

ORIGINAL

Decision No. 44309

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
the SOUTHERN PACIFIC COMPANY and THE)
WESTERN PACIFIC RAILROAD COMPANY for)
authority to abolish by physical)
closing the crossings of 51st Avenue,)
52nd Avenue and 53rd Avenue, over the)
tracks of the Western Pacific Rail-)
road Company and Southern Pacific)
Company in the City of Oakland,)
Alameda County, California.)

Application No. 30319

E. L. Van Dellen, for Western Pacific Railroad Company
and Southern Pacific Company, applicants.
Bernal & Bernal, for Genoneffa Perrone and others
similarly situated, protestants.

O P I N I O N

By their application in this proceeding, Western Pacific Railroad Company and Southern Pacific Company seek an order directing the closing of certain existing grade crossings over their railroad tracks at 51st, 52nd and 53rd Avenues, in the City of Oakland. Opposition to this proposal was voiced by residents of the vicinity, who assert that such action would be detrimental to their interests. The matter was submitted at a public hearing, held before Examiner Austin at Oakland on January 5, 1950.

Applicant, Western Pacific Railroad Company, produced its operating officials, who had undertaken a study of the project. In support of their protest, residents of the affected territory were called as witnesses.

The contentions of the parties may be briefly stated. Applicants assert that these crossings are hazardous; moreover, they are not necessary to permit public access to the areas situated

on either side of the tracks. This is denied by protestants, who also contend that the closing of these crossings would impair the market value of their real property holdings, for which it is claimed they should be compensated; that, from their standpoint, any existing hazard could be eliminated more economically by the installation of warning signals at these crossings; and that children living south of the tracks would be obliged to follow circuitous routes to and from school, where the risk is considerably greater than at the crossings in question. To safeguard school children, as well as others, applicants have offered to maintain a pedestrian crossing at 52nd Avenue.

The track layout was described by the railroad operating officials. At the situs of these crossings, the Western Pacific main line track extends east and west through urban territory along a private right of way. Immediately adjacent to this track, and paralleling it on the north, is a drill track jointly maintained and used by both the Southern Pacific and the Western Pacific. About one-quarter mile west of 50th Avenue, near High Street, the Western Pacific main line curves southward; east of these crossings it runs straight for more than a mile. The joint drill track curves north, between 54th and 55th Avenues; it turns south across the Western Pacific main line between 47th and 49th Avenues. Thus, the drill track parallels the main line for only a short distance. In the vicinity of these crossings, the tracks are fairly level.

The condition of these crossings was shown in detail. All three streets cross both tracks at grade. To the west the nearest public crossing is situated at 50th Avenue, and to the east, at 54th Avenue. Both of these are grade crossings. Between

50th and 54th Avenues, inclusive, each block is some 200 feet in length, exclusive of the streets themselves; excepting 50th Avenue (which is 60 feet wide), each has a width of 55 feet. At each of the crossings involved, the street surface is worn, rough and uneven; moreover, the grade of approach to the tracks is quite steep. ⁽¹⁾ The drill track is approximately one foot lower in elevation than the main line track.

The location of the streets adjacent to these crossings was fully portrayed. South of, contiguous to and paralleling the Western Pacific right of way is San Leandro Street over which traffic moves in heavy volume, at high speed. It crosses the area, lying south of the right of way, directly involved in this proceeding. Fiftieth to 54th Avenues, inclusive, extend south of that street for two blocks to the Southern Pacific main line tracks, where all but one reach a dead end; only 50th Avenue crosses the Southern Pacific right of way. To the north, the private holdings of local residents abut directly upon the Western Pacific right of way. In this direction, the nearest through street running parallel to the right of way is East 12th Street. Although East 10th Street

(1) Looking south along the Avenues toward the right of way, the grades of approach, at the crossings involved, were shown to be as follows:

	Between North Line of Right of Way and Drill track	Between drill track and main line track	Between main line track and south line of right of way, at San Leandro Street
50th Avenue	6.9%	4.8%	8.9%
51st Avenue	2.7 to 6.1%	11.2%	5.1%
52nd Avenue	2.0 to 9.4%	9.3%	7.0%
53rd Avenue	0.8 to 3.5%	7.2%	5.0 to 8.0%
54th Avenue	0.8 to 5.5%	approximately level	4.6%

is situated further south and closer to the tracks, it is not a through street, in this locality; it extends only from 50th to 54th Avenues, following a diagonal course. Fiftieth, 51st, 52nd and 54th Avenues extend, without interruption, north from the right of way to East 14th Street and beyond; however, 53rd Avenue is blocked at East 10th Street.

