

Decision No. 49165**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of THE ATCHISON, TOPEKA AND)
SANTA FE RAILWAY COMPANY, a)
corporation, for authority to)
construct a spur track in First)
Avenue across Island Avenue in)
the City of San Diego, County)
of San Diego, State of California.)

Application No. 34286

Robert W. Walker and Robert B. Curtiss, by
Robert B. Curtiss, for applicant.

Randolph Karr, for San Diego and Arizona Eastern
Railway, protestant.

Hoyt E. Ray, for City of San Diego, interested
party.

O P I N I O N

The Atchison, Topeka and Santa Fe Railway Company seeks authority to construct, maintain and operate a spur track at grade along First Avenue across Island Avenue, in the City of San Diego, California. The City of San Diego has approved the proposal, subject to conditions not here material. ⁽¹⁾ The application is opposed by the San Diego and Arizona Eastern Railway. The controversy between applicant and protestant will be discussed in the opinion herein.

A public hearing was held before Examiner Rogers in San Diego on July 10, 1953, at which time the matter was submitted subject to the filing of briefs. These briefs have been filed and the matter is ready for decision.

Applicant proposes to install the afore-mentioned spur track from an existing Atchison, Topeka and Santa Fe Railway Company industry track on the west side of First Avenue. ⁽²⁾ The Atchison,

(1) Resolution No. 111467, attached to the application.

(2) See blueprint attached to the application.

Topeka and Santa Fe Railway Company will hereinafter be referred to as Santa Fe. San Diego and Arizona Eastern Railway (hereinafter called San Diego Railway) has in the approximate center of First Avenue a single line of track extending from about the intersection of First Avenue and J Street northward two blocks to Market Street. This line formerly connected with San Diego Railway's main line near the intersection of First Avenue and J Street. Santa Fe's proposed spur track will cross San Diego Railway's First Avenue track in the approximate center of Island Avenue⁽³⁾.

To protect the crossing of Island Avenue by the contemplated spur track, Santa Fe agrees to install and maintain two reflectorized crossing signs.

The evidence shows that the purpose of the proposed spur is to provide service for a General Electric Supply Company plant which is under construction and is expected to be completed and occupied by November 1, 1953. The plant will occupy space in the block surrounded by Island Avenue, Second Avenue, J Street and First Avenue, and will have two doors for the reception of rail freight on First Avenue about half way between Island Avenue and J Street⁽⁴⁾. General Electric Supply Company expects to receive annually approximately 50 carloads of merchandise ranging from refrigerators to conduit. It will ordinarily have one car on the spur at one time, infrequently two, but never three. Outgoing rail shipments are not contemplated.

The protestant stipulated that the applicant's plan is highly desirable as concerns the portion of the proposed spur on the east side of First Avenue and adjacent to the General Electric Supply Company's plant.

(3) Exhibit A and Exhibit 2.

(4) See Exhibit 2. The freight doors will be in C and D of Block 117.

In opposition to Santa Fe's request, San Diego Railway introduced evidence intended to show that Santa Fe's existing track on the west side of First Avenue, and from which the proposed spur would be taken, should not be used for the reasons (a) that as it exists it is in violation of numerous provisions of General Order 26 D of this Commission, and (b) because of the parking of automobiles on the existing track undue delay and expense will be occasioned in performing switching operations. San Diego Railway also introduced evidence intended to show that it has an existing rail line near the center of First Avenue from which the spur track could and should be taken.

For a clear understanding of the points raised, the background of First Avenue tracks should be explained.

Prior to and including 1909, Santa Fe had, and still has, a railroad line immediately adjacent to the ocean in San Diego with (since 1909) a spur running north therefrom along First Street (now avenue) to H Street (now Market Street) one block north of I Street (now Island Avenue).⁽⁵⁾ This track, except for the portion across San Diego Railway's track, is still operative and is the track from which the proposed spur is to be constructed.⁽⁶⁾ In 1908 San Diego Railway commenced construction of its main line of railway from San Diego to El Centro.⁽⁷⁾ In San Diego this line, where it crosses First Avenue (street),⁽⁶⁾ is parallel to and immediately north of Santa Fe's main line tracks. In 1908 each railroad had, or contemplated, spurs or industry tracks which crossed or would cross the main line of the other railroad. In order to avoid the crossing of the main line of one railroad by industry tracks of the other

(5) Exhibit H. Franchise Ordinance No. 3456. This franchise would have expired in 25 years.

