

ORIGINAL

Decision No. 78741

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JOEN F. BLAKEMORE  
and DONNA B. BLAKEMORE to secure  
a private roadway crossing.

Application No. 52225  
(Filed October 1, 1970)

James M. DeLoreto, Attorney at Law,  
for applicants.  
William E. Still, Attorney at Law, for  
Southern Pacific Transportation Company,  
respondent.  
Daniel R. Paige, for the Commission staff.

O P I N I O N

Applicants have applied for an order authorizing the restoration of a private roadway crossing over the tracks of the Southern Pacific Transportation Company at Mile Post 345.97 at or near Tajiguas, in Santa Barbara County. The crossing will provide access to 3.82 acres of land owned by the applicants and located next to the Pacific Ocean. The property extends 1,000 feet on the northerly border and 100 feet on the westerly border, both along the railroad right of way, then 800 feet along the Pacific Ocean as the southern boundary and 400 feet along Tajiguas Creek as the eastern boundary. A road over the Southern Pacific Transportation Company tracks was used to reach the property for many years. This action was filed under Section 7537 of the Public Utilities Code after the railroad blocked the crossing with mounds of dirt and refused to reopen it. A public hearing was scheduled and held on December 15, 1970, in Santa Barbara before Examiner Fraser.

John Blakemore testified that he has lived in Santa Barbara County for eight years. His permanent home in Santa Barbara was recently condemned by the State, and the space it occupies will support a freeway access ramp. He testified he is now living in a trailer with his wife until he can gain access to the property which the proposed rail crossing will open. He testified there are between 600 and 700 six to eight foot pines at his former home to be removed and replanted. This work will commence as soon as the crossing is opened. He testified that his new home will be built on the 3.82 acres near two producing wells which he dug after he purchased the property. He testified that he now enters the property by crossing the tracks at the Birrone crossing, 3/4 of a mile away, then driving on the railroad right of way to Tajiguas, through the creek (which had to have its banks bulldozed into ramps) and up onto his property. This route is passable only in the driest weather. Rain would wash out the road along the right of way and the creek bank. It would be necessary to pave the entire road from the crossing and to bridge the creek if this route were to be used all year, at a cost of at least \$12,000. He stated that probably neither the railroad nor the other crossing owner would allow him a permanent easement to pass over their property. The only practical way in is over the railroad tracks. He estimated that the crossing would be used about twenty times a day by members of his family and various deliverymen. He is a class "A" contractor by profession, but will not have members of the public visiting him at his home.

He testified further that a crossing has been located on the approximate spot where he is seeking to open the present crossing

for more than forty years. The old crossing was protected by a railroad crossbuck sign and an arterial stop sign, which he believes to be adequate for the new crossing. He testified that he purchased the 3.82 acres on December 10, 1969, and later fenced it with a locked gate on the access road. The gate is always locked and will continue to be locked. Prior to the fence and gate, people were using the property to reach the beach and as a parking lot. The crossing was closed in late 1969 when the railroad placed a low mound of dirt along the outside of the rails, where cars used to cross. The crossing has no wooden barricade or gate.

He testified that he contacted the local freight agent of the Southern Pacific Transportation Company to ask about getting the crossing reopened; he was advised to write the San Francisco office of the railroad, which he did, and after some delay he received a "Private Crossing Agreement" (Exhibit 6) in April 1970, with a letter advising him to sign and return the document to the Los Angeles office of the railroad for the latter's approval; he heard nothing for several months, then after calling the Los Angeles office was advised that the railroad representative, named Long, simply refused to sign the document. When it became apparent that further discussion was useless, he brought this action. The position of the railroad was evidenced by a letter from the Southern Pacific dated November 13, 1970, which provided that the railroad would have no objection to the reopening of the crossing if the applicants pay all costs therefore, including the cost of the installation and maintenance of automatic gates.

A project engineer for the railroad testified as follows:  
the crossing bisects a mainline track with two daily passenger

trains and from 8 to 30 freight trains, with an average of 20 trains a day. The witness advised that the crossing has a restricted view to the west from 700 to as little as 100 feet, depending upon where the observer stands. The visibility can be improved considerably if obstructing brush is cut away. He advised that 2/3 of the trains will pass the crossing after dark, which may add to the danger. All trains will be traveling at 55 miles an hour through the crossing. He stated the best protection for the crossing would be automatic gates with flashing lights, which would cost \$12,700 according to an estimate dated March 1970; the estimate is a year old and would now be about 10 percent higher; the preparation of the track bed and laying planks through the crossing so vehicles can use it will cost another \$1,400. He advised that the railroad is not benefited by the crossing in any way and the applicants should therefore be required to assume all costs.

