

31073

Decision No. _____.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Complaint of the BOARD OF SUPERVISORS OF KERN COUNTY concerning the defective condition of grade crossing B-309.4 over the tracks of the SOUTHERN PACIFIC RAILWAY.

Case No. 4269.

W. A. MCGINN, Deputy District Attorney, for Complainant.

H. W. HOBBS, for Southern Pacific Company, Defendant.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

Complainant alleges that Southern Pacific Company has failed to construct its railroad across a county highway "in such a manner as to afford security for life and property," and seeks an order directing the company to construct such crossing and install and maintain warning signals "in a manner to promote and safeguard the safety of the public." It contends that because the highway was opened on May 6, 1874, and the crossing was created by the railroad on August 1, 1874, the entire cost of additional protection should be borne by the railroad, and relies upon Section 42 of the Public Utilities Act and Section 465(5) of the Civil Code. (1)

Public hearing was had before Examiner Hall at Bakersfield on April 1, 1938, and the matter has been submitted upon briefs.

In approaching Bakersfield from the north, the San Joaquin

(1) Public Utilities Act, section 42 empowers the Commission to require every utility to so operate its system as to safeguard the health and safety of employees and the public, to prescribe installation of safety devices, establish standards of construction and equipment, etc.

Civil Code, section 465 enumerates the powers of railroad corporations, which may construct their roads across streams or highways "in such manner as to afford security for life and property," but shall restore the stream or highway "to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise." (Subdivision 5).

Valley main line of the railroad crosses Pierce Road, also known as Road No. 8 (Crossing No. E-309.4). Pierce Road connects with new State Highway No. 4 (U.S. 99) about a quarter of a mile southwest of the crossing, and with Roberts Lane, the old State Highway, about the same distance northeast of the crossing. The buildings and grounds of Beardsley School are located on both sides of Pierce Road between the railroad right-of-way and Roberts Lane.

Pierce Road has an oiled surface about 30 feet wide, which narrows to about 20 feet in width at the crossing. The latter is protected by one standard No. 1 crossing sign. There are two advance warning signs about 250 feet from the crossing. The grade of the railroad is about the same level as the surrounding territory and the grade of the highway in approaching and crossing the track is unbroken. The highway user approaching the crossing has little indication of its existence other than the signs mentioned. The view of approaching trains is somewhat obstructed by buildings located just outside of the carrier's right-of-way fence. The right-of-way, however, is 100 feet wide on each side of the center line.

Complainant presented three witnesses. The Superintendent of Road District 3 related the history of Pierce Road and described its present condition. The Superintendent of the Beardsley School District testified that the district operates four busses which make a total of twelve crossings each school day. According to the County Coroner the ordinary hazard of a grade crossing is increased because of the narrowing of the roadway, although there is room for two vehicles to pass.

The railroad presented maps and photographs of the

crossing, as well as traffic checks. (2) A civil engineer employed by the carrier expressed the opinion that a single wig-wag would be ample protection in the event protection was found necessary, there being an unobstructed view of approaching trains when a vehicle is 100 feet from the track. He estimated costs as follows: for installation of one wigwag and necessary track circuits, \$1,560; for two wigwags and track circuits, \$2,470; and for preparation of track for widening the crossing to 36 feet, exclusive of paving, \$275.

Near the close of the hearing and after complainant and defendant had completed their showings, the School District recalled its Superintendent, who suggested a relocation and shifting of the Pierce Road crossing northwesterly a distance of about 480 feet from the present crossing. (Exhibit No. 13). The District is willing to give a deed to a strip of property across its playground for such road change. The proposal calls for a realignment of Roberts Lane, the closing of the present crossing, and the closing of Pierce Road from the railroad right-of-way to Roberts Lane. The District desires that its 12 acres "will be one piece of ground rather than having a road separating the activities of the school." The proposal has been discussed with the Supervisor of the District, but apparently the Board of Supervisors has not taken any action.

Complainant's counsel stated that the position of the county, regarding the existing crossing, was that any expense

(2) Traffic checks covering the 12-hour period from 7 A.M. to 7 P.M. indicate as follows:

	<u>Dec. 25, 1933</u> <u>(Wednesday)</u>	<u>Dec. 16, 1936</u> <u>(Tuesday)</u>	<u>Jan. 5, 1938</u> <u>(Wednesday)</u>
Pedestrians	16	115	94
Automobiles	363	705	1281
Trucks	54	87	190
Busses	10	13	15
Trains	4	13	7
Switching Movements	-	5	4

should be borne entirely by the railroad, and that the county would be opposed to sharing in the expense of relocation. "At the present time, as I understand the attitude of the county, we will have to have a decision of the Commission before we could consider assuming any expense on account of a relocation of the crossing."

In fairness to complainant, it should be stated that Section 42 of the Public Utilities Act does not prohibit apportionment to the county of "any part of the cost for installing safety devices" at the existing crossing, as complainant urges in its brief. Nor do we believe that Section 465 of the Civil Code would be controlling. The Legislature has vested in the Commission the power to determine the manner and the terms of installation, operation, maintenance, use and protection of crossings, and to alter, relocate or abolish any crossing, or to require a separation of grades. (Public Utilities Act, Section 43). Under that section the Commission may prescribe the proportions in which expenses shall be divided between the carriers and the political subdivisions affected.

Under the circumstances it does not appear advisable to issue any order at this time regarding additional protection at or improvement of the Pierce Road crossing and apportioning the cost thereof between the parties. Any substantial expenditure would be wasteful if the crossing is to be relocated in the near future. Nor could any apportionment of expense made upon this complaint be "carried over" so as to apply in like proportion on any future application for authority to relocate the crossing, as each proceeding involving apportionment of crossing expenses must be decided upon its own facts.

While the proposed relocation is not an issue in this proceeding, such a change appears to be a highly desirable im-

provement. In problems concerning railroad crossings the well-considered and long-range plans of local authorities and organizations are welcome and necessary. With their assistance expenditures affording temporary benefits only, and therefore wasteful, may be avoided. It is recommended that the parties give serious consideration to the proposal of the school district.

Dismissal of the present proceeding will be without prejudice to the filing of an application for authority to relocate the Pierce Road crossing, and also without prejudice to the filing of a petition to reopen the present proceeding. In the event that the county decides not to proceed with the proposed relocation.

O R D E R

Good Cause Appearing, the complaint herein is dismissed without prejudice.

This order shall be effective twenty days from the date hereof.

Dated, San Francisco, California, this 30th day of June, 1938.

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Commissioners