(6) See map attached to Exhibit 8-A.

(7) Exhibit I.

railroad, a switching agreement was made between the two roads in March 1910, whereby interchange tracks were installed, and it was agreed, among other things, that San Diego Railway would physically connect the Santa Fe's First Street (avenue) spur with San Diego Railway and remove the portion of the said spur which crossed the San Diego Railway's main line.⁽⁸⁾ In January 1913 Santa Fe was granted a perpetual right to use its tracks along First Street (avenue),⁽⁹⁾ subject to annual payments by Santa Fe. In January 1917 San Diego Railway was given the right to construct a line of railway as follows:

"From the east line of the intersection of Fifth Street with 'L' Street, thence running westerly along the private right-of-way of the San Diego and Arizona Railway Company⁽¹⁰⁾ to the intersection of said right-of-way with First Street⁽¹¹⁾ (at 'J' Street), thence northerly along said First Street to the center of the intersection of said First Street with 'B' Street,⁽¹²⁾ thence westerly to the center of the intersection of said 'B' Street with Arctic Street, in the City of San Diego, California; (provided, however, that steam motive power shall not be used over or upon the route described in this paragraph, and further, that no freight traffic shall be operated over the route described in this paragraph); ..." (13)
(underlining added.)

On July 16, 1919, pursuant to a petition dated July 14, 1919, by San Diego Railway,⁽¹⁴⁾ that railway was given permission to construct and maintain railway tracks as shown by the red lines on the map⁽¹⁵⁾ attached to the petition of July 14, 1919.⁽¹⁶⁾ This authority (in so far as it affects the instant matter) applied only to connection with Santa Fe's First Avenue spur and San Diego Railway's passenger line referred to above^(13 supra) along First Avenue.

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- (8) Exhibit 8-A.
 (9) Exhibit 9.
 (10) Predecessor of San Diego Railway.
 (11) Now First Avenue.
 (12) About 4 blocks north of Market Street.
 (13) Exhibit 13.
 (14) Exhibits 11 and 12.
 (15) Exhibit 11.
 (16) Exhibit J.

A witness for protestant testified that San Diego Railway last used its line near the center of First Avenue on March 31, 1930. Since that time the switch near First Avenue and J Street has been removed. Photographs submitted by both parties show that the remaining track of the San Diego Railway along First Avenue is covered with paving, although in places the course of the track is visible. (17) In addition to the foregoing, protestant's witness testified that the protestant uses a portion of Santa Fe's tracks on the west side of First Avenue for a tail track, although there are times when this track is unusable due to private automobiles being parked thereon.

From the evidence it appears, and we find, that San Diego Railway was granted a right by the City of San Diego to use the city street for its line of rails in First Avenue for passenger traffic only; that the last time such use was made was on March 31, 1930; that thereafter the switch at First Avenue and J Street was removed.

From the foregoing findings of fact we conclude that San Diego Railway's line of track along First Avenue north of J Street is not owned, controlled, operated or managed for public use in the transportation of persons or property as set forth in Section 229 of the Public Utilities Code, and therefore Santa Fe will not be crossing a track of a railroad corporation within the meaning of Section 1201 of the Public Utilities Code if it constructs its proposed spur track across the track of San Diego Railway in First Avenue at about the intersection of that street with Island Avenue.

As heretofore stated, San Diego Railway and Santa Fe have an agreement whereby San Diego Railway performs all switching operations for Santa Fe north of San Diego Railway's main line. (18)

(17) Exhibits B, C, D, E, 3, 4 and 7.

(18) Exhibit 8-A.

First Avenue is north of San Diego Railway's main line, so Santa Fe's traffic destined for the General Electric Company's proposed siding will be handled by San Diego Railway employees across the San Diego Railway's main line, over Santa Fe's spur track on First Avenue and into the proposed siding. San Diego Railway contends that its employees will be subjected to danger if the use of Santa Fe's existing spur on First Avenue is permitted, for the reason that said existing spur track violates provisions of General Order 26 D relating to side clearances.

The claimed obstructions are shown on San Diego Railway's map, Exhibit A, and include the items discussed hereafter. A curb approximately 40 feet long is located on the southwest corner of First Avenue and Island Avenue and an intermittent curb is located on the west side of First Avenue between Island Avenue and Market Street. These curbs are 5.75 feet from the center line of Santa Fe's existing track, and vary from 4-1/2 inches in height near Island Avenue to 11 inches in height near Market Street. There is a fire hydrant 6 feet 9 inches from the center of the tracks at a point about 25 feet north of Island Avenue (This has been moved since the hearing to allow proper clearance, see late-filed Exhibit 10), and there is a power pole located on the northwest corner of First Avenue and Island Avenue, with a clearance of 8 feet 4 inches at the base from the center of the track.