The area surrounding these crossings is predominantly residential in character. Bordering upon it are industrial establishments of various types. North of the right of way, residences line the Avenues, from 51st to 54th, inclusive, as well as East 10th Street. A rubber processing plant occupies the block, on the west side of 50th Avenue between East 12th Street and the tracks. South of the right of way and beyond San Leandro Street, the residential section fills a space of four square blocks between 50th and 54th Avenues. Immediately south, and across East 8th Street, both industries and residences abut upon the Southern Pacific right of way. Between San Leandro Street and the Southern Pacific tracks, industrial plants and a few residences are situated along the west side of 50th Avenue, and a cannery occupies the east side of 54th Avenue. West of 50th Avenue lies an industrial area. South of the Southern Pacific tracks, at 50th Avenue and Clement Street, a housing project extends west toward High Street.

Thus, the residential area lying between the Western Pacific and the Southern Pacific rights of way forms a sort of cul-de-sac, in relation to the district situated north of the Western Pacific tracks. Access to the south is shut off by the Southern

(2)
Pacific right of way, and to the east and the west, by industrial plants located on 50th and 54th Avenues, respectively.

Elementary and grammar school facilities are situated some two blocks north of these crossings. Children residing in this area attend the Melrose School, which is located on 52nd Avenue between East 12th and East 14th Streets. Only one fire alarm box accommodates this territory; it is located north of the tracks, at East 10th Street and 52nd Avenue.

Over the Western Pacific main line, trains operate with considerable frequency. In number they exceed 20 trains daily, both east and westbound. In this territory the railroad has imposed speed limits of 35 miles an hour for passenger trains, and 25 miles an hour for both freight trains and switch engines. A resident of the district asserted that he had observed passenger trains traveling at speeds as high as 50 miles an hour. This testimony was not contradicted. The record does not indicate the frequency of train movements over the joint drill track, nor the speed at which these trains operate.

The evidence dealt with the extent to which the view of approaching traffic, at these crossings, might be obstructed. Along the south side of the right of way, the view of both trainmen and vehicle drivers is unobstructed. Since the highway parallels the railroad, on this side, ample space is afforded for a clear

(2) As stated, 50th Avenue extends south across the Southern Pacific tracks. This street affords residents of the housing project, described above, a means of approach to San Leandro, East 12th and East 14th Streets, all of which are major traffic arteries. Children living in this district also attend the Melrose School. East 8th Street, in this locality, extends only from 50th Avenue to 54th Avenue; it does not cross or extend beyond either of these streets.

view of approaching trains and motor vehicles. Weather permitting, one can clearly see along the main line track for a distance of over one mile, looking east, and one-fourth mile, looking west. On the north side of the right of way, however, a different situation exists. There buildings, signs and fences abut upon the right of way, thus obstructing the view both of automobile drivers and of trainmen. Possibly, the rather steep grades of approach from the north, along 51st, 52nd and 53rd Avenues, might have a tendency to retard vehicular traffic, but this is problematical. From this viewpoint, these must be regarded as blind crossings.

Data submitted indicate the number of accidents which have occurred at these and other crossings in the vicinity, over the Western Pacific main line, as disclosed by the Commission's records. Since January, 1926, there were eight accidents at the affected crossings, involving no fatalities, and injury to but one person. During the same period, there were ten accidents at 50th and 54th Avenues, resulting in injury to five persons, but in no fatalities. The number of accidents attributable to these crossings is somewhat lower than those recorded at other crossings in this district, particularly within the zone extending from 66th to 98th Avenues.

Traffic counts, designed to measure the extent of the use of these crossings, were submitted by the applicants. These indicate the number of vehicles and pedestrians which traversed these crossings on selected dates; the details appear below. By

(3) The following tabulation indicates the distribution, among the crossings involved, of traffic which utilized these crossings within selected 24-hour periods, on December 28, 29 and 30, 1949.
(Continued on Page 7)

far the greater share crossed at 50th and 54th Avenues; only a small proportion used 51st, 52nd and 53rd Avenues. The preponderance of the traffic turned into or out of San Leandro Street; it did not cross both that street and the Western Pacific right of way. The latest survey was made during the Christmas holiday season, consequently it does not account for children who ordinarily would cross the tracks on their way to and from school.

(3) Continued from Page 6.

	<u>Automobiles</u>	<u>Light Trucks</u>	<u>Heavy Trucks</u>	<u>Pedestrians</u>	<u>Motor-cycles & bicycles</u>	<u>TOTAL</u>
50th Ave.	(571 32.48%	(63 29.86%	(76 44.71%	(148 47.90%	(29 56.86%	(887 35.49%
51st Ave.	(122 6.94%	(22 10.43%	(1 0.59%	(39 12.62%	(1 1.96%	(185 7.40%
52nd Ave.	(158 8.99%	(17 8.06%	(18 10.59%	(62 20.06%	(5 9.81%	(260 10.40%
53rd Ave.	(48 2.73%	(9 4.26%	(4 2.35%	(8 2.59%	(4 7.84%	(73 2.96%
54th Ave.	(359 48.86%	(100 47.39%	(71 41.76%	(52 16.83%	(12 23.53%	(1094 43.77%
TOTAL	1758	211	170	309	51	2499

A total of six gasoline trucks also used these crossings during the period mentioned, viz.: two, at 50th Avenue; one, at 51st Avenue; and three, at 54th Avenue.

