

Decision No. 74042**ORIGINAL**

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 across
Thomas Road in the City of Agnew,
County of Santa Clara, State of
California.

Application No. 50061
(Filed February 29, 1968)

O R D E R

Southern Pacific Company is hereby authorized to construct an industrial drill track at grade across Thomas Road, near Agnew in the City of Santa Clara, Santa Clara County, at the location described in the application, to be identified as Crossing No. L-42.5-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 road as proposed, 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. 2085 of the City of Santa Clara City Council passed and adopted on January 30, 1968 granting permission to the Southern Pacific Company to construct the subject track. The permit issued under this 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 Sections 1202 (a) and 1219 of the Public Utilities Code. The city alleges that various concerned parties may contract in advance for the allocation of the cost of future protective devices, and that irrespective of the existence or non-existence of exclusive jurisdiction of the Commission, such agreement is valid

and enforceable. The city also alleges, among other things, that such an agreement should be given due weight and consideration by the Commission, in the event that said Commission shall pass upon any application for approval of the installation of crossing protection devices.

As no special safety devices are necessary at the proposed Thomas Road crossing at this time, the Commission will not pass upon the issues raised by the applicant concerning Resolution No. 2085 and the permit issued thereunder.

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 states that the industry to be served desires to receive early rail service from this trackage, and requests that the 20-day waiting period be waived.

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

Dated at San Francisco, California, this 30th day of APRIL, 1968.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.