

ORIGINAL

Decision No. 57418

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the)
County of Kern, State of California, for)
an Order Authorizing the Construction of)
a grade separation crossing at Crossing)
No. B-314.4 Mt. Vernon Avenue and the)
mainline tracks of the Southern Pacific)
Company.)

Application No. 40264

Rex R. Mull for applicant.
Randolph Karr and Harold S. Lentz for Southern
Pacific Company, interested party.
George D. Moe and Warren P. Marsden for the
State Department of Public Works, protestant.
Martin J. Porter for the Commission staff.

INTERIM OPINION

By application filed July 18, 1958, the County of Kern requests authority for the construction and improvement of Mt. Vernon Avenue at separated grades across the mainline and other tracks of the Southern Pacific Company and necessarily, also, across State Highway No. 58 (U.S. 466).

As justification it is alleged that plans for the proposed project have been prepared in cooperation with the railroad; that financing of the project will be dependent upon an allocation from the Grade Separation Fund pursuant to Streets and Highways Code Section 189-191; that applicant and Southern Pacific Company have agreed upon the amount which the railroad will contribute toward the cost of said project; and that the State has not agreed on the amount it will contribute toward the cost of said project by virtue of the separation of State Highway No. 58, but that applicant is willing to

advance such portion of the cost of the project pending final determination of the amount thereof as provided by law to be later determined by this Commission in this proceeding. Public hearing was held on September 16, and 17, 1958, in Bakersfield before Examiner Rowe, at which time evidence, both oral and documentary, was adduced on the question of whether the Commission should proceed pursuant to Section 1202.1 of the Public Utilities Code. This application was consolidated with the Commission investigation in Case 6003 for the purpose of taking evidence only. On September 17, 1958, Application No. 40264 was submitted for decision upon the restricted issue of whether construction should be authorized pursuant to said Section 1202.1.

Counsel for the State Department of Public Works argued that Section 1202.1 did not apply to the facts as alleged in the application because all the parties involved were not in the status of not being in agreement and for the further reason that in his opinion Section 1202 of said code applied to the State of California only as to work involved which is to be performed upon the railroad right of way. The Commission is of the opinion and finds that applicant has sufficiently proved by evidence of record that public safety, convenience, and necessity require the grade separation as proposed; that the location thereof should be and is approved; that the plans in their present condition are sufficient and are approved in so far as required by said Section 1202.1; that adequate provision has been made for the handling of traffic during construction and as indicating the work to be performed by each party; and that applicant has made adequate provision for all necessary sums to be advanced by it. Applicant has taken all steps required of it to place it in a position where it is eligible for the allocation of funds appropriated by the Legislature and as provided by Sections 189-191 of the Streets and Highways Code.

The plans as submitted are definite in that they indicate the complete project as proposed. The fact that detailed plans and specifications are being prepared but have not as yet been finally completed in such detail, as is required for the purpose of calling for bids, does not require deferring approval by the Commission under the provisions of said Section 1202.1. Applicant proposes to close the crossing during construction; and based upon the evidence of record the Commission finds that there are adequate and convenient public roads and streets in the area over which the members of the public can travel via alternate routes to their respective points of destination. The following order is not to be construed as indicating approval of the present means and provisions for safety protection of the public at this crossing prior to the commencement of construction, when it will be closed. In view of the fact that clearance of the most northerly Southern Pacific track may be impaired, the order herein will contain provisions for the safety of railroad employees. The effective date of the following order shall be the date the decision is signed, due to the requirement that applicant be in a position to proceed on or before October 1, 1958, to participate in the above mentioned Grade Separation Fund.

Subsequent to the hearing of September 17, 1958, when the matter of proceeding under Section 1202.1 of the Public Utilities Code was submitted for decision, the Department of Public Works by letter requested an opportunity for oral argument before the full Commission of its motion to dismiss the Department as a party to the application matter. The following order will, as is provided by said Section 1202.1, reserve for further order any possible apportionment of the cost of any portion of construction against the Department. The hearing on the motion to dismiss made by the Department of Public Works will be scheduled at a future date and the order herein is not in any manner to be construed as prejudicing the position of the Department in asserting its contention that its appearance is special and that it should not be a party to this proceeding and should be required to contribute no funds for this construction other than an allocation under Sections 189 and 190 of the Streets and Highways Code.

INTERIM ORDER

Application therefor having been made and public hearing having been duly held,

IT IS ORDERED:

(1) That Kern County is authorized to construct Mt. Vernon Avenue at separated grades over the tracks of the Southern Pacific Company in said county, at the location as shown and indicated by Exhibits "A" and "B" attached to Application No. 40264, to be

identified as Crossing B-314.4-A. Construction and maintenance expense shall be borne in accordance with an agreement to be entered into in detail between applicant and Southern Pacific Company, said railroad contributing the sum of \$400,000 and the County the balance, except for amounts which may be allocated from the Grade Separation Fund pursuant to Streets and Highways Code Sections 189 and 190, and any further funds which may be ordered by this Commission to be contributed by the California Department of Public Works. Should the interested parties, including the State Department of Public Works, fail to agree as to any further apportionment of cost of construction and maintenance, the Commission reserves for further order any apportionment of the cost of construction between the County and said Department in accordance with the law and facts and after further hearing.

(2) That during construction the overhead clearances of the most northerly Southern Pacific track may be impaired to a height of 22 feet above top of rail. Consequently, during such construction Southern Pacific Company is ordered to cease operating over said most northerly track unless and until it issues appropriate bulletins to all employees involved, informing them of the impaired clearance condition and forbidding them from riding on the tops of cars while operating beneath the grade separation or any structure erected in connection with the construction thereof.

(3) That at the beginning and during construction and thereafter the grade crossing at Mt. Vernon Avenue of the tracks of Southern Pacific Company, being Crossing No. B-314.4, shall be closed to public use, and after completion of construction shall be abandoned.

(4) That Southern Pacific Company and said Department of Public Works, both being a respondent herein within the meaning of said Section No. 1202.1, are hereby ordered to proceed upon receipt of any

sums to be advanced by applicant or to permit applicant to proceed without delay, to perform any work to be done by applicant or by either respondent, integrating such work with that of the applicant or its contractor in such manner that neither will obstruct or delay the work of the other.

(5) That within thirty days after completion pursuant to this order applicant shall so inform the Commission in writing. This authorization shall expire if not exercised within thirty months, unless time be extended.

The effective date of this order shall be the date hereof.

Dated at San Francisco California, this 29th day of September, 1958.

[Signature]
President

[Signature]
Commissioners

[Signature]
Commissioners