

ORIGINALDecision No. 73428

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CITY OF DINUBA)
 to construct a public street)
 across tracks of SOUTHERN)
 PACIFIC COMPANY at Kern Street)
 in the City of Dinuba, Tulare)
 County, California.)

Application No. 48892
 (Filed October 25, 1966;
 Amended May 15, 1967)

Ralph N. Nickerson, for City of Dinuba, applicant.
Harold S. Lentz and L. W. Telford, for Southern
 Pacific Company; Richard F. Keefe, for Poppy
 Food Company, protestants.
Richard D. Ethridge, for Ethridge Packing Company,
 interested party.
Kenneth G. Soderlund, for the Commission staff.

O P I N I O N

By this application, as amended, the City of Dinuba (City), in Tulare County, seeks authority for the construction of Kern Street across the right-of-way and tracks of Southern Pacific Company (Southern Pacific).

Public hearing was held before Examiner Bishop at Dinuba on March 1, 2, 3 and 16, and June 6, 1967. With the filing of concurrent briefs on July 27, the matter was taken under submission.

Evidence on behalf of applicant was presented through nine witnesses. Southern Pacific, protestant, offered evidence through four witnesses. Officers of Poppy Food Company, protestant, and Ethridge Packing Company, interested party, testified on behalf of their respective companies. An engineer from the Engineering Operations Branch of the Commission's Transportation Division staff assisted in the development of the record. Forty-eight exhibits were received in evidence.

The record discloses the following facts: Dinuba is located on the Exeter Branch of Southern Pacific, the line of which railroad passes through the western and southern portions of the community in a northwesterly and a southeasterly direction.^{1/} At the present time there are seven crossings of Southern Pacific within the city limits, the distance from the El Monte Way crossing to that at Kamm Avenue being approximately 1-1/4 miles. These are the extreme northerly and southerly crossings, respectively. These streets run geographically east and west. The next interior crossings are of South Alta Avenue, on the north, and South College Avenue, on the south. These streets run geographically north and south. The remaining crossings, from north to south, are at West Merced Street, West Tulare Street and Mono Street. From South Alta to South College the railroad is paralleled by M Street, immediately to the east, and by N Street, immediately to the west.

Between Merced Street and Tulare Street, and parallel thereto, is Fresno Street. Between Tulare Street and Mono Street are Kern Street and Ventura Street. Fresno, Kern and Ventura Streets extend westerly through the central portion of Dinuba to M Street. After the break between M and N Streets, Fresno, Kern and Ventura continue in a westerly direction from N Street.

Tulare is Dinuba's principal east-west business street, the business houses being mainly located in the six blocks between El Monte Way, on the east, and M Street, on the west. The principal business cross streets are K and L Streets, with business houses in

^{1/} In order to avoid confusion, the railroad line, together with the streets parallel to it will be considered as running from north to south, and the streets which lie at right angles to the railroad as running from east to west. Other streets are generally north to south and east to west.

the two-block stretch from Fresno to Kern. In the central business district traffic signals are located at two intersections: at Tulare and K Streets and at Tulare and L Streets.

Southern Pacific's right-of-way occupies a wide, centrally located, strip between M and N Streets. The strip of land adjacent to and on the west side of M Street is occupied by packing plants and other industrial facilities. A corresponding row of industrial concerns extends along the east side of N Street. In the vicinity of the proposed Kern Street crossing six tracks are located in the railroad right-of-way.^{2/} Track No. 1 is a spur track serving Ethridge Packing Company (Ethridge); it terminates in the proposed crossing area. Track No. 2 is the house and public team track and also serves as an industry track for certain firms south of the proposed crossing. Track No. 3 is the Exeter Branch main track. Tracks Nos. 1, 2 and 3 are close together, while Tracks 4, 5 and 6 form a second group at the western side of the right-of-way. The distance between Tracks Nos. 3 and 4 is 90 feet. Track No. 4 is a "drill" or "running" track, used for switching purposes and sometimes for car storage. Track No. 5 is also a "drill" track; it may be used also for secondary loading^{3/} and other purposes. Track No. 6 is the back track. It is adjacent to industries facing N Street and is used for spotting cars for loading and unloading at said industries.

