

ORIGINAL

Decision No. 78339

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the COUNTY OF FRESNO, of the State of California, to the Public Utilities Commission of the State of California, for an Ex Parte order authorizing the removal of a stop sign at the approach of a private crossing of the Southern Pacific Company B-Line Track in the vicinity of Mile Post B-208.8(P), County of Fresno, State of California, and for a permanent order therefor.

Application No. 51867
(Filed May 1, 1970)

- Floyd R. B. Viau, Attorney at Law, for County of Fresno, applicant.
- Harold S. Lentz, Attorney at Law, for Southern Pacific Transportation Company; R. D. Hayes, Attorney at Law, for The Atchison, Topeka and Santa Fe Railway Company, respondents.
- Melvin R. Dykman, Attorney at Law, for State of California Department of Public Works, interested party.
- M. E. Getchel, for the Commission staff.

O P I N I O N

The Atchison, Topeka and Santa Fe Railway Company (hereinafter Santa Fe) presently has a private crossing across the tracks of Southern Pacific Transportation Company (hereinafter Southern Pacific). The crossing provides the only street access for Santa Fe's Fresno piggy back terminal.

The stop sign emplaced at this crossing (as required by Pub. Util. Code § 7538) is alleged to present a serious hazard to the general public utilizing the adjacent public street. The clearance between S.P.'s track and the adjoining street is restricted so that a truck stopped at the sign extends well into the travelled way.

The matter was set for hearing in Fresno before Examiner Gilman on December 29, 1970. When the matter was called for hearing counsel for Santa Fe offered a stipulation which, with certain modifications, was accepted by counsel for the remaining parties and the staff representative. The stipulation provided for the crossing to be relocated to another of S.P.'s tracks, to connect to a different segment of the street system. This solution eliminates the alleged hazard presented by the stop sign while not increasing the possibility of a truck-train collision.

The new crossing will ultimately be protected by automatic gates and flashing lights. Santa Fe is to bear the entire cost of construction and maintenance of the crossing and protection.

The automatic protection is expected to reduce the hazard still further.

Requested Ruling

Both Southern Pacific and Santa Fe requested a ruling that, as a matter of law, the user of a private crossing must bear the entire cost of a crossing, absent contrary provisions of deed, contract or judgment in eminent domain.

Any request for a ruling not actually required to resolve a controversy is addressed to the Commission's discretion. We see no necessity for such a ruling and prefer to postpone a determination until the matter has been argued by parties with fully adverse interests.

Conclusion

In light of the agreement of all parties on the proper resolution of the problem and the further stipulation that the

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crossing will not be a publicly-used crossing as that term is used in § 1202 Pub. Util. Code, no findings appear necessary.

We conclude that the Santa Fe's proposal should be adopted as the basis for the Commission's order and that such adoption will render the County's application herein moot.

O R D E R

IT IS HEREBY ORDERED that:

1. A private crossing shall be constructed at a point near the intersection of the Golden State frontage road and North Avenue in Fresno; construction shall commence as soon as possible and be completed not less than 90 days from the effective date hereof.
2. Southern Pacific Transportation Company (hereinafter Southern Pacific) shall be responsible for roadway construction within two feet outside of the rails. The Atchison, Topeka and Santa Fe Railway Company (hereinafter Santa Fe) shall be responsible for the remaining roadway construction. The crossing shall be constructed to a 24 foot minimum width.
3. When said crossing is opened, the present crossing located at Mile Post B-208.8(P) shall be physically closed to traffic.
4. Before said crossing is opened to traffic, stop signs in compliance with Decision No. 75094, in Case No. 8207 shall be installed.
5. As soon as possible and not later than one hundred eighty days after the opening of said crossing, Southern Pacific shall install Standard No. 8 signals supplemented with gate arms at the new crossing. When such installation is complete the stop signs required by ordering paragraph 4 may be removed.
6. All costs of construction, protection and maintenance of said crossing and automatic protection shall be apportioned to Santa Fe.

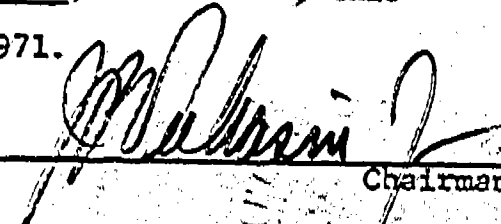
7. The obligations imposed on Santa Fe by ordering paragraphs 1 through 6 shall be conditioned on the following:

- a. Southern Pacific shall have tendered to Santa Fe a crossing agreement for the new crossing either substantially in the same terms as the agreement covering the present crossing or in terms satisfactory to Santa Fe.
- b. County of Fresno shall have provided Santa Fe with an easement to cross any public lands lying between the travelled way of the public highway in the vicinity of the new crossing and Santa Fe's own real property.

8. The application is hereby dismissed.

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

Dated at San Francisco, California, this 22nd day of FEBRUARY, 1971.



Chairman



Commissioner



Commissioners

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

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.