

Decision No. 80772

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of F. L. SMOTHERS to
Secure a Private Roadway Crossing- }

Application No. 53236
(Filed March 24, 1972)

F. L. Smothers, Attorney at Law, in propria persona,
and Donald M. Lasser, Attorney at Law, for
applicant.

William E. Still, Attorney at Law, for Southern
Pacific Transportation Company, respondent.

Melvin R. Dykman, Attorney at Law, for State
of California, Department of Public Works,
Division of Highways; Francis C. Buchter,
Attorney at Law, for California Department
of Parks and Recreation; interested parties.
John P. Ukleja, for the Commission staff.

O P I N I O N

F. L. Smothers seeks an order for a private roadway crossing over the railroad tracks of the Southern Pacific Transportation Company (SP) at Milepost 346.9 or other acceptable location, to provide access to his property in the County of Santa Barbara. The SP filed a motion to consolidate this application with another similar application for a crossing within a mile of this requested crossing. The motion was denied. The Department of Public Works and the Department of Parks and Recreation appeared and presented evidence.

Public hearing was held before Examiner DeWolf at Los Angeles on June 29, 1972, and the matter was submitted subject to briefs which have been filed.

Applicant asserts that he is the owner of approximately 22 acres of real property in the County of Santa Barbara. The property is bounded on the south by the Pacific Ocean, on the north by property owned by the SP, on the east by property owned by the State of California, and used as a state park, and on the west by property of another. Applicant owns two house trailers, located

at the southern portion of his property, close to the Pacific Ocean. Substantial improvements are located on the property, including extensive landscaping, irrigation systems, and a water well.

The property owned by the SP is contiguous to and lies immediately north of the northern boundary of applicant's property. Immediately to the north of the SP's property and contiguous thereto is Highway 101. The SP's property separates applicant's property from the state highway. Applicant claims he has no lawful access to and egress from his property to the highway.

Sometime during the year 1966, when applicant's property was owned by his predecessor, the SP barricaded the crossing at Milepost 346.9 (Engineering Station 14268 + 61). This was the only crossing located on the property and the only lawful means of access to and egress from the property. Applicant contends that a grade crossing is necessary to permit him to have reasonable and convenient access to his property.

The applicant, two witnesses for the SP, and a witness for the Department of Parks and Recreation gave testimony. Nineteen exhibits were received in evidence.

The witnesses testified that there was a private crossing used by applicant's predecessors; that the crossing was closed by the railroad because of threatened establishment of a trailer park on the property and threatened public use of the crossing by one of applicant's predecessors. Applicant now has and uses a private roadway from Refugio Beach State Park. He enters the park from his property through a locked gate and thence under the railroad through an adjoining underpass. His property is a little over a half mile from the Refugio Beach underpass.

Applicant testified that the roadway to Refugio State Park along his property is not in good condition and is being eroded by the sea and the elements and eventually will be impassable.

The Division of Highways opposed the opening of a crossing. Its witness testified that he is a supervising project design engineer and that he is familiar with the area and Highway 101 at the point to which the applicant wishes to gain access by the proposed crossing. He testified that Highway 101 at this point is termed an expressway because it has limited access and grade crossings at certain locations. The witness testified that interchanges on both sides of the proposed crossing, one at Refugio Beach and one near Tajiguas Creek, are to be advertised for construction and that this freeway conversion is currently planned for the 1975-76 fiscal year subject to available funding.

The SP opposed the proposed crossing as unsafe. Its witness testified that train speed at this point is 55 miles per hour, the average size freight train carries 60 to 100 cars, and there are about 14 freight trains and two passenger trains each day passing here. A freight train traveling in either direction of the average size operated (between 60 and 100 cars) could not stop within the sight distance of this crossing, nor would similar trains be able to stop within sight distance at 30 miles per hour. The witness testified that a crossing in this location would not constitute a safe crossing. Near the proposed location is an underpass and crossing at Refugio Beach and another crossing about 2-1/4 miles to the southwest near Tajiguas Creek, both of which are in highway improvement plans. The proposed private crossing is 1.09 miles from Refugio Beach underpass. Evidence presented by the railroad shows that at present applicant is adequately and safely afforded access over a road through Refugio Beach connecting with an existing road on applicant's property.

Findings

1. The proposed private crossing over the railroad and railroad right-of-way is not reasonably necessary or convenient for ingress to or egress from his property.

2. Applicant has adequate access to his property through Refugio Beach State Park.

3. State Highway 101, which applicant wishes to enter by the proposed crossing, is now a limited access highway and is designated to become a freeway at an early date. A new entrance at or near the proposed location is hazardous and will interfere with improvement of the highway.

4. The proposed crossing would be hazardous because of the high speed trains on the railroad and the heavy traffic on the highway at the proposed location.

5. A new crossing between Refugio Beach and Tajiguas Creek, a distance of 2-1/4 miles, is unnecessary.

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that the application is denied.

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

Dated at San Francisco, California, this 5th
day of DECEMBER, 1972.

Vernon R. Sturgeon
President
William J. Moran
William J. Moran
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.