

ORIGINAL

Decision No. 17670

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of )  
the County of Orange for an order )  
authorizing a subway crossing under )  
the Pacific Electric Railway Com- ) Application No. 13120.  
pany's tracks at Orchard Avenue near )  
Stern Station, in the County of Orange. )

Mr. Alex P. Nelson, District Attorney,  
for Applicant,

Mr. C. W. Cornell, for Pacific Electric  
Railway Company,

Mrs. K. L. Barclow, in propria persona.

WHITSELL, COMMISSIONER:

O P I N I O N

In the above entitled application the County of Orange asks for an order authorizing the construction of a subway under the La Habra Line of the Pacific Electric Railway Company near Stern Station and for an order apportioning the expense of constructing said subway between the interested parties. A public hearing was held on this matter at Santa Ana on October 15th, 1925.

The railroad under which it is sought to construct the proposed subway, is the so-called La Habra Line of the Pacific Electric, the present terminus of which is approximately one-quarter mile easterly of the proposed crossing. This railroad was built about 1911, with the idea of being extended easterly through the Santa Ana Canyon to Riverside. It appears that the company at this time has no definite plans regarding such an extension. At the time the line was built it crossed an arroyo just east of Stern Station by means of an earth fill, but near the westerly side of the arroyo

there was driven a three-panelled pile trestle through one bent of which a roadway was provided. This roadway connects with the County Road system but it appears that the approaches for a short distance on each side of the railroad are in such an unsatisfactory condition as to alignment, grades and surface that public travel thereover is relatively slight. The existing undergrade crossing is maintained by the railroad but the roadway itself is maintained by the County. The County now desires to improve the road in this vicinity by re-locating it to the easterly side of the arroyo and carrying it under the railroad in a subway of permanent type of construction in such a manner that both alignment and grades of the relocated roadway will make it a satisfactory route for both through and local traffic.

The railroad does not concede that public convenience and necessity justify the relocation of this road or the construction of the new subway and opposes being assessed with any portion of the expense. Applicant introduced considerable testimony to show that a road was necessary in this vicinity to give a convenient and direct outlet to a substantial territory north of the railroad and in the vicinity of Yorba Linda and easterly thereof to the Placentia-Yorba Boulevard, which in turn connects with the main highway leading easterly through the Santa Ana Canyon to Riverside County. It also appears that this road would form a part of an alternate through route somewhat shorter than existing routes between Riverside and Los Angeles.

Considerable evidence was also introduced relating to the hazardous condition of the existing crossing under the railroad and the approaches thereto. It appears that the width of opening of the existing crossing does not comply with the provisions of General Order No. 26-a of this Commission, it being less than 15 feet, whereas said general order prescribes a minimum width of opening for such under-

grade crossings of not less than 20 feet. It also appears that on the northerly side of the crossing the road makes a right-angle turn to the east which adds to the hazard of traffic meeting on this narrow roadway at the crossing.

Applicant proposes to construct a new subway structure consisting of a concrete arch having a horizontal width of 24 feet and a total clear height at the center of 19½ feet, in such a location that practically straight line approaches can be constructed with easy grades, thereby making the crossing not only permanent but adequate and safe for highway traffic. The cost of the subway itself under this plan is estimated by the Applicant at \$17,000., a sum which, it is stated, includes the filling of the old trestle. This sum does not include the cost of constructing any of the approaches to the new crossing. Pacific Electric Railway has estimated the same work to cost in excess of \$21,000.

Applicant contends that the railroad should pay one-half of the cost of the structure but expressed itself as not expecting the railroad to pay any portion of the cost of constructing the approaches to the new crossing or paving the roadway. The railroad contends that it should not bear any portion of the cost of constructing the new crossing, inasmuch as it has already provided and now maintains a grade separation to take care of this traffic.

The railroad further points out that if it becomes necessary for the existing crossing to be widened to provide legal clearances, such alterations can be made at a cost of approximately \$1,000. and should it be necessary to replace the entire structure, on account of deterioration of its wooden members, such replacement, including the cost of providing standard clearance, could be accomplished for approximately \$1,800. Engineer for the County estimated the replacement of the existing crossing at \$7,300. and estimated that a further sum of \$2,500. would be required to improve the immediate approaches to

the crossing in such a manner that it could be considered reasonably safe and adequate for highway traffic. The record further shows that a timber structure of standard clearance could be built at the location desired by the County at a cost of \$1,800. In addition to the cost of the necessary excavation, no estimate of which was made.

Evidence was introduced to the effect that traffic on the railroad at this point was light and intermittent, the only use now made of the railroad being to give access to a quarry located on the east side of the arroyo in which the highway here under discussion is situated. However, since no proposal is made to cross the railroad at grade, the volume of the railroad traffic does not appear to be an important factor in this proceeding. It is, of course, apparent that if the railroad were not located across this arroyo, this crossing problem would not exist. The railroad does not indicate that it has any intention of abandoning its line at this point and the first question here presented for determination is whether the existing crossing is adequate and satisfactory for the public necessities in this vicinity or whether the plan proposed by the applicant should be approved or whether some other relief should be afforded. The evidence appears conclusive that the existing crossing is unsafe and inadequate to meet the public convenience and necessity for a highway in this vicinity.

