

**ORIGINAL**Decision No. 71387

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN PACIFIC COMPANY for	)	
an order authorizing construction at grade	)	Application No. 48809
of an industrial spur track in, upon and	)	(Filed Sept. 22, 1966)
across Ninth Street in the City of San Jose,	)	
County of Santa Clara, State of California.	)	

O R D E R

Southern Pacific Company is hereby authorized to construct a track at grade across Ninth Street in the City of San Jose, Santa Clara County, at the location described in the application, to be identified as Crossing No. DA-45.62-C. Construction of said crossing shall be equal or superior to Standard No. 1 of General Order No. 72, without superelevation and of a width to conform to the portion of the street now graded, with tops of rails flush with the roadway and with grades of approach not exceeding 2 percent. Protection shall be by one Standard No. 1 crossing sign (General Order No. 75-B) reflectorized with reflex-reflective sheet material. Applicant shall bear entire construction and maintenance expense.

The application includes Resolution No. 29865 of the City Council of San Jose adopted August 22, 1966, granting permission to the Southern Pacific Company to construct the track in question. The resolution contains a clause to the effect that any costs for crossing protection that may become necessary will be borne by the Southern Pacific Company. The Southern Pacific Company alleges that such a clause is void because the subject matter is within the exclusive jurisdiction of the Commission pursuant to Section 1202(a) and 1219 of the Public Utilities Code.

Inasmuch as no special safety devices are necessary at the crossing at this time, the Commission will not pass upon the issue raised by the applicant concerning the aforesaid resolution in this decision.

Within thirty days after completion pursuant to this order, applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within one year unless time be extended or if above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

Applicant declares that industry is in need of immediate service in order to avoid expensive delay in operation of its warehouse. The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 4<sup>th</sup> day of OCTOBER, 1966.

[Signature]  
President  
George G. Grover  
Frederick B. Holhoff  
William W. Dunell

Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.