In the application the following allegations are made as justification for the proposed crossing: excepting Tulare Street,

^{2/} For convenient reference the tracks will be designated herein, beginning with the most easterly track, as Tracks Nos. 1, 2, 3, 4, 5 and 6.

^{3/} A secondary loading track is one on which cars are spotted for loading from a warehouse or plant through another car on an intervening track.

City is lacking in traffic arteries running directly between the central section and Alta Avenue, a major county highway connecting Dinuba with other cities and major highways; Tulare Street is not adequate to carry its present or future traffic; additional street crossings over the Southern Pacific right-of-way are required for purposes of routing police and fire department vehicles in time of emergency in the event that other crossings are blocked.

A consulting traffic engineer and the Dinuba Chief of Police testified regarding the traffic congestion on Tulare Street. This congestion occurs during the rush hour, principally on Monday and Friday, approximately between 4:00 p.m. and 5:15 p.m. The congestion is related to the operation of the traffic signals at K and L Streets. During the period in question westbound vehicles are often backed up for a block and a half or more east of the L Street intersection. There is also congestion of eastbound traffic west of that intersection. Additionally, during the same period traffic is often backed up on L Street for one block on each side of Tulare Street. There is no evidence of congestion on Tulare Street in the vicinity of the Southern Pacific crossing.

Vehicular traffic originating at points south of Dinuba and destined to points north and east of that city enters Dinuba principally via South Alta Avenue and exits via East El Monte Way. By moving exclusively over these two arterials vehicles would avoid the central business district.^{4/} However, Tulare Street provides a shortcut through the city, attracting much, if not most of such through traffic and contributing to the congestion on that street.

The record shows that traffic on Kern Street is substantially less than it is on Tulare Street. The police chief was

4/ This route is posted as the truck route for through traffic.

of the opinion that if the Kern Street grade crossing were constructed, the congestion on Tulare Street would be relieved. Through traffic could conveniently traverse Kern and College, avoiding the Tulare business section. Practically all delivery trucks, he asserted, would use Kern instead of Tulare, because of the greater convenience which would be experienced in connection with the one-way direction of the alleys in the business area. The Kern crossing, he said, would facilitate police and fire protection for the industrial and residential area located west of the railroad tracks.^{5/} Most of the Kern Street intersections now have stop signs against that street, this witness stated, but it is planned to remove these signs and make all the intersecting streets "stop" streets, in order to expedite movement on Kern Street.

The business manager of the elementary and high school districts testified concerning the routes which school buses follow which, in their operations, go from one side of the tracks to the other. The Kern crossing, she said, would be of assistance to the schools by enabling certain bus routes to avoid Tulare Street and by opening more direct routes to others.

The aforesaid consulting engineer had been employed by City to make a traffic study of the community. This study was begun in the latter part of 1966 and completed early in 1967. In his report to the city he recommended that an additional arterial be opened by the extension of East Kern Street across the Southern Pacific and other private property between M and N Streets to

^{5/} The police headquarters are located on Kern Street east of the tracks. However, calls to proceed to points west of the tracks may come to officers while they are cruising in any part of the city. The fire department is located on Tulare Street between I and H Streets. Traffic signals at K and L Streets can be preempted at headquarters; also, there is a downtown siren which is activated at the fire house.

connect with West Kern Street and South Alta Avenue.^{6/} In his testimony the engineer expressed the opinion that currently there is sufficient need for the proposed Kern Street crossing to justify planning for it and going ahead with its construction. While congestion is limited now to brief periods the need for relief will develop rapidly, he said. He further stated that the Kern crossing would make practicable the designation, at a future proper time, of Tulare and Kern Streets as a one-way couplet between Alta Avenue and some point east of the business district.

The consulting engineer had not recommended certain other possible changes for alleviating the Tulare traffic congestion. Diagonal parking is presently the practice on that street, allowing one lane of traffic in each direction. The witness admitted that parallel parking would provide room for two lanes in each direction, but indicated that parallel parking would probably be opposed by the merchants. Other possibilities mentioned were the prohibition of left turns off of Tulare, at least during times of heavy traffic, and the installation of timer devices on the Tulare Street traffic signals which would vary the cycle of the signals in accordance with the heaviest flows of traffic.

