

Decision No. 26264.

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 Department of Public
Works, for an order authorizing the
construction of a crossing at separated
grades of the state highway and the
Southern Pacific Railroad near Madrone,
in Santa Clara County, California.

ORIGINAL

Application No. 18301.

Frank B. Durkee, for Applicant.

H. W. Hobbs, for Southern Pacific Company.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

This Supplemental Opinion and Order deals with the matter of apportionment of maintenance expense of the separation of grades at the intersection of a state highway and Southern Pacific Company's track near Madrone, Santa Clara County, which was authorized by the Commission in its Decision No. 25588, dated January 30, 1933, in this proceeding.

Condition (3) of the order in this decision relates to the question of apportionment of maintenance of this separation and provides that the parties, applicant and Southern Pacific Company, may enter into an agreement covering this matter and file a copy of same with the Commission within a period of 120 days from the date thereof.

It appears that after considerable negotiations between applicant and Southern Pacific Company they have been unable to

reach an agreement on this question and have petitioned the Commission to fix such apportionment by supplemental order.

A further hearing in this matter was conducted by Examiner Hunter at San Francisco, Saturday, August 5, 1933, to afford the parties an opportunity to present testimony and oral arguments on the question of apportionment of cost of maintenance.

Southern Pacific Company contends that its portion of the maintenance of this separation should be limited to the track structure, consisting of rails, ties and ballast, and that the remainder, including girders, deck, abutments, drainage and lighting, should be assessed to applicant. In support of this contention it points out that it now enjoys an unrestricted and exclusive use of its right of way at the site of the separation for not only the present development but for any further use such as additional tracks, pipe lines, etc., and that its portion of the maintenance should be limited to the track structure which it is now required to maintain, as set forth above, also it is expected to grant applicant the right to use a portion of its right of way for highway purposes without compensation. The railroad presented testimony in support of the following estimates:

Estimated value of the land which will be occupied by the separation and the approaches thereto within the limits of the right of way	\$ 40.
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Annual cost of maintaining girders and deck of separation, painting etc.	30.
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Annual depreciation on girders and deck	315.
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On the other hand, applicant contends that a reasonable division of maintenance would be for it to maintain the roadway and abutments, or that portion of the structure below the girders, commonly referred to as the substructure, also the drainage and lighting, and that the railroad should maintain the remainder, or

superstructure, consisting of girders, deck and track structure. In support of this position it is urged that the railroad is the proper party to maintain the superstructure with its regular forces and that it would be hazardous for any one other than a railroad employee to work on this portion of the separation; also if applicant were required to bear the maintenance cost of the superstructure, it would be necessary for the railroad to perform the actual work and bill applicant for same, which in applicant's opinion would be unjust and unsatisfactory in that it might lead to disputes regarding the reasonableness of the charges. Applicant estimates that the annual maintenance and depreciation of the substructure, including light and drainage, will amount to \$425.

In the Commission's Decision No. 25588 the carrier is assessed forty per cent of the total cost of this separation and it is anticipated that the railroad will add this cost to its operative property which will be maintained and replaced in the same manner as other railroad structures and under the same method of accounting.

The construction of this separation permits of the closing of an adjacent grade crossing, thereby affording the carrier an undivided use of this portion of its right of way. As for further use of the property at and adjacent to the proposed separation, there is nothing in the record to show that the railroad has any plans for expansion of facilities, such as building additional tracks, etc.

After carefully considering the record in this proceeding there is nothing to justify the Commission deviating from the usual practice of apportioning the maintenance of such a separation,

to the effect that the railroad should bear the cost of maintaining the superstructure and applicant the remainder, and the following order will so provide.

FIRST SUPPLEMENTAL ORDER

IT IS HEREBY ORDERED that the cost of maintenance of the grade separation in the vicinity of Madrone, County of Santa Clara, authorized in Decision No. 25588, dated January 30, 1933, be and it is hereby apportioned as follows:

- (1) Southern Pacific Company shall bear the cost of maintenance of the superstructure, which includes girders, deck and track structure.
- (2) Applicant shall bear the remainder of the maintenance cost of the separation, which includes roadway, abutments, drainage and lighting.

In all other respects the Commission's Decision No. 25588 shall remain in full force and effect.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 21st day of August, 1933.

C. L. Leary
Leon Whitman
W. H. Cunn
W. B. Hansen
Commissioners.