

**ORIGINAL**

Decision No. 73650

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the safety, maintenance, operations, use and protection of grade crossings over the Southern Pacific Company's El Paso Line at Mile Post 502.96, Mile Post 503.36, Mile Post 503.9 in the City of Industry, County of Los Angeles, and into the necessity of developing additional crossings along the Southern Pacific Company's El Paso Line between Anaheim-Puente Road and Nogales Street in said City of Industry.

Case No. 7575

Walt Steiger, for Southern Pacific Company; Byron Curl, for the City of Industry; Helen Walsh; and Walter Ragenovich; interested parties.  
Elmer Sjostrom, counsel, for the Commission staff.

O P I N I O N

By ordering paragraph 1 of Decision No. 66962 dated March 17, 1964 in the above case, this Commission ordered certain work to be done relative to the crossings of the Southern Pacific Company's El Paso Line in the city of Industry at the mileposts specified in the title. Ordering paragraph 5 of said decision provided: "In the event that said crossings are improved as provided in said paragraph 1, they may remain open to public use until such time as other access roads or streets are provided for the industries which are now being served by said crossings. However, notwithstanding any interim improvements, said crossings shall be permanently closed on or before December 31, 1965."

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The three crossings are by non-dedicated streets across the Southern Pacific Company's right of way to Valley Boulevard on the north.

The improvement work at the crossings was to be done by the Railroad and the costs were to be divided pursuant to agreement between the Railroad and the City. The opinion in Decision No. 66962 states that a new road extending from Anaheim-Puente Road on the west to Nogales Street, on the east, is to be built by the City along the north side of San Jose Creek and south of the Railroad's right of way, and this road will obviate the need for the three crossings considered. This road was to be built as soon as the Los Angeles County Flood Control District had realigned San Jose Creek.

On July 20, 1964 the Railroad advised the Commission that the ordered improvements had been completed at all three crossings.

On September 28, 1965 the Railroad petitioned for an extension of time within which to close the crossings, to August 1, 1967. The reason for the petition was that the work of realigning San Jose Creek had not been completed and the new road could not be constructed.

On December 21, 1965 the Commission ordered that the time limit within which the Railroad shall close the grade crossings be extended to August 31, 1967.

On August 16, 1967 the Railroad filed the herein-considered "Petition for Extension of Time to Comply with Decision No. 66962" until March 1, 1969.

On September 19, 1967 the Commission reopened Case No. 7575, suspended the time limit for closing the crossings pending further Commission order, and ordered the matter set for hearing. This hearing was held before Examiner Rogers in Los Angeles on December 14, 1967. Evidence was presented and the matter was submitted. All parties which had theretofore appeared in this matter were notified of the hearing.

The Railroad's petition alleges that when it filed its September 1965 petition for an extension of time in which to comply with said decision, the Flood Control District and the City of Industry had entered into an agreement providing that the City would furnish a right of way for both the relocated San Jose Creek channel and the roadway to be constructed on each side of the relocated creek, that the District would grade the roadways, and, following completion of the channel, would turn over to the City the roadways on either side thereof for the City's use, and that it was expected that the District would advertise the project in February of 1966 and that construction would be completed about August, 1967.

The petition further alleges that the City is now proceeding with the necessary street improvements under an applicable Street Improvement Act; that the matter is being actively progressed with the property owners within the contemplated improvement district; that only recently was the presentation of proposed realignment, cost estimate and breakdown made to petitioner; that an analysis of this proposal, the obtaining of management authorization, completion of the improvement district,

bidding, letting contract, and construction cannot be completed within the time of the present order; and that it is the estimate of the city engineer of the City of Industry that ten months must be allowed from receipt of the petition to form the district to the letting of the contract. The petition further alleges that the necessary detailed planning of street location, completion of the petition and actual construction are estimated to consume an additional eight months.

The petition further alleges that until such roadways (along the creek) are available, affected property in the area will not have access in the event the aforesaid private crossings are closed. The petitioner further alleges that the delay in the San Jose Creek project and the construction of streets that would afford access to private property other than over the subject crossings is not the fault of the petitioner; that to close said crossings, prior to other access being made available, would subject petitioner to liability and possible damage claims, and that the safety of the crossings has been effectively improved by the changes ordered and made.

A representative of the City of Industry testified that a road, which will extend from Anaheim-Puente Road on the west to Nogales Street on the east, is to be constructed along the north side of San Jose Creek; that this road will provide access to the properties south of the Southern Pacific tracks and north of the Creek which are presently given access across the tracks by the three crossings under consideration; that steps are being taken under the 1913 Street Improvement Act for approval of bonds

to finance said road, that owners of 60 percent of the property affected must signify their approval of the necessary bonds; and that within one year after receipt of the necessary approval the road can be completed.

The witness further testified that if the crossings are closed prior to the completion of the road, several going concerns will lose all access and will be completely landlocked.

The only property owner who appeared and objected to the petition for extension of time owns property in the vicinity of the crossing at Milepost 503.36. She testified that she has been deprived of access for some time past due to action between her and another property owner.

A witness for the Southern Pacific Company testified that the Railroad has maintained the three crossings and is interested in having them remain open until such time as access to and from properties between the railroad and the creek is provided by the contemplated road along the creek. The Railroad objects to closure until the proposed road is completed in order to protect itself against a lawsuit if it is forced to close the crossings.

The Commission's counsel opposed any extension of time. He stated that if the Commission finds that an extension shall be granted it should be for a total of not over nine months from the effective date of the order herein.

Findings

We find that:

1. It will be impossible to provide any alternate access to property between San Jose Creek and the railroad in the area between Anaheim-Puente Road and Nogales Street by the proposed road along the north side of San Jose Creek for approximately one year.

2. Industries between Valley Boulevard and San Jose Creek and south of the Southern Pacific Railroad require access across the tracks until such time as the proposed road south of the railroad is completed.

3. The City is proceeding with due diligence to construct said proposed road.

4. The one complaining property owner will not be adversely affected by an extension of time in which to construct the proposed road.

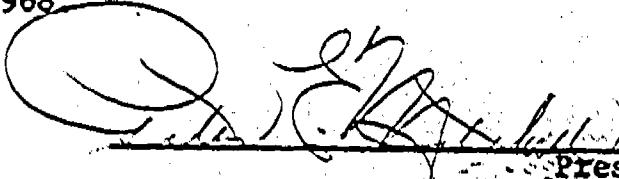
5. A one-year extension of time is reasonable and is required by the facts herein.

The Commission concludes that the time within which to comply with ordering paragraph 5 of Decision No. 66962 should be extended to and including January 1, 1969.

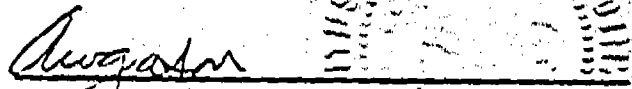
ORDER

IT IS ORDERED that the time limit within which the Southern Pacific Company shall close the grade crossings at Mileposts 502.96, 503.36 and 503.9 is extended to January 1, 1969.

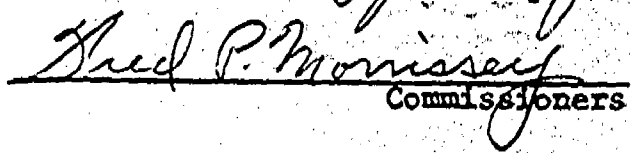
Dated at San Francisco, California, this 23<sup>rd</sup> day of JANUARY, 1968

  
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President

  
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Commissioner

  
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