

Decision No. 57317**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN PACIFIC COMPANY relating to the provisions and terms of a contract between Southern Pacific Company and the County of Santa Clara providing for the installation of crossing protection at Palm Avenue and Church Avenue and also the physical closing of San Bruno Avenue, Miramonte Avenue, Live Oak Avenue and Madrone Avenue where said streets cross the railroad tracks of Southern Pacific Company between the stations of Perry and Gilroy in the County of Santa Clara.

Application No. 39875

Investigation into the safety, maintenance, operations, use and protection of crossings at grade with public highways and streets and the lines of the SOUTHERN PACIFIC COMPANY, in the County of Santa Clara, State of California.

Case No. 6089

Randolph Karr and Harold S. Lentz, for Southern Pacific Company, applicant and respondent.  
John R. Kennedy, for the County of Santa Clara, interested party and respondent.  
Graham R. Mitchell, for the Brotherhood of Locomotive Engineers, interested party.  
George B. Moe, for the State Department of Public Works, interested party in Case No. 6089 only.  
Robert Morgan, for Santa Clara County Farm Bureau and the American Federation of Labor, and many residents living near the crossings, protestants.  
Franklin G. Campbell, for the Commission staff.

O P I N I O N

By Application No. 39875, filed March 6, 1958, Southern Pacific Company prays that the Commission consider the terms and provisions of a contract between applicant and the County of Santa Clara whereby said county agreed to the closing of the grade

crossings at San Bruno Avenue, Miramonte Avenue, Live Oak Avenue and Madrone Avenue; that the Commission apportion the cost of crossing protection at Palm Avenue and Church Avenue, and that the Commission institute an investigation on its own motion into the whole matter.

Such an investigation has been ordered in Case No. 6089. Specifically this order, dated April 15, 1958, provided for an investigation into the safety, maintenance, operation, use and protection of each, all, and any part of the grade crossings above referred to, and the making of any necessary order or orders that may be appropriate, in the exercise of the Commission's jurisdiction. This investigation was consolidated for hearing with Application No. 39875. The Southern Pacific Company, and the Board of Supervisors and the Road Commissioner of Santa Clara County were named as respondents.

Public hearings were held in San Jose before Examiner Rowe on July 15 and 16, 1958, at which time evidence was adduced and the matter duly submitted.

By the contract, copy of which was attached to the application, Southern Pacific Company agreed to construct Standard No. 8 flashing light signals at the crossings known as Palm Avenue (Crossing No. E-66.0) and Church Avenue (Crossing No. E-68.5), at its sole cost. The county agreed to the closing of the grade crossings known as San Bruno Avenue (Crossing No. E-66.7), Miramonte Avenue (Crossing No. E-66.9), Live Oak Avenue (Crossing No. E-67.4) and Madrone Avenue (Crossing No. E-67.9). As to these four crossings to be closed, the county by this contract agreed to take all steps to officially vacate and close them to public use, including any

necessary authority of the Public Utilities Commission of the State of California. It was further provided that the "Railroad, at its expense, shall remove the vacated crossings. County, at its expense, shall install any necessary barricades."

Pursuant to its agreement the county forwarded a copy of the contract to this Commission. By letter dated February 14, 1957, receipt of this letter and the copy of the contract was acknowledged by the Commission. This Commission letter, addressed to the county engineer, contained the following statement:

"We have reviewed this agreement and conclude that the work set forth therein will be very beneficial to public safety in Santa Clara County. The Commission has sought, in many instances, throughout the State to relieve grade crossing hazards in the manner in which this particular project is planned.

"Inasmuch as the parties are in agreement with respect to the closing of the four crossings and the installation of the Standard No. 8 flashing light signal, no particular order or approval of this Commission is needed for the proposed work.

"The parties will be fulfilling the regulations of this Commission if upon conclusion of the work, the railroad notifies our office in its monthly Form "G" report, General Order No. 75-B, of the installation of the Standard No. 8 signals at the Palm Avenue and Church Avenue crossings. It would also be appropriate if upon constructing effective barricades at the four grade crossings to be closed, the railroad also report this on Form "G".

"In order that our files may be complete, it would be appreciated if the county will advise us by letter at the time it officially vacates the four public streets at the grade crossings as set forth in Paragraph 2 of this agreement."

A copy of this letter was sent to the General Manager of the Southern Pacific Company in San Francisco.

