

ORIGINAL

Decision No. 42374

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 THE CITY OF LOS ANGELES, a municipal)
 corporation, for an order or orders)
 authorizing and requiring the widening,)
 increasing the vertical clearance and)
 improving of the crossings of Washington)
 Boulevard and the Harbor Branch Line and)
 the Main Line railroads of The Atchison,)
 Topeka and Santa Fe Railway Company,)
 designating the portions of the work to)
 be done respectively by said city and by)
 said railroad corporation and allocating)
 the cost thereof between said city and)
 said railroad corporation.)

Application No. 29396

Roger Arnebergh, Assistant City Attorney,
 For City of Los Angeles;
R. W. Walker and Wm. F. Brooks, for The Atchison,
 Topeka and Santa Fe Railway Company, protestant.

O P I N I O N

The petition of the City of Los Angeles, applicant herein, concerns the proposed widening and increasing of the vertical clearance of two grade separation crossings of Washington Boulevard and the Harbor Branch line⁽¹⁾ and the main line⁽²⁾ railroads of

(1) This crossing is designated as Crossing No. 2H-0.1-B, and the legal description is as follows:

That portion of the right of way, 66 feet wide, of The Atchison, Topeka and Santa Fe Railway Company (formerly of the California Central Railway Company), described in Deed recorded in Book 491, page 106, of Deeds, Records of said County, included within the lines of Washington Boulevard, 90 feet wide, at Harriett Street.

(2) This crossing is designated as Crossing No. 2-143.2-B, and the legal description is as follows:

That portion of the right of way, 100 feet wide, of The Atchison, Topeka and Santa Fe Railway Company (formerly of the California Central Railway Company), described in Judgment of Condemnation had in Case No. 6855 of the Superior Court of the State of California in and for the

The Atchison, Topeka and Santa Fe Railway Company. The petition alleges that the present grade separations are inadequate to meet the present demands of vehicular traffic in that they are too narrow and the vertical clearances are too low. Applicant requests that this Commission issue its order authorizing and requiring the proposed improvements, and also designating the work to be done and the costs to be apportioned to each of the parties hereto.

Protestant, The Atchison, Topeka and Santa Fe Railway Company, in its answer to the above-mentioned petition, denies, upon information and belief, any need for changing the existing grade separation crossings, and further alleges that the present crossings are wholly sufficient for the needs of the railroad and the convenience and necessity of the public using the railroad facilities. Respondent contends that, since it will receive no benefit from the proposed changes, and since any alleged need for these changes has been occasioned, not by the railroad activities, but by automotive traffic using the highway, it should not be required to bear any of the costs of changes that might be made.

Public hearing was held in Los Angeles, California, on December 6, 1948, before Examiner Syphers, at which time evidence was adduced and the matter submitted, the parties being granted permission to file written briefs. Applicant has filed opening and closing briefs, and protestant has filed a reply brief. The

(2) cont'd

County of Los Angeles, a copy of which judgment is recorded in Book 361, page 77, of Deeds, Records of said County, included within the lines of Washington Boulevard, 90 feet wide, at Harriett Street.

matter is now ready for decision.

Washington Boulevard is a public street extending from the westerly boundary of the city at the Pacific Ocean, in the Venice area, easterly through the entire breadth of the city and for a distance of several miles east of the easterly boundary of the city.⁽³⁾ In the vicinity of the grade separation crossings here under consideration, Washington Boulevard traverses one of the principal industrial districts of the Los Angeles area. Throughout most of its length, Washington Boulevard has a paved surface at least 60 feet in width, with some exceptions where the pavement width varies from 40 to 60 feet. However, at the site of the two crossings here under consideration, the pavement narrows down to 20 feet in width while the street easement at these points is 90 feet. The vertical clearance of these grade separations is between 13 and 14 feet.

Witnesses for applicant testified as to the need for enlarging these two grade separation crossings. Due to the rapid increase in population in Los Angeles City and also in the county, the automobile traffic has greatly increased. This has caused a congested condition at the site of the two crossings in question inasmuch as the underpasses are too narrow and too low to permit a free flow of traffic. It is very difficult for trucks to pass each other in the underpasses, and some of the larger vehicles cannot safely go under the underpasses because of their height. All of these factors, in addition to causing congestion at the site of the underpasses, also cause a diversion of traffic. Vehicles turn to

(3) Exhibit 8 is a map of Washington Boulevard.

other streets, and studies⁽⁴⁾ made by the principal traffic engineer of the City of Los Angeles show heavy turning movements at intersections in the vicinity of the underpasses. These heavy turning movements create safety hazards at the intersections where they are made.

