was submitted subject to the filing of briefs. Briefs now have been filed and the matter is ready for decision.

The record in the prior hearing held August 30, 1951, was incorporated in the record of rehearing.

At the outset, counsel for protestant railroad renewed a motion to dismiss, which motion was made in the original hearing in this matter and which was based on the contention that the County has not obtained an easement for the construction of a street across the station grounds of protestant railroad. Counsel further pointed out certain eminent domain problems may be encountered in attempting to construct a highway across the station grounds. However, the reasons advanced in the motion do not constitute sufficient grounds to preclude a determination of this matter on its merits. This Commission does have jurisdiction under Section 1202(a) of the Public Utilities Code as follows:

"To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad

"or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa, subject to the provisions of Section 1121 to 1127, inclusive, of the Streets and Highways Code so far as applicable."

From the exhibits and testimony presented in this hearing and in the prior hearings held in this matter, the following description of the town of McFarland is obtained. McFarland is an unincorporated town in Kern County, located on U.S. Highway 99, approximately 26 miles north of Bakersfield. In the vicinity of this town the highway is paralleled by the tracks of the Southern Pacific Railroad and, together, the highway and the railroad bisect the area of the town of McFarland in a northerly and southerly line. Eastwardly of this line the town extends approximately one-third of a mile, and westwardly it extends approximately one-half mile, the eastern and western boundaries consisting of cotton fields. On the northerly edge of the town is located Perkins Avenue which presently crosses the railroad tracks, and on the southerly side is located Sherwood Avenue which, likewise, crosses the railroad tracks. The distance between Perkins and Sherwood is approximately one-half mile. In the center of the town is located Kern Avenue which runs parallel to Perkins and Sherwood and is approximately equidistant from each of them. Kern Avenue extends through the limits of both the easterly and westerly portions of the town of McFarland but does not cross the railroad tracks. At the point of proposed crossing there is located the Southern Pacific's McFarland Station which would have to be moved should any crossing of the tracks be effected at that point.

In addition to the record in the prior hearing applicant now relies upon additional testimony presented at the second hearing. A supervisor of Kern County testified as to the rapid growth in the McFarland area and stated that, in his opinion, there was a need for the proposed crossing of Kern Avenue with the tracks of the Southern Pacific Railroad in order to meet the demands of pedestrian traffic as well as vehicular traffic. He pointed out that the pedestrians include a large number of school children. In Decision No. 46633, supra, it was suggested that the County of Kern give consideration to the construction of a pedestrian overpass across the tracks as well as over U.S. Highway 99. In the opinion of this witness such an overpass would be impractical in view of the present widening of the highway from a single highway to a divided highway with two access roads.

The county surveyor of Kern County presented Exhibit 1 which consists of a map of the proposed crossing as well as an elevation map of the railroad tracks at the point of the proposed crossing. This witness also presented Exhibit 2, a map of McFarland showing the proposed highway construction and the streets and roads of the township.

The secretary and acting planning engineer of the Kern County Planning Commission presented Exhibit 3 which is a map of the town of McFarland showing the uses of the various lots. This map discloses the residential, commercial and industrial areas, as well as the property devoted to agricultural and public uses. A study thereof discloses that the bulk of the residential property is on the east side of the railroad tracks, whereas the

bulk of the business property is on the west side of the railroad tracks. The center street of the town is Kern Avenue. This witness further disclosed that the present population of McFarland is about 3,200 people, approximately 2,200 of which live on the east side of the tracks.

An engineer for the Road Commissioner of the County of Kern presented Exhibit 4 which shows the amount of vehicular traffic at the crossings of Perkins Avenue and Sherwood Avenue with the tracks and, also, at the location of Kern Avenue. This witness testified that the construction of a pedestrian overpass would cost approximately \$30,000 to \$35,000, and an underpass would cost approximately \$50,000.

A civil engineer of the Public Works Department of Kern County presented Exhibit 5 which is a map showing part of a master plan of the Kern County Planning Commission. This master plan was formulated in 1937 and contains existing and proposed streets and highways in the area. On this master plan Sherwood Avenue and U. S. Highway 99 are shown as major highways, Perkins Avenue as a secondary highway, and Kern Avenue as a local traffic pickup and business street.

