

Public hearings were held thereon before Examiner Vaughan at Hayward and San Francisco, the matter was duly submitted and is now ready for decision.

The record shows conclusively that a wigwag crossing signal is necessary for the proper protection of this crossing, a fact stipulated to by both the Town and the Company at the hearing. The sole question presented to us is with regard to the assessment of the costs to install and maintain this signal, both parties contending that the other should bear the entire cost thereof.

Evidence and testimony were introduced by the Town showing that prior to and at the time the Railroad Company laid its tracks in the Town of Hayward, "C" Street was a street being used by the public. It was also shown that before the Company erected a fence parallel to its track, thereby closing this crossing, the public in using "C" Street was actually crossing the railroad tracks. There is nothing in the record to show that the Company was given any authority to thus close the crossing.

In view of the foregoing, it is our opinion that it is just and equitable in this case to assess the entire cost of the wigwag signal to the railroad company. In coming to this conclusion, we are bearing in mind that this company is operating under a franchise granted to it by the Town of Hayward (Ordinance No. 84 N.S.) under which it is provided-

"E. Said Western Pacific Railway Company shall provide efficient alarm bells at such street crossings as may be required by the Board of Trustees."

In this regard the record shows that the Board of Trustees has made a request of the Railroad Company for the installation of this wigwag signal.

While we do not feel that under the Public Utilities Act we are legally bound by such a franchise provision, nevertheless, in this instance we believe that the obligation entered into between the parties should be recognized and we are taking the same into consideration as one of the guiding factors to the conclusion as above reached.

An order will be entered in conformity with the foregoing.

O R D E R

The Western Pacific Railroad Company having on April 28, 1927, petitioned that this matter be given further hearing, particularly as to the necessity for the installation of an automatic flagman at applicant, Town of Hayward's, expense at the crossing of "C" Street, heretofore granted in Decision No. 17291, dated August 27, 1926, in this proceeding, 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 ORDERED that the crossing of "C" Street in the Town of Hayward with the tracks of The Western Pacific Railroad Company, heretofore authorized by Decision No. 17291, dated August 27, 1926, in this proceeding, be protected by the installation thereof of an automatic flagman, the cost of said automatic flagman and its installation and maintenance thereafter to be paid for by The Western Pacific Railroad Company.

The effective date of this order shall be twenty (20) days after the making thereof.

Dated at San Francisco, California, this 4th day of October, 1927.

3.

Ernest A. [Signature]
Commissioner
Leon [Signature]
Thomas [Signature]
Mr. A. [Signature]
Commissioners.