Exhibits 3 to 7 inclusive are photographs of the two underpasses and corroborate the description of the conditions there existing as given by various witnesses.

Some of applicant's witnesses testified that there was a need for public bus transportation along Washington Boulevard in the vicinity of the underpasses but that the inadequacy of these underpasses has deterred the institution of such bus service. Other testimony was to the effect that it is becoming increasingly important to have through highways in Los Angeles. Washington Boulevard, for the greater part of its length, is a through highway and the widening of the underpasses in question would make it a through highway for its entire length. Furthermore, Washington Boulevard is one of the streets which has a bridge crossing the Los Angeles River.

The two grade separation crossings here under consideration were constructed in 1914 pursuant to an agreement between the City of Los Angeles and The Atchison, Topeka and Santa Fe Railway Company. The costs were borne one-half by the city and one-half by the railroad. In 1926 an additional superstructure for another track was installed and the entire cost of this was paid for by the railroad.

Three proposals are advanced by the applicant. One is to fill in the present separation and have the crossings at grade.

(4) Exhibit 2 shows the results of a traffic check made by the City of Los Angeles as to the hourly volume of vehicles and the right and left turns at intersections in the vicinity of the two underpasses.

The second is to use the present grade separations for east-bound traffic and build a new west-bound roadway at grade. The third is to widen and increase the height of the existing underpasses and maintain the grade separation. The last of these proposals is the one most strongly advocated. Also, the testimony shows that a grade separation is the most desirable type of crossing for this situation, in that the volume of traffic is too heavy to satisfactorily and safely be handled over a grade crossing.

The total cost of widening the present underpasses and constructing new bridges is estimated to be \$722,100⁽⁵⁾, and exhibits were introduced at the hearing showing the details of this contemplated improvement⁽⁶⁾. A breakdown of the estimated costs was given by an engineer who testified for applicant, as follows:

Two span-deck girder railway bridges,		
One west of Harriet Street	\$192,000	
One east of Harriet Street	<u>204,000</u>	\$396,000
Structure wing walls, and		
walls between structures		79,800
Storm drain, sewer		<u>240,550</u>
Slope rights		5,750
Total		<u>\$722,100</u>

An analysis of all of the evidence presented herein shows that there is practically no dispute as to the factual situation. The testimony and exhibits showing the desirability and need of widening the existing underpasses and providing more vertical clearance were not seriously challenged nor controverted. Likewise, the estimated cost of the proposed improvements was not challenged. The issue in the matter, therefore, resolves itself into a legal inquiry. What portion of the costs, if any, shall be borne by the

(5) Exhibit 12

(6) Exhibits 9, 10, 11, and 13

railroad? In considering this question we have had the benefit of applicant's opening and closing briefs and protestant's reply brief.

The City of Los Angeles contends that the railroad should bear that portion of the costs which the existence of the railroad tracks adds to the cost of the proposed improvement. Under this contention it is argued that the City of Los Angeles should pay only that cost of widening the street which it would pay if there were no railroad crossing; all other costs, such as the cost of the bridge and its supports, should be borne by the railroad. The public, it is contended, should not be required to pay additional costs for street improvements when these additional costs are occasioned by the presence of the railroad.

The protestant railroad takes the position that costs should be allocated according to benefits received. It contends that the railroad will receive no benefits from the proposed widening since it is now operating satisfactorily and the widening of the street will in no way change these operations. As a matter of fact, the railroad contends the proposed improvements will actually be a detriment since there will be increased costs involved in maintaining the longer bridge. It contends that the need for widening the underpasses has arisen, not because of any activity of the railroad, but because of the increase in motor vehicle and pedestrian traffic.

