

Decision No. 66222**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the status, safety, maintenance, operations, use and protection of a crossing at grade of the Southern Pacific Company at or near Mile Post 114.45, in Stanislaus County.

Case No. 7645
(Filed June 11, 1963)

Application of the State of California, Department of Public Works, for an order authorizing construction of three crossings at separated grades over the tracks of the Southern Pacific Company and the Tidewater Southern Railway Company; the construction of six crossings at grade; the alteration of an existing crossing at grade; the abandonment of four crossings at grade, and authority to connect proposed Butcher Town Spur Frontage Road into an existing county frontage road, known as River Road, beneath River Road Undercrossing, under the tracks of the Southern Pacific Company's mainline, in connection with the improvement of State Highway X-Sta-4-B, Mod,B, in Stanislaus County, referred to as the "South Modesto Overhead" and the "West Modesto Overhead".

Application No. 43593
(Petition for Modification
filed April 16, 1963)

Thomas B. Markley, for Peter Janopaul, Vera Janopaul, Robert N. Janopaul and Elizabeth Janopaul, respondents and petitioners.
Daniel S. Lane, for United Concrete Pipe Company, respondent.
George D. Moe, and Warren P. Marsden, for the State of California, Department of Public Works, respondent and interested party.
Randolph Karr and Harold S. Lentz, for Southern Pacific Company, protestant and respondent.
F. W. Reyland, for the County of Stanislaus, respondent and interested party.
Donald B. Day, for the Commission staff.

O P I N I O N

Application No. 43593 was decided without a hearing by Decision No. 63633 on May 1, 1962, as it was unopposed. The petition for modification was filed approximately eleven months

thereafter by owners of property who considered themselves aggrieved by the construction of a fence across a roadway as required by the ordering paragraph (1) of said Decision No. 63633, which provided:

"(1) A fence shall be constructed along the southerly property line of United Concrete Pipe Corporation extending from the easterly right-of-way line of the Southern Pacific Company main line at or near Mile Post 114.45 in an easterly direction to the westerly property line of Tidewater Southern Railway Company said fence to be provided with at least one gate, such gate or gates not to be located closer than one hundred feet from said Southern Pacific Company's easterly right-of-way line."

In response to the petition for modification, the Commission ordered Application No. 43593 reopened for further hearing, such hearing to be limited to matters relating to ordering paragraph (1) on Sheet 4 of the Commission's said Decision No. 63633. In this connection an Order Instituting Investigation into the safety of a crossing at or near Mile Post 114.45 was authorized. The fence above referred to had been constructed for the purpose of limiting the use of this private grade crossing to respondent United Concrete Pipe Corporation.

Public hearings were held before Examiner Rowe in Modesto on October 2 and 3, 1963. Evidence was adduced and both matters were submitted on a consolidated record on the latter date.

From a careful consideration of the evidence the Commission finds that the grade crossing over Southern Pacific Company's main-line tracks at Mile Post 114.45 is a private farm crossing which has long ago served its useful purpose and is now unneeded for that purpose and its use for any purpose is extremely dangerous to the public and the railroad. It is further found that the maintenance of the fence constructed pursuant to ordering paragraph (1) on Sheet 4 of the Commission's Decision No. 63633 will no longer be required when the grade crossing at Mile Post 114.45 is closed.

Based upon the above findings the Commission concludes that said grade crossing should be closed and that Decision No. 63633 should be amended by deleting therefrom ordering paragraph (1) on Sheet 4.

ORDER

IT IS ORDERED that Decision No. 63633 in Application No. 43593 dated May 1, 1962 is amended by deleting therefrom ordering paragraph (1) on Sheet 4 thereof.

IT IS FURTHER ORDERED that Southern Pacific Company shall within forty days after the effective date hereof, abolish by physical closing the private crossing over its mainline tracks at or near Mile Post 114.45.

The Secretary of the Commission is directed to cause a certified copy of this order to be served forthwith upon Southern Pacific Company and the petitioners herein. The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of October, 1963.

William L. Donald
President

Robert S. Hatfield

Robert W. Ray

George L. Trorer

Fredrick B. Halbach
Commissioners