

ORIGINAL

Decision No. 69602

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the status, maintenance, operation, use, safety and protection of that crossing, at grade, of the track of the Southern Pacific Company, at Mile Post 39.85 in the City of Fremont.

Case No. 7911
(Filed May 26, 1965)

Harold S. Lentz, for Southern Pacific Company; Raymond E. Ott, for the City of Fremont, respondents.
Dale E. Dorn, for Dorn Refrigeration, and Robert N. Lowry, for Union Oil Company of California, interested parties.
John C. Gilman and M. E. Gatchel, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the status, maintenance, operation, use, safety and protection of a crossing at grade at Mile Post 39.85 on the Southern Pacific Company's DAB line in the City of Fremont for the following purposes:

1. To determine whether said crossing is a private or publicly used crossing.
2. To determine whether the public safety requires the elimination of said crossing by the physical closing thereof.
3. To determine whether public safety requires physical protection or alteration of said crossing and the construction and maintenance of protective devices thereat.
4. To determine whether the costs of such alteration and protection as may be found necessary should be assessed to the Southern Pacific Company or apportioned between the railroad corporation and the City of Fremont.
5. To determine whether any other order should be issued.

Southern Pacific Company and the City of Fremont were made parties to the investigation. Union Oil Company of California, while not designated as a party in the investigation, was expressly permitted by the Order of Investigation to appear and be heard.

Public hearings were held before Examiner Rowe in Fremont on September 22 and 23, 1964, and in San Francisco on March 2, 3, 12 and 19, 1965, and the matter was submitted on briefs which have now been filed.

Access to the subject crossing is possible from Baine Avenue, which parallels the railroad on the north side, and from Peralta Boulevard via property of Dorn Refrigeration and/or Union Oil Company on the south. The properties of Dorn Refrigeration and Union Oil Company both front on Peralta Boulevard, and access is available to both properties without using subject crossing.

As to issue No. 1, whether the crossing is private or publicly used, the evidence is such as to require a finding that at the time of the hearing it was not publicly used. The respondent railroad company apparently has invited use by the public because it has placed a sign 8 inches by 14 inches near the tracks containing the words "private property", "permission to pass", "offer revocable" and "at any time". (Tr. 34 lines 10 and 24, inclusive). According to the testimony of one staff witness on June 24, 1964 a total of nine unidentified vehicles passed over this crossing before or after travelling over the property of Dorn Refrigeration and/or Union Oil Company and to or from Peralta Boulevard. In the absence of any evidence as to their identity it must be assumed that these vehicles were driven by employees or business invitees of one of the owner's of the right of way. Barricades were erected before January 15, 1965, which now prevent the use of an unpaved roadway over the Railroad Company's right of way to Joseph Street which leads to Peralta, as well as over a like roadway which leads to the Volkswagen premises.

The Public Works Director of Fremont testified that although he had held that position for five and one-half years he knew of no public use being made of the private crossing at Mile Post No. 39.85.

The Commission finds that this grade crossing is not a publicly used crossing.

Dorn Refrigeration and Union Oil Company of California in this case are successors in interest to Manuel Jose Rodrigues, Jr. and his wife, Mary Rodrigues, who on January 19, 1907, granted to Southern Pacific Company the right of way over which it presently maintains its tracks. This conveyance, a copy of which, taken from company files, was presented in evidence by counsel for Southern Pacific Company, was made and accepted upon the following condition, to wit:

"That the party of the second part shall provide one gate crossing at such point as shall be mutually agreed upon by first and second parties herein mentioned."

We find that, based upon the evidence of record, this crossing is used extensively by gasoline trucks and is dangerous and a safety hazard to the employees of Southern Pacific Company and to the public travelling along Baine Avenue and to the members of the public being in the general area, and that the only way it can be made safe is by its closure.

As to the next issue we find that the standard forms of grade crossing protection usually installed at public grade crossings are inappropriate and would not materially improve the safety at this point. This conclusion arises from the fact that there is a very limited amount of space on the south side of the railroad tracks in which a vehicle may maneuver, and thus the driver of a petroleum tank truck could easily blunder onto the tracks in spite of the usual protective devices. The only appropriate type of protection would consist of signals with gates so devised and constructed that

they could control the movement of trains as well as vehicles which operate over highways. While such devices could be devised and in the opinion of the railroad expert might prove workable, we find that even if they proved effective they would constitute an extreme interference with and burden upon the efficient operation of the railroad.

Inasmuch as the crossing will be ordered closed, no issue is presented on the cost of protection.

In summary we find (1) that this crossing is a private grade crossing not used or usable by the public, (2) that the public safety requires the elimination of this crossing by physical closing, and (3) no feasible protective devices will have the effect of rendering this private crossing safe for employees of the railroad involved or for members of the public in this general area.

From these findings we conclude that respondent Southern Pacific Company should eliminate said crossing at said Mile Post by physical closing.

O R D E R

IT IS ORDERED that:

1. Within thirty days after the effective date hereof Southern Pacific Company shall abolish by physical closing the private grade crossing at Mile Post 39.85.
2. The entire cost of such physical closing shall be borne by Southern Pacific Company.

3. Within thirty days after such closing Southern Pacific Company shall give the Commission written notice of its compliance with the respective terms of this order.

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

Dated at San Francisco, California, this 27th day of AUGUST, 1965.

Fredrick B. Holdhoff
President
John E. Smith
George J. Grover
Augustin
William A. Bennett
Commissioners