

Decision 88-11-004 November 9, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
The Atchison, Topeka and Santa Fe )	
Railway Company for an order closing )	Application 88-04-016
Pearl Street (X-ing 2B-23.7) at its )	(Filed April 6, 1988)
intersection with Applicant's main )	
line in the City of Corona. )	

Benjamin B. Salvaty, Attorney at Law, for  
The Atchison, Topeka and Santa Fe  
Railway Company, applicant.

Robert M. Taylor, for protestants.

Best, Best, & Krieger, by Elise Travnum,  
Attorney at Law, for the City of Corona,  
interested party.

Raymond Toohey, for the Transportation  
Division.

O P I N I O N

This application was filed on April 6, 1988 to request that Pearl Street Crossing No. 2B-23.7 (crossing) which intersects The Atchison, Topeka and Santa Fe Railway Company's (applicant) main line at Mile Post 23.7 in the City of Corona (City) be closed by order of the Commission. The application has letters from the Commission staff and counsel for the City attached. The staff letter is dated February 19, 1988 and supports the application on the basis that the crossing is unsafe in its present condition. The letter from counsel for the City is dated March 14, 1988 and favors the application because the City has not sanctioned development north of the crossing and no building permits have been issued. The City has also determined after an investigation that the crossing is not safe in view of the continuous train traffic up and down applicant's main line.

The application alleges on information and belief that certain property owners and tenants on the north side of

applicant's main line are opposing the closing of the crossing, although they refuse to execute a private crossing agreement and will not assume any liability for the installation of necessary crossing protective devices.

A protest was filed on May 26, 1988 by John and Constance Vanderbur and Robert and Nancy Taylor. The late-filed protest was accepted due to possible lack of notice and protestants' unfamiliarity with Commission procedure. The protest alleged that the crossing has been in use for 40 years, that it is the only access to land and buildings owned by protestants and that employees of protestants and members of the public use the crossing on a daily basis.

A public hearing was scheduled and held on August 4, 1988 before Administrative Law Judge Edward G. Fraser in Los Angeles. Applicant provided testimony and documentary evidence. Protestants made a statement for the record and placed various documents in evidence. The staff made a statement of position and assisted in developing the record. The matter was submitted on the date of hearing.

Protestants' building is shown in photographs provided by applicant. It is a single story, brick warehouse-type building approximately 50 by 200 feet in dimension, with an enclosed front porch, used for offices or display rooms. There is a parking lot in front with a large wooden sign reading "For Sale or Lease" and the back of the building is 20 feet from the tracks, with the building located north of the tracks on the east side of Pearl Street. The side of the building is parallel with Pearl Street, which extends within a few feet of the structure. Protestants' property seems to be partially enclosed by a wire fence, although it is difficult to see in the photographs.

The photos show the warning devices installed at the Pearl Street crossing. A five-foot high arterial stop sign has been installed at the northwest corner with a white railroad

crossing sign on the pole under the stop sign. The southwest corner has a wig-wag on an extension off a pole, about 12 feet over the highway. There are no automatic gates or other protective devices. The photos show that Pearl Street ends about 200 feet south of the crossing where it is blocked by a high dirt bank which supports a highway running at right angles to Pearl Street. North of the crossing Pearl Street extends to several buildings which could be warehouses.

Five tracks extend through the crossing. Applicant's main line is the center track. There are three passing or yard tracks and a spur which extends off a yard track to a building located next to the right-of-way. Applicant's witness testified that every 24 hours there are 24 freight trains, 2 AMTRAC trains, and 2 switching trains. He did not know the train schedules and was not able to advise whether the traffic was passing at night or during the day. Testimony and the photographs place the two rails of the mainline track about six inches higher than the rest of the crossing. The photos show timbers have been placed between the rails in an apparent effort to reduce the change in grade. Applicant's witness testified that due to lack of leveling a vehicle using the crossing is likely to stall when it proceeds over the elevated main line. This might cause a train-auto accident if a train were approaching when the auto stalled. The witness testified that trains are authorized to move through the crossing at 45 miles per hour.

Applicant's witness was a Public Projects Engineer with 30 years' experience. He placed a series of maps and legal documents in evidence, including resolutions from the City Council of Corona abandoning the Pearl Street crossing in 1939 and abandoning all of Pearl Street north of the applicant's right-of-way in 1962. He testified that these resolutions made Pearl Street's intersection with the railroad a private crossing. He further testified that the railroad would support a private

crossing if those who seek to keep it open would pay for the necessary protection at the crossing, which would include flashing lights, warning bells and gates which drop when trains are approaching or occupying the crossing. The cost of the necessary warning devices and protection was estimated to be in excess of \$100,000.