It is proper to inquire into the most economical means of correcting the present situation, so that an adequate crossing may be afforded. The railroad expresses an opinion that the cost of maintaining a temporary structure at this point is not sufficient to justify the relatively large investment necessary to provide a permanent concrete structure. Applicant takes the position that there is nothing in its requirements to necessitate a permanent structure if a temporary structure is satisfactory to the railroad, but applicant does insist that the only satisfactory location for a grade separation is at approximately the location proposed in its application. Neither is

applicant interested in the closing or abandoning of the existing crossing but it has expressed its willingness to construct the necessary lateral road to serve such local residents as might otherwise need the existing crossing if the railroad desires to fill in the old crossing. The railroad states that it will not oppose the construction of a timber crossing at the location desired by the County, providing the cost of constructing such crossing is borne entirely by applicant, both as to construction and maintenance, and the railroad further agrees to accept the maintenance of the new structure if the County will bear the cost of filling and thus abandoning the old structure.

From the record, it appears that public convenience and necessity justify the construction of an undergrade crossing of timber construction at the location proposed by applicant. When such new crossing is built, it appears that public convenience and necessity will no longer require the maintenance of the existing crossing. It also appears reasonable to conclude from the evidence that the proposals of the railroad to provide standard clearances at the existing crossing at an expense of \$1,000. does not fully measure the railroad's obligation in providing a safe crossing in this vicinity and that some part of the cost of so constructing the crossing that the approaches will be safe, is also an obligation of the railroad.

Based upon the entire record in this proceeding, it appears that a crossing of wooden construction should be provided under the tracks of the railroad on the easterly side of the arroyo and that the existing grade separation should be abandoned and filled in. It also appears that the County and the railroad have a joint obligation in providing a reasonably safe and adequate means of permitting the public to pass under the railroad at this point and that the cost, therefore, of this entire work should be divided equally between the two parties, except that the cost of providing any necessary roadways, either by way of approaches to the new crossing

itself or by the construction of lateral roads to serve persons who will be deprived of the use of the existing crossing, should be borne exclusively by the County.

It may be that in working out the detail plans of the structure now proposed, that the County and the railroad may desire to agree upon the division of work rather than upon dividing actual cost of the total work. In the event that the parties so desire to enter into some such agreement, it may be proper for the Commission to grant such a request by supplemental order.

The following form of order is recommended:

ORDER

The County of Orange, State of California, having made application to this Commission for an order authorizing the construction of a public road crossing under the tracks of the La Habra Line of Pacific Electric Railway Company, approximately 600 feet easterly of Stern Station, and apportioning the cost thereof, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision

IT IS HEREBY FOUND AS A FACT that public convenience and necessity require the construction of separated grades at the point above indicated, therefore

IT IS HEREBY ORDERED that the County of Orange and Pacific Electric Railway Company be and they are hereby authorized to construct an undergrade crossing under the tracks of the La Habra Line of the Pacific Electric Railway Company approximately 600 feet easterly of Stern Station, in accordance with detail plans which hereafter shall be submitted to and approved by the Commission. Said crossing shall be designated as Crossing No. 6C-31.7-B, and shall be constructed subject to the following conditions, namely:

(1) Said undergrade crossing shall be of timber construction, substantially in accordance with plans hereafter to be submitted to and approved by the Commission.

(2) Said undergrade crossing shall be constructed with clearances conforming to the provisions of General Order No. 26-a.

(3) The cost of constructing said undergrade crossing, including the removal of the necessary portion of the existing railway embankment but excepting the paving of the roadway and the construction of highway approaches and laterals, shall be borne substantially fifty (50) per cent by the applicant and fifty (50) per cent by the Pacific Electric Railway Company.

(4) The cost of filling and abandoning the existing crossing, located approximately 300 feet west of the proposed crossing, shall be borne substantially fifty (50) per cent by the applicant and fifty (50) per cent by the Pacific Electric Railway Company.

(5) The cost of constructing and maintaining all roadway approaches to the undergrade crossing herein authorized shall be borne exclusively by applicant. The cost of paving and maintaining all roadway approaches, including the roadway across the right-of-way of Pacific Electric Railway Company and under the undergrade crossing herein authorized, shall be borne exclusively by applicant.

(6) The cost of maintaining the timber undergrade crossing herein authorized shall be borne exclusively by the Pacific Electric Railway Company.

(7) Applicant shall, within one hundred and twenty (120) days of the date hereof, file with this Commission a certified copy of the agreement between the interested parties relative to the construction of said undergrade crossing and relative to the division of cost of construction and maintenance thereof. Said agreement shall be subject to the approval of this Commission.

(8) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said undergrade crossing.

(9) If said undergrade crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(10) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said undergrade crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective twenty (20) days after the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29<sup>th</sup> day of November, 1926.

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*Charles*  
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*Emmett*  
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*Leon Whitehall*  
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*Thos S. Roatta*  
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Commissioners.