

Decision No. 52874

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the City of San Luis Obispo
 under Section 1206 of the California
 Public Utilities Code for an Order fixing
 the Just Compensation, if any, to be paid
 by the City for an easement for a widened
 underpass under the tracks of the
 Southern Pacific Company in said City,
 and for a final Order of Condemnation.

Application No. 37125

William M. Houser, Jr., for the City of
 San Luis Obispo.
Randolph Karr, for Southern Pacific
 Company.
Zenon Talbot, for the Brotherhood of
 Locomotive Engineers, interested
 party.

INTERIM OPINION

On September 23, 1954, the City of San Luis Obispo filed Application No. 35806, requesting the Commission to authorize the reconstruction of the Southern Pacific-Johnson Street underpass located in said City and to apportion the cost of reconstruction in the event the parties could not agree.

The Southern Pacific Company filed a motion to dismiss the application on the ground that applicant not only sought the Commission's authority to widen the crossing but also sought to invoke the Commission's jurisdiction in a condemnation proceeding without properly complying with the rules of procedure.

On July 12, 1955, the City of San Luis Obispo filed the above-numbered application requesting that certain specified property be condemned for the purpose of widening the Johnson Street underpass.

On August 16, 1955, as required by the statute, this Commission issued an order directing the Southern Pacific Company,

Southern Pacific Railroad Company (since merged into the Southern Pacific Company) and the City of San Luis Obispo to appear on October 19, 1955, and show cause, if any they had, why the Commission should not proceed with the application to condemn and to fix the just compensation. Because of a written stipulation by the parties the matter was taken off calendar and subsequently reset to March 15, 1956, on which date the parties appeared before Commissioner Ray E. Untereiner and Examiner T. E. Daly at San Luis Obispo.

The Southern Pacific Company takes the position that there are separate steps which must be followed in any matter concerning the opening or separation of a street across railroad tracks. It contends that the Commission's consent must first be acquired and then a subsequent and separate proceeding instituted to condemn the property required. It further contends that because of certain technical irregularities in the preparation of the application it fails to comply with statutory rules of procedure.

The City of San Luis Obispo filed Application No. 35806 (Section 1202 to 1205 of the California Public Utilities Code) wherein the consent of the Commission was requested to widen the Johnson Street crossing. It also filed Application No. 37125 pursuant to Section 1206 of the California Public Utilities Code requesting the condemnation of certain specified property and the fixing of just compensation. According to Section 1207 of the California Public Utilities Code such a condemnation proceeding, ". . . may be made a part of any proceeding commenced under Section 1202 to 1205, inclusive." As a matter of procedure both matters may be consolidated for the purpose of hearing.

It appears that the City of San Luis Obispo has substantially complied with the procedural statutory requirements

and the Commission is of the opinion and so finds that the objections should be overruled and the motion to dismiss denied.

INTERIM ORDER

The City of San Luis Obispo having filed an application that the Commission fix and determine the just compensation to be paid for certain lands, properties and rights described therein, an order to show cause directed to the owners and claimants named in said petition having been issued, a written return to said order to show cause having been filed by said owners and claimants, public hearing and oral argument having been had, and good cause appearing;

IT IS ORDERED that the objections set forth in the written return to the order to show cause be and they are hereby overruled and that the motion to dismiss contained therein be and it is hereby denied.

Dated at San Francisco, California, this 10th day of April, 1956.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners

Commissioner Matthew J. Deoley, being necessarily absent, did not participate in the disposition of this proceeding.