

ORIGINALDecision No. 71810

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHERN PACIFIC COMPANY for an order)
 authorizing the construction at grade)
 of an industrial drill track, in, upon)
 and across Rogers Avenue, City of San)
 Jose, County of Santa Clara, State of)
 California.)

Application No. 43951
 (Filed November 14, 1966)

ORDER

Southern Pacific Company is hereby authorized to construct an additional spur track at grade across Rogers Avenue at the intersection with Junction Avenue in the City of San Jose, Santa Clara County, at the location described in the application, to be identified as a portion of Crossing No. DA-45.67-C. Construction of said crossing shall be equal or superior to Standard No. 2 of General Order No. 72, without superelevation and of a width to conform to the portion of the avenues now graded, with tops of rails flush with the roadway and with grades of approach not exceeding one percent. Protection shall be by two Standard No. 1 crossing signs (General Order No. 75-B) reflectorized with reflex-reflective sheet material. Applicant shall bear entire construction and maintenance expense. The application includes Resolution No. 29364 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 with the following provisions:

In the construction, reconstruction, maintenance and operation of said track, permittee shall, at permittee's own cost and expense, erect, maintain and operate any and all barricades, signs, lights, signals, safety or warning devices, and do any and all other things necessary to avoid the creation of, and the eliminate or to give warning of, any dangerous and defective condition in said street

caused by or resulting from said construction, reconstruction, maintenance and operation of said track, or the failure of permittee to do any and all things herein required of said permittee by this resolution.

Permittee shall, at permittee's own cost and expense, construct, install, maintain and operate any and all flood lights which the Public Utilities Commission of the State of California may deem necessary at the crossing of said street and said track.

The Southern Pacific Company alleges that such clauses are void because the subject matter is within the exclusive jurisdiction of the Public Utilities Commission pursuant to Sections 1202 (a) and 1219 of the Public Utilities Code.

Inasmuch as no such safety devices are necessary at the crossing at this time, other than those ordered herein at applicant's expense, 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.

The industry to be served alleges that operations were commenced in warehouse on September 1, 1966 but full utilization

cannot be enjoyed until the railroad connection is made.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 4th
day of JANUARY, 1967.

Robert E. Mitchell
President

Augustus

William W. Bennett

_____ Commissioners