A representative of the California Division of Highways presented testimony as to the proposed plans for U. S. Highway 99. At the present time there is under construction in the vicinity and in the town of McFarland a divided highway and two access roads. Exhibit 6 sets out the details of this construction. It is planned by the Division of Highways, in connection with this highway construction, to install signals at Kern Avenue which will consist of traffic-actuated signal lights for the main highway

and stop signs for the access roads. This witness further testified that a vehicular count had been made as to the volume of traffic now using Sherwood and Perkins Avenues and an estimate as to the traffic that would use Kern Avenue if a crossing were made at that point. Based upon this study it has been concluded that the traffic at Perkins and Sherwood Avenues is not of sufficient volume to meet the requirements for the installation of signals according to the standards of the Division of Highways. However, the traffic at Kern Avenue is of sufficient volume and, accordingly, the signals will be installed at that location. Exhibit 7 shows the results of this volume study.

This witness also cited instances of other towns where railroad tracks bisect the community and he pointed out that in each instance there is a crossing of the railroad tracks in the center of town. Concerning a proposed pedestrian overpass or underpass, this witness was opposed to such a construction, observing that pedestrians would be reluctant to use either type of crossing and, also, contending that it would be difficult to keep it clean.

An Assemblyman for the 39th District who is a resident of the near-by town of Shafter, California, testified that he is familiar with the area, that it is a fast growing area, and that, in his opinion, a crossing at Kern Avenue would be beneficial to the community.

A representative of the Kern County Forestry and Fire Department testified that the fire control in McFarland is under the supervision of the County. He pointed out that the fire station is on the west side of the town, located on Sherwood Avenue. He stated that his department would welcome an additional crossing

so as to better enable the answering of fire calls and that, in his opinion, it would be desirable to have a crossing at Kern Avenue controlled by signals.

A representative of the Sheriff's Department testified that the town of McFarland is policed by two deputy sheriffs who work out of their homes. Both live on the west side of the town and on an average of eight to ten times a day it is necessary for either or both of them to answer calls. Many of these calls are on the east side of town, that being the principal residential district. In the opinion of this witness a crossing at Kern Avenue would be beneficial. He further observed that the present railroad station has become a hangout for undesirable characters and that this is a matter of concern to police since school children cross in that location.

A representative of the California Highway Patrol testified that it would be desirable to have an additional crossing to enable farmers to cross there with their cotton trailers and, also, to provide a better crossing for school children.

The superintendent of the McFarland Elementary School District testified as to the location of schools in the area and also as to the location of the residences of the school children. At the present time both the elementary school and the high school are located on the west side of town. There are 966 children attending the elementary school, of which 617 live east of the tracks and 349 west of the tracks. There are 224 students in the high school, 127 from the east side and 97 from the west side. Of the 617 elementary school children living on the east side of town, approximately 300 are transported to and from school by a

school bus, while the remaining 317 walk. About 99 per cent of these use the crossing at Kern Avenue. Exhibit 8 is a map of the town of McFarland showing the residences of the school children.

In relation to an overpass over the tracks, or an underpass under the tracks, this witness expressed doubt that many of the children would use either. He further observed that undesirable characters loiter at the depot and since Kern Avenue is a traffic lane for school children, the moving of the depot would be desirable.

A hardware dealer and resident of the town of McFarland testified that Kern Avenue is now the main business street of the town. While formerly there were businesses located along U. S. Highway 99 these all have been moved to make way for the new highway construction. In the opinion of this witness there should be a crossing at Kern Avenue.

Another witness, who is an accountant and cotton buyer in the area, likewise, stated that Kern Avenue is the principal business street and that businesses have been removed from U. S. Highway 99. He further observed that the post office is located in the west side of town and that there is no mail delivery in McFarland. This necessitates people calling for their mail and, accordingly, occasions many crossings of the tracks every day. It should be pointed out at this juncture that the parties stipulated that the post office was on the west side of town and that there was no house-to-house delivery.

