

ORIGINALDecision No. 74000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California
 Department of Public Works for such
 order or orders as will make possible
 the construction of a viaduct whereby
 State Route 87 will be extended from
 18th Street to 6th and Brannan Streets
 in the City and County of San Francisco,
 passing over tracks of The Atchison,
 Topeka and Santa Fe Railway Company and
 the Southern Pacific Company, referred
 to as the "China Basin Viaduct".

Application No. 49626
 (Filed August 21, 1967)

Joseph C. Easley, Norval Fairman and Edward J. Connor, for Department of Public Works, State of California, applicant.
Harold S. Lentz, for Southern Pacific Company;
Robert B. Curtiss, for The Atchison, Topeka and Santa Fe Railway Company, interested parties.
Richard O. Collins and H. W. Privette, for the Commission staff.

INTERIM OPINION AND ORDER

By this application, as amended, the Department of Public Works, State of California (Department), seeks authority to construct crossings at separated grades over tracks of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and of Southern Pacific Company, in the City and County of San Francisco. The project will be sometimes hereinafter referred to as the "China Basin Overpass".

Department proposes to extend the viaduct which was the subject of Application No. 48000 from 18th Street north to Sixth and Brannan Streets, whereby State Route 87 will be carried over the tracks of Southern Pacific and Santa Fe as shown in the

application. That project has prompted the request for the authorization herein sought.

A prehearing conference was held before Examiner Bishop at San Francisco on January 23, 1968 and hearings were held on February 13 and March 18, 1968. At neither hearing session was evidence offered. At the February 13 session, Department and Southern Pacific^{1/} stipulated that the usual "ex parte" form of order might be issued, in which the authorization is subject, inter alia, to the filing with the Commission within a specified period, of plans approved by Southern Pacific.

A representative of the Commission's Transportation Division staff stated the staff's position to be that any order authorizing construction of the proposed crossings require also that the present protection at two existing crossings at grade in the vicinity of the proposed separated crossings should be improved.^{2/} The staff was of the opinion that, because of the freeway construction, conditions would be so changed at said crossings as to require such improvement of protection. The staff proposed to offer evidence in support of its position at an adjourned hearing. The date of March 18 was scheduled for that purpose.

At the March 18 hearing the staff representative modified the staff's position to the extent that determination of the issue as to upgrading of existing crossing protection need not delay the

1/ Santa Fe did not appear at the initial session. Appearance on its behalf was entered by counsel at the March 18 session.

2/ The crossings in question are that of the Santa Fe at the intersection of Mariposa and Pennsylvania Streets (Crossing No. 2SG-1.12) and that of Southern Pacific on Sixth Street between Berry and King Streets (Crossing No. E-0.47).

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issuance of an order authorizing the construction of the China Basin overpasses, subject to the understanding that hearing be held later on the aforesaid crossing protection. He said that the staff had recommended the issuance of a separate order instituting investigation for that purpose, respondents to include the Department, the City and County of San Francisco, the Santa Fe, Southern Pacific and The Western Pacific Railroad Company.^{3/}

Counsel for Southern Pacific argued that properly the issues in Application No. 49626 should be broadened by the Commission in its interim order to include consideration of the upgrading of crossing protection and to include the additional respondents, rather than by issuance of an order instituting investigation such as proposed by the staff. However, the parties finally stipulated that there would be no objection to the issuance of an order instituting investigation for the above-indicated purposes, provided that (1) one of the issues in the OII proceeding shall be whether grade crossing protection could have been ordered in Application No. 49626, and, if so, (2) whether apportionment of costs of such protection would have been governed by Section 1202, or by Section 1202.5, of the Public Utilities Code in Application No. 49626, and (3) the apportionment of cost of such protection shall be the same as if it had been ordered in the present proceeding.^{4/}

^{3/} The Western Pacific Railroad Company operates under contract over the Santa Fe track involved in Crossing No. 2SG-1.12.

^{4/} It is the Department's position that upgrading of adjacent crossing protection is not a matter in which it is involved, as not being a part of the freeway project. If, however, a separate proceeding should be instituted, as hereinabove described, the Department has no objection to the inclusion therein of the matters stated in the stipulation.

At the conclusion of the hearing the matter was adjourned to May 7, 1968 for the receipt of evidence relative to the question of improvement of the existing protection at the grade crossings hereinbefore specified, with the understanding that if a separate order instituting investigation should be issued for that purpose, said hearing date would be transferred from Application No. 49626 to that proceeding.^{5/}

IT IS ORDERED that:

1. The State of California Department of Public Works is authorized to construct crossings at separated grades of State Route 87 over the tracks of Southern Pacific Company and of The Atchison, Topeka and Santa Fe Railway Company, referred to as "China Basin Viaduct", said crossings to be identified as Crossings Nos. E-0.9-A and 2SG-1.08-A, respectively, with "N₁" line off ramp and "S₂" line on ramp No. E-0.5-A, all within the City and County of San Francisco at the locations and substantially as described and delineated in Exhibits A and B, both as amended, attached to the application as amended.

2. Rail traffic will continue to use the tracks during construction.

3. Clearances shall be in accordance with Subsections 2.1, 3.2 and 3.16 of General Order No. 26-D, except that during the period of construction, a side clearance of not less than 8' 0" from center line of track is authorized, and The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company are authorized to operate with such reduced side clearance provided they issue, and file with the Commission, appropriate bulletins to

^{5/} Certain days in the week of June 18, 1968 have also been reserved for the consideration of any other questions in connection with this application as to which a determination may be necessary.

train and engine crews advising them of the temporarily impaired side clearance and forbidding trainmen to ride on the sides of cars on the track adjacent to the structures.

4. Applicant shall notify the Commission, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company at least 15 days but not more than 30 days in advance of the date when the temporarily impaired clearance authorized by ordering paragraph 3, above, will be created.

5. Construction and maintenance expense shall be borne in accordance with an agreement entered into between the parties relative thereto, and copy of said agreement, together with plans of said crossings approved by The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, shall be filed with the Commission within 180 days from the date hereof. Should the parties fail to agree, the Commission will apportion the cost of construction and maintenance by further order.

6. Within 30 days after completion pursuant to this order applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within four years unless time be extended or if conditions are not complied with.

By separate order in Case No. 8786 the Commission today is instituting an investigation on its own motion into the status, safety, maintenance, use and protection or closing of Crossings Nos. 2SG-1.12 and E-0.47, to which reference is made in the preceding opinion. The scope of that investigation will include the first two issues presented in the stipulation entered

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into by the parties at the hearing on March 18, 1968, as set forth also in said opinion. As to the third element of the stipulation, the Commission cannot be bound by a stipulated finding, especially in a proceeding in which new parties are involved. The May 7, 1968 scheduling of hearing dates will be transferred to the investigation proceeding.

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

Dated at San Francisco, California, this 16th day of APRIL, 1968.

John E. Mitchell
President

William A. Brown

Augusta

William J. Lyons

Fred P. Monahan
Commissioners