Construction of a grade crossing over Southern Pacific tracks at Kern Street would necessitate the removal of certain structures or portions thereof. A portion of the land necessary for the crossing is owned by Poppy Food Company which owns a turkey and

^{6/} This witness had made an earlier traffic study for the City of Dinuba in 1958, at which time he had recommended the opening of a grade crossing at Fresno Street. At the hearing in the instant application he pointed out that subsequently a large concrete building had been built on property in the suggested crossing area, rendering impracticable a crossing at Fresno Street.

chicken processing plant and other connected property on the east side of N Street, extending northerly from Mono Street to a point halfway between the proposed Kern Street crossing and Tulare Street. Among other structures on this property is a metal building, with a wooden loading shed attached thereto, occupied by Westerlund Box Company, lessee. A portion of the building and the entire loading shed are in the proposed Kern crossing area.

The manager of Poppy Food Company testified that his company has plans for enlargement of its plant facilities by the construction of a chicken processing plant and a feed mill, together with expansion of its cold storage plant, now located on the south side of the proposed crossing. These structures are planned to occupy the crossing area and the recently acquired property to the north of said area. It is estimated that the cost of these additional facilities will be between \$750,000 and \$1,000,000. The manager stated that construction of the Kern crossing will have the detrimental effect of splitting their operations and reducing the ground available for their planned expansion. Taking into account the space necessary for parking, the area which would be available north of the crossing would be insufficient for the indicated purposes.^{7/} For these reasons, the manager testified, Poppy must protest the proposed crossing.^{8/}

^{7/} Poppy has established a 140-acre chicken ranch seven miles south-east of Fresno. To construct the feed mill at the ranch, the record shows, would be impracticable, since the mill must be served by rail spur to receive feed components from the midwest, and construction of a spur track, over a mile long, to the ranch would be out of the question.

^{8/} The manager admitted that before the feed mill could be built as planned the proposed site for it would have to be zoned as M-2 by City and a conditional use permit obtained. As of March 1, 1967 these steps had not been taken.

At the opposite end of the proposed crossing is the plant of Ethridge Packing Company, engaged in the packing and shipping of grapes, on property leased from Southern Pacific. The plant building is located on M Street to the south of the crossing area, but attached to the north end of the building is a covered loading dock which is in the crossing area. A partner in the packing company testified that the loading dock is used for the palletization of a part of the firm's truck shipments. If the crossing is constructed the shed will necessarily be removed and the palletizing operations transferred to other parts of the plant. Because of the physical properties of the plant, he said, the only solution would be to palletize the entire plant. Such procedure would involve some construction and rearrangement of machines, involving considerable expense. Moreover, elimination of that portion of Track No. 1 which is located in the proposed crossing area, he stated, would deprive Ethridge of storage space for at least one loaded freight car. This spot is used and needed, along with other portions of the track, for holding such cars when market conditions prevent the immediate sale of the loaded produce. In view of the foregoing circumstances, the witness asserted, Ethridge will be forced to seek compensatory damages if the Kern crossing is authorized.

Other facilities which would be required to be relocated are a small tool house and an underground gasoline storage tank, both owned by Southern Pacific, and a telephone line pole.

The record further shows, through evidence adduced by protestant Southern Pacific, the following facts: The railroad operates five trains per day through Dinuba from January to May. During the perishable season, which extends from June to December, seven or eight trains per day are operated through the applicant city.

During the perishable season at least three trains engage in switching operations at Dinuba; in the quiet season two of the trains do switching.^{9/} The trains arrive at Dinuba at various times, both in daytime and at night, depending on the work required at other stations on the Exeter Branch. During the off-season as many as seven or eight switching moves per day are made over the proposed Kern crossing area, while during the rest of the year the number of such movements is far greater, even as high as 35.

The railroad station in Dinuba is located just south of the Tulare Street crossing and trains arriving from the north generally pull all the way through that crossing to avoid blocking it or other crossings to the north, and stop with the caboose in the vicinity of the station. This part of the tracks, extending south from Tulare Street is the only three-block stretch in Dinuba which is not intersected by grade crossings. If Kern Street is cut through (one block south of Tulare) there will not be sufficient room between Kern and Mono Streets (a two-block stretch), the carrier's trainmaster testified, for the crew to leave their train without blocking one of the latter two crossings. Assertedly, establishment of the Kern crossing will require the train crew, on many occasions, to break their train at Tulare Street and again at Kern Street.

