

Decision No. 61850**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Southern Pacific Company to replace)
 human flagmen crossing protection)
 with Standard No. 8 flashing light)
 signals equipped with automatic gate) Application No. 41035
 arms at Emory Street (No. E-45.7),)
 and close Stockton Avenue (No. E-45.65))
 both in the City of San Jose, County)
 of Santa Clara, State of California.)

Randolph Karr and Harold S. Lentz, for applicant.
Ferdinand P. Palla, Eugene B. Morosoli, Jr., and
Donald B. Atkinson, for City of San Jose,
 interested party.
Anthony J. Anastasi, for Perry Fredkin, Harry Fredkin,
 Mutual Grocery Co., Regal Petroleum Co., and
 Regal Supply Co.; Chester W. Waiz, Jr., for
 Shell Oil Co., (appearance later withdrawn);
Miller, Morton and Wright by Harvey C. Miller,
 for Kurze Electric Co.; William C. Benchley,
 for Fiberlight Corporation, J. G. Strong, for
 Mutual Grocery Co., Robert Erickson, for
 Suzanne Gardens Nursery; Hugo Spitzer, for
 San Jose Elevator Co.; A. H. Anderson, for
 Bean Crane and Drayage Co.; G. W. Smith
 in propria persona; F. D. Fowler, for College
 Park Paint Co., and C. P. Albanese, for Central
 Concrete Supply, protestants.
Charles J. Astrue, for the Commission staff.

O P I N I O N

The original application herein was filed on April 15, 1959.
 An amendment was filed on November 23, 1960. Several days of
 hearings were held before Examiner John Power at San Jose in the
 early part of 1960. After the proceeding had been removed from
 the calendar an amended application was filed. A final hearing
 was held before the examiner on February 21, 1961, at San Jose and
 the matter was submitted. This proceeding involves the main coast

line of applicant, Southern Pacific Company, and two streets in the City of San Jose; namely, Emory Street and Stockton Avenue.

Emory Street, after crossing the Alameda, proceeds northeast to and across the railroad tracks involved here. Southeast, two blocks distant and parallel to Emory is a street variously designated as Polhemus or Taylor Street. Two blocks to the northwest of Emory and also parallel is Hedding Street. An overpass carries Hedding Street over the tracks and Polhemus-Taylor crosses by means of an underpass. Stockton Avenue starts at a point just west of the Alameda underpass under another part of the same railroad line. It proceeds northwesterly to and across Emory Street (at right angles) and thence across five Southern Pacific tracks at an acute angle. The Emory and Stockton crossings are each protected by crossbuck signs and by human flagmen. The latter are on duty daily from 6:10 a.m. to 10:10 p.m. or sixteen hours.

Southern Pacific's original proposal was to eliminate all of the flagmen, to close the Stockton Avenue crossing and to change the protection of Emory Street to flashing-light signals with automatic gates. This proposal received strong opposition. The proposal apparently did not fit in with the over-all plan of the City of San Jose and therefore was opposed by the city.

The proposal if granted would have had the effect of cutting off a direct route between the central business district of San Jose and Stockton Avenue business establishments beyond, i.e., northwest of the crossing. This aroused a vigorous protest from the operators of several such establishments. These firms retained counsel and formally protested the application.

The amended application reverses the roles of the two streets. It proposes to close Emory and to install automatic gates with flashing-light signals on Stockton Avenue. The flagmen will still be discontinued. The railroad and the city seek approval of an agreement by which Southern Pacific will make a financial contribution to the widening of the Polhemus or Taylor Street underpass.

The effect of the amendment is to convert the city to a proponent of the application. The individual protestants, having achieved their purpose, did not appear at the final hearing. There were no protests from Emory Street establishments.

In the 1960 hearings the railroad presented evidence through a number of witnesses and introduced eighteen exhibits. Traffic checks of both vehicles and rail movements were taken in December, 1959. The visual counts for December 1 and 2 were 1,357 vehicles on Emory Street and 184 rail movements, of which 59 were passenger train movements.

It was shown that the two crossings, Emory and Stockton, were only 350 feet apart. In view of the hazards involved, the traffic volumes carried, and the presence of alternate routes of travel in the neighborhood, including two nearby grade separations, it appears that the Emory Street crossing may be closed.

The Commission therefore finds that public safety, convenience and necessity require that the protection of the crossing of Stockton Avenue, with tracks of the Southern Pacific Company, be established as provided by the following order and that Emory Street crossing with said tracks be abolished by physical closing.

The Commission further finds that there is nothing contrary to the public interest in an agreement dated November 2, 1960, between Southern Pacific Company and the City of San Jose, execution of which by the city was authorized by Ordinance No. 8488 of the council of the City of San Jose, passed October 17, 1960.

Southern Pacific Company and the City of San Jose are hereby placed on notice that approval of the agreement of November 2, 1960, does not constitute a release or abandonment by the Commission of the jurisdiction conferred upon it by Sections 1201 and 1202 of the Public Utilities Code of California, which jurisdiction is hereby expressly reserved.

O R D E R

Public hearings having been held and the Commission basing its decision on the evidence adduced at such hearings and upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. Southern Pacific Company is authorized to replace crossing watchman protection at Stockton Avenue (crossing No. E-45.65) in the City of San Jose, Santa Clara County, with two Standard No. 8 flashing-light signals (General Order No. 75B), supplemented with automatic gate arms, with track circuits so installed as to give thirty-second warning of the approach of the normally fastest train operated over said crossing, as such time provision is set forth in paragraph numbered VI (d) of General Order 75B.

2. Concurrently with the placing in operation of the automatic protection of the Stockton Avenue crossing as provided by paragraph No. 1 hercof, Southern Pacific Company shall abolish by physical closing the crossing of Emory Street with its tracks (crossing No. E-45.7).

3. Expenses shall be borne as provided by an agreement between Southern Pacific Company and the City of San Jose, dated November 2, 1960, a copy of which is attached to the amended application on file herein.

4. Southern Pacific Company is authorized to carry out the terms and conditions of its agreement with the City of San Jose, dated November 2, 1960, a copy of which is attached to the amended application on file herein.

5. Southern Pacific Company and the City of San Jose shall not, however, undertake the widening or relocation of the West Taylor Street underpass unless and until Commission authorization has been obtained therefor by an appropriate application.

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

Dated at San Francisco, California, this 18th day of APRIL, 1961.

Charles W. Page
President

George E. Brown

George E. Brown

Commissioners

Lyn Fox
Commissioner Frederick B. Haloboff, being necessarily absent, did not participate in the disposition of this proceeding.