

Decision 00-02-035 February 17, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

TIM SELBY, as TRUSTEE OF THE SAN LUIS TRUCK TRANSFER, INC. PROFIT SHARING TRUST,

Complainant,

v.

UNION PACIFIC RAILROAD, a Corporation, formerly known as SOUTHERN PACIFIC RAILROAD COMPANY, a Corporation,

Defendant.

Case 99-03-045  
(Filed March 19, 1999)

**O P I N I O N**

**Summary**

This decision grants a private crossing over the tracks of the Union Pacific Railroad (Union Pacific) to the owner of certain property in San Luis Obispo County. The decision also orders Union Pacific to reconstruct and maintain the crossing up to standards prescribed by the Commission staff and to bear all costs for such reconstruction and maintenance.

**Background**

On March 19, 1999, Tim Selby, as Trustee of the San Luis Truck Transfer, Inc. Profit Sharing Trust (Trust), filed this complaint seeking a private crossing over railroad tracks and land owned by Union Pacific which adjoined the Trust's property in San Luis Obispo County. Complainant alleged that such a crossing had existed from as early as 1886 but no later than 1981 to March 1998.

Complainant further alleged that Union Pacific, without notice, had caused the crossing road to be destroyed and had placed boulders where the roadway had been.

On April 27, 1999, Union Pacific filed its answer to the complaint. Union Pacific admitted that it removed the crossing without notice to the Complainant. Union Pacific also stated that the private crossing would not be necessary or safe.

On June 8, 1999, the assigned Commissioner and Administrative Law Judge (ALJ) convened a prehearing conference. Templeton Community Services District (District) intervened in the proceeding stating that it had purchased an option to buy the property from the Trust. The parties agreed to meet and confer with Commission staff at the site. They further agreed to attempt to reach a mutually agreeable resolution of the entire proceeding and, if that failed, to arrive at a stipulated statement of facts. The ALJ also set a briefing schedule.

On July 30, 1999, the parties filed a stipulated statement of facts but also included disputed facts offered by Union Pacific, Selby, and the District. Initial briefs followed on August 27, 1999, with reply briefs on September 17, 1999.

**Applicability of Article 2.5 of the Commission's Rules of Practice and Procedure**

The parties filed a stipulated factual statement. The statement also contained factual assertions by each party that remained contested. As set out below, the facts necessary to resolve all issues in this proceeding are contained in the stipulated facts. There being no remaining disputed issues of material fact, a hearing is not necessary. Accordingly, Article 2.5 of the Commission's Rules of Practice and Procedure does not apply to this proceeding.

## **Summary of Stipulated Facts**

### **1. The Property**

The parcel of real property at issue in this proceeding is commonly known as 1585 South Main Street, Templeton, California, and is specifically described in Attachment 1 to this decision. It is landlocked by Union Pacific's railroad tracks to the west, another neighboring property to the north, and the Salinas River and Paso Robles Creek to the east and the south, respectively. The property does not have direct access to a public roadway, and the only feasible route of access is over Union Pacific's tracks.

### **2. The Crossing**

Prior to March 1998, the crossing consisted of a strip of paved asphalt approximately 15 feet wide up to and over the railroad line from approximately 25 feet on each side of the track centerline. It included one stop sign and one sign displaying a notice of private railroad crossing on each side of the tracks.

### **3. Selby**

Selby is the sole trustee and beneficiary of the Trust. The Trust acquired the property in a 1995 foreclosure sale. The property contains a well site but no other improvements. Selby resides in Nevada and no other agent or manager is responsible for the property.

### **4. Union Pacific**

Union Pacific is a Class I freight railroad performing common carrier services throughout the western United States. It owns and operates the single-track line of railroad known as the "Coast Main Line" on which the private crossing is located. Currently, 10 trains per day pass along the tracks at the crossing, and Union Pacific expects train traffic to increase.

### **5. Templeton Community Services District**

The District, a public entity located in San Luis Obispo County, has the legal authority, among other things, to acquire real property for the transmission, treatment, and disposal of wastewater. Since 1990, the District has been planning and designing improvements to its wastewater treatment system, which includes the construction of percolation ponds. The District has concluded that the only feasible location for its percolation ponds is the property.

### **6. History of the Crossing**

On November 24, 1886, J.H. Blackburn conveyed the property that is now owned by Union Pacific and on which the tracks run. The 1886 deed contained a reservation that the railroad must build and maintain a fence on each side of the tracks and construct three farm crossings protected by cattle guards on the same. Between 1886 and 1998, at least one at-grade, private railroad crossing has existed over the railroad line to provide access to the property from a public roadway, which crossing has commonly been referred to by Union Pacific by its location near mile post E-222.75.

