

Decision No. 1925000

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Complaint of PACIFIC AVENUE
IMPROVEMENT ASSOCIATION, a civic association,

COMPLAINANT

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, a corpora-
tion, TWENTY JOHN DOES, and CITY OF LONG BEACH,
a municipal corporation.

DEFENDANTS

ORIGINAL

Case No. 4395

RODNEY F. WILLIAMS, for Pacific Avenue Improvement
Association, Complainant.

FRANK KARR and C. W. CORNELL, by C. W. Cornell, for
Pacific Electric Railway Company, Defendant.

JOHN W. BROOKS and E. C. DENIO, by John W. Brooks, and
MARK L. TAYLOR, for Los Cerritos Improvement Asso-
ciation, interested party.

IRVING M. SMITH, City Attorney, City of Long Beach, by
Joseph B. Lamb, Deputy City Attorney, interested party.

BY THE COMMISSION:

O P I N I O N

Pacific Avenue Improvement Association, ⁽¹⁾ complainant,
is an unincorporated civic association composed of approximately
75 members, each of whom either owns property or resides in a tri-
angular area comprising part of the so-called Wrigley district,
located in the northwestern portion of the City of Long Beach, bounded
by Willow Street on the south, the Los Angeles River on the west, and
the tracks of Pacific Electric Railway Company ⁽²⁾ along the hypotenuse.
The association was purportedly organized for the development of the

(1) Hereinafter sometimes referred to as Pacific Association.

(2) Hereinafter sometimes referred to as Pacific Electric.

area adjacent to and in the vicinity of Pacific Avenue, located within the above-described triangle.

Pacific Electric Railway Company, principal defendant, is a corporation existing under the laws of the State of California, engaged in the business of operating an extensive common carrier local, suburban, and interurban rail and motor coach system, primarily for the transportation of passengers and freight throughout the Los Angeles metropolitan area and adjoining territory, serving among many other communities the City of Long Beach. At present Pacific Electric's tracks are located on a fill approximately 15 feet higher than the surrounding area, and Pacific Avenue, which runs north and south, terminates at a point approximately 200 feet south of the railway right of way and continues northerly from a point approximately 200 feet north of the right of way, there being no connection for vehicular travel between the two sections. The center line of Pacific Avenue intersects the center line of Pacific Electric's tracks at an angle of about 20 degrees.

The City of Long Beach, co-defendant, is a municipal corporation located in the County of Los Angeles, State of California, embracing within its boundaries the property occupied and owned by members of complainant association.

On February 10, 1939, Pacific Avenue Improvement Association filed its original complaint against Pacific Electric Railway Company, twenty John Does, and the City of Roe, followed on March 10, 1939, by an amended complaint specifically naming the City of Long Beach as a defendant. Due to a series of requests for postponement of hearing on behalf of plaintiff and other interested parties, the matter, which was originally set for hearing on June 13, 1939, was not heard until January 17, 1940, before Examiner Jenkins, in Los Angeles, and was submitted on briefs on February 1, 1940.

Epitomizing the issues involved, Pacific Association seeks an order from this Commission requiring the construction of a grade separation at the crossing of Pacific Electric's Los Angeles-Long Beach rail line with Pacific Avenue, in the City of Long Beach. Secondary thereto, the issues of right and title were pressed in an attempt to establish as a fact the legal obligation of Pacific Electric to assume the entire cost of constructing the proposed grade separation.

Plaintiff alleges that the interests of the general public, residents of Long Beach, and members of complainant association are suffering by reason of inadequate provision for the free flow of automotive vehicular traffic between Long Beach and points north of the Pacific Electric tracks, and that relief from this intolerable condition can only be obtained by construction of a grade separation providing for the extension of Pacific Avenue northward under the tracks at a point near 32nd Street, the cost of said structure to be apportioned by the Commission.

Plaintiff contends that Pacific Avenue is a public street duly dedicated to and for the use of the general public, and has been since a time prior to the construction of Pacific Electric tracks, and that by reason of constructing said tracks, defendant has maintained unlawfully and without right a dirt fill across Pacific Avenue, contrary to the reservations contained in the deeds under which title was taken, thereby constituting an obstruction that is unlawful and injurious to the general welfare of the residents of the City of Long Beach.

Pacific Electric denied the above-enumerated allegations and urged that it be assessed with no part of the cost of constructing the grade separation, in the event the Commission should rule that such a structure should be installed, upon the grounds that the structure would be of benefit solely to the highway traveling public and in no way benefit the railroad.

By Resolution No. C-7389, dated January 16, 1940, the City Council of the City of Long Beach opposed construction of the grade separation as proposed by plaintiff, upon the grounds that it would entail considerable expense to the taxpayers of the city without being of any material benefit; that such separation would only serve to increase traffic and traffic hazards in the high-class residential section of Long Beach known as Los Cerritos; that traffic diverted from existing arteries to Pacific Avenue by construction of the underpass would flow back to those arteries at San Antonio Drive; and that the problem concerning the area for which relief is sought through this complaint can be better solved by other means entailing a much lesser burden upon the taxpayers.

