

Decision No. 18122.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
The People of the State of California,
on relation of the California Highway
Commission, for an order authorizing
the construction of a State highway
crossing under the tracks of the South-
ern Pacific Railroad, at Mossdale, San
Joaquin County, California.

Application No. 12,836.

Paul F. Fratessa, for Applicant,

E. W. Hobbs, for Southern Pacific Company.

WEITSELL, COMMISSIONER:

O P I N I O N

In the above entitled application the California Highway Commission asks authority to construct a state highway under the tracks of Southern Pacific Company near Mossdale in San Joaquin County, in order to eliminate an existing inadequate and unsafe grade separation where the highway passes under the railroad at that point. Applicant further asks that the Commission make its order apportioning the cost of the proposed grade separation between the interested parties.

A public hearing was held in this matter at Stockton on October 6th, 1926.

At the hearing both parties agreed that public convenience, necessity and safety justified the replacement of the existing underpass by constructing a new grade separation in the general vicinity of the location proposed by applicant in this proceeding. The parties, however, did not agree upon the precise plan by which such grade separation should be effected, nor was agreement reached as

to the division of cost thereof.

The proposed grade separation, if constructed, will form a part of the state highway extending from the Bay District to the San Joaquin Valley by way of Haywards, Livermore and Tracy. This highway carries a large volume of through traffic which normally travels at high rates of speed. The rail line involved is Southern Pacific Company's double track main line between Tracy and Lathrop, over which high-speed passenger and freight trains are operated.

The evidence shows that the existing undergrade crossing is a hazardous one, due to restricted width of roadway between trestle bents and also due to the right-angle turn in the northerly approach about sixty to seventy feet from the trestle. It is also inconvenient to users of the highway by reason of restricted overhead clearance, which does not permit of the passage of loads which are more than 12 feet in height.

Applicant herein proposes to construct a new subway underneath the Southern Pacific Company's double track main line at a point approximately 800 feet east of the existing separation, which will provide a clear roadway width of thirty feet without sidewalks. The maximum approach grade on the proposed highway is 2.7 per cent. The new subway will, if constructed as proposed, require an entirely new alignment of the highway in this vicinity which will cross the railroad at an angle of about 45 degrees and will eliminate three turns in the highway, two of which are dangerous right-angle turns located on the north side of the railroad in that portion of the existing highway which is to be abandoned. The present highway approaches are paved with oiled macadam fifteen feet in width, whereas the plan proposed shows a concrete pavement twenty feet in width. No change is contemplated in the existing alignment or grade of the railroad.

Southern Pacific Company does not object to the plan pro-

posed by applicant but contends that it should not be assessed for more than one-half of the cost that would be incurred in building a substitute subway at the location of the existing timber underpass.

L. D. Packard, Assistant Bridge Engineer for applicant, presented an estimate (Applicant's Exhibit No. 4) showing the cost of constructing the subway, itself, at the new location, as proposed in Applicant's Exhibit No. 1, to be \$67,351.00, exclusive of the cost of right-of-way. Applicant's Exhibit No. 10 shows the total cost for the proposed project, exclusive of right-of-way, to be \$98,746.00, of which \$15,870.00 covers the cost of paving the highway line change outside of the limits of the new grade separation.

The necessary right-of-way has already been secured and no suggestion was made by applicant that the cost of such right-of-way should be included in the cost of the project to be apportioned between the parties.

J. P. Dunnigan, Assistant Engineer, Southern Pacific Company, estimated the cost of a substitute subway to be located at the existing undergrade crossing, as shown on Southern Pacific Company's Exhibit No. 3-a, to be \$34,283.00, while Mr. Packard estimated the cost of another plan of separation at this location at \$28,980.00. Costs of rights-of-way, grading and paving, for a line change so as to improve the alignment of the highway on the north side of the track at this location, are omitted from both estimates.

The plan proposed by Southern Pacific Company places a curve of 130-foot radius in the north highway approach, which their own witness admitted was not a proper alignment for a trunk highway, as is the case here, and which would result in a hazard to vehicular traffic. In order to eliminate this curve, approximately nine acres of additional right-of-way would have to be procured by the Highway Commission and the change in highway alignment required would bring

the total cost of the project under this plan to \$76,695.00, exclusive of right-of-way. Another curve, with a radius of 206.7 feet, at the east end of the new highway bridge across the San Joaquin River, would be an inherent part of Southern Pacific Company's plan, which it would be impractical to eliminate even by the purchase of additional right-of-way and the construction of a new road.

It is contended by Southern Pacific Company that the cost of providing proper highway alignment in approaches to grade separations is not a proper portion of the cost of this grade separation project to be shared by the railroad and that only a portion of the cost of providing the subway, itself, should be assessed to the railroad. This appears to be a fair contention where the subway is so located that it will permit of proper highway alignment being made, but in this case the alignment of the highway on the north side of the railroad at the existing crossing does not lend itself to a favorable separation; therefore, this situation warrants special consideration.

The plan proposed by Southern Pacific Company, while improving clearance conditions at the point of crossing, would leave the highway with practically the same alignment, with its attendant hazards, as exists at the present structure, which is one of the major reasons for building a new separation. This Commission has often held that the location and design of grade separations should be such as to eliminate hazard and promote the convenience of the users of both the highway and railroad and give proper grade and alignment to each.

Exception was taken by Southern Pacific Company to certain items of cost in applicant's estimate as not being proper of inclusion in the costs to be divided between the interested parties. Upon review of the evidence in this proceeding, however, it is believed that the cost of constructing all of the items shown in Applicant's

Exhibit No. 4, except the cost of paving the highway outside the track supporting structure, should be apportioned between applicant and Southern Pacific Company. Inasmuch as the paving within the subway itself forms an integral part of the subway construction in this particular instance, it should be included in the cost of the subway. The additional items shown in Applicant's Exhibit No. 10 for grading and paving, due to change in alignment of the highway outside the limits covered by Applicant's Exhibit No. 4, should be borne exclusively by applicant.