### **7. Destruction of the Crossing**

In March 1998, Union Pacific removed both sides of asphalt leading up and over the railroad line. Union Pacific also placed boulders at the crossing and erected a fence across the crossing. Union Pacific gave no notice to, nor did it receive any authorization from, Selby or the Commission. Union Pacific constructed a temporary asphalt crossing to allow the District access to perform tests on the property to determine its suitability for use as a percolation pond. The District also erected a locked metal chain barrier across the entrance.

## 8. Commission Staff's Recommended Safety Measures

At the request of the assigned ALJ, Commission staff met with the parties at the site of the crossing. All parties agreed that the seven safety measures which are set out in Attachment 2 would be needed should the District purchase the property and operate it as a percolation pond.<sup>1</sup> Any other use of the property would require reassessment and potentially different safety measures.

### Discussion

Pursuant to § 7537,<sup>2</sup> the Commission has the authority to "determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

All parties agree that the property is landlocked, absent a crossing over Union Pacific's tracks. Thus, such a crossing is a practical necessity. All parties further agree that the crossing has been in place for over a century.

The Commission has previously determined that a crossing that is necessary to obtain access to a landlocked parcel should be constructed and maintained at the expense of the railroad. Seibel et al. v. Western Pacific Railroad Company, Decision 83-02-071. In Seibel, the Commission considered, but did not find dispositive in arriving at its conclusion, a deed restriction requiring the railroad to construct the crossing.

Like the deed in Seibel, the 1886 deed restriction appears to create an obligation on the railroad to build and maintain three crossings to the property.

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<sup>1</sup> The District has agreed to pay the costs of constructing and maintaining a gate at the entrance to the crossing. The parties did not assess the costs of all other safety requirements.

<sup>2</sup> All citations are to the Public Utilities Code, unless otherwise indicated.

Like the Commission in 1983, we will consider this fact when assessing the costs of the crossing.

Of greater weight, however, is Union Pacific's action in destroying a century-old crossing without notice to the property owner, who was about to be denied any access to the property, or to this Commission, which is charged with oversight of crossings. Union Pacific's actions were simply unreasonable.

In its briefs, Union Pacific contends that several factors support its unilateral action. First, the crossing is located near a high school and the crossing is unsupervised. Second, motorcycle tracks and worn paths are visible on the property. Third, Union Pacific employees have reported over the years many "near misses" in the vicinity of this crossing. Fourth, Union Pacific is attempting to minimize the number of private crossings of its tracks due to the danger such crossings can pose for the public and the railroad.

While Union Pacific presents valid reasons for desiring the elimination of the crossing, such reasons provide no support for its impulsive act in destroying the crossing. Union Pacific presented no facts, contested or uncontested, which demonstrated an unforeseen event which suddenly rendered the crossing unsafe, and thus necessitated immediate action. Rather, Union Pacific described a multi-year series of problems which cumulatively, in Union Pacific's view, undermined safety at the crossing. In short, Union Pacific presented no justification for acting without notice to the landowner. Even if Union Pacific determines that a private crossing poses a danger to the public and the railroad, Union Pacific must give as much notice as is practicable to the landowner.

In reviewing our decisions and rules, we find that the Commission has not previously addressed the question of the process that a railroad should use when determining that a crossing should be destroyed. Except in an emergency, such

process must include timely prior notice to the landowner. The railroad should also notify Commission staff where the closing is likely to cause controversy.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on January 27, 2000, and reply comments were filed on February 1, 2000.

The comments and reply comments have been thoroughly considered. Where warranted, changes have been made in the text.

### **Findings of Fact**

1. The real property at issue in this proceeding is commonly known as 1585 South Main Street, Templeton, California, and is described more particularly in Attachment 1.
2. The property described in Attachment 1 is landlocked. The only feasible route of access is over Union Pacific's tracks.
3. A private crossing over Union Pacific's tracks is necessary to obtain access to the property described in Attachment 1.
4. Prior to March 1998, the crossing consisted of a strip of paved asphalt approximately 15 feet wide up to and over the railroad line from approximately 25 feet on each side of the track centerline. It included one stop sign and one sign displaying a notice of private railroad crossing on each side of the tracks.
5. The Trust owns the property described in Attachment 1.
6. Union Pacific owns and operates the single trackline of railroad known as the "Coast Main Line" on which the private crossing is located. Currently, 10 trains per day pass along the tracks at the crossing.
7. The District is a public entity located in San Luis Obispo County that disposes of wastewater.

8. On November 24, 1886, J.H. Blackburn conveyed the property that is now owned by Union Pacific and on which the tracks run.

9. The 1886 deed contained a reservation that the railroad must build and maintain a fence on each side of the tracks and construct three farm crossings protected by cattle guards on the same.

10. Between 1886 and 1998, at least one at-grade, private railroad crossing has existed over the railroad line to provide access to the property from a public roadway.

11. In March 1998, Union Pacific removed both sides of asphalt leading up and over the railroad line. Union Pacific also placed boulders at the crossing and erected a fence across the crossing.