Supporting the action taken officially by the City Council of the City of Long Beach, similar action was taken by the Los Cerritos Improvement Association, wherein, through brief filed by counsel for said Association, construction of the underpass was opposed on the grounds that there are readily available better routes which will more effectively serve the purposes of traffic requirements, and that routing of traffic over Pacific Avenue would inevitably damage the exclusive residential Los Cerritos district located along Pacific Avenue north of the Pacific Electric tracks. It was further contended that the project, as proposed, is purely local in nature, sought by a limited number of persons and vigorously opposed by a far greater number.

In further support of the opposition, a petition was filed by the Parents and Teachers Association of Los Cerritos district on the grounds that the extension of Pacific Avenue does not offer the most desirable outlet to the people of the Wrigley district, but would inevitably direct a large volume of high speed traffic into the Los Cerritos district without provision of an adequate outlet; that a more direct and far more economical outlet could be provided by opening 31st Street to the east; and that construction of the

proposed underpass would present an obstacle in the way of eventually carrying forward a more comprehensive master plan of highway development in the area.

The position taken by Pacific Electric was not in opposition to the construction of an underpass at Pacific Avenue but, in the event such a structure should be built, that the entire cost thereof be assessed to parties other than the railroad, and that such expression of willingness to cooperate through the granting of an easement for the extension of Pacific Avenue across its tracks had been preferred on different occasions in the past when the matter was under consideration.

Much evidence was adduced on behalf of plaintiff in an effort to establish, through documentary evidence and testimony of witnesses, Pacific Electric's obligation to construct adequate grade crossings in conformity with agreements entered into when right of way properties were acquired for the original construction of its rail line from Los Angeles to Long Beach and points south. Determination of the equities involved in that connection do not fall within the scope of the Commission's jurisdiction.

The record contains much testimony in regard to the desirability of constructing a crossing at grade in the immediate vicinity of the location proposed for the underpass to take care of the traffic requirements in lieu of the proposed grade separation at Pacific Avenue. Here again the issue does not extend to the necessity for construction of a grade crossing at any point other than that specified in the complaint, which specifically is confined to the question of a grade separation at the intersection of Pacific Electric tracks with Pacific Avenue.

Reducing the matter down to its essential elements, namely, the determination of the existence or non-existence of the need for a

grade separation at the proposed location, there remain two factors for consideration, one being the requirements of existing and future vehicular traffic, and the other the effect upon property values that might result from construction of the underpass. A review of the evidence indicates that the major element upon which plaintiff lays the foundation of its case is one of economics and not one of public convenience and necessity, despite the filing of a petition signed by approximately 900 persons in support of the complaint.

Of the several witnesses produced by plaintiff, almost without exception each one was pecuniarily interested in the effect upon property values by the construction of the underpass and extension of Pacific Avenue, and their testimony conflicted on the issue of probable traffic flow after construction of the underpass. The record is meager indeed in so far as a showing of public convenience and necessity is concerned.

Although the complainant contended that lack of adequate vehicular outlets from the triangle had retarded the growth of the area, Witness Barton, President of Pacific Association, testified that between 400 and 500 homes had been constructed in the triangle during the past three years. Another witness, owner of a motel, testified that the underpass was necessary in order to accommodate tourist travel which contributes 20 per cent of the city's income. Another witness, a civil engineer for the California Trust Company, testifying on behalf of plaintiff, stated that his company had owned 150 lots in the triangle located east of Pacific Avenue and north of Willow Street, and that of that number of lots, all have been sold except 13. He further testified that development of the district was retarded by reason of conditions existing in the area in the nature of oil sumps, city junk yard, and seepage of water and oil from Signal Hill.

Automotive vehicular arteries are now provided between Long Beach and points north by a system of parallel through highways running north and south consisting principally of American Avenue (also commonly termed Long Beach Boulevard), Atlantic Avenue, Orange Avenue, and Cherry Avenue. To the west, through arteries are provided by Anaheim Street, State Street, and Willow Street, all running parallel. Pacific Avenue is one of the principal streets in Long Beach, extending from the ocean front to Willow Street, and is fairly heavily travelled, the volume of traffic diminishing from a maximum of 18,000 vehicles during a 24-hour period at Ocean Avenue, the first street parallel to the ocean front, to 2,500 at Willow Street, the most northerly through east and west artery.

