

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
 OAKLAND, ANTIOCH AND EASTERN RAILWAY,  
 a corporation, for permission to con-  
 struct subgrade crossings under the  
 tracks of the Southern Pacific Company  
 and the Atchison, Topeka and Santa Fe  
 Railway Company near McAvoy, Contra  
 Costa County, California. } Application No. 296.

Jesse Steinhart for Oakland, Antioch and Eastern Railway.

E. W. Camp for Atchison, Topeka and Santa Fe Railway Co.  
George D. Squires for Southern Pacific Company.

THELEX, Commissioner.

OPINION.

This was a hearing in the above entitled matter on the petition of the Atchison, Topeka and Santa Fe Railway Company for a modification of the order of this Commission rendered December 3, 1912, in so far as that order specifies the division of the cost of the subgrade crossings affected. The Commission by its said order authorized the Oakland, Antioch and Eastern Railway to construct its line of railway below grade at crossings proposed with the parallel tracks of the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company near McAvoy, in Contra Costa County, subject to the condition, among others, that "the cost of constructing the subgrade crossings shall be borne one half by applicant (Oakland, Antioch and Eastern Railway) one quarter by the Atchison, Topeka and Santa Fe Railway Company and one quarter by the Southern Pacific Company."

The Atchison, Topeka and Santa Fe Railway Company now asks for a modification of the order in so far as it relates to the sharing of the expense, on the ground that it had reached an agreement with the Oakland, Antioch and Eastern Railway prior to the making of the Commission's order, which agreement was contained in a series of letters, and provided in part that the Santa Fe should be called upon

to pay one half of the expense of the subgrade crossing only in so far as the crossing was constructed under its own right-of-way. The Oakland, Antioch and Eastern Railway guaranteed to the Atchison, Topeka and Santa Fe Railway Company that the latter company's proportion of the expense would not exceed the sum of \$23,228.67. The Oakland, Antioch and Eastern Railway contends that this guarantee was made on the assumption that the crossing would be considered in two units, and that each unit would be considered by itself, the dividing line being the common right-of-way line between the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company.

The Commission, after considering all of these matters, reached the conclusion that the proper principle would be to consider the crossing as a whole and to provide that one half of the entire cost should be borne by the Oakland, Antioch and Eastern Railway and one quarter each by the Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company.

The Atchison, Topeka and Santa Fe Railway Company introduced no evidence as to the difference in cost to this company under the two plans, but based its application for a modification of the order entirely on the agreement which it claims was entered into with the Oakland, Antioch and Eastern Railway prior to the date of the Commission's order. Mr. Camp, representing the Atchison, Topeka and Santa Fe Railway Company, stated that the difference in cost would probably in no event exceed \$1500. The Southern Pacific Company does not have the same understanding with reference to the purported agreement as the Atchison, Topeka and Santa Fe Railway Company, and takes the position that it was never agreed that the cost should be determined on the basis of two units instead of one.

The sole question at issue on the evidence on this application is whether the Commission is bound by agreements which railway companies may enter into with reference to the division of the expense of crossings prior to the Commission's order. Under the provisions of Section 43 of the Public Utilities Act, this Commission

clearly has authority over this subject matter. Railroad companies cannot, by agreement between themselves, oust the Commission of this jurisdiction. While the Commission will give weight to the views of railroad companies in connection with such crossings, the Commission must exercise its authority in view of the weight which will be given to precedents established by it, and bearing in mind the necessity of considering underlying principles in cases of this kind and of establishing such principles as may be correct. In this case the Commission reached the conclusion that the arrangement for which the Atchison, Topeka and Santa Fe Railway Company contended was not correct in principle, and accordingly entered the order hereinbefore referred to.

No good reason was presented at the hearing why this order should be changed. I accordingly recommend that the petition of the Atchison, Topeka and Santa Fe Railway Company be denied and submit herewith the following form of order:

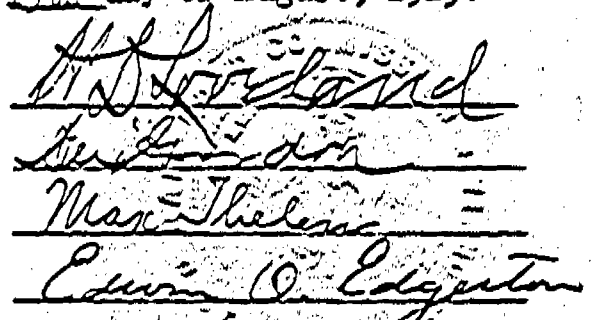
ORDER.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY having made application to this Commission for a modification of that portion of its order of December 3, 1912, in the above entitled proceeding which refers to the sharing of the expense of the subgrade crossings therein referred to, and a public hearing having been held upon said application, and no good reason appearing for granting said application,

IT IS HEREBY ORDERED that said application be and the same is hereby denied, and that this Commission's order dated Dec. 3, 1912, be and the same is hereby affirmed.

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 13th day of August, 1913.

  
Commissioners.