

**ORIGINAL**Decision No. 67892

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 the County of Contra Costa, State of )  
 California, for a Crossing at grade )  
 of the tracks of Southern Pacific )  
 Company at Balfour Road in the )  
 Brentwood Area, Contra Costa County, )  
 California. )

Application No. 45780  
 (Supplemental)

Victor J. Westman, for applicant.  
Harold S. Lentz, for Southern Pacific  
 Company, respondent.  
Martin J. Lewis, for the Commission staff.

INTERIM OPINION

On September 17, 1963, the County of Contra Costa filed an application requesting that the Commission make its order establishing this public grade crossing and fixing and determining the type of crossing and crossing protection to be installed. The Commission issued such an order in Decision No. 66311 dated November 12, 1963. Despite this order, Southern Pacific Company has refused to proceed with the work unless and until the County acquires title to a right of way, over its tracks and right of way, for street purposes. It, also, stated that the Company would require as a condition that the County execute an agreement whereby it would promise to maintain the automatic protection of the two Standard No. 8 flashing light signals required by Decision No. 66311.

In response to the letter of March 13, 1964, in which Southern Pacific Company stated that it will purchase the necessary materials and commence construction only after the County has executed the Company's proposed agreement, applicant, on May 15, 1964, filed its present request that the Commission issue an interim

decision as provided in Section 1202.1, requiring the County to advance all sums necessary for the work to be done by the railroad.

Public hearing was held on July 23, 1964, in Martinez before Examiner Rowe and the issues involved duly submitted for decision after evidence was introduced by the County and by the railroad company.

The railroad company attempted, among other things, to prove that the signal protection at the crossing should be increased by the installation of automatic gates in addition to the two Standard No. 8 flashing light signals provided in Decision No. 66311. As the Southern Pacific Company failed to petition for rehearing of that decision, they are precluded from seeking changes in this proceeding.

Decision No. 66311 authorized construction of "Balfour Road at grade across a track of Southern Pacific Company near Brentwood, Contra Costa County, at the location described in application to be identified as Crossing No. B-62.2. Applicant shall bear entire construction expense, also maintenance cost outside of lines two feet outside of rails. Southern Pacific Company shall bear maintenance cost between such lines. Width of crossing shall be not less than forty feet and grades of approach not greater than three percent. Construction shall be equal or superior to Standard No. 2 of General Order No. 72. Protection shall be by two Standard No. 8 crossing signals (General Order No. 75-B) equipped with reflectorized 'STOP ON RED SIGNAL' signs."

At this hearing the only issue to be considered is the amount of money reasonably necessary to enable the respondent to complete the work which Decision No. 66311 provides must be done by it. The other issues involved in a hearing under Section 1202.1, of the Public Utilities Code, to wit: "(a) the necessity for the project," and "(b) the approval of the location and the engineering

plans, . . ." have been fully disposed of in Decision No. 66311. There was formerly a private crossing some 250 feet north of the proposed crossing that was closed some two years ago and barriers have been constructed by the railroad company barring all traffic over the tracks. No evidence was introduced which would justify the use by the public of this crossing prior to the installation of the above-described protection ordered by Decision No. 66311. Consequently, the Commission need make no provision for handling highway traffic during construction.

The insistence by the railroad that the County at this time be required to deposit with it the sum of \$19,040 in addition to the amounts hereafter found to be required by Section 1202.1 of the Code "for the work to be done by the respondent," is unjustified. This amount, \$19,040, was described by Southern Pacific Company as, "annual maintenance and operating costs capitalized at 5%." The requirement of the payment or deposit of such sum will not be considered at this phase of the proceeding.

The other issue sought to be injected was whether the Standard No. 8 flashing light signals should be supplemented by automatic gates. The assertion of need for this expensive item goes beyond the protection as provided in Decision No. 66311. This claim is not supported by any evidence of changed conditions nor circumstances, justifying any increase in crossing protection beyond that found by the Commission in November of 1963.

Exhibit No. 4, submitted by the railroad company included the gates without segregating such costs. Consequently, it became necessary on cross-examination of the railroad's expert witness, to ascertain the extent to which the "Total Cost" set forth in page 2 should be reduced to result in the aggregate cost after this item is eliminated. This witness testified that after these costs are removed

the cost of signal protection amounts to \$14,520. The cost of construction within lines two feet outside the rails for which the County must now advance money, according to the railroad's own witnesses, aggregates \$2,005. The sum of these two items comes to \$16,525, which is the amount which must be advanced by the County.

Based upon the evidence of record the Commission makes the following findings and conclusions:

Findings of Fact

1. The crossing at grade of Balfour Road of a track of Southern Pacific Company near Brentwood, Contra Costa County, at the location described in the application to be identified as Crossing No. B-62.2 is required by public convenience and necessity.
2. The County of Contra Costa and Southern Pacific Company have been unable to agree as to apportionment of costs, required for the completion of the work which must be done by the railroad.
3. The opening of the above-described grade crossing and the work required to be performed by said railroad company is immediately necessary.
4. The public will not be permitted to use this crossing prior to the completion of all pertinent construction, therefore no provision need be made for handling traffic during construction of the work to be performed.
5. The sum to be advanced by applicant to the railroad for such work amounts to \$16,525.

Conclusions of Law

1. An interim order should now be issued requiring the construction of this crossing, and ordering the above-described protection.

2. Southern Pacific Company should be ordered to proceed immediately to construct the crossing and install the protective devices upon receipt of the sum of \$16,525 from the County of Contra Costa, to integrate the work with that of the applicant or its contractors in such manner that neither will unreasonably obstruct or delay the work of the other to the end that the people of the State of California may have the use of the project at the earliest possible date.

3. The Commission concludes that the railroad company has no right to refuse to proceed with the construction work hereinafter ordered prior to the County's acquiring a right of way over its railway tracks and right of way. All of this work is to be performed, on railroad property and rights of way, by the railroad company and not by the County. This is the same type of work the Commission has ordered railroads in the State to perform pursuant to the provisions of Section 1202.1 of the Public Utilities Code. The Commission expresses no views as to the right of the County to use these facilities after their construction, but assumes that prior to use by the County all necessary rights will be acquired by condemnation or purchase as indicated by Section 1202.1 of the Public Utilities Code. In the letter of March 13, 1964, from the railroad company's superintendent he says that this Commission has no right to order this work, but he states no supporting reasons.

4. The Commission should reserve for later hearing and decision the matter of apportioning costs as hereafter requested by the parties.

INTERIM ORDER

IT IS ORDERED that Southern Pacific Company shall proceed without delay upon receipt of the sum of \$16,525, to be advanced by applicant County to perform the work ordered to be done by it in Decision No. 66311, dated November 12, 1963, in this proceeding, to integrate such work with that of the applicant, or any contractor in

connection with the construction of Balfour Road in such manner that neither will unreasonably obstruct nor delay the work of the other to the end that the people of the State may have the use of the project at the earliest possible date. Construction shall be equal or superior to Standard No. 2 of General Order No. 72. Protection as provided in Decision No. 66311 shall be by two Standard No. 8 crossing signals (General Order No. 75-B) equipped with reflectorized "STOP ON RED SIGNAL" signs. Within thirty days after completion pursuant to this order, applicant and respondent shall each so advise the Commission in writing.

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

Dated at San Francisco, California, this 22nd day of SEPTEMBER, 1964.

Fredrick P. Holbrook  
President  
George H. Grover  
William L. Brundage  
Commissioners

*I concur in the order.*

*George H. Grover*