- (4) Of the traffic described in footnote (3), supra, 81 per cent of the automobiles, 77 per cent of the light trucks, 86 per cent of the heavy trucks, and 65 per cent of the pedestrians used 50th and 54th Avenues. The remainder used 51st, 52nd and 53rd Avenues. This comprised 19 per cent of the automobiles, 23 per cent of the light trucks, 14 per cent of the heavy trucks, and 35 per cent of the pedestrians. Of the latter group, as shown above, the larger share of the traffic crossed at 52nd Avenue rather than at 51st and 53rd Avenues.
- (5) A traffic count, made June 29, 1949, indicates that of the vehicles which crossed the Western Pacific right of way, the
- (Continued on Page 8)

The record shows that at times, both 50th and 54th Avenues are choked with heavy traffic, in the immediate vicinity of those crossings. During the packing season, which extends from July through September, heavy trucks constantly are loading and discharging freight at the cannery, on 54th Avenue. Throughout the year the same situation prevails at the rubber processing plant, on 50th Avenue. Frequently, trucks seeking to gain access to this plant are backed up for a considerable distance along East 10th Street. This results in heavy congestion of traffic at both of these crossings, with consequent vexatious delays and inconvenience to those seeking to cross the tracks there. This condition also tends to increase the danger, both to pedestrians and to vehicular traffic.

To minimize these hazards, school children residing south of the Western Pacific tracks have been instructed to cross both San Leandro Street and the railroad right of way at 52nd Avenue. For their protection, a traffic officer is stationed, before and after school hours, at 52nd Avenue and San Leandro Street. This officer controls the traffic and assists children across the street. During inclement weather, the parents of pupils residing in this area frequently convey their children to and from Melrose School, using their own automobiles for this purpose. The record indicates that some 35 school children regularly use this crossing.

That the crossings with which we are here concerned present certain elements of hazard, both to vehicular and pedestrian traffic alike, cannot well be doubted. This conclusion finds

(5) Continued from Page 7.

proportion which also crossed San Leandro Street was as follows: viz.: At 50th Avenue, 13.5 per cent; at 51st Avenue, 8.0 per cent; at 52nd Avenue, 12.7 per cent; at 53rd Avenue, 10.0 per cent; and at 54th Avenue, 4.8 per cent. The remainder traveled either east or west along San Leandro Street. Thus, only a relatively small share originated at, or was destined to, the area lying between the Western Pacific and the Southern Pacific rights of way.

ample support in the evidence, reviewed above. Ordinarily, in the interest of public safety, crossings of this nature should be eliminated.

To close all of these crossings, however, might well result in public inconvenience which would outweigh the advantages flowing from their abolition. Such action would leave 50th and 54th Avenues as the only channels for traffic moving to and from the area lying south of the Western Pacific tracks. As stated, this district is hemmed in by industries on both its east and west sides, and by the Southern Pacific right of way on the south. Ordinarily, these crossings might be sufficient to serve the needs of this traffic. But 50th and 54th Avenues often are congested by heavy trucks, engaged in loading and unloading freight at industries situated adjacent to these crossings. To limit residents of this section to crossings at these points would subject them to protracted and annoying delays, as well as hazards exceeding those normally encountered where these conditions do not prevail. Applicants' offer to reserve a pedestrian crossing at 52nd Avenue would accommodate children attending Melrose School, but would not meet the requirements of vehicular traffic.

Upon the record now before us, it would seem appropriate to retain the crossing at 52nd Avenue. Because of its location, this crossing, it appears, would best satisfy the needs of those residing within the area mentioned above. The crossings at 51st Avenue and 53rd Avenue should be closed, thus eliminating the hazards attendant upon them. The local traffic readily could be concentrated at 52nd Avenue. The record does not indicate the necessity for additional protection at this crossing.

Protestants have objected to the procedure followed in this matter, contending that it is fatally defective because of lack of proper notice to certain property owners, who assertedly

would be damaged by the closing of these crossings. This claim is challenged by the applicants.

If the crossings at 51st, 52nd and 53rd Avenues were closed, protestants contend, the parcels of land fronting on those streets and also abutting on the Western Pacific right of way would be cut off from access to the streets lying immediately south of the tracks. Assertedly, these parcels would be deprived of access along those streets, respectively, to San Leandro Street, the nearest intersecting street lying south of and adjacent to the right of way; to reach that street, circuitous routes considerably longer than those now available, must then be followed. Because of the limitations thus imposed upon their means of ingress to and egress from their property, the owners of such parcels might find themselves in a cul-de-sac. The record does not disclose the identity of these property owners, nor were their holdings described specifically.