From a consideration of all of the evidence in this proceeding, it appears that in the interest of the public a subway should be built at the location proposed in Applicant's Exhibits Nos. 1 and 2 and it is concluded that the cost of constructing the subway and approaches thereto, the items of which are enumerated on Applicant's Exhibit No. 4, should be borne fifty (50) per cent by Applicant, and fifty (50) per cent by Southern Pacific Company, except the cost of paving the highway outside the track supporting structure, which should be borne exclusively by Applicant. The maintenance charges of this separation should be apportioned in accordance with an agreed plan to be filed with the Commission. In the event the parties cannot agree upon such a plan, the Commission will prescribe the terms of this assessment in a subsequent order.

The following form of order is recommended:

O R D E R

The people of the State of California, on relation of the California Highway Commission, having made application to this Commission for an order authorizing the construction of a State Highway under the tracks of Southern Pacific Company in the vicinity of Mossdale, County of San Joaquin, and for an order 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, therefore

IT IS HEREBY FOUND AS A FACT that the public convenience, necessity and safety require the construction of a State Highway under the tracks of Southern Pacific Company at the point, and in the manner, shown on Applicant's Exhibits Nos. 1 and 2; therefore

IT IS HEREBY ORDERED that the People of the State of California, on relation of the California Highway Commission, and Southern Pacific Company be and they are hereby authorized to construct a subway carrying the highway under the tracks of Southern Pacific Company near Mossdale, San Joaquin County, at the location and in accordance with the plans shown on Applicant's Exhibits Nos. 1 and 2 in this proceeding, subject to the following conditions:

(1) Said undergrade crossing shall be constructed, as hereinafter provided, substantially in accordance with Applicant's Exhibits Nos. 1 and 2 and specifically in accordance with detailed plans which hereafter shall be submitted to the Commission for its approval after having been approved by applicant and by Southern Pacific Company.

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

(3) The cost of constructing said undergrade crossing shall be borne fifty (50) per cent by applicant and fifty (50) per cent by Southern Pacific Company, based upon the actual cost of the items enumerated in Applicant's Exhibit No. 4 in this proceeding, except the cost of paving the highway outside the track supporting structure which shall be borne exclusively by Applicant. Applicant shall, within one hundred and twenty (120) days from the date hereof, file with this Commission, for its approval, a certified

copy of an agreement between Southern Pacific Company and itself, covering the terms and manner of constructing this grade separation.

(4) The cost of maintenance of said undergrade crossing shall be borne in accordance with the terms of an agreement hereinafter to be entered into between Applicant and Southern Pacific Company and filed with the Commission for its approval within one hundred and twenty (120) days from the date hereof, or, in the event of failure to reach such agreement within this time, said maintenance shall be borne in accordance with the terms of a supplemental order by this Commission.

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

(6) 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.

(7) After the proposed undergrade crossing is constructed and opened to traffic, the existing undergrade crossing, located approximately 800 feet west thereof, shall be legally abandoned and effectively closed to public use and travel.

(8) 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.

For all other purposes, the effective date of this order shall be twenty (20) days from and 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 this 30th day of
March, 1927.

Emmett

O. S. Jones

Leon Whitell

Commissioners.

DISSENT

I disagree with the majority opinion in its apportionment of costs between the State and the railroad.

For more than fifty years there has existed at this location separated grades for the railroad and the highway. For all of these years there has not been and there is not now any danger of collision between railroad trains and vehicular traffic, nor is there any possibility of interfering with or impeding vehicular traffic by reason of the operation of trains.

Admittedly, the existing under-grade crossing is inadequate. The tube is too narrow and is not deep enough to accommodate modern vehicular traffic. Also, the highway is badly located, there existing sharp turns which greatly increase the hazard of collision between vehicles. The remedy proposed is to construct a new under-grade crossing at another location where the existing sharp turns may be avoided and the highway made as safe as possible for vehicular traffic. The proposed plan is desirable and should be carried out. The only point on which there is disagreement is that concerning a division of costs.

If an error was made by public authority in locating the highway something more than fifty years ago the responsibility for that error rests with the public and not with the railroad. So far as the adequacy of the present under-grade crossing is concerned the railroad should bear its full responsibility. To make adequate for present and future traffic the under-grade crossing now existing, without attempting to correct the error made many years ago in locating the highway, according to the testimony would amount to a sum somewhere between \$28,000 and \$34,000.

I am of the opinion that the railroad should be required to pay one-half of the estimated cost of making adequate the existing under-grade crossing. If it is in the public interest, as clearly appears from the record, that the line of the highway be changed and that a new under-grade crossing be established at another and different location, then it seems to me to be just and equitable that the railroad should contribute to the cost of the new under-grade crossing approximately the sum which it otherwise would have been justly required to pay to make the present under-grade crossing adequate and capable of carrying the traffic.

I feel that to require the railroad to pay one-half of the total cost of the proposed entirely new and substitute under-grade crossing, which, exclusive of paving outside the subway, will amount to somewhere between \$67,000 and \$83,000, is inequitable and amounts approximately to twice as much as in justice to all parties should be paid by the railroad.

I feel that I must refuse to be bound in other and similar cases by the rule laid down by the majority in this proceeding. If, in the years to come this proceeding ever is urged as a precedent or guide for action by this Commission or any other public body, I wish my unequivocal dissent to appear as a part of the record.

H. A. Brundige

I concur in the dissent of Commissioner Brundige.

Thos. S. Lunt