

Decision No. 22255

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

City of Burbank, a municipal corporation,
Burbank Chamber of Commerce, a corporation,
Burbank Realty Board, a corporation,

Complainants,

vs.

Southern Pacific Railroad Company, a
corporation, Southern Pacific Company,
a corporation,

Defendants.

ORIGINAL

Case No. 2530

James H. Mitchell, City Attorney, City of Burbank,
for Complainants.

R. E. Wedekind, for Defendants.

Burrel D. Neighbours and C. A. Lyon, for the
American Safety Devices Company and
The Kahler Company, Interested Parties.

BY THE COMMISSION -

FIRST SUPPLEMENTAL OPINION AND ORDER

By its Decision No. 20035, dated July 11, 1928, the Commission issued its original order in the above entitled proceeding, relating to the protection of five grade crossings over Southern Pacific Company's tracks in the City of Burbank, such decision providing, among other things, for the trial installation of a set of Kahler Automatic Crossing Gates at the Alameda Street crossing. On January 20, 1930, the Commission reopened the matter for further hearing, and such further hearing in this matter was held before Examiner Handford at Burbank on February 19, 1930, the principal purpose of the hearing being to afford the parties an opportunity to show the performance record of the automatic gates and to

consider whether or not their maintenance should be continued. The protection at the other four crossings is of a type more or less commonly used in this state, and there was nothing offered requiring a further order dealing with these particular crossings.

The record shows that the Kahler gates were installed on January 4, 1929, and have been in operation continuously since that time. Selective speed track circuits were installed on October 25, 1929. The wigwag signal, which was previously installed for the protection of the Alameda Avenue crossing, was removed on August 20, 1929.

It appears that these gates originally were installed and subsequently have been maintained, during the trial period, in accordance with an agreement between The Kahler Company and Southern Pacific Company, whereby The Kahler Company agreed to install and maintain the gates at its own expense during a trial period. The railroad has also been protected by liability insurance, at the expense of the manufacturer, during this time. The Kahler Company now desires that it be reimbursed for the cost of the installation of these gates and also that it be released from the expense of further maintenance.

The City of Burbank and the other complainants herein expressed their approval of the automatic gate type of protection for this crossing and urged the continued maintenance of this particular installation.

Southern Pacific Company takes the position that it should not be required to go further in the matter of crossing protection than give the traveling public using the highway reasonable advance warning of an approaching train and that it is a matter of police regulation to require the autoist to stop, in compliance with Section 114 of the California Motor Vehicle Act, which section provides, in effect, that motorists must come to a stop before passing over a grade crossing where a danger signal is being displayed. The traffic checks

presented show that only a small percentage of the motorists failed to stop for the gates when they were closed across the highway or were in the process of closing, whereas, a substantial amount of the traffic passed over crossings when the wigwag signals were in actual operation, without first coming to a stop, as required by the Motor Vehicle Act. There is nothing in the record, however, to show that the motorists who did not make a stop under such conditions did not see the signal; in fact, it appears that in most cases the drivers of vehicles attempted to beat the train to the crossing. It may be concluded, therefore, that the gates act, to some extent, as a barrier and thus police the crossing in addition to affording a warning by the presence of the gates, flashing lights and bell.

After fully considering the record showing the performance of these gates, it appears that, mechanically, they are a dependable form of protection for that particular crossing and the traffic conditions there existing.

In analyzing the question as to the public responsibility to protect itself against accidents at grade crossings, the conclusion is apparent that the driver of a vehicle must assume some responsibility for his safety, regardless of any law which requires him to stop upon a danger signal. It is his duty to use due care on the highway, not only for his own protection but for that of others who may suffer as a result of his carelessness.

It would appear that for this particular crossing, protection equal or superior to that afforded at the majority of grade crossings in this state, could be had through the installation of two wigwag signals each equipped with two-train indicators, but the record shows that the City of Burbank and other complainants desire automatic gate protection for this crossing, which is a more expensive type of protection than the standard form commonly used in this state for this type of crossing and similar traffic conditions. In view of this situation, it would seem reasonable, if the gate protection is to remain, to assess to the municipality a portion of

the expense of providing this particular type of safety device.