It was contended by a witness for Plaintiff that most of the traffic on Pacific Avenue at Ocean Avenue now seeks out the through arteries running parallel to Pacific Avenue by proceeding eastward on the several east and west streets intermediate to Willow Street and Ocean Avenue, and that most of that traffic would remain on Pacific Avenue if it were extended through, thereby relieving the existing congestion on arteries to the east. Figures presented by the same witness indicate a similar condition of diminishing traffic from Ocean Avenue to Willow Street on American Avenue, the first through artery east of Pacific Avenue. On that street traffic built up from 15,500 vehicles at Ocean Avenue to 19,300 at Anaheim Street, the second through east and west artery north of Ocean Avenue, and decreased to 8,500 vehicles at Willow Street. These figures do not indicate that all or any appreciable portion of the northbound traffic on Pacific Avenue eventually flows to parallel through streets. Even if such were the case, that volume of traffic assumed to follow such a course would again be poured into those through arteries at San Antonio Drive only about one-half mile north of the proposed underpass. Pacific Avenue north of the tracks parallels American Avenue to San

Antonio Drive, which cuts diagonally across the four main north and south arteries in a direction from southwest to northeast, and all traffic that might be diverted from the existing through arteries would have no other course to follow than to again proceed on those through routes north of San Antonio Drive, thereby only effectively relieving the traffic concentration on the existing routes between Willow Street and San Antonio Drive, a distance of approximately two miles, which is outside the heavy business district of Long Beach, and contributes to a small degree to the northbound automobile traffic.

The record indicates that, assuming an average speed of 30 miles per hour, a saving in time of only eight seconds would be afforded an automobile traveling between the intersection of Willow Street and Pacific Avenue and the intersection of Long Beach Boulevard and San Antonio Drive by utilizing Pacific Avenue if the underpass were constructed, and assuming the most extreme case of a person traveling from a point on Pacific Avenue south of the Pacific Electric tracks over existing routes to a point on Pacific Avenue north of the tracks, only four minutes would be saved by use of an underpass if such were available.

The office engineer of the Los Angeles County Planning Commission testified that at one time the Planning Commission contemplated in its master plan the extension and improvement of Pacific Avenue north of Willow Street to a connection with San Antonio Drive, and an extension and improvement of San Antonio Drive, but that subsequent thereto those two projects had been dropped from the plan and that in his estimation there is at present no need for the extension of Pacific Avenue under Pacific Electric tracks. This witness further testified that incorporated in the Planning Commission's master plan is the eventual construction of what is termed the Pacific diagonal, which will be a paved highway 100 feet in width extending from a connection with Pacific Avenue

immediately adjacent to and parallel with Pacific Electric tracks in a northwesterly direction, crossing the Los Angeles River and joining with Santa Fe Avenue in Los Angeles, crossing Alameda Street, and proceeding along Compton Creek to a connection with the Imperial Highway northerly of Compton. He stated that this proposed highway would more adequately take care of the traffic requirements of the areas involved than would an extension of Pacific Avenue, and that surveys had already been made of the route to be followed, but that at the present time, although the diagonal is included in the master plans, funds for its construction have not yet been made available.

This witness further testified that the existing through north and south arteries paralleling Pacific Avenue have not yet reached their capacity and that although opening of Pacific Avenue would result in a heavy traffic flow over that thoroughfare, it would not materially reduce the existing traffic congestion on parallel arteries.

Summing up the evidence, the record indicates that there is no need for the construction of an underpass at the intersection of Pacific Avenue and the Pacific Electric tracks for the convenience of through traffic originating at points south of Willow Street and destined to points north of Long Beach; that the area within the triangle has developed rapidly during recent years in the absence of an underpass on Pacific Avenue; that the differential in travel time for persons destined to points within the triangle to points north of the Pacific Electric tracks is insufficient to justify the construction of an underpass; that construction of such an underpass would entail the expenditure of approximately \$200,000; that the motive of plaintiff's action appears to be based upon the improvement of real estate values rather than upon public

convenience and necessity; that there is contemplated at the present time by the Los Angeles County Regional Planning Commission the Pacific Avenue diagonal which would more adequately meet the traffic requirements than a proposed grade separation and extension of Pacific Avenue; that the City of Long Beach officially has taken action in opposition to the proposal of plaintiff; that the Los Cerritos Improvement District has taken a position opposing construction of a grade separation; that no material relief to the existing traffic conditions would be afforded; and that public convenience and necessity does not require at this time construction of the underpass and the extension of Pacific Avenue.

The above findings of fact lead to the conclusion that the complaint herein should be denied, and the following order will so provide.

O R D E R

Public hearings having been held on the above-entitled complaint, the matter having been duly submitted, and the Commission being fully apprised in the premises, and basing its order on the findings as appear in the Opinion preceding this order:

IT IS HEREBY ORDERED that the complaint be dismissed without prejudice.

Dated at San Francisco, California, this 17th day of September, 1940.

Ray A. Riley
James C. Smith
Robert W. H. H. H.
Justus F. Casner
Commissioners