

Decision No. 22298

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
CITY OF SUNNYVALE for an order to
completely install two signals on
Mathilda Avenue at the Southern
Pacific Railroad right-of-way, to
determine the price of same, and
allocate the cost thereof.

Application No. 19414.

H. W. Hobbs, for Southern Pacific Company.

Niles E. Wretman, City Attorney, for
City of Sunnyvale.

E. G. Pocs, for Department of Public Works,
Division of Highways.

BY THE COMMISSION:

O P I N I O N

In this application the City of Sunnyvale requests an order from this Commission requiring the installation of crossing protection signals at the crossing of Mathilda Avenue with the main line tracks of Southern Pacific Company in that city and to allocate the cost thereof.

A public hearing was held at Sunnyvale on September 12, 1934, before Examiner Hunter.

Mathilda Avenue is a street in the City of Sunnyvale which extends from El Camino Real easterly across the city to a connection with the Bayshore Highway and the Mountain View-Alviso Road to East Bay points. Approximately midway between the two highways Mathilda Avenue crosses the double track main line of Southern Pacific Company and it is this crossing which is the subject of the present proceeding.

Prior to 1932 Mathilda Avenue was a comparatively unimportant road, being little more than a local street providing an interchange between the sections of the city separated by the railroad tracks. In 1932, however, the Bayshore Highway was completed through this district and the street became an important connection between this highway and the business district of Sunnyvale, El Camino Real and the Saratoga road leading to the Santa Cruz recreational area. In this same year the City of Sunnyvale filed Application No. 18306 with this Commission requesting authority to make a slight change in the location of the crossing in order to provide a more direct connection between the sections of Mathilda Avenue lying east and west of the railroad. This authority was granted and the work performed at the expense of the city. In 1933 this road was declared a State highway route.

According to traffic counts submitted at the hearing, the crossing now carries traffic between 1700 and 2000 vehicles on Sundays and a week-day travel of 900 to 1000 cars. Much of this travel is of through traffic unfamiliar with local conditions and to vehicles approaching the crossing from the east the view conditions are obstructed. The crossing is now protected by standard crossing signs only and both applicant and Southern Pacific Company concede the necessity for additional protection.

The parties have agreed on the type of protection - two Standard No. 5 signals equipped with second-train indicators - but are not in agreement as to the apportionment of cost. This being a State highway route, certain gasoline tax receipts are available for maintenance and it appears from the record that the State Highway officials are agreeable that the city expend some of this money for protection of this grade crossing. The

city is also willing to so spend the money and assume a portion of the cost of the signals but states that it is not in a position to bear the entire cost which is estimated to be approximately \$4,100.

Southern Pacific Company takes the position that it was the improvement to the crossing, carried out by the city under authority granted in Application No. 18306, which now occasions the installation of automatic protective devices and that the installation, therefore, should be made at the sole expense of the city. It appears to the Commission, however, that the necessity for additional protection was not caused primarily by the improvement of the crossing made in 1932 but rather by the construction of the Bayshore Highway which diverted travel to this route by converting a theretofore unimportant city street into a through route, thus necessitating improving the alignment at the crossing and now also requiring that the crossing be adequately protected.

Southern Pacific Company is correct in its contention that it was not responsible for this diversion of traffic but the Commission cannot agree that this is sufficient reason for complete relief from its obligation to protect this crossing. The construction of new highways or the improvement of old ones is constantly causing the diversion of traffic to new routes, some of which cross railroad tracks, but in many instances such new highways divert travel from railroad grade crossings and in these cases the railroad frequently benefits without expense. While in this particular instance an unusual amount of travel has been diverted to a grade crossing with Southern Pacific Company's tracks, it would be an extremely narrow policy to consider only the cases where additional grade crossing traffic

is created and ignore the many instances where public improvements reduce such traffic at no cost to the railroad.

In apportioning the cost of crossing protection, the Commission has refrained from establishing any fixed rule, it being of the opinion that each case should be decided on its own merits. After carefully considering the record in this case it is concluded that an equitable apportionment of cost in this case is to divide the expense equally between applicant and Southern Pacific Company. An Order will be entered accordingly.

O R D E R

City of Sunnyvale, having made application for an order requiring the installation of crossing protective devices at the crossing of Mathilda Avenue with the main line tracks of Southern Pacific Company (Crossing No. E-38.6) and for apportionment of cost thereof, a public hearing having been held and the matter submitted,

IT IS HEREBY ORDERED that applicant and Southern Pacific Company are authorized and directed to install, within ninety (90) days from the date of this order, and thereafter maintain, two (2) Standard No. 5 Flashing Light Rotating Stop Banner signals, in accordance with the Commission's General Order No. 75-A, equipped with second-train indicators for the protection of said grade crossing, subject to the following conditions:

- (1) The work of installing said signals shall be performed by Southern Pacific Company, and the City of Sunnyvale shall reimburse said company for fifty (50) per cent of the cost of said installation. The cost of said work, as billed the City of Sunnyvale, shall be the actual cost to said railroad company. The maintenance of said signals shall be borne by Southern Pacific Company.

- (2) Within thirty (30) days thereafter, Southern Pacific Company shall notify the Commission, in writing, of the installation of said signals and shall file with the Commission a statement of the actual cost of said installation.
- (3) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper and to revoke its permission if, in its judgment, public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 29th
day of ~~October~~ ^{September}, 1934.

Leon C. O'Connell
W. B. Harris
W. B. Harris

Commissioners.