

Decision No. 23435

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of The City of Los Angeles, a municipal corporation, Southern Pacific Railroad Company, a corporation, and Southern Pacific Company, a corporation, its lessee, The Atchison, Topeka and Santa Fe Railway Company, a corporation, and Los Angeles & Salt Lake Railroad Company, a corporation, to construct railroad tracks across (1) Macy Street, and (2) College Street, in the City of Los Angeles, County of Los Angeles, State of California, in a manner resulting in a separation of grades at (1) Macy Street, and (2) College Street.

Application No. 19159

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Attorneys, and Richard Sachse, Vice-President
and Consulting Engineer, for Los Angeles Railway
Corporation.

E. E. Bennett, for Los Angeles & Salt Lake Railroad
Company and Union Pacific Railroad

Frank Karr, for Southern Pacific Company

Robert Brennan and E. T. Lucey, for The Atchison,
Topeka & Santa Fe Railway Company

Ray L. Chesebro, City Attorney, Frederick Von Schrader
and Bourke Jones, for the City of Los Angeles

BY THE COMMISSION:

OPINION AND ORDER ON SUPPLEMENTAL
PETITION OF LOS ANGELES RAILWAY
CORPORATION

The petition of the Los Angeles Railway Corporation filed April 27, 1936, prays that an order be made supplemental to Decision 26532 of November 14, 1933 now to expressly relieve the petitioner of any costs in connection with the subway structures then ordered at Macy and College Streets, City of Los Angeles, where the new tracks

of the several steam railroads above named will enter their proposed union passenger station.

The Los Angeles Railway Corporation operates a street railway line on Macy Street. The City has officially changed the grade of that street by depressing it for a distance of about 1350 feet so as to make possible the grade separation ordered by the Commission, and has notified the Los Angeles Railway Corporation that in accordance with its franchise obligation it will be required to change its street railway tracks and other facilities to conform to the newly established grade.

The position taken by the Street Railway Corporation is that the Commission's order of November 14, 1933 should be construed to assess the entire cost of the project, including the reconstruction of its tracks, upon either the steam railroads or the City of Los Angeles. The Railroads and the City dispute this interpretation of the order, insisting that the Street Railway is required both by the Commission's decision and by its franchise obligation to itself bear all expense connected with the rearrangement of its own facilities.

It seems to be conceded by all of the parties involved that the Commission's order heretofore made is a final order binding them to its terms, their disagreement being only as to the intent of that order. The petitioner asks us to construe the order to relieve it of any costs incident to the grade separation at Macy Street, or, should the Commission be of a contrary opinion, that a supplemental order now be made expressly relieving it of that burden.

The decision of November 14, 1933, must be read in the light of the many orders which the Commission has made relating to the construction of the Los Angeles Union Passenger Terminal. This seems to be conceded. We may take notice of the fact that the Union Station plan as conceived from the beginning was largely for the purpose of eliminating the many existing hazards incident to the operation of

railroad trains on Alameda Street. The railroad tracks located on this street cause great interference with travel upon the intersecting streets, some of which, including Macy Street, are occupied by lines of the Los Angeles Railway Corporation. The removal of passenger trains from Alameda Street will eliminate much of this congestion and hazard. The new track plan calls for rail intersections at only two important thoroughfares and these are to be at separated grades.

When the union station plan was about to become a reality, the City of Los Angeles agreed with the rail carriers to contribute one million dollars toward the cost of making the street changes and grade separations involved. Therefore, when the City and the railroads joined in the application as above entitled for authority to separate the grades at Macy and College Streets, they were in agreement that the Commission should assess against the City the entire cost of these structures, but not to exceed one million dollars. The Los Angeles Railway Corporation and the other utilities which maintain facilities on either Macy or College Streets appeared at the hearing upon that application. Evidence was introduced by the Los Angeles Railway Corporation relating to the cost of changing its tracks to conform to the new street grade proposed, while the applicants advanced the claim that the street railway was obligated under its franchise to make the necessary changes at its own expense.

In the light of these facts the decision of the Commission then rendered appears to us to be entirely clear in its intent. After reciting that the City should bear all of the cost of the two grade separations, the order sets forth with particularity just what items of work were to be deemed a part of the grade separation structures. Included in both the Macy and College Street work or costs was an item to "Relocate the public utility structures which the City may be legally obligated to move." Undoubtedly the Commission intended by these words that the Los Angeles Railway Corporation, as well as the other

utilities affected, should be left in the position of contracting parties with the City, each bearing the costs of changing its facilities in the streets as their franchises or common law duties demanded.

We do not understand the Los Angeles Railway Corporation to contend that the Commission, when apportioning the costs of a grade separation structure as provided in Section 43 of the Public Utilities Act, was without power to thus cast upon it the obligation of bearing its own expenses if the equities of the situation justified such action. It contends only that such was not the Commission's purpose as revealed in the order issued. We are of the opinion, as above indicated, that the Commission clearly did intend to make an apportionment of costs between the parties in accordance with the provisions of Section 43, and in so doing to assess against the Street Railway the expense of rearranging its own facilities in the streets in compliance with its franchise obligation, but no other part of the cost of the project. The course followed by the Commission in this case of leaving the street railway to bear such costs as its franchise imposed was just as much an exercise of the power granted by the statute to apportion some part of the cost of the structure to it as would have been a direction by the Commission that it should bear a definite percentage of the total cost of the structure. Such action was in accordance with precedent established in past proceedings of like character. See Application of Southern Pacific Railroad re San Jose crossings, 10 C.R.C. 159, 24 C.R.C. 1.

Believing, therefore, that the Commission's order of November 14, 1933 definitely imposed upon the Los Angeles Railway Corporation the duty of defraying the cost of all work which under its franchise it is required to perform if it continues to operate its street railway on Macy Street, and that order having been made after a hearing in which the facts were fully presented, we conclude that the Commission's

judgment then expressed should not now be disturbed. For this reason our order herein will direct the dismissal of the petition.

O R D E R.

A supplemental petition having been filed by the Los Angeles Railway Corporation in the above entitled matter, a hearing on said petition having been had, and the Commission being of the opinion that the relief prayed for should not be granted:

IT IS ORDERED that said petition herein of the Los Angeles Railway Corporation filed April 27, 1936, be and it is hereby dismissed.

Dated at San Francisco, California, this 4th day of January 1937.

W. H. H. H. H.
Leon G. H. H.
Frank R. H. H.

Commissioners