

Decision No. 44301

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of)
the City of San Bernardino and the)
Department of Public Works of the State)
of California for an order authorizing)
construction of a crossing at separated) Application No. 31061
grades of State Highway Route No. 9 and)
the tracks of The Atchison, Topeka and)
Santa Fe Railway Company in the City of)
San Bernardino, County of San Bernardino,)
State of California.)

O P I N I O N

The City of San Bernardino and the Department of Public Works of the State of California, by application filed February 28, 1950, have requested authority to construct a crossing at separated grades of State Highway Route 9 (also known as 5th Street) over the five tracks of The Atchison, Topeka and Santa Fe Railway Company (herein referred to as Santa Fe Railway) located on "I" Street in said city.

Santa Fe Railway, on May 29, 1950, signified, in writing, that it has no objection to the construction of said over-grade crossing and consented to the issuance by this Commission of an interim order authorizing its construction in accordance with the plan attached to the application and identified as Exhibit "A".

This consent by the Santa Fe Railway was, however, conditioned upon the reservation that it did not admit or concede that it should, in any manner, nor to any extent, be required to contribute any sum of money to pay the whole or any part of the cost

of such construction. Santa Fe Railway's contention is that any public convenience and necessity which may require the above construction, is solely that of the public in the use of the public highways and no benefits will inure to said railway company in the operation of trains over its tracks.

The City of San Bernardino concurs in the request for an interim order authorizing immediate construction. Said city has declared its intention by Resolution, dated April 12, 1949, to allocate a total of \$200,000 toward the cost of the proposed overhead crossing and of widening 5th Street to 64 feet between curbs from the westerly city limits to "E" Street in the City of San Bernardino. Of said sum, \$150,000 has been allocated to the cost of the structure and approaches by memorandum of agreement between said city and the State of California executed, respectively, November 8 and November 23, 1949. The present commitment of said city is in the amount above stated.

The interested parties are attempting to reach an agreement covering the terms of construction and maintenance and the division of costs thereof, but as of this time no such agreement has been reached. The order authorizing construction will contain a condition that, prior to the commencement of construction, a certified copy of an agreement satisfactory to this Commission shall be filed with it or, in the alternative, the Department of Public Works shall submit evidence of its willingness and ability to pay the entire cost of construction over and above that to be furnished by said city, as above stated, unless, and to the extent that, this Commission should, after hearing, determine that a portion of said costs should be paid by Santa Fe Railway or unless, and to the

extent, Santa Fe Railway should subsequently, by contract, agree to share such expense.

It appears to be in the public interest that construction of the over-grade crossing commence at once and prior to a determination of the question as to whether Santa Fe Railway should bear any portion of the expense of such construction. A public hearing is not necessary for the issuance of the interim order authorizing immediate construction.

INTERIM ORDER

IT IS HEREBY ORDERED that the Department of Public Works of the State of California is hereby authorized to construct a crossing at separated grades of State Highway Route 9 (also known as 5th Street) and the five tracks of The Atchison, Topeka and Santa Fe Railway Company located on "I" Street in the City of San Bernardino, State of California, at the location more particularly described in the application and substantially in accordance with and as shown by, the plan marked Exhibit "A" attached to the application herein, subject to the following conditions:

- (1) The above crossing shall be identified as Crossing No. 2-80.75-A.
- (2) The entire expense of constructing and thereafter maintaining the crossing in good and first-class condition for safe and convenient use of the public shall be borne in accordance with the terms of an agreement to be entered into between applicants and The Atchison, Topeka and Santa Fe Railway Company, a certified copy of which shall be filed with the Commission within sixty (60) days after the date hereof. Should said agreement not be filed within the specified time and further time not be granted by subsequent order, said costs will be apportioned between said Department of Public Works and The Atchison, Topeka and Santa Fe Railway Company by supplemental order.

- (3) Construction shall be in accordance with plans approved by the interested parties and filed with this Commission prior to commencement of any work.
- (4) Said crossing shall be constructed with clearances conforming to the provisions of the Commission's General Order No. 26-D.
- (5) Applicants shall, within thirty (30) days thereafter notify this Commission in writing, of the completion of the installation of said crossing and of their compliance with the conditions hereof.
- (6) The authorization herein granted shall lapse and become void if not exercised within two years after July 1, 1950, unless further time be granted by subsequent order.

IT IS HEREBY FURTHER ORDERED that applicants be, and they hereby are, authorized to close and barricade to traffic existing crossing No. 2-80.75 upon completion of the construction of crossing No. 2-80.75-A or at such earlier time as its closing may be considered necessary to facilitate construction of said crossing No. 2-80.75-A.

The authority herein granted shall become effective on the date hereof.

Dated at Los Angeles, California, this 13th
day of June, 1950.

R. E. Dickinson
Justin J. Calver
Robert L. Luce
Harold H. Hulse
Frederick R. Potter
COMMISSIONERS