This witness further testified that he was familiar with the train movements in the vicinity of McFarland and he gave some information as to the switching movements. He stated that

of the switching sheds located in McFarland, two, the so-called Red Barn shed and the Haynes shed, can be and usually are switched from south of Sherwood Avenue, and that the Metler shed, which is located north of the station, can be and usually is switched from the north across Perkins Avenue.

Additional testimony disclosed that the Haynes, Red Barn and Metler sheds are the only ones from which switching is now being done. The loading point of the American Crystal Sugar Company has not been used for the past year since no beets are shipped. As to the Metler shed, which is north of the railroad station, the testimony disclosed that this is a potato shipping point which was operated 22 days in 1952 and shipped a total of 154 cars. The greatest shipment in any one day consisted of 12 cars.

This accountant and cotton buyer presented Exhibits 10 and 11 which are aerial photographs of the area, Exhibit 10 showing the highway before the present construction started, and Exhibit 11 showing the extent that construction has progressed on the new divided highway and access roads.

A final witness for applicant, the city engineer of the City of Delano, testified as to grade crossings in other towns and cities in the area and pointed out that usually there is a grade crossing in the center of town.

Exhibit 9, introduced by a representative of the Transportation Division of the Public Utilities Commission shows the results of a traffic count made at Kern Avenue on September 24 and 25, 1952. It is of interest to note that during the peak hours between 8:00 a.m. and 9:00 a.m. there were 211 crossings by

pedestrians and between 3:00 p.m. and 4:00 p.m., 141.

The protestant railroad presented the testimony of the manager of the American Crystal Sugar Company, which company maintains a plant at McFarland. This witness testified that under normal operations the railroad would not have sufficient trackage to handle the switching to his company's loading point without interfering with any crossing of Kern Avenue which might be made. If a crossing were opened at Kern he indicated that it might be necessary for the company to move its McFarland plant and such a move would entail an expense of approximately \$10,000. He also stated that his company has not shipped any beets for the past year due to the fact that the farmers now all are growing cotton.

The assistant superintendent of the Southern Pacific Railroad at Bakersfield testified that the opening of a crossing at Kern Avenue would cause delays to trains and would increase the railroad's operating costs. He stated that the principal business of the railroad in McFarland was freight, there being very little passenger business.

The division engineer of the Southern Pacific Railroad testified as to the costs involved should it become necessary to install a crossing and move the station. It was his estimate that it would cost \$25,000 and if the recommended No. 8 flashing signals were provided there would be an additional cost of \$8,000. If special circuits were provided it would entail a further cost of an additional \$8,000. This witness was of the opinion that a third railroad crossing in McFarland would increase the safety hazard and he observed that a crossing at Kern Avenue would be

of no benefit to the railroad but, as a matter of fact, would constitute a detriment.

At the conclusion of protestant's case it was asked that the Commission take judicial notice of the size, street layouts and railroad crossings at San Carlos, Roseville and Sunnyvale, California.

Subsequent to the hearings applicants and protestants have filed briefs which have summarized the problem. The applicant's case essentially is stated to be that the principal business street in the town of McFarland is now Kern Avenue rather than U. S. Highway 99 and that only by providing a crossing at Kern Avenue can there be a normal connection with the business district on the west side of town and the residential district on the east side of town. In addition to the business district being on the west side of town, there is also located the post office, the schools, and the fire station. A crossing at Kern Avenue would be desirable from the standpoint of both vehicular traffic and pedestrians and, in particular, school children would use such a crossing to a great extent. Likewise, it is pointed out that the railroad tracks at McFarland have a relatively small amount of switching since the best movements have vanished and of the remaining three sheds, two are served by switching across Sherwood Avenue and the third only occasions a small amount of switching across Kern Avenue. In connection with the moving of the station, it is contended that it is outmoded, a loafing place for transients, and a menace for school children.

The position of the railroad is that the County has not acquired an easement to construct a crossing, that additional grade crossings are a source of hazard, and that the town of

McFarland already has access to two grade crossings at Perkins and Sherwood Avenues. It is pointed out that there are other cities where the main street comes to a dead end such as San Carlos, Sunnyvale and Roseville.

