

ORIGINALDecision No. 65725

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the
 safety, maintenance, operations,
 use and protection of Richmond
 Avenue crossing at grade over the
 tracks of the Southern Pacific
 Company in Santa Clara County,
 being Crossing No. E-65.2.

Case No. 7233

SUPPLEMENTAL ORDER

By Decision No. 64312, dated September 25, 1962, in this proceeding, respondent Southern Pacific Company was directed to install improved crossing protection at the Richmond Avenue crossing in the City of San Jose (Crossing No. E-65.2). Said respondent was further directed to complete the installation within six months after the effective date of the order in the aforesaid decision.^{1/}

Decision No. 64312 was stayed by the timely filing, by Southern Pacific, of a petition for rehearing. By Decision No. 64866, dated January 29, 1963, rehearing was denied. Thus, the time within which the aforesaid installation is to be accomplished is due to expire on July 29, 1963.

On June 28, 1963 respondent Southern Pacific Company filed a petition in which it seeks an extension for an additional period of six months within which to comply with the order of the Commission in Decision No. 64312. As justification in support of

^{1/} Said decision also directed the City of San Jose to negotiate with the State Division of Highways to obtain an improved approach grade at said crossing and to reconstruct the approach accordingly.

this request petitioner pointed out that in said decision the Commission did not order an apportionment of costs, stating that if the parties were unable to reach agreement as to such apportionment the Commission would entertain a petition seeking reopening of the proceeding. The petition states that a tentative agreement as to apportionment has been reached by Southern Pacific and the City of San Jose; that a written agreement will be executed in the near future and the additional protection will be installed as soon as the necessary materials can be obtained; and that, due to the delay in obtaining the basis for an agreement, it will not be possible for petitioner to comply with the directive in Decision No. 64312 within the prescribed time.

At Sheets 2 and 3 of Decision No. 64312 the following statement appears:

"In the course of the hearing the parties stipulated that no evidence would be received relating to apportionment of costs, and that if the Commission should order the installation of increased protection at the crossing, the parties, without delaying such installation, would endeavor to agree informally as to the apportionment of the cost of such installation and that if they were unable so to agree the Commission would be petitioned to reopen the proceeding for the purpose of making just and reasonable apportionment of such cost." (Emphasis supplied.)

At Sheet 13 of the aforesaid Decision No. 64312 the Commission said:

"In no event shall installation of the improved crossing protection hereinafter ordered be delayed by the cost apportionment negotiations."

The stipulation to which reference is made in the first quotation, above, was reached at the suggestion of counsel for Southern Pacific. After making the suggestion, he said (transcript, page 186):

"I only made the suggestion because we have done it in the past, and this would not delay the institution of protection if protection were required. In other words, what has been done in the past, we have been ordered to put the protection in, and we have put it in and the question of costs has come up later. This is not a delaying action in that respect." (Emphasis supplied.)

It is clear from the above-quoted portions of Decision No. 64312 and of the transcript of the hearing in the subject proceeding that respondent Southern Pacific, as well as the other parties, understood at the time of hearing that the installation of any improved protection which the Commission might order for the Richmond Avenue crossing was not to be delayed while the parties attempted to reach agreement as to cost apportionment; and that in directing the installation the Commission cautioned Southern Pacific against such delay.

The pertinent statements in the aforesaid petition, on the other hand, indicate that Southern Pacific has disregarded both the understanding reached at the hearing and the Commission's admonition, and that it has thus far deferred, and apparently intends to persist in deferring, the crossing installation, pending the execution of a written agreement with the City of San Jose on the subject of cost apportionment.

In view of the aforesaid stipulation and decision, no good cause for this extension has been shown. It is apparent that, notwithstanding that petitioner was required to complete the installation of the protection by July 29, 1963, it has not done so. Accordingly, it will be ordered herein to forthwith supply the Commission with a detailed written statement of its efforts to comply with Decision No. 64312. In the meantime, if it has not

commenced the work of installing such protection, it will be ordered to forthwith commence such work and to complete it within ninety days from the effective date hereof. It will also be ordered to submit in writing weekly progress reports relative thereto.

IT IS ORDERED that:

1. Respondent Southern Pacific Company is directed to forthwith supply the Commission with a detailed written statement of its efforts to comply with Decision No. 64312.

2. Respondent Southern Pacific Company is directed to forthwith commence the work of installing the crossing protection ordered by said Decision No. 64312, if it has not already done so, and to complete such work within ninety days after the effective date of this order.

3. Until further order, respondent Southern Pacific Company is directed to submit in writing to the Commission weekly progress reports relative to the installation of said crossing protection.

4. The time for completion by the City of San Jose of the approach grade, as directed by the second ordering paragraph of the order in Decision No. 64312, is extended to ninety days after the effective date of this order.

5. In all other respects said Decision No. 64312 shall remain in full force and effect.

6. In all other respects said Petition for Extension of Time is denied.

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

Dated at San Francisco, California, this 16th day of JULY, 1963.

William W. Bennett
President

Robert E. Mitchell

Robert W. Page

George T. Grover

Fredrick B. Halshoff
Commissioner's