

Decision No. 46215**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the)
 South Villa Avenue, Gibraltar Avenue,)
 and North Villa Avenue grade cross-) Case No. 5276
 ings with The Western Pacific Rail-)
 road Company in Butte County.)

E. L. Van Dellen, for Western Pacific
 Railroad Company, respondent.
Daniel P. Corcoran, Chairman, Board of
 Supervisors, for Butte County,
 respondent.
John K. Power, for Commission's staff,
 Transportation Department.

O P I N I O N

In this proceeding the Commission has instituted an investigation, upon its own motion, into the maintenance, operation, use and protection of certain grade crossings of three public highways over the track of Western Pacific Railroad Company at Palermo, in Butte County. This investigation was undertaken to determine whether these crossings, or any of them, constitute a public hazard; whether public safety requires their abolition, alteration or relocation, or the installation of protective devices at one or more of such crossings; and to prescribe the terms upon which the closing, alteration or relocation of said crossings or the installation of such devices should be made, and the apportionment of the expense thereof.

A public hearing was held before Examiner Austin at Oroville on July 10, 1951, when the matter was submitted. Evidence was offered on behalf of the staff of the Commission's Transportation Department, the railroad company and the county. Both the staff and the company recommended that two of these crossings be closed. The county, however, objected to this proposal.

Palermo, the situs of the crossings involved, is an unincorporated community situated some six miles south of Oroville. It is the center of an area devoted primarily to the cultivation and processing of olives. Orchards surround the town; within it are located several processing plants.

The Western Pacific main line track runs north and south through Palermo. Paralleling it on the west is a track, once used as a siding, which has been disconnected from the main line; ultimately, it will be removed. Over the main line track, both freight and passenger trains operate between Oakland, California, and Salt Lake City, Utah. During the week June 17 to 23, 1951, inclusive, as shown by a survey, these trains ranged in number from 10 to 15 daily, in both directions. Of these, there were from two to four passenger trains daily. Here, passenger trains are subject to a maximum speed limit of 60 miles an hour, and freight trains, 40 miles an hour.

Both the business district and the principal residential section of Palermo are situated east of the Western Pacific right of way. Within this area are located the schoolhouse and the facilities of the local fire district, which serve the surrounding territory. The area lying west of the track consists of orchards and fields, pierced by highways which are spaced at widely separated intervals. Some 23 landowners or their tenants reside along or near South Villa Avenue, between the railroad and Occidental Avenue. The record is not clear as to those reached by North Villa Avenue; however, their number appears to be considerably smaller than those accommodated by South Villa Avenue. Very few reside along Palermo Road.

Within Palermo, three parallel streets or highways running east and west cross the Western Pacific main line track at grade. These are the crossings with which we are here concerned. They are

designated, respectively, as North Villa Avenue, Palermo Road (formerly known as Gibraltar Avenue) and South Villa Avenue. Each crossing, in turn, will be considered.

Of these three crossings, the central one, located at Palermo Road, is the most important. This is a well-traveled arterial highway extending west from the track for some three miles where it intersects State Highway No. 24, a major highway traversing and connecting both Marysville and Oroville. Easterly, this road extends over the track through the business section of Palermo, where it turns northward. South Villa Avenue, lying 1,540 feet south of Palermo Road, extends west of the track 1,200 feet to Occidental Avenue where it terminates; to the east, it continues through the town and into the Sierra Nevada foothills. North Villa Avenue, situated 1,120 feet north of Palermo Road, extends west of the track 900 feet to Occidental Avenue, circling thence westerly and southerly about one-half mile to a connection with Palermo Road, where it terminates. It also extends east across the track into the business section of Palermo.⁽¹⁾

The highways mentioned are intersected by others running north and south. Occidental Avenue, situated approximately 1,000 feet west of the track, extends from a point one-fourth mile north of North Villa Avenue to a point one-fourth mile south of South Villa Avenue, terminating at each end in open fields. About one mile west of Occidental Avenue is Lone Tree Road, which crosses all three of the highways involved and provides a connection between State Highway No. 24 and Oroville. Lying east of the track is Railroad Avenue, which extends through the business section about

(1) The crossings nearest to those involved are Crossing No. 4-196.2, some 3.1 miles south of South Villa Avenue, and Crossing No. 4-200.6, situated nine-tenths of one mile north of North Villa Avenue.