He testified the applicant's present route to reach his property would not be practical for continuous use. The railroad could not give a permanent easement over its right of way due to the danger involved and the fact that signal wires and circuits are buried on the right of way. He advised he does not believe automatic signals are necessary to protect the crossing as long as it is protected by a locked gate and only used by members of one family and occasional deliverymen.

Applicants placed the deed in evidence (Exhibit No. 1) which granted them the property. The deed provides (on the page headed Exhibit "A", paragraph designated Parcel Three) that the railroad will provide access to the property by a crossing over the tracks as provided in a certain deed recorded June 25, 1900.

Findings

1. On December 10, 1969 applicants purchased 3.82 acres adjacent to Tajiguas Creek, in Santa Barbara County.
2. The property is bordered by the railroad on the north and west, the ocean to the south and Tajiguas Creek to the west.
3. For more than forty years access to the property was by a road which crossed over the Southern Pacific tracks.
4. During 1969 the railroad closed the property access road by piling dirt along the railroad right of way so vehicles could not cross the tracks.
5. The Grant Deed dated December 10, 1969 and filed herein as Exhibit No. 1 includes an excerpt from an earlier deed recorded on June 25, 1900, which provides that the railroad "shall build and maintain" two crossings over the railroad tracks.
6. In January 1970, applicants asked the railroad to reopen the crossing and the railroad mailed the applicants a "crossing agreement" which was signed and returned by the applicants, but never executed by the railroad.
7. A single family crossing protected by a locked gate does not require the installation of flashing lights and automatic gates at an estimated cost of \$13,000, plus annual maintenance expense.
8. Applicants' only other access is over a private crossing located 3/4 of a mile from their property, thence along the railroad right of way parallel to the tracks for almost a mile and through Tajiguas Creek over a trail prepared by a bulldozer.

Conclusions

The Commission concludes that:

1. The private crossing over the Southern Pacific tracks at Mile Post 345.97, at or near Tajiguas, in the County of Santa Barbara, State of California, is reasonably necessary and convenient for ingress to or egress from said 3.82 acres purchased by the

applicants and should be reopened by the Southern Pacific Transportation Company and protected by two private crossing signs as provided in Section 7538 of the Public Utilities Code.

2. The crossing should be further protected by a fence and a gate which will be locked at all times except when the crossing is in use.

3. The cost of opening and maintaining the crossing should be borne by the Southern Pacific Transportation Company. The cost of constructing and maintaining the gate and fence, or other barrier, should be borne by the applicants.

O R D E R

IT IS ORDERED that:

1. Southern Pacific Transportation Company shall reopen and restore the vehicle grade crossing located at Mile Post 345.97, at or near Tajiguas, in Santa Barbara County, to the minimum requirements for a "Standard 2-A - Oil Macadam Road crossing" as set forth in General Order No. 72 and shall maintain the crossing at said standard.

2. Southern Pacific Transportation Company shall install and maintain two private crossing signs in accordance with Section 7538 of the Public Utilities Code.

3. Applicants shall construct a gate on their side of the crossing, along with a fence or other barrier, so the crossing can be reached only through the gate, which will be kept locked at all times except when the crossing is in use.

4. The costs of constructing, reopening and maintaining the vehicle grade crossing shall be borne by Southern Pacific Transportation Company. The cost of constructing and maintaining the gate and fence, or other barrier, shall be borne by the applicants.

5. All of the improvements, installation and construction ordered by ordering paragraphs 1 through 4 shall be completed within six months after the effective date hereof.

6. Within thirty days after completion of the improvements and construction each is directed to undertake by the order herein, Southern Pacific Transportation Company and John F. and Donna R. Blakemore shall each so notify the Commission in writing.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of MAY, 1971.

J. P. [Signature]  
Chairman  
William [Signature]  
[Signature]  
Vernon L. Sturgeon  
[Signature]  
Commissioners