

Decision No. ~~89203~~ DEC 19 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE ATCHISON, TOPEKA }
AND SANTA FE RAILWAY COMPANY for an }
order abolishing grade crossing at }
Walter Avenue, Pinole, Contra Costa }
County. }

Application No. 57839
(Filed January 30, 1978)

Leland E. Butler and Charles L. Hemmings,
Attorneys at Law, for The Atchison,
Topeka and Santa Fe Railway Company,
applicant.

E. James McGuire and William R. Benz,
Attorneys at Law, for Jones Development
Company; and Charles Schreiner, James
Jenkins, and Alan Lindsay, for themselves;
protestants.

Charles R. Abar, for Owners at Crossing,
Charles R. Abar and Elizabeth M. Abar;
and Paul E. Kilkenny, for Contra Costa
County, Public Works Department;
interested parties.

Steven Weissman, Attorney at Law, for the
Commission staff.

ORDER DENYING PETITION FOR MODIFICATION

In Decision No. 89203 dated August 8, 1978 in Application No. 57839, this Commission ordered that the railroad crossing located at Walter Avenue over the main tracks of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) near the city of Pinole, Contra Costa County, be abolished.

On September 6, 1978 Charles R. Abar and Elizabeth M. Abar (petitioners) filed a petition for modification of Decision No. 89203 requesting that Finding 9 be deleted and that the Commission institute an investigation "as to the need for a private crossing necessitated by the effect of the closure of the crossing in Walter Avenue as ordered in Order No. 89203." In support of the request for deletion of Finding 9, petitioners' verified statement states that Finding 9 is incorrect as to petitioners' property.

On September 15, 1978 Santa Fe filed a reply to the petition. Santa Fe states that the petition should be denied because it is not directed to either Finding 13 or to the order, but rather is directed to a matter that is not germane to the issue, i.e., the petitioners' need for a private crossing, which Santa Fe has indicated they are willing to grant, where a need is shown, subject to conditions necessary for the safety and protection of the parties. Further, Santa Fe states that the need for a private crossing is not the proper subject for a Commission investigation since the petitioners are the serviant owners subject to Santa Fe easement; and the serviant owners' interference with this easement is not within the Commission's judisdiction. Santa Fe did not challenge petitioners' property.

The testimony and evidence in the record supports our finding of alternate access routes to the property north of the tracks; however, it appears to be in error with respect to the Abar property. With respect to the need for a private crossing, Santa Fe has declared that it is willing to grant a license for a private crossing and, as stated in Decision No. 89203, "If the parties are unable to reach an agreement, they can apply to the Commission for determination of the necessity for a crossing."

Based on the circumstances and record herein, we conclude that the petition should be denied except as to the modification of Finding 9 as provided in the following order.

Findings

1. In Decision No. 89203 dated August 8, 1978, we ordered that the railroad crossing at Walter Avenue over the main line of Santa Fe be abolished.
2. Finding 9 of Decision No. 89203 stated that "Alternate means of access to the property north of the Walter Avenue crossing are available through the adjacent residential subdivision by crossing the Santa Fe main line over Del Monte overpass."
3. The record supports our finding of the availability of alternate access routes to the property north of the Santa Fe tracks at Walter Avenue except for the property owned by Charles R. Abar and

Elizabeth M. Abar and that finding of fact provided support for our order abolishing the Walter Avenue crossing.

4. The need for a private crossing at Walter Avenue was not at issue in this proceeding.

5. Santa Fe has declared that it is willing to grant a license for a private crossing where a need is shown subject to conditions which are necessary for the safety and protection of the parties.

IT IS ORDERED that the petition is denied except that Finding 9 of Decision No. 89203 is modified to read:

9. Alternate means of access to the property north of the Walter Avenue crossing are available through the adjacent residential subdivision by crossing the Santa Fe main line over Del Monte overpass, except for the property owned by Charles R. Abar and Elizabeth M. Abar.

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

Dated at San Francisco, California, this 19th day of DECEMBER, 1978.

Robert Bakum
 President
William J. ...
Vernon L. ...
Clifford D. ...
Clair J. ...
 Commissioners