In 1932 these same parties were before this Commission in a similar proceeding involving the same two crossings.⁽⁷⁾ At that time the proposal of the City of Los Angeles was to widen

(7) Decision No. 25069, dated 8/15/32, in Application No. 18063, 37 CRC 784.

the two grade separations so that the roadway under them would have a width of 56 feet. This Commission issued its order authorizing widening of the grade separations and holding that the costs should be borne "25 per cent by The Atchison, Topeka and Santa Fe Railway Company and 75 per cent by applicant". The order further provided that the authorization therein granted should lapse and become void if not exercised within one year from the date thereof. The authorization was not exercised and, therefore, lapsed according to its terms.

As pointed out by applicant in its closing brief, we cannot now fail to take note of the material change in conditions at the present time as compared to those in 1932, at the time of Decision No. 25069, supra. The great increase in population and the tremendous increase in motor vehicle traffic present a new problem.

According to the evidence presented, the widening of the underpass is now necessitated by the increase in vehicular and pedestrian traffic. The area in the vicinity of the two underpasses here under consideration has become one of the leading industrial areas of Los Angeles and its environs. As a result, there is a large amount of motor truck traffic hauling to and from these areas. The reasons advanced by applicant for widening the underpasses, which reasons were not disputed by protestant, were the increase in motor vehicle traffic, both passenger and commercial, the need to make Washington Boulevard a through street for its entire length, the need for a bus line to transport passengers through that area, and the inadequate height of the present underpass. It was pointed

out that the height of the underpass should be increased so as to provide adequate clearance for commercial vehicles. All of these factors have resulted in a congestion of traffic in the area of the underpasses, and the diversion of traffic to other streets, which diversion is felt even in the central business district of Los Angeles.

The protestant railway company contends that none of these factors are due to the operation of the railroad; that the railway operations are being conducted satisfactorily over the present underpasses. A fair view of all of the evidence presented in this matter supports this contention. Thus we are specifically faced with the problem of who shall pay the cost of widening of the underpass where the necessity for such widening is not due to the activities of the railroad but rather to the needs of the automotive and pedestrian traffic.

The applicant city relies rather strongly on the proposition that the proposed improvement is an exercise of the police power and that, therefore, it is distinguishable from similar situations involving federal aid highways. Exhibit No. 20, introduced in evidence, is a copy of General Administrative Memorandum 325 of the Public Roads Administration, Federal Works Agency, of the United States Government. This particular memorandum sets out the policy of the federal agency to be that the costs assessed against the railroad in such situations shall be based upon the benefits accruing to the railroad and, in no case, shall costs be greater than 10% of the total cost of the project. In the case of reconstruction of existing rail-highway grade separation structures, the memorandum states that such reconstruction "shall be considered

as not resulting in ascertainable benefits to the railroad and, consequently, no contribution to the cost of such a project by the railroad shall be required."

We find that the situation presented in the matter before us is differentiable from those grade crossing and grade separation situations involving federal aid highways, since Washington Boulevard is a city street and no federal funds are to be used in the proposed widening.

Applicant city, in its brief, set out at some length the authority of this Commission to require grade separations and allocate the costs thereof. These contentions are not challenged and there is no question as to the jurisdiction and power of this Commission in this matter to allocate costs within legal and constitutional limitations. However, in considering these costs, a sound policy requires that the allocations be reasonable and equitable. We must take cognizance of present-day conditions, and in this particular instance we are impressed not only by the fact that the need for the proposed improvements is not brought about by any requirement of the railroad, but also by the fact that, but for the existence of the railroad at the location of the proposed street widening and the grade separation structures now there, the city would be able to widen its street without the necessity of incurring the cost of replacing the existing bridge and underpass structures with the new structures proposed.

If the contention of the City of Los Angeles were to be sustained, then the railroad would be required to pay \$475,800, that amount being the cost of the two proposed bridges and the structure wing walls and walls between the structures. The City

of Los Angeles would be required to pay \$246,300, that being the cost of the proposed improvements other than that cost necessitated by the existence of the railroad. We do not subscribe to this contention. Within its proper limitations, the police power of the City of Los Angeles is not challenged. However, we must also consider the fact that protestant railway has already paid its proportionate share of the existing structures.

The pavement under the existing underpasses is 20 feet in width and the proposal is to widen this so as to permit a 90-foot roadway thereunder, but, an analysis of other evidence presented in this record shows that the widening of these underpasses to 90 feet will not increase the traffic capacity of the street to that extent. The Washington Boulevard bridge over the Los Angeles River is only 56 feet in width and is located east of the underpasses and west of Soto Street, with no cross streets between the underpasses and this bridge. Accordingly, it is obvious that the practical carrying capacity of the street beyond the underpasses would be limited to 56 feet.