These owners, it is claimed, should be compensated for the damage resulting to their property. Protestants point to court decisions which, it is said, support their contentions. (6)

It is conceded by protestants that the Commission alone may determine the need for closing a crossing; no court, called upon to deal with the property interests affected, may pass upon this subject. If this matter is excluded from the court's consideration, then the property owners, it is claimed, are entitled to notice throughout all stages of the proceedings, both before

(6) Bacich v. Board of Control, 23 Cal (2d) 343; Beals v. City of Los Angeles, 23 Cal (2d) 381. See also Constantine v. City of Sunnyvale, 91 Cal App. (2d) 278; Rosa v. State of Calif., 19 Cal (2d) 713; Eckus v. Los Angeles Cons. Elec. Ry. Co., 103 Cal 614.

the Commission and in the courts. This, they contend, is essential in order to safeguard and protect the rights and interests of such owners. Since the application failed to specify the parcels thus affected or their owners, and since the owners were not notified individually of the pendency of this proceeding nor of the hearing, there has been a substantial defect in procedure, it is claimed.

In reply, applicants contend that in a proceeding of this nature the Commission is concerned only with public convenience and safety, its action being referable to the police power rather than to the field of eminent domain. It may not, they say, undertake to determine the nature or extent of the damage suffered by any land owner, arising from the execution of a project involving the construction of public improvements. Under the circumstances, it is said, the general notice which was accorded in this proceeding, is sufficient.

The Commission's authority to require the closing of a grade crossing is well established. In such a proceeding, however, it is concerned only with the public interest in the continued maintenance, or discontinuance, of the crossing. It is called upon to balance considerations of public safety, involved in permitting the crossing to remain open, against the public inconvenience which might result from its abolition. Its action must be ascribed to the police power. In a case such as this, it may not determine whether property owners have suffered any damage due to the closing of the crossings, nor may it undertake to fix the amount of such damages. These are matters which fall within the jurisdiction of the courts.

(7) Public Utilities Act, Section 43(b); City of San Mateo v. Railroad Commission, 9 Cal (2d) 1-10; Civic Center Assn. of Los Angeles v. Railroad Commission, 175 Cal 441.

(8) S. H. Chase Lumber Co. v. Railroad Commission, 212 Cal 691, 706.

In this proceeding, notice was given in accordance with the practice usually followed in cases of this nature. Notice of the hearing was accorded to the applicants and their attorneys, to the protestants and their attorneys and to various officials of the City of Oakland, including the City Manager, the City Engineer and the City Attorney. In this respect, it appears, the Commission's rules of procedure were duly observed. This, clearly, was sufficient. ⁽⁹⁾ In view of what has been said, we conclude that protestants' objections, based upon the alleged insufficiency of the application and the alleged lack of adequate notice to the property owners affected, are not well taken. Accordingly, they are overruled.

As indicated above, applicants will be authorized to close the existing grade crossings at both 51st and 53rd Avenues. However, the crossing at 52nd Avenue will remain open. To that extent, the application will be denied. The following order will so provide.

O R D E R

Application as above entitled having been filed, a public hearing having been held thereon, the matter having been duly submitted and the Commission being now fully advised,

IT IS ORDERED that:

(1) Applicant, The Western Pacific Railroad Company, is hereby authorized to abolish, by physical closing, the crossings of 51st and 53rd Avenues, and each of them, with its main line railroad track in the City of Oakland, Alameda County, as more

(9) City of San Jose v. Railroad Commission, 175 Cal 284.

particularly shown on the map attached to the application herein; that in abolishing said crossings, and each of them, The Western Pacific Railroad Company shall remove said crossings and their approaches, within the limits of its right of way, and erect suitable barriers, in such manner as effectively to prevent the use of said crossings, and each of them, by vehicular traffic.

(2) Applicants, The Western Pacific Railroad Company and Southern Pacific Company, are hereby authorized to abolish, by physical closing, the crossings of 51st and 53rd Avenues, and each of them, with the joint drill track which they maintain (parallel to the main line track of The Western Pacific Railroad Company, referred to above), in the City of Oakland, Alameda County, as more particularly shown on the map attached to the application herein.

(3) Within thirty (30) days after the closing of said crossings, as provided herein, said applicants, respectively, shall so advise the Commission in writing; that this authorization shall become void if not exercised within one year after the effective date of this order, unless such time may be extended for good cause; that such authorization may be revoked or modified if public convenience, necessity or safety so require.

(4) In all other respects, the application herein is hereby denied.

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

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

A. J. Anderson
Justus F. Coe
Don H. Fawcett
Harold P. Hull
Kenneth Pott
Commissioners