

Decision No. 373984

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CITY OF SIGNAL HILL, CALIFORNIA,
a municipal corporation,

Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 4516

E. P. Mulholland, for Complainant.

Frank Karr and C. W. Cornell, for
Defendant.

BY THE COMMISSION:

O P I N I O N

A part of the Newport Branch of Pacific Electric Railway Company is located upon private right of way in Long Beach, adjoining the southerly boundary of Signal Hill. Complainant City of Signal Hill asks that defendant railway be ordered to reconstruct and maintain a crossing at Lemon Avenue, in Long Beach. Such an order is sought upon the ground that the railway removed an overhead structure without Commission authorization. The complaint also alleges that a crossing is necessary and convenient for public travel on Lemon Avenue between the two cities.

The evidence, taken by Examiner Hall at a public hearing

on December 11, 1940, shows that the right of way was acquired in 1903 from the owners of two adjoining tracts of farm property. The owners' offers to grant rights of way, accepted by the railway, provided in part that the tracks should be laid in a "cut", rather than upon a "fill", and that the railway should construct and maintain a twenty-foot roadway across the right of way, at the common boundary line of the two properties, as a convenient crossing for the farm owners, their heirs and assigns. When the branch line was constructed in 1904, defendant's predecessor erected a wooden bridge farm crossing, at the intersection of the right of way and the common boundary line. Some time later, when the surrounding property was subdivided, a street named Lemon Avenue was laid out on either side of the farm crossing. The level of Lemon Avenue, both in Signal Hill and in Long Beach, is about 18 or 20 feet above the level of the tracks. The railway has never granted an easement for highway purposes at the location of the farm crossing, nor has it made or joined in any tract or other map dedicating such an easement.

The original wooden structure was used by the public for at least ten years prior to 1935. From time to time certain repairs were made by the railway, by the City of Long Beach, and by the County of Los Angeles. Late in 1935, for reasons of safety, the City of Long Beach barricaded the southerly approach to the structure, and erected a sign reading "Danger - Keep Out." Shortly thereafter, according to complainant's brief, the City of Signal Hill barricaded the northerly approach. From 1935 to 1940 the structure remained unused, except by pedestrians and bicyclists.

In 1939 defendant's engineers, finding upon inspection that the structure was becoming so dilapidated as to constitute a menace to rail traffic, recommended that it be demolished. On March 29, 1940, the railway advised both cities that the structure was being removed, and the work of removal was completed about April 12, 1940. The record is clear that prior to removal the structure was wholly unsafe for traffic, and was a hazard to rail operation thereunder.

Complainant asserts that the railway assumed a contractual obligation to maintain the farm crossing, and that thereafter the public acquired a prescriptive right to use the crossing. Complainant's argument also seems to be that the crossing was dedicated as a public highway by abandonment, and that because the railway, without first obtaining authority, has removed a portion of the public highway which it is obligated to maintain, and which is necessary and convenient for public use, it should be ordered to restore the crossing.

The railway asserts complete absence of any acts constituting dedication as a public highway; disclaims liability to maintain the crossing; suggests that complainant, although not a real party in interest, is seeking a determination of title to real property; and asserts that public convenience and necessity do not require a crossing at Lemon Avenue.

A discussion of the legal questions suggested by the conflicting theories of the parties appears unnecessary. Determination of most, if not all, of such questions are beyond the Commission's limited regulatory jurisdiction. A crossing, public or

private, existed and was used until late in 1935, when it was closed to public use by action of the municipalities. The overhead structure has not been used by vehicular traffic for at least five years. We know of no provision of the Public Utilities Act or of any Commission rule that was violated by removal of the old structure in 1940. The real issue is whether public convenience and necessity require a crossing at Lemon Avenue.

That part of Signal Hill immediately north of the site of the old crossing is a residential section. Lemon Avenue is not a through street, but extends northerly from the right of way for about three blocks, where it terminates at two cemeteries. South of the site of the removed structure, in Long Beach, the territory is mostly vacant and residential in character for about a mile, when one reaches the business section of Long Beach. At Orange and Hill Streets, some 660 feet east of Lemon Avenue, is a modern structural steel overhead crossing, paved to a width of at least 50 feet, and erected in 1932. Orange Avenue is a through street. A timber bridge crossing exists at California Street (also a through street), some 660 feet west of Lemon Avenue. Complainant's single public witness, an owner of residential property fronting on Lemon Avenue in Signal Hill, testified that before 1935 the Lemon Avenue crossing was used by residents of the neighborhood for shopping in Long Beach, by funerals, and by an occasional heavy truck.

The existing crossings at California Street and at Orange and Hill Streets have accommodated the traffic since the barricading of Lemon Avenue in 1935, and while Signal Hill residents on

Lemon Avenue have had to travel an additional distance in order to cross the right of way, the record fails to establish a need for, and we find that public convenience and necessity do not require, an additional crossing at Lemon Avenue.

O R D E R

The above matter having been submitted following the taking of evidence at a public hearing and the filing of briefs, and based upon the record and upon the factual findings contained in the above opinion, IT IS ORDERED that Case No. 4516 be and it is hereby dismissed

Dated, San Francisco, California, March 14, 1941.

W. J. Baker
Raymond W. Bishop
Ray & Remy
Justus F. Coe
Francis R. Havenner
Commissioners.