12. Union Pacific gave no notice to, nor did it receive any authorization from, Selby or the Commission.

13. Commission staff met with the parties at the site of the crossing and all agreed that the seven safety measures which are set out in Attachment 2 would be needed should the District purchase the property and operate it as a percolation pond.

### **Conclusions of Law**

1. Pursuant to § 7537 the Commission has the authority to "determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained, and shall fix and assess the cost and expense thereof."

2. The Commission exercised its discretion under § 7537 in Seibel where it determined that the crossing was necessary to obtain access to a landlocked parcel and that the railroad should construct and maintain the crossing at its expense.

3. The Commission may consider the 1886 deed restriction which appears to create an obligation on the railroad to build and maintain three crossings to the property.

4. Even accepting all of Union Pacific's contested facts as true, Union Pacific has failed to present sufficient justification for destroying the crossing without notice to the landowner.

5. Union Pacific's action in destroying a century-old crossing without notice to the property owner was unreasonable.

6. Except in an emergency, Union Pacific must give as much notice as is practicable to the landowner of its intention to destroy an existing private crossing.

7. The public interest requires that railroads operating in California provide timely prior notice to landowners before destroying a crossing, absent an emergency.

8. Union Pacific should construct and maintain a permanent private crossing over its tracks at the location of the destroyed crossing.

9. Union Pacific should bear the costs of such construction and maintenance.

10. Union Pacific should be allowed to exercise its judgment in the construction and maintenance of the crossing so long as the crossing complies with all applicable federal, state, and local safety requirements, and the crossing is capable of meeting the reasonable needs of the property owner. Should the District acquire the property, the crossing shall comply with the safety requirements found in Attachment 2.

11. This order should be made effective immediately so that Union Pacific can begin remedial action as soon as possible.

**O R D E R**

**IT IS ORDERED** that:

1. Union Pacific Railroad (Union Pacific) shall, at its expense, continue to allow reasonable access over its tracks at the location of the destroyed crossing.
2. The Templeton Community Services District (District) shall notify Union Pacific in writing when it has obtained title to the property described in Attachment 1. The District shall also notify Union Pacific should the District decide not to purchase the property.
3. Should the District decide not to purchase the property, Union Pacific and the property owners shall work cooperatively with Commission staff to determine the appropriate safety measures to be implemented at the crossing.
4. Unless otherwise agreed by the parties, no later than 180 days after the District notifies Union Pacific of its decision regarding purchase of the property, Union Pacific shall, at its expense, construct and maintain a permanent crossing over its tracks at the location of the destroyed crossing.
5. Union Pacific may exercise reasonable discretion in constructing and maintaining the private crossing ordered in Ordering Paragraph 4, provided, however, that such crossing shall comply with all applicable federal, state, and local safety requirements, including those set out in Attachment 2, if applicable, and that the crossing is capable of meeting the reasonable needs of the property owner.
6. Union Pacific shall file with the Commission's Rail Safety and Carriers Division and serve a compliance filing stating the date on which it completed the construction.

7. This proceeding is closed.

This order is effective today.

Dated February 17, 2000, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

CARL W. WOOD

LORETTA M. LYNCH

Commissioners

**ATTACHMENT 1**

Parcel A of parcel map CO-80-160, in the County of San Luis Obispo, State of California, according to the map recorded February 18, 1982 in book 31, page 60 of parcel maps.

Excepting therefrom all oil, gas and other hydrocarbon substances and minerals below a depth of 500 feet, without the right to enter upon, possess or use any portion of the surface for the purpose of prospecting or exploring for oil, gas or other hydrocarbon substances and minerals in and under said land, as excepted by John V. Rossi and Lucille S. Rossi in deed recorded in book 1941, page 115 of official records.

**(END OF ATTACHMENT 1)**

## ATTACHMENT 2

1. The approach on the east side of the track should be raised so that it is as leveled as possible with the crossing.
2. In the northeast quadrant of the crossing, trees should be trimmed to improve sight line for westbound vehicles.
3. The roadway and the track should cross as close to 90-degree angle as possible.
4. The approaches should have the appropriate RXR and limit line pavement markings.
5. There should be Standard No. 1-C Private Crossing Sign (Commission General order 75-C) installed at the appropriate location.
6. A fence should be installed along the west side of the railroad property line from the crossing running about 200-feet north.
7. A gate and padlock should be installed at the entrance to the railroad's maintenance road on the west side of the track.

These safety enhancements apply only to District's limited use of the referenced crossing. The group agreed that any other use of the private crossing would require a re-evaluation of the crossing.

The group agreed that at the minimum a padlock-gate entry system should be installed. District personnel must exit the vehicle and unlock a gate to enter the crossing when safe to do so. After the vehicle has safely cleared the track, the gate must be immediately locked. This will be part of the District's training for its personnel using the crossing. The railroad suggested that Operation Lifesaver be involved in the training process.

**(END OF ATTACHMENT 2)**