

ORIGINAL

Decision No. 58082

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into that
grade crossing located at the
intersection of Mt. Vernon Avenue
and tracks of Southern Pacific
Company near Bakersfield, Kern County,
being Crossing No. B-314.4.

Case No. 6003

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 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 AND ORDER

On November 5, 1957, the Commission entered its Order of Investigation into the safety, maintenance, operation, use and protection of Mt. Vernon Avenue crossing of the tracks of the Southern Pacific Company for the following purposes:

1. To determine whether or not public safety requires the installation and maintenance of additional or improved protective devices at said crossing.
2. To determine whether or not public safety requires the relocation, alteration, or widening of said crossing.
3. To prescribe the terms upon which such installation, maintenance, relocation, alteration, or widening shall be done; and to apportion the costs thereof between the Southern Pacific Company, the County of Kern, and the Department of Public Works of the State of California.

4. To enter any other orders that may be appropriate in the lawful exercise of the Commission's jurisdiction.

This order was subsequently further amended in 1958.

Before any evidence was introduced, counsel for Southern Pacific Company on February 18, 1958, moved that the proceedings be stayed until such time as The Atchison, Topeka and Santa Fe Railway Company be brought into the proceedings as a party defendant. It was asserted that to proceed without said railway company would confiscate property of the moving party without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States and to Article 1, Sections 13 and 14 of the California Constitution and would burden interstate commerce in violation of the Commerce clause of the Constitution of the United States.

At the further hearings on this order which were consolidated for the taking of evidence with Application No. 40264, held before Examiner Rowe in Bakersfield on January 20 and 21, 1959, this motion was renewed upon the introduction of evidence designed to prove that said Southern Pacific Company should be required to hire and maintain additional human crossing guards during a twenty-four hour period daily. Counsel also asserted that the employment and maintenance of human crossing guards does not fall within the terms "installation and maintenance of additional or improved devices at said crossing".

In compliance with said motion,

IT IS ORDERED:

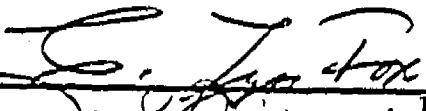
That the Order of Investigation in Case No. 6003 dated the fifth day of November, 1957, is further amended by including The Atchison, Topeka and Santa Fe Railway Company as a party respondent for the limited purpose of determining whether or not watchmen

should be required at this crossing for additional periods of time each day and for apportioning the cost of such human watchmen if any are required and by including as an additional purpose of the investigation a new paragraph to be numbered 3(a) as follows:


"3(a) To determine whether or not the public safety and health require the discontinuance, alteration or change in the operative practices of respondent railroads at or about said crossings."


The Secretary is directed to cause certified copies of this Order and of said original order dated November 5, 1957, to be served upon The Atchison, Topeka and Santa Fe Railway Company and such copies of this order to be served upon the other parties to this proceeding, and to cause appropriate notice of hearing to be mailed at least ten days before the hearing set for April 1, 1959, or of any resetting of said matters for hearing.

Dated at San Francisco, California, this
2nd day of March, 1959.



President





Commissioners

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