The applicant and protestant stipulated (Exhibit 10) that the curb located on the southwest corner of the intersection of Island Avenue and First Avenue and on the west side of First Avenue, and the curb on the west side of First Avenue extending 150 feet north from Island Avenue were installed in August 1913, and that the balance of the curb on the west side of First Avenue between Island Avenue and Market Street was installed in the year 1916.

The evidence shows that the existing track of Santa Fe along First Avenue was constructed in 1909, at which time there was no order equivalent to General Order 26. At the time the curbs were installed (1913 and 1916) General Order 26 of this Commission was in effect. Section 1(g) of said general order provided, in so far as pertinent, "The minimum clearance between the center line of yard and industrial tracks of standard gauge railroads ..., and the sides -- or nearest projection -- of buildings and structures ... less than 1 foot in height ... shall be 4-1/2 feet." The curbs are less than 1 foot in height and 5.75 feet from the center line of the First Avenue spur track and hence, at the time the curbs were constructed, they conformed to the provisions of the then effective General Order 26.

The power pole has a clearance of 8 feet 4 inches at the base, which clearance is two inches less than that required by the Commission.

These clearances mentioned above relate to Santa Fe's existing track on the west side of First Avenue. The proposed spur track will originate from this existing track about 75 feet north of Island Avenue and thence proceed southeast across Island Avenue to the east side of First Avenue. The power pole located on the northwest corner of First Avenue and Island Avenue will have a clearance in excess of that required from the curved track. The curb is 5.75 feet from the proposed switch for the industry track from the existing First Avenue track and will have less than the minimum clearance requirements of General Order 26 D, Sections 3.2 and 3.16, for a distance of approximately 45 feet from the point of switch of the proposed spur track. In our opinion it would be inequitable to require applicant to remove its existing track to construct the proposed spur track in accordance with General Order 26 D, Sections 3.2

(19) Exhibit A. General Order 26 D, Section 3.2, Section 3.16.

✓ 3.16, 3.17, and, therefore, the requirements of those sections will be waived in accordance with the provisions of Section 16.2 of General Order No. 26 D, and Santa Fe will be authorized to construct the proposed spur track in conformance with the plans and specifications attached to its application herein.

Protestant presented evidence to show that it will be impractical to use Santa Fe's First Avenue spur because of the fact that private automobiles are parked thereon and that the parking creates a situation whereby the switching services are delayed while the automobiles are removed. The remedy for this situation lies with the City of San Diego and the railroads involved through proper ordinances and the enforcement thereof. We cannot undertake to police tracks.

O R D E R

Application having been filed by The Atchison, Topeka and Santa Fe Railway for authority to construct a spur track at grade along First Avenue across Island Avenue in the City of San Diego, and a public hearing having been held thereon,

IT IS ORDERED:

(1) That The Atchison, Topeka and Santa Fe Railway Company is authorized to construct one spur track at grade along First Avenue across Island Avenue in the City of San Diego, at the location described in the application, the crossing of Island Avenue to be identified as Crossing No. 2-268.38-C. Applicant shall bear the entire construction and maintenance expense. Construction shall be equal or superior to Standard No. 2 of General Order No. 72, without superelevation, and with tops of rails flush with roadway.

(2) That protection shall be by two Standard No. 1-A crossing signs (General Order No. 75-B) with reflex reflecting sheet material.

(3) That within thirty days after completion pursuant to this order, applicant shall so advise the Commission in writing.

(4) That authority to deviate from the requirements of Sections 3.2; 3.16 and 3.17 of General Order No. 26-D is hereby granted in connection with clearances of curb to the extent shown on The Atchison, Topeka and Santa Fe Railway, Los Angeles Division Drawing L-19213 attached to the application.

This authorization shall become void if not exercised within one year, unless time is extended, or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity or safety so require.

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

Dated at San Francisco, California, this 19th day of September, 1953.

P. J. [Signature]
President
Justus J. [Signature]
[Signature]
[Signature]

Commissioners

Commissioner Harold P. Huls, being necessarily absent, did not participate in the disposition of this proceeding.