In view of this situation, and in view of the evidence which indicates that the principal need for widening the underpasses is occasioned by traffic conditions on Washington Boulevard, we conclude that the proposed additional width of the underpasses, over and above 56 feet, becomes a matter of future city planning and will not contribute to the immediate traffic problem.

The Commission in City of Los Angeles Application No. 18063, Decision No. 25069, 37 CRC. 784 at 786-7 said: "The matter of direct financial benefits is not the sole test in the determination of the respective portions which the railroad and public should contribute toward the cost of such improvement. In apportioning the cost of constructing these separations between applicant and

the railroad company, due consideration should be given to the obligations of each party, as well as to the benefits derived. It should be recognized that the railroad has a continual obligation to participate in the matter of constructing and maintaining reasonable and adequate crossings over its tracks both at grade and at separated grades. This obligation is inherent, notwithstanding the fact that the traffic on the railroad may increase or decrease."

We believe that the railroad has a continuing obligation to participate in the cost of such an improvement as is contemplated. Therefore, in considering any allocation of costs, the extent of the additional cost for bridge structures for the widening of the street over and above a 56-foot width should be allocated to the city.

As previously has been pointed out, the total cost of the proposed improvement will be \$722,100, but the cost attributable to the presence of the railroad is \$475,800. The remainder of the cost is clearly attributable to the paving and widening of the street. Of the proposed 90 feet of roadway, 20 feet is now available under the existing underpasses and the excess over 56 feet, or 34 feet, is attributable to future city planning. Therefore, this leaves but 36 feet of the proposed railway bridges, the costs of which are in any way attributable to the existence of the railway. These costs would amount to 40% of \$475,800, or \$190,320.

We conclude that this last-named amount is the only cost which should be allocated in this proceeding. In allocating this amount of \$190,320 between the applicant city and the protestant railroad, we give effect to the factual situation as presented by

the evidence in this case. A fair view of this evidence warrants the conclusion that each of the parties should defray one-half of this amount.

After considering all the evidence presented in this matter, we hereby find that public convenience and necessity have been shown to justify the widening of the existing grade separations, and we further find that there is a duty upon the protestant railway to defray a portion of the costs of such widening, as set out hereinabove.

O R D E R

Application as above entitled having been filed, a public hearing having been held and the Commission being fully advised in the premises,

IT IS ORDERED that the City of Los Angeles be, and it hereby is, authorized to widen and increase the height of the existing underpasses of Washington Boulevard and the Harbor Branch line and the main line railroads of The Atchison, Topeka and Santa Fe Railway Company in the manner and at the locations more particularly described in the foregoing opinion, and substantially in accordance with the plan introduced in evidence in this proceeding, subject to the following conditions:

1. The expense of constructing said undergrade crossings shall be borne by the City of Los Angeles with the exception of the sum of \$95,160, which amount shall be borne by The Atchison, Topeka and Santa Fe Railway Company.
2. In the event applicant elects to construct said undergrade crossings, the cost of maintaining those portions of the separations which, for the purpose of this decision, shall be referred to as the superstructures, which shall be deemed to be everything above the bridge seats, shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

The remainder of the maintenance of said structures shall be borne by applicant.

3. Prior to the commencement of construction, applicant shall file with this Commission for approval a set of plans for the proposed grade separation crossings which plans shall have been approved by The Atchison, Topeka and Santa Fe Railway Company, or bear a statement as to why the said railway company refuses to approve such plans. In the event the said railway company refuses to approve such plans, this Commission may issue supplementary orders in this matter.
4. The crossing shall be constructed with clearances conforming to the provisions of General Order 26D of this Commission.
5. Applicant within thirty (30) days thereafter shall notify this Commission, in writing, of the completion of the installation of said crossings and of its compliance with the conditions hereof.
6. The authorization herein granted shall lapse and become void if not exercised within one year after the date hereof unless further time is granted by subsequent order.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 4th day of October, 1949.

R. E. Murray
James F. Gallivan
James A. Russell
Harold P. Hild
Kenneth P. Little
COMMISSIONERS