In fulfillment of its promises in this agreement, Southern Pacific Company has constructed and installed the required flashing light signals at the grade crossings of Church Avenue and

Palm Avenue at a total cost of \$14,542. The county, however, has taken no action with regard to its promise of closing the other four grade crossings as above listed.

A locomotive engineer representing the Brotherhood of Locomotive Engineers testified that in his opinion each of the grade crossings known as San Bruno Avenue, Miramonte Avenue, Live Oak Avenue and Madrone Avenue is dangerous and unsafe and should be closed. An associate transportation engineer of this Commission after a study of the crossings involved, concurred in this opinion and recommended that the protective devices installed at Palm and Church Avenues be retained and that the grade crossings at San Bruno, Miramonte, Live Oak and Madrone Avenues be closed and barricaded to public use and travel. This witness further expressed the opinion that left-turn lanes be installed for northbound vehicles on Monterey Road (U.S. Highway 101) at Palm and Church Avenues and that the two last named crossings be widened to 24 feet. He also recommended the repainting of the "RXR" and white stripes on the western approach to the crossing at Palm Avenue. The signal engineer of the Southern Pacific Company concurred in these recommendations. The company's project engineer also agreed, and, in addition, stated as his opinion that it would be feasible to widen the crossings to 24 feet.

The protestants produced a number of witnesses. The assemblyman for the district testified that in his opinion Live Oak Avenue should remain open and that he would not like to see closed any of the crossings involved. A local real estate broker stated that in his opinion the closing of these crossings would cause a depreciation in property values. Many people who reside or work in

the area testified that each of the above grade crossings is safe and that closing them would inconvenience the witnesses--in spite of the fact that since 1926 twelve people have been killed and two injured at the San Bruno Avenue crossing, three have been killed at the Live Oak Avenue crossing; that visibility from a point 100 feet west of tracks looking southerly towards the tracks at Miramonte Avenue and each of the other three crossings just mentioned is reduced to fifty feet or less, and that the permissible maximum speed of trains in this area is 79 miles per hour.

From the evidence of record the Commission is of the opinion and finds that each of the crossings under investigation, and referred to in Application No. 39875, is dangerous without protection and the four grade crossings which the staff recommends be closed constitute unsafe crossings and the public safety requires that they should be closed. The protection constructed at Palm Avenue and Church Avenue is hereby found to be beneficial to the public safety and should be continued. The Commission is further of the opinion and finds that protestants have failed to show any reason why the contract between the county and the railroad is inappropriate or unauthorized. The extension and improvement of cross and access roads and the construction of left-turn lanes in U.S. Highway 101, as testified to at the hearing, appear desirable but no order will be made applicable thereto because such work is not contemplated within the area of the grade crossings. No reason has been shown why payment for the signal protection should be made in a manner other than as provided in the contract entered into between the county and the railroad.

The resolution of the Board of Supervisors submitted as a late-filed exhibit, being that resolution adopted July 21, 1958, can be given no effect upon the rights of the parties hereto as it has not been agreed to by them and as it contemplates payments by Southern Pacific Company which are inconsistent with the contract between said parties.

As to Live Oak Avenue it appears that the crossing is hazardous without protection. There was some evidence to indicate that the crossing was of value to the citizens in the vicinity. We will therefore order the crossing closed without prejudice to the rights of the County of Santa Clara to file an application for the reopening of this crossing at grade and the installation and financing of two Standard No. 8 automatic flashing light signals at Live Oak Avenue.

O R D E R

Public hearings having been held and the Commission basing its decision upon the above findings,

IT IS ORDERED that the grade crossings in the County of Santa Clara over the Southern Pacific Company tracks at San Bruno Avenue (being Crossing No. E-66.7), at Miramonte Avenue (being Crossing No. E-66.9), at Live Oak Avenue (being Crossing No. E-67.4), and at Madrone Avenue (being Crossing No. E-67.9) shall be closed to all vehicular traffic within ten days after the effective date of this order by constructing fences or other proper barriers and by removing the road surface, the cost of erecting said fences or other proper barriers to be at the sole cost of the County of Santa Clara.

IT IS FURTHER ORDERED that within thirty days thereafter applicant shall give the Commission written notice of the completion of all such construction and removal.

IT IS FURTHER ORDERED that the investigation in Case No. 6089 is hereby discontinued.

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

Dated at San Francisco, California, this 10th day of September, 1958.

E. Lynn Fox  
President  
Robert Mitchell  
Robert Mitchell  
Theodore Jensen  
Commissioners