The trainmaster testified that the operations of breaking the train and coupling it together again at the Kern crossing would add from 15 to 20 minutes, depending on the prevailing circumstances,

^{9/} The record shows that the railroad serves various industries in Dinuba by spur tracks which are in addition to those hereinbefore described.

to the total time consumed at Dinuba.^{10/} Assertedly, a year-round average of two trains per day would be required to perform these operations if the crossing were constructed. The annual additional cost to the carrier, at current wage rates, the witness estimated to be approximately \$9,000.

The record shows that construction of the Kern crossing would reduce the length of Track No. 2 now available for team track purposes. At the present time two freight cars can be spotted for unloading in the assigned team track area between the south end of the station platform and Ethridge Packing Company's facility. The proposed crossing would reduce this capacity to space for one car. The witness pointed out, however, that such use of the remaining space would involve violation of the carrier's rule that no freight car shall remain standing for any length of time less than 100 feet from a grade crossing. Assertedly, the Kern crossing would eliminate the present team track as such. He further testified that there is no other track area in Dinuba which would be a practicable substitute for the existing arrangement.^{11/} A new track, he said, would have to be constructed for that purpose.

With respect to the type of protection to be installed, in the event that the crossing is authorized, applicant's consulting traffic engineer testified that in his opinion Standard No. 8 flashing light signals (General Order No. 75-B) would be adequate.

^{10/} Counsel for City attempted to show, through cross-examination, that the aggregate of time for each of the elements involved in these operations would fall short of the above estimate. However, the witness adhered to his testimony, emphasizing the variable factors involved.

^{11/} The witness pointed out the objectionable features involved in the possible use of other tracks as a team track in response to specific suggestions by counsel for City.

Applicant introduced a series of photographs of various grade crossings in Reedley, a neighboring city of size comparable to Dinuba and located on the same Southern Pacific branch. None of these crossings was protected by crossing gates. A Southern Pacific signal engineer, however, recommended the installation of automatic crossing gates. Since the crossing, if authorized, would be constructed over two rather widely separated groups of tracks, he recommended the installation of two sets of gates, one set for each group of tracks. He testified to the marked superiority of crossing gates over flashing light signals in preventing grade crossing accidents. Official notice was taken of a recent study of Fresno County grade crossings in which the Commission's staff recommends the installation of automatic gates at various crossings on the Exeter Branch, including one in the City of Reedley.

By its application City proposes that the expense of constructing the proposed crossing and of installation of crossing protection devices be borne by City and Southern Pacific in equal shares. Southern Pacific's signal engineer, however, testified as to his understanding of the Commission's practice of assessing the costs, in the case of a new crossing, against the applicant. Thus, where a public body proposes a new street over an existing track the cost is assessed against the public agency. This witness saw no reason why the crossing sought herein by City should be subjected to a different assignment of costs. Southern Pacific witnesses introduced cost estimates for the crossing and the protection, as well as appraisals of the value of the land which would necessarily be acquired by the city in the proposed crossing area.

We find that:

1. The principal business street in Dinuba is Tulare Street, with the heaviest traffic across Southern Pacific tracks of any of the six such crossings in that city.

2. For vehicles going from points south of Dinuba to points north and east of that city, or vice versa, the most direct route through Dinuba includes the full length of Tulare Street, and a substantial amount of such through traffic uses this route.

3. At times, there is congestion of traffic on Tulare Street in the vicinity of the K and L Street intersections, with traffic backing up a block and a half, or more, east of the latter intersection, as well as west thereof, waiting for the traffic signal changes.

4. Said traffic congestion occurs during the rush hour, principally on Monday and Friday, approximately between 4:00 p.m. and 5:15 p.m.

5. Diagonal parking of vehicles is the practice on Tulare Street in the business district; this permits only one lane of traffic in each direction.

6. If parallel parking on Tulare Street in the business district were practiced, there would be room for four lanes of traffic.

