

ORIGINAL

Decision No. 49286

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of application of)	
SOUTHERN PACIFIC COMPANY for an order)	
authorizing the construction at grade)	
of industrial spur track across an)	Application No. 33944
unnamed street in the City of Belmont,)	
County of San Mateo, State of)	
California.)	

R. J. Lathrop, Jr., for applicant.
William L. Crane, for William & Burrows, Inc.,
 interested party.
Albert H. Gomme, attorney for Walter Jacobi &
 Sons, Inc., protestant.
Martin J. Lewis, for the Commission staff.

OPINION AND ORDER

This is an application to construct an industrial track in San Mateo County near the corporate limits of the City of Belmont.

A public hearing was held on this matter before Examiner John K. Power at Redwood City, September 29, 1953.

The main track of Southern Pacific Company, in Belmont, runs in a northwesterly direction toward San Francisco and southeasterly toward San Jose. These directions will be referred to as northerly and southerly, respectively. Just to the east of the railroad right of way, and parallel to it, is an improved highway of San Mateo County called by the witnesses the old county road. About 345 feet further east is Elmer Street, 50 feet wide, parallel to the railroad right of way and the old county road. The application refers to Elmer Street as "an unnamed street" but there is no doubt about the street to which they refer.

A short distance to the north of the property of Walter Jacobi & Sons, Inc., protestant herein, there is a switch on the

railroad property. From this a curved drill track swings southeasterly across the old county road to the Jacobi land. On the east line of the old county road there is another switch and from there the drill track splits one track turning south and one, with which we are here concerned, turning east. As a drill track it stops approximately 25 or 35 feet west of Elmer Street. However, physically it continues as a spur track across Elmer Street and past the premises of the Independent Paper Company into the property of Williams & Burrows, Inc. The drill track will be extended across Elmer Street if and when that is necessary.

The purpose of this spur is to serve the two last named companies. The protestant does not object to this and the necessity was established by a witness representing William & Burrows, Inc. The crossing will be authorized.

The shop or plant of protestant occupies the northwest quadrant. The Independent Paper Company building occupies the northeast quadrant.

The portion of Elmer Street within the City of Belmont has been accepted by that city and paved. The city limits are less than a thousand feet distant from the proposed crossing toward the north. The effect is to create a through street extending from within the city limits of Belmont to Harbor Boulevard, a main road south of the crossing.

The evidence of the applicant's engineer who put in the crossing and of a witness for protestant requires a finding that this street is in use by the general public. It may be true that it has never been accepted by the county. Nevertheless Elmer Street has been in public use for many years and is a public way at this crossing.

Applicant actually constructed this crossing in March of this year. Technically this was a violation of Section 1201 of the

Public Utilities Code. In view of the ambiguous status of Elmer Street, the Commission is not disposed to press this point. Applicant acted in good faith on the assumption that it was constructing a private crossing.

Thanks to this prior construction a clear picture of traffic at the crossing became available. The applicant's engineer observed motor traffic while his construction work was in progress. He put it that two or three highway vehicles per hour passed the crossing. A witness for protestant testified that Elmer Street was frequently used by trucks and also by patrons of a drive-in theatre, a few hundred feet east of the crossing herein involved. The portion of Belmont north of the crossing contains a number of residences which would generate some traffic. A witness for the industry served by the spur stated that his company had received 37 rail cars over the spur between its construction in March and the date of hearing, a period slightly in excess of six months.

The Commission usually favors two signs at any crossing. Here, however, there is no practical location for a sign on the west side of Elmer Street. Therefore, we find that one crossing sign will be sufficient at this crossing. The applicant has installed two such signs, one on each side of the street. The one on the westerly side now blocks an alley; if moved to the north of the track it would block an entrance to protestant's building and should be removed. The order following will so provide.

The remaining issue in this matter is the question of access to the rear of protestant's building. The map attached to the application shows an alley running from the old county road to Elmer Street. In so doing it passes along the south side of the protestant's plant. Protestant's witness testified that commercial and other vehicles had, for many years, approached the plant by

traveling down the old county road through the alley and up to the back of building. To aid this movement, protestant improved a driveway from the alley into their back lot. When the applicant built the track involved herein, the workmen removed certain material from the road-bed and did not replace it. The result is that access in this manner has been effectively destroyed. The testimony of protestant's witness was that this route to the rear of the shop building had been used since that building had been built in 1945 or 1946. Under the circumstances we are of the opinion that the applicant should have replaced the driveway material after the rails were laid.

O R D E R

Southern Pacific Company having heretofore constructed a spur track across Elmer Street (referred to in its application herein as an "unnamed street") near the City of Belmont in San Mateo County, and the Commission having found: (1) that Elmer Street is a public street or road and therefore that such construction was without proper authority; (2) that such construction resulted from a mistake of applicant, which the Commission has found to be reasonable; and (3) that the construction of said crossing is required by the industries to be served;

IT IS ORDERED that construction of a spur track at the location described in the application on file in this proceeding is authorized, subject to the following conditions:

1. Said crossing shall be identified as crossing No. E.22.32-C.
2. Construction of said crossing shall be equal or superior to Standard No. 2 of General Order No. 72, without superelevation and of a width to conform to the portion of the street now graded, with tops of rails flush with the roadway and with grades of approach not exceeding 4 per cent. Protection shall be by one Standard No. 1 crossing sign (General Order No. 75-B).

- 3. Applicant shall remove the Standard No. 1 crossing sign now located on the westerly side of Elmer Street.
- 4. Applicant shall replace the driveway connecting the rear of the plant of Walter Jacobi & Sons, Inc. with the alley between the old county road and Elmer Street as shown on applicant's drawing, Coast Division No. 28097 as revised to November 28, 1952 and attached to the application on file herein.
- 5. Applicant shall commence the construction required by this order within thirty days after its effective date. Applicant shall advise the Commission of compliance with this order within thirty days after the completion thereof.

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

Dated at San Francisco, California, this 3rd day of November, 1953.

[Signature]
President

[Signature]

[Signature]

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Commissioners