The record shows that the manufacturer is willing to dispose of this particular installation, complete, for the sum of \$3,750. The list price of the two gates and accessories, complete, exclusive of installation, is quoted at \$2000. f. o. b. factory. The most important difference between the cost of wigwag signal protection and that of automatic gates, is the cost of the materials for the protective device. The cost of the two wigwag signals each equipped with two-train indicators, f.o.b. factory, is a little over \$800. It is apparent, from these figures, that the original cost of automatic gate protection is substantially more than that for wigwag signals. There appears to be no substantial difference in the maintenance costs of the two devices.

At this time there are many unprotected grade crossings in this state and it is apparent that the number of protected crossings must reasonably be increased in the future; therefore, it is important that the railroads use their funds, available for investment in protective devices, in signals which will give the motorists reasonable warning of approaching trains at the least cost, thereby enabling the protection of the greatest number of crossings with a fixed sum. If, however, a municipality desires a special form of protection, which involves substantially greater initial expenditure than for a standard type of warning device, it is reasonable and proper that the municipality participate in the original cost of such a special installation.

In view of the fact that the City of Burbank is strenuously urging the continued maintenance of the gates, it would seem proper in this case that it should bear the greater portion of the difference in cost between this device and that of a standard wigwag installation. Since this is somewhat of an experiment, it would seem reasonable that Southern Pacific Company should bear part of the expense of working out a safety device which may result in

a benefit to the railroad in the way of protecting grade crossings.

After fully and carefully considering the entire record in this proceeding, we are of the opinion and hereby conclude that the record of performance of the Kahler automatic gates as installed at the Alameda Avenue crossing at Burbank justifies further continuance of this experiment, at the expense of the City of Burbank and Southern Pacific Company; that The Kahler Company should be reimbursed for the installation; and that the continued maintenance of these gates should be borne by Southern Pacific Company.

The order will require the City of Burbank to contribute the sum of \$1,000. toward the original cost of installation of the gates in question, and the Southern Pacific to pay the balance of the cost, the sum not to exceed \$2,750. Under this division, the net cost of the gates to the Southern Pacific Company will be substantially the same as would be the cost of two wigwag signals with two second train indicators installed in the same general manner as the existing gates, with respect to giving the motorists' advance warning of the approach of a train.

O R D E R

A further hearing having been held in the above entitled proceeding, with respect to the performance of the Kahler automatic gates installed for the protection of the grade crossing of Alameda Avenue over Southern Pacific Company's tracks in the City of Burbank, the matter having been duly submitted and being now ready for decision, and the Commission being now fully advised,

IT IS HEREBY FOUND AS A FACT that the Kahler automatic crossing gates are giving reasonable and satisfactory protection for vehicular traffic on the Alameda Street crossing over Southern Pacific Company's tracks, in the City of Burbank, and that in accordance with the above opinion their continued maintenance is justified, therefore,

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IT IS HEREBY ORDERED that Southern Pacific Company be and it is hereby directed to continue the maintenance of these gates, subject to the following conditions:

- 1- The original cost of this installation shall be borne by Southern Pacific Company and the City of Burbank, the city to contribute the sum of \$1000. and Southern Pacific Company the remainder.
- 2- The Southern Pacific Company and City of Burbank shall, within sixty (60) days from the date of this order, pay to The Kahler Company the original cost of these gates, provided, however, that this cost shall not exceed the sum of \$3750.
- 3- Upon the payment to The Kahler Company for these gates, Southern Pacific Company shall thereafter maintain said gates until the further order of this Commission.

In all other respects this Commission's Decision No. 20035, heretofore entered in the above entitled proceeding, shall remain in full force and effect.

The Commission reserves the right to make such other and further orders in this proceeding as to it may appear just and proper or as may, in its opinion, be required by the public safety.

For all purposes, other than hereinabove stated, the effective date of this order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 14th day of April, 1930.

Cl Seaver

Leon Whitell

Thos. G. Lott

M. J. Lee

Commissioners.