7. There is no problem of traffic congestion on Tulare Street at the Southern Pacific crossing.

8. Kern Street, one block away, is also a business street, but with substantially less traffic than is found on Tulare Street.

9. If the proposed Kern Street crossing of Southern Pacific tracks were constructed, Kern Street would become a through street from Alta Street on the west to College, East Tulare and El Monte Streets, on the east.

10. The Kern Street crossing would probably result in an increase of traffic on Kern Street and some reduction in traffic on Tulare Street.

11. The Kern Street crossing would provide an additional crossing between the fire house, east of the railroad tracks and the residential section which is developing west of the tracks, and would probably result in a small saving of time for fire and police vehicles in arriving at some locations in the latter section.

12. The Kern Street crossing would enable certain school bus routes to avoid Tulare Street and would make others more direct.

13. Construction of the Kern Street crossing would involve cutting a right-of-way through an entire block from M Street to N Street. This would necessitate purchase of land from Southern Pacific (including some under lease to Ethridge Packing Company) and from Poppy Food Company.

14. Construction of the Kern Street crossing would necessitate removal and relocation of several structures or portions of structures belonging to Poppy Food Company, Ethridge Packing Company and Southern Pacific.

15. Construction of the crossing would nullify plans of Poppy to expand its plant operations, for which it has already purchased additional land adjacent to its present facilities; would necessitate substantial and costly rearrangement of machinery layout and processing operations in plant of Ethridge Packing Company, and would reduce needed storage capacity of its spur track.

16. Southern Pacific operates five trains per day through Dinuba, which number during the perishable season is increased to seven or eight trains per day.

17. During the off-season as many as seven or eight switching moves are made daily over the proposed Kern crossing area; far more, as many as 35, are made during the perishable season.

18. The proposed crossing would cut the only three-block extent of tracks in Dinuba having no intervening cross streets. Southern Pacific uses this stretch to park its trains, clear of the Tulare crossing, while switching cars or getting instructions.

19. Construction of the crossing would, in many instances, require breaking the train to clear the crossing while work was being done, increasing work time at Dinuba and operating expense.

20. Construction of the crossing would so reduce the length of the existing public team track area as to eliminate it. No other existing track area is practicable for this purpose. A new team track would have to be constructed elsewhere in Dinuba.

21. Construction of the crossing would reduce the efficiency of Southern Pacific's operations and impair the value of its service to shippers and receivers.

22. Possible means of alleviating the traffic congestion on Tulare Street, other than by extension of Kern Street over Southern Pacific tracks, have not been given serious consideration by applicant. Among these are such possibilities as the institution of parallel parking on Tulare Street, the prohibition of left-hand turns on that street, the installation of traffic signal devices which would vary the cycle of the signals in accordance with the heaviest flows of traffic, and more effective enforcement of the rule which designates Alta Avenue and El Monte Way as the route for trucks through the city.

23. The adverse effect on the efficiency, convenience and economy of Southern Pacific operations and on the operations and expansion plans of concerned shippers far outweighs the anticipated benefits of the proposed crossing.

24. Public convenience, necessity and safety do not require the construction of the proposed Kern Street grade crossing.

We conclude that the application, as amended, should be denied.

By amendment to the application, filed on May 15, 1967, City requested that, if the crossing were authorized, the Commission make orders specifying the permissible periods of time and circumstances under which the proposed Kern Street crossing and the crossings at Mono, Tulare and Merced Streets might be blocked by locomotives and cars. This amendment was the result of testimony at the March hearing sessions regarding a local ordinance relating to the blocking of crossings by trains. The aforesaid Chief of Police testified that such an ordinance was currently in effect, but a copy of it was not offered and its provisions were not made a part of the record.

In its brief, Southern Pacific took the position that such ordinance is void, on the ground of the Commission's exclusive jurisdiction. It argued that the Commission must make a finding and a conclusion to that effect, under Section 1705 of the Public Utilities Code, on the basis that this is a material issue. In the light of the findings and conclusion hereinabove set forth it is apparent that the question of the validity of such ordinance is not a material issue, and need not be considered herein.

O R D E R

IT IS ORDERED that Application No. 48892, as amended, is denied.

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

Dated at San Francisco, California, this 5th day of DECEMBER, 1967.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners