

Decision No. 26800.

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 State highway crossing at grade across the tracks of the Hanford-Coalinga Branch of the Southern Pacific Railroad near Goshen Junction, Tulare County, California.

ORIGINAL

Application No. 18024.

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 tracks of the Southern Pacific Railroad, near Goshen, Tulare County, California.

Application No. 18101.

Frank B. Durkee, for Applicant.

H. W. Hobbs, for Southern Pacific Company.

BY THE COMMISSION:

FIRST SUPPLEMENTAL OPINION

The Commission, by its Order in Decision No. 25551, dated January 16, 1933, in Application No. 18101, authorized applicant to effect a separation at the intersection of State Highway Route No. 4 with Southern Pacific Company's main line track near Goshen, Tulare County. This authority was granted under certain conditions, one of which, Condition (3), covers the item of apportionment of cost of the maintenance of the separation and permits the parties, applicant and Southern Pacific Company, to enter into an agreement on the division of maintenance cost, a copy of such agreement to be filed with the Commission within one hundred and twenty (120) days from the date thereof.

The file shows that attempts by applicant and railroad to reach an agreement on apportionment of maintenance cost of this separation have failed and the Commission is now called upon to fix this apportionment by supplemental order.

A further hearing in this proceeding was conducted by Examiner Hunter at San Francisco, 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 urges that its portion of the maintenance of the separation involved 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 that it usually grants 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	\$ 50.
Annual cost of maintaining girders and deck of separation, painting, etc.,	30.
Annual depreciation on girders and deck	315.

On the other hand, applicant contends that a reasonable division 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 of the substructure, including light and drainage, will amount to approximately \$350.

The plan for the major highway improvement in the vicinity of Goshen Junction, which has been approved by the Commission in said Decision No. 25551 with respect to the crossing situation between public highways and Southern Pacific Company, provides for the closing of two important grade crossings with the main line track and limits one unimportant grade crossing with the main line track to the use of live stock. New crossings will consist of one separation with the main line track and one grade crossing with a branch line track, the net result of which, with respect to the carrier's property, will be that the amount of right of way which will be withdrawn from highway use will exceed that which is involved in new crossings within the area affected by this major highway improvement plan. As for further use of the right of way property to be occupied by the proposed separation, there is nothing in the record to show that the railroad has any plans for expansion of facilities at this point, such as building additional tracks, etc.

It is assumed that the railroad will add to its operative property an amount to cover the \$15,000 apportionment of this

separation, as prescribed in said Decision No. 25551. Maintenance and replacements on this separation to the extent of this investment will doubtless be handled in the same manner and under the same system of accounting as other structures on the railroad, and it would seem equitable and practicable to require applicant to assume the maintenance of this property which will be carried for the greater part as railroad property.

After carefully considering the record in this proceeding there is nothing to justify the Commission deviating from the usual procedure 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 Goshen, County of Tulare, authorized in Decision No. 25551, dated January 16, 1933, in Application No. 18101, be and it is hereby apportioned as follows:

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

In all other respects the Commission's Decision No. 25551 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 28th
day of August, 1933.

C. Seaver
Leon White
W. A. ...
M. B. ...