The staff recommended that the crossing be closed. A staff investigation revealed that about 40 cars per day use the crossing to visit a food and household goods distributor located in protestants' building. The staff noted that there is a properly protected crossing approximately 1/10th mile west of Pearl Street on Joy Street which runs parallel to Pearl. Joy Street could be connected to Pearl Street by improving and paving the presently existing dirt road which extends along the north border of the applicant's right-of-way. The staff further recommended that if the Commission determines Pearl Street crossing should remain open, it must be protected by the installation of two Standard No. 9 automatic gate-type signals, as provided in General Order 75-C, to properly protect the public.

Counsel for the City stated that the City abandoned the crossing in 1939 and abandoned the area north of the crossing on Pearl Street in 1962. The City is not aware of any action by developers to build on or sell the property north of Pearl Street, but if such a move was made the City would insist on proper protection being installed at the crossing. The City favors closing the crossing because it is not safe and there is access to the area on Joy Street.

Protestants' representative stated that the Pearl Street crossing has been used by the public for at least 40 years. He placed three leases in evidence which concern the protestants' building at the crossing. The yard of the building is leased as a parking lot for a tractor, trailer and two backhoes. The upstairs interior is leased to an organization sponsored by the City of

Corona that aids the needy. Downstairs is leased to a fabricator of steel.

Protestants' representative stated that there is a 25-foot wide easement which extends easterly from Joy Street to Pearl Street over land located adjacent to protestants' property. The owner of the adjoining land is a developer who does not want to develop the right-of-way over his land until he knows how the property will be developed and where his buildings will be located. It is estimated that the development of the adjoining land may take as long as two years.

Applicant placed a copy of the easement agreement in evidence. It is described as "perpetual and non-exclusive" and that it "shall constitute a burden on the property" over which it extends. Another paragraph provides that "The easement granted herein shall be perpetual and constitute an easement and covenant running with the land." The easement is defined (Exh. 23, page 2(c)) as being for "the use and benefit of protestants' property for vehicular and pedestrian ingress and egress from protestants' property to publicly dedicated streets".

The easement agreement also provides that the easement can be moved on 20 days' notice by the owner of the burdened property. This provision was designed to prevent the easement from interfering with the location of buildings on the burdened property. The agreement provides that the new location of the easement must provide protestants with the same access as provided by the prior easement. A map attached to the agreement places the easement approximately 400 feet north of the applicant's mainline track and extends it 350 feet easterly from Joy Street to the westerly boundary of protestants' property.

#### Discussion

Protestants are concerned that access to their property will be cut off if the Pearl Street crossing is closed. Entry is guaranteed over the easement on the adjoining property which can be

used by 4-wheel drive vehicles. It was suggested that a grader would make it passable to all vehicles with a minimum of effort. The easement could be relocated by agreement of all parties at a later date if necessary. The easement will provide the same access from Joy Street that the customers of the lessees now have over the Pearl Street crossing. Access over the easement will also be much safer than entry and exit over the railroad tracks.

Protestants' representative requested that all Commission action be deferred for 24 to 36 months to encourage development of adjoining land. This is an insufficient reason to delay the closing of a dangerous highway-crossing over a mainline railroad. Finally, the general public does not use the Pearl Street crossing. Pearl Street is used almost exclusively by customers of the organizations occupying protestants' building.

Joy Street is about 100 yards east of Pearl Street and is protected by gates and flashing lights where it crosses the rail line. The Joy Street intersection is recognized as a public crossing by the City, the railroad and the Commission.

Applicant filed comments to the proposed decision on October 24, 1988 to suggest that Ordering Paragraphs 1 and 2 be amended and that a fourth ordering paragraph be added to the three-paragraph order.

The new paragraph requires the City to erect a barricade across Pearl Street south of applicant's right-of-way. This recommendation is logical and should be incorporated in the decision.

#### Findings of Fact

1. This application was filed by the applicant to request that the Pearl Street crossing over applicant's tracks in the City of Corona be closed by Commission order.

2. The City and the Commission staff have determined that the Pearl Street crossing is not safe and therefore support this application.

3. The crossing is not protected by automatic gates which drop when trains approach the crossing. There is a simple arterial stop sign on one side and a pole with a wig-wag signal on the other.

4. Trains are authorized to approach and proceed through the crossing at 45 miles per hour. Twenty-eight trains cross the intersection every day.

5. Owners of the lot located at the northeast corner of the crossing are protesting the application.

6. Protestants claim that the crossing provides access for the customers of three lessees located in a building on their property.

