

ORIGINALDecision No. 74668

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application }
 of SOUTHERN PACIFIC COMPANY for }
 an order authorizing construction }
 at grade of an industrial spur }
 track in, upon and across Kirkham }
 Street, in the City of Oakland, }
 County of Alameda, State of Cali- }
 fornia. }

Application No. 50004
 Filed February 7, 1968

Randolph Karr, for Southern Pacific Com-
 pany, applicant.
William C. Sharp, for City of Oakland,
 interested party.
M. E. Getchel, for the Commission staff.

O P I N I O N

By this application Southern Pacific Company seeks author-
 ity to construct a spur track in and across Kirkham Street in the
 City of Oakland. Said track would extend from a connection with
 applicant's drill track, which lies along Kirkham Street, into the
 property of Asbury Graphite, Inc. The proposed construction is in
 the block between 24th and 26th Streets.

Public hearing was held before Examiner Bishop at San
 Francisco on May 1, 1968. Briefs were filed by applicant and City,
 and the matter stood submitted on June 17, 1968, the due date for
 applicant's reply brief.¹

The record shows that the property in question is presently
 undeveloped, that the owners plan to construct a plant at which
 graphite ore will be ground in transit, that spur track facilities

¹ Apparently, applicant elected not to file a reply brief.

will be necessary for such operation, and that Asbury Graphite has not yet entered into a spur track agreement with applicant pending authorization of installation of the spur.

At the hearing the parties entered into a stipulation in which it was agreed that if the Commission should authorize construction of the spur no crossing protection will be needed in connection therewith. The record amply supports this. The portion of Kirkham Street between 24th and 26th Streets is in an industrial area, with industrial plants or structures and spur tracks on both sides of the street; the street is used for parking of automobiles of employees of adjacent businesses; the street is not a through or principal street; it is rough and unpaved, with the rails of the central drill track elevated, in places, above the grade of the street.

Because of the foregoing facts, speeds of vehicular traffic are low. Also, rail traffic is confined to switching movements, which are also made at low speeds. The volume of both rail and vehicular traffic is light. The record discloses no train-vehicle accidents in this block. There is a single Standard No. 1-A crossing sign near the location of the proposed spur track, apparently designed to protect an existing spur track, which the proposed track would cross. That sign will necessarily be removed if the spur is constructed, and there is no satisfactory location at which it might be re-erected for a useful purpose.²

At the hearing the parties further stipulated that, in view of the foregoing stipulation, it is not necessary, in their

² Another crossing sign, erected in Kirkham Street near the 26th Street intersection, has been repeatedly knocked down by vehicles. At the time of the hearing it was not in position.

opinion, for the Commission to decide the other issues which had been raised regarding the apportionment of costs of construction of crossing protection. These latter issues were responsible for bringing the matter to hearing. By Resolution No. 48703, dated December 26, 1967, the Oakland City Council authorized Southern Pacific to construct the spur here in issue, subject to compliance by the railroad with numerous specified conditions. Among these is Item 9, which states that Southern Pacific shall "bear all costs of any grade crossing protection devices that may hereafter be required."

The evidence shows that a copy of the proposed City Council resolution had been transmitted to Southern Pacific by City with a letter dated August 21, 1967, for the carrier's approval. In subsequent correspondence Southern Pacific attempted to induce City to eliminate Item 9. It was, however, unsuccessful in this and by letter dated December 5, 1967, the carrier requested that "City of Oakland grant Resolution as previously submitted in your letter of August 21." City contends that, applicant having agreed to the terms of Item 9 of the City Council's resolution, there is no question but that the carrier shall bear all costs of any additional protection. Southern Pacific, on the other hand, contends that authority to apportion such costs rests exclusively with the Commission and that apportionment is a matter to be determined by it, regardless of any prior agreements between the parties. Although City and Southern Pacific stipulated that such determination is not now necessary, they sought and were granted permission to file briefs in support of their respective positions.³

³ City's brief cited Sections 7555, 102.2, 102.5(h) and 1202(a) of the Public Utilities Code and the Commission Decisions Nos. 66881 (dated February 25, 1964, in Cases Nos. 7463 and 7464) and 70075 (dated December 7, 1965, in Application No. 46010) in support of City's position. Applicant's brief cited, inter alia, Sections 1202(a) and 1219 of the Public Utilities Code and Decisions Nos. 69556 (dated August 17, 1965, in Case No. 8110), 69201 (dated June 8, 1965, in Case No. 7999) and 71206 (dated August 23, 1966, in Application No. 48269), as substantiating Southern Pacific's position.

The most recent pronouncements of the Commission support the contentions of Southern Pacific. In Decision No. 69556, dated August 17, 1965, in Case No. 8110 (64 CPUC 678, 680), the Commission said:

"The City presented evidence that the County of Los Angeles had granted the Railroad a franchise for the drill track effective June 8, 1951, (Exhibit 4) and that pursuant to Section 7 thereof the costs of all warning devices at the crossing are to be paid by the railroad. Such agreement or requirement is, of course, of no force or effect as far as this Commission is concerned, inasmuch as it has the exclusive jurisdiction to prescribe the terms of any crossing and to apportion the costs thereof (Public Utilities Code Section 1202)."

More recently, in Decision No. 74420, dated July 17, 1968, in Application No. 49338, the Commission said:

"Insofar as Ordinance No. 61206 of the City of Los Angeles would apportion the costs, said ordinance has no force nor effect, inasmuch as the matters involved are of State concern, subject to the jurisdiction of the Commission, and do not come within the field of municipal affairs."

Both of the proceedings, the decisions in which are quoted above in part, involved, among other matters, the same question concerning which City and applicant herein presented argument in their briefs, although arising from somewhat different circumstances.

We find that:

1. Construction of the proposed industrial spur track will not be adverse to the public interest.
2. Public convenience and safety do not, under present conditions, require the construction of any crossing protective device or devices at or near the subject spur track crossing.

We conclude that the application should be granted.

O R D E R

IT IS ORDERED that:

Southern Pacific Company is authorized to construct a track at grade across Kirkham Street, in the City of Oakland, in Alameda County, at the location described in the application, to be identified as Crossing No. A-6.76-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 street now graded, with tops of rails flush with the roadway and with grades of approach not exceeding two percent. Applicant shall bear entire construction and maintenance expense of said track.

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

Dated at San Francisco, California, this 11th
day of SEPTEMBER, 1968.

William L. Lawrence
President
William L. Burnett
Secretary
Paul P. Monahan
Commissioners