

ORIGINAL

Decision No. 66571

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of Sacramento to construct a grade crossing of the Southern Pacific Railroad at Hunt Road.

Application No. 45257  
(As Amended)  
(Filed March 19, 1963)

Fred G. Williams, for County of Sacramento, applicant.

Randolph Karr and Harold S. Lentz, for Southern Pacific Company, protestant.

Martin J. Lewis, for the Commission staff.

O P I N I O N

By this application the County of Sacramento seeks an order authorizing the construction at grade of Hunt Road over the tracks of Southern Pacific Company.

Public hearings on the application were held in Sacramento on September 17 and 18, 1963. The matter was submitted subject to the filing of concurrent briefs on or before November 14, 1963. Protestant has filed its brief. Applicant indicated no intention of filing a brief and none has been filed by it within the time limit. The matter is ready for decision.

Before the introduction of any evidence protestant presented its motion (1) to dismiss, (2) that the Commission not proceed further, and (3) to stay all proceedings. This motion was said to be filed for the reason that the Public Utilities Commission has no jurisdiction over the subject matter of this application. According to protestant the only possible method of proceeding is under Section 1401, et seq., of the Public Utilities Code by a petition to condemn a right-of-way over the tracks of Southern Pacific Company.

The Commission is unable to agree with protestant that the application is insufficient in that applicant fails to allege that it will secure title for a public street across the railroad right-of-way. If the applicant is unwilling to condemn an easement over protestant's right-of-way, the Commission cannot force it to do so. Consequently, the motion will be denied.

Many public bodies in the past have filed their applications under Section 1202 and either without or after hearing have received authorization to construct the grade crossing upon the terms indicated by the Commission in its decision. Usually where the installation of signals is required the applicant is required to pay construction costs but no question of costs of condemning rights-of-way is involved. Usually the railroad will voluntarily grant the required right-of-way to the public body by deed for a nominal sum.

This question was long ago decided by the California Supreme Court, in a Case cited by protestant in its brief, City of Oakland v. Schenck, 197 Cal. 456, where Mr. Justice Waste speaking for the Court said:

" . . . If the opening of the street across the railroad tracks in this case does not unduly interfere with the companies' use for legitimate railroad purposes, then their compensation should be nominal. . . ."  
and,

" . . . The extent to which the value of the companies' right to use the land for railroad tracks was unduly diminished by opening the public street across it was the only question to be determined by the jury. (Chicago, B. & Q. R.R. v. Chicago, 166 U.S. 226, 251 [41 L.Ed. 979, 17 Sup. Ct. Rep. 581, see, also, Rose's U.S. Notes].) The burden of showing such diminution of value of the right of way was on the appellants."  
also,

"The expenses that will be incurred by the railroad companies in making structural changes, such as filling the portion of the tracks between the rails, and two feet outside, with planks, and other crossing changes, in order that the railroad may be safely operated, necessarily result from the maintenance of a public highway, under legislative sanction, and must be deemed to have been taken into account by the railroad companies when they accepted the privileges and franchises granted by the state. Such expenses must be regarded as incidental to the police power of the state."  
and finally,

"In answer, the court said (pp. 250, 251) that the railroad company must be deemed to have laid its tracks within the limits of the city subject to the condition, necessarily implied, that new streets might be opened and extended from time to time across its tracks as the public convenience required, and under such restrictions as might be prescribed by statute. The city did not propose to interfere in any degree with the enjoyment of the right of the company to use the land in question for tracks upon which to move its cars, otherwise than by opening a street across the tracks for public use. Consequently, it was not bound to obtain and pay for the land over which the street was opened, the only question of compensation to be determined being to what extent the use of the land for railroad tracks was unduly diminished by opening a street across it." (Emphasis added.)

In the City of Oakland Case the sum of \$1 was awarded as the value of the easement taken. In the usual case it is obvious that the Commission decision authorizing the grade crossing cannot have the effect of depriving the railroad company of its property without due process of law. However, we need not resolve this issue for the reason that this application will be denied upon other grounds.

Southern Pacific Company also moved that the Elk Grove Unified School District be joined as a necessary and proper party for allocation of costs and for other purposes. The only authority cited in support of this motion was Section 1202(c) of the Public Utilities Code. Since the application is to be denied on grounds hereafter to be stated, there is no need to concern ourselves with this problem. This motion will therefore be denied.

The applicant's showing of public need for this grade crossing was not extensive. The opening of the grade crossing was opposed by Southern Pacific Company. The Commission staff witness stated that the only way he would recommend in favor of this crossing "would be if it were done as a grade separation." The first grade crossing to the north, Elk Grove Boulevard, presently has a daily vehicular count of 4,478. That to the south, Grant Line Road, has a count of 1,868. It is probable that only a small proportion of these vehicles would ever use the proposed Hunt Road grade crossing. The other roads have direct access to the freeway and extend into county areas, whereas Hunt Road would not. Because Hunt Road would end at the freeway access road, it could be used only by those who are presently using the north-south roads of Waterman, Elk Grove-Florin and the freeway frontage road. The total traffic on these roads is now about 783 vehicles. The only positive evidence of any expected use of Hunt Road crossing was that school buses for the new high school being constructed would thereby be afforded a circle route to relieve congestion at the intersection of Elk Grove-Florin Road and Elk Grove Boulevard.

The school superintendent testified that if substantial delays were met by reason of trains blocking the proposed Hunt Road grade crossing, the school would direct the buses to continue to use the Elk Grove Boulevard crossing. The uncontradicted testimony of the railroad was that the proposed crossing would be blocked for an average of two hours a day by standing trains. Consequently, the Commission is of the opinion and finds that no school buses would use the Hunt Road crossing even if it were opened as proposed. Another reason advanced by applicant, the desire to develop the area industrially, had practically no evidentiary support.

On the other hand Southern Pacific Company presented convincing evidence that to permit this proposed grade crossing would greatly interfere with railroad operations. Its location is at the approximate center of a Centralized Traffic Control siding which is used for the meeting and passing of trains and is very important because it is the last siding before Sacramento and the dispatcher must accept all trains coming from Sacramento. This siding must be precisely located to provide proper spacing of trains.

The interference from the proposed grade crossing would be intolerable and it would be necessary for Southern Pacific Company, at a cost of over \$200,000, to relocate the siding so as to avoid the necessity of cutting trains. Even such relocation, however, would only be a compromise and a detriment would still be suffered for the reason that the only possible relocation would result in a siding 500 feet shorter so as to avoid blocking Grant Line Road. If this were done, the costs would necessarily be increased by the required upgrading of the automatic crossing protection at this latter crossing.

The record herein shows and we find that the existing grade crossings in this area will adequately handle the traffic to be reasonably anticipated; that the grade crossing as proposed would present an unduly hazardous situation; and that the public safety, convenience and necessity do not now require the proposed crossing. Consequently, we conclude that the application should be denied without prejudice to a request for separation of grades at Hunt Road.

ORDER

IT IS ORDERED that protestant's motions and Application No. 45257 are denied.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of JANUARY, 1964.

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*[Signature]* President  
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*[Signature]*  
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*George H. Hoover*  
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 Commissioners

*I concur in the order.*  
*Fredrick B. Holshoff,*  
*Cov'r.*

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.