7. Access can also be provided over an easement which extends from Joy Street 350 feet easterly over land adjoining protestants' property. (A map with easement included is attached hereto as Appendix A.)

8. The easement agreement classifies the easement as perpetual and states that it is a covenant running with the land.

9. The owner of the land burdened by the easement prefers to disregard it until he has developed his land and knows where buildings to be constructed will be located.

10. The easement agreement provides for moving the easement if equal access is provided over the new entry.

11. The adjoining lot is level and an easement to accommodate vehicles can be extended without undue effort.

12. The easement is not in use as of the date of this order.

13. Joy Street has a properly protected public crossing located 100 yards west of Pearl Street.

14. The crossing at Pearl Street is dangerous and should be closed. The public will not be inconvenienced since the Joy Street crossing is available.

15. The cost of closing the Pearl Street crossing should be borne by applicant.

16. The alterations recommended by applicant in the comments filed on October 24, 1988 are reasonable and should be adopted.

Conclusions of Law

1. The crossing at Pearl Street is dangerous and should be closed. The public will not be inconvenienced since the Joy Street crossing is available.

2. The cost of closing the crossing should be borne by the applicant.

3. The application should be granted.

ORDER

**IT IS ORDERED that:**

1. Pearl Street Crossing No. 2B-23.7 over the tracks of The Atchison, Topeka and Santa Fe Railway Company (applicant) in the City of Corona (City) shall be closed by applicant to all vehicular and pedestrian traffic as provided in the findings herein by removing the planking, pavement, and other material from, between, and adjacent to the rails.

2. Applicant shall request in writing that the City install permanent barricades of a nature which it normally uses for permanent street closures at a location south of applicant's right-of-way line but the barricades shall not interfere with the use of the existing spur track.


3. The Pearl Street crossing shall be closed and barricaded within six months of the date of this order.



4. Application 88-04-016 is hereby granted.  
This order becomes effective 30 days from today.  
Dated November 9, 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weiss, Executive Director

# APPENDIX A.

Point of Commencement

S. 24° 13' 22" E. 30.26'

E JOY STREET

N 7° 43' 30" E. 30.06'

The Point of Beginning

N 7° 43' 30" E. 30.06'

S. 73° 33' 57" E. 347.17'

N 7° 43' 30" E. 30.06'

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Varied Part Effect  
by Resolution No. 312,  
recorded May 12, 1933 in  
Bk. 446 Pg. 333, O.R. 1  
Resolution No. 1872 recorded  
May 16, 1962 in Instrument  
No. 45341, O.R.

PLAT NO. 15210  
PLAT B. 10513-27  
POL. 2  
N. 7° 45' 53" E.  
16.83'

STREET

E A.T. & S.F.

R.R. R/W

A-88-04-016

Exh 19

Taylor

Aug 4, 1988

Edw. S. Fraser

EXHIBIT "C" continued



WILLIAMSON & SCHMID

17700 SKY PARK BOULEVARD  
IRVINE, CALIFORNIA 92714  
(714) 549-2222

SKETCH TO ACCOMPANY  
LEGAL DESCRIPTION

for

MOSES & O. G. G. G.

SCALE	1" = 10'
DRAWN BY	JLc
SURVEYED BY	
CHECKED BY	SL
FIELD BOOK	
DATE	

Decision 88 11 004

NOV 9 1988

ORIGINAL

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OPINION

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crossing sign on the pole under the stop sign. The southwest corner has a wig-wag on an extension off a pole, about 12 feet over the highway. There are no automatic gates or other protective devices. The photos show that Pearl Street ends about 200 feet south of the crossing where it is blocked by a high dirt bank which supports a highway running at right angles to Pearl Street. North of the crossing Pearl Street extends to several buildings which could be warehouses.

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#### Findings of Fact

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#### Conclusions of Law

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2. The cost of closing the crossing should be borne by the applicant.

3. The application should be granted.

ORDER

IT IS ORDERED that:

1. Pearl Street Crossing No. 2B-23.7 over the tracks of The Atchison, Topeka and Santa Fe Railway Company in the City of Corona shall be closed by the The Atchison, Topeka and Santa Fe Railway Company to all vehicular and pedestrian traffic as provided in the findings herein.

2. The Pearl Street crossing shall be closed within six months of the date of this order.

3. Application 88-04-016 is hereby granted.

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California.

16. The alterations recommended by applicant in the comments filed on October 24, 1988 are reasonable and should be adopted.

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A.88-04-016 ALJ/EGE/cac

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Dated NOV 9 1988, at San Francisco, California.

STANLEY W. HULETT  
President

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FREDERICK R. DUDA  
C. MITCHELL WILK  
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Commissioners