Finally, the railroad contends that in any event if a crossing were authorized, all costs of construction and providing protection should be borne by the County of Kern. In its reply brief the County agrees to pay all costs of construction and providing protection. It contends that the proper procedure in this matter is to secure this Commission's approval for a grade crossing and then to proceed to any eminent domain proceedings which may be necessary.

In considering all of the testimony presented herein and the contentions in the briefs which have been filed, we hereby find that it would serve the public convenience and necessity to provide for a grade crossing of Kern Avenue with the tracks of the Southern Pacific Railroad at McFarland provided at least one of the existing crossings at Perkins Avenue and Sherwood Avenue be closed.

In making this finding we are cognizant of the new highway construction and of the fact that signal lights will be installed at Kern Avenue. Likewise, we are cognizant of the conditions in the town of McFarland as elucidated by this evidence. While it is true that the installing of a new grade crossing at Kern Avenue would create some inconvenience to the railroad, yet we have in mind the offer of the County of Kern to pay all costs incident to the installation of this grade crossing, the installation of signals and the moving of the railroad station to a satisfactory location.

In making the authorization to construct a grade crossing at Kern Avenue contingent upon the closing of one of the crossings at Perkins Avenue or Sherwood Avenue we are aware that all grade crossings present some degree of hazard. It is the province of this Commission to consider and determine this situation in the light of the existing evidence. If a new crossing is constructed at Kern Avenue and one of the existing crossings is closed, the town of McFarland will still have two grade crossings. It is not in the public convenience and necessity to permit three grade crossings in McFarland within a distance of one-half mile.

Therefore, upon this record the request of the County of Kern for authority to construct a grade crossing over the tracks of the Southern Pacific Railroad at Kern Avenue in the town of McFarland will be granted subject to the restriction that one of the existing crossings at Sherwood Avenue and Perkins Avenue be closed.

O R D E R

Application as above entitled having been filed, public hearings having been held thereon, the Commission being fully advised in the premises and hereby finding that the grade crossing in question should be authorized,

IT IS ORDERED that the Board of Supervisors of the County of Kern, State of California, be and it hereby is authorized to construct a crossing at grade over the tracks of the Southern Pacific Railroad, approximately 1343.5 feet south of Mile Post 286.8, Kern County, California, subject to the following conditions:

1. The total cost of the proposed construction, together with the installation of signals and the cost of moving the present railroad station to a satisfactory location, shall be borne by the County of Kern. Applicant shall bear maintenance cost outside of lines two feet outside of rails. Southern Pacific Company shall bear maintenance cost between such lines, as well as cost of maintaining signals.
2. The crossing shall be protected by two No. 8 flashing light signals (G.O. 75-B). The width of the crossing shall be not less than sixty feet, and the grades of approach shall not exceed two per cent.
3. Prior to the beginning of actual construction of the crossing herein authorized, the County of Kern shall file with this Commission a certified copy of an appropriate ordinance or resolution, duly and regularly passed, instituting all necessary steps to legally abandon and effectively close at least one of the two existing public grade crossings in the vicinity of Perkins Avenue or Sherwood Avenue, and identified as Crossings Nos. B-286.8 and B-287.3. Upon the completion of the crossing herein authorized, and upon its being opened to public use and travel, at least one of the two Crossings Nos. B-286.8 and 287.3 shall be legally abandoned and effectively closed to public use and travel.
4. The construction herein ordered shall be commenced within one year, and completed within two years, after the date hereof unless further time is granted by subsequent order.
5. Applicant, within thirty days after the completion of construction, shall notify this Commission in writing of the completion thereof.

IT IS FURTHER ORDERED that the Southern Pacific Railroad Company, in the event the crossing of Kern Avenue as herein authorized is completed, shall observe the following operating restriction:

At all times that railroad cars are allowed to stand on the tracks within two hundred feet of the center line of Kern Avenue no train, motor, engine or car shall be operated across said Kern Avenue unless highway traffic be protected by a member of the train crew or other competent employee acting as flagman.

The authorization herein granted shall expire if construction is not commenced within one year after the date hereof unless further time is granted by subsequent order.

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

Dated at San Francisco, California, this 21st day of April, 1953.

R. J. Anderson
President

Justin F. Calmes
Harold P. Hule

Fremont H. Patten
John E. Maxwell
Commissioners