450 feet east of and parallel to the right of way. After crossing Railroad Avenue and about 375 feet east of that point, Palermo Road turns north at right angles, continuing through town and extending some six miles to Oroville. The southerly prolongation of Palermo Road (at the point where the latter turns northward) is Wise Street, which extends to South Villa Avenue where it terminates. East of the tracks, other streets extend east and west, but do not cross the right of way. They accommodate local travel within the community.

The physical conditions affecting these crossings were described by the Commission's engineer. His testimony dealt with the condition of the roadway, approaches and crossings; the nature of the view of approaching trains from the highway; and the extent to which this view would be obstructed or impaired. Each crossing will be dealt with separately.

Palermo Road, a paved county road some 16 feet in width, crosses the track at an angle of $83\frac{1}{2}$ degrees. The planked crossing is in good condition. The immediate grades of the approaches (some 21 feet in width), for a distance of 50 feet from the track in each direction, are plus six per cent on the west and plus eight per cent on the east. At all corners except the northwest, the view is obstructed by orchards and trees; at the latter corner the view is fair but eventually it may become obstructed when the young orchard, now situated there, will attain its full growth.

South Villa Avenue is a graveled county road, 16 feet wide, which crosses the track at an angle of $83\frac{1}{2}$ degrees. Both the planked crossing and the approaches (some 21 feet in width) are in fair condition. The grades of approach, for a distance of 50 feet on each side of the track, are plus seven per cent on the west and plus 10 per cent on the east. At all corners except the southeast, the view of approaching trains is obstructed by trees; there, the view is satisfactory.

North Villa Avenue is an unimproved county road, 10 feet in width, crossing the track at an angle of 84 degrees. The approaches, of the same width, are mere sandy unimproved roadways. Starting 25 feet from the track in each direction, the grades of approach are plus four per cent on the west and plus seven per cent on the east, with an additional short rise of approximately 12 per cent on the west and 13 per cent on the east. The view of approaching trains is obstructed at all four corners.

Traffic checks were made by Western Pacific at all three crossings on June 19, 1951; and earlier, on August 17, 1949 at North Villa Avenue; and on August 18, 1949 at both South Villa Avenue and Palermo Road. The details appear below. They indicate

(2) The information revealed by the traffic checks mentioned, is summarized below:

| Direction of Travel | August 18, 1949* | | | June 19, 1951 | | |
|--------------------------|------------------|-------------------|--------------------|-----------------|-------------------|-------------------|
| | Palermo Road | So. Villa Ave. | No. Villa Ave.* | Palermo Road | So. Villa Ave. | No. Villa Ave. |
| <u>Autos</u> | | | | | | |
| West | 101 | 22 | 0 | 95 | 25 | 1 |
| East | <u>93</u> | <u>23</u> | <u>0</u> | <u>95</u> | <u>33</u> | <u>6</u> |
| Total | 194 | 45 | 0 | 190 | 58 | 7 |
| <u>Trucks</u> | | | | | | |
| West | 45 | 3 | 1 | 37 | 7 | 0 |
| East | <u>46</u> | <u>0</u> | <u>1</u> | <u>48</u> | <u>6</u> | <u>0</u> |
| Total | 91 | 3 | 2 | 85 | 13 | 0 |
| <u>Bicycles</u> | | | | | | |
| West | 5 | 4 | 0 | 10 | 0 | 3 |
| East | <u>8</u> | <u>5</u> | <u>0</u> | <u>7</u> | <u>1</u> | <u>0</u> |
| Total | 13 | 9 | 0 | 17 | 1 | 3 |
| <u>Pedes- trians</u> | | | | | | |
| West | 11 | 7 | 2 | 7 | 1 | 6 |
| East | <u>7</u> | <u>5</u> | <u>3</u> | <u>5</u> | <u>3</u> | <u>2</u> |
| Total | 18 | 12 | 5 | 12 | 4 | 8 |

* As stated, the traffic check at North Villa Avenue was made August 17, 1949; that at the other two crossings was made August 18, 1949. A check at all three crossings was made June 19, 1951.

that the traffic volume at Palermo Road far exceeds that at the other two crossings. It appears that, on the average, 10 school busses use the Palermo Road grade crossing every school day.

As shown by the Commission's records, accidents have occurred both at Palermo Road and at North Villa Avenue, resulting in death and injury to those involved. No accident at South Villa Avenue was reported. (3)

The Commission's engineer recommended that the crossings at both North and South Villa Avenues be closed; and that at Palermo Road, standard No. 8 flashing light signals should be installed, the approaches improved, and the crossing widened to 24 feet. Thus, the traffic would be concentrated at one well-protected crossing. He pointed out that, following the grade crossing survey inaugurated by the Commission in 1947, the crossing at North Villa Avenue had been designated as one of those which should be closed, in the interest of public safety. Recognizing that the closing of South Villa Avenue might result in inconvenience to those residing in the vicinity, he suggested that, if agreeable to the county authorities, a connecting road might be constructed between Palermo Road and South Villa Avenue, along a line lying west of and contiguous to the railroad right of way. This would afford such residents a convenient outlet to the Palermo Road crossing, and would obviate the circuitous route to which otherwise they would be relegated.

(3) The details of these accidents, as disclosed by the Commission's records, appear below:

Palermo Road

Nov. 25, 1928: one injured; Aug. 23, 1931: one killed;
April 12, 1938: one killed.

North Villa Avenue

Aug. 21, 1945: one killed.

South Villa Avenue

None.

Through its assistant engineer, respondent Western Pacific announced its position. It favors the closing of both the North and the South Villa Avenue crossings and the installation of standard No. 8 flashing light signals at Palermo Road. If such a course were pursued, he stated, the railroad would undertake to pay the full cost of installing such protective devices, estimated at approximately \$5,445. It also would assume the cost of widening the crossing at Palermo Road to 24 feet. However, if neither North Villa nor South Villa Avenue were closed, the county, in his judgment, should bear half the cost of installing these signals; and if only one of these crossings were closed, the county should bear one-third of this cost. Should a connecting highway between Palermo Road and South Villa Avenue be established, the railroad would contribute for that purpose, so he testified, a 10-foot strip extending along the westerly side of its right of way.

Opposition to closing the crossings at both North Villa and South Villa Avenues was voiced by the county authorities. Their position rests largely upon future rather than present public need, since it was conceded that only a few might now be inconvenienced by such a step. Both the Supervisor from the district affected and the County Road Superintendent anticipate substantial future growth throughout this area. The former pointed out that a crossing, once abolished, ordinarily cannot readily be reopened. The testimony concerning present public need was directed principally to the situation at South Villa Avenue. If this crossing were closed, it was said, the employees of processing plants residing west of the tracks would be incommoded.

No objection was raised by these officials to the installation of flashing light signals at Palermo Road; in fact, the need for such protection was conceded. Their principal concern was with

the apportionment of the cost. They testified that if the crossings at both North Villa and South Villa Avenues were permitted to remain open, they would recommend that the county should bear half the cost of installing these signals; but should either crossing be closed, then the county should bear only one-fourth of this cost.

They questioned the need for establishing a connecting road between Palermo Road and South Villa Avenue, paralleling the right of way. The record is uncertain regarding the cost of constructing such a road. The value of the land to be acquired from adjoining landowners (including at least two rows of olive trees) was not indicated. Admittedly, the donation of a 10-foot strip by the railroad bordering its right of way would tend to minimize the cost. Moreover, it appears that some difficulty might be encountered in obtaining an allocation of funds for this purpose; hence, the consummation of the project might well be long delayed.

Both these officials expressed the view that North Villa Avenue should not be closed. The record discloses no definite plan to improve the conditions existing at this crossing; it reveals merely the possibility that, at some indefinite future time, they might be alleviated.

Evidence was offered on behalf of the residents of the territory affected. Three public witnesses were called, two of whom reside near South Villa Avenue, and the other, near North Villa Avenue. All opposed the closing of either crossing. They testified that during recent years, and particularly since 1944, the population in this territory had grown substantially, referring particularly, in this regard, to those accommodated by South Villa Avenue. Throughout the year, the volume of traffic using this crossing fluctuates, being much heavier during the olive harvesting season than at other times. Then, there is a constant flow of trucks

between the orchards and the processing plants. Should South Villa Avenue be closed, it was stated, the circuitous route then available via Occidental Avenue would be quite inconvenient. Furthermore, fire apparatus crossing the tracks in order to respond to fire alarms would be unduly delayed.

Here, as in similar cases, we are called upon to balance the public hazard engendered by the continued existence of these crossings against the public inconvenience which would be occasioned by their abolition. As to Palermo Road, no such question is involved, this being the principal arterial highway connecting Palermo with neighboring communities. However, in view of the volume of the traffic using this crossing, as well as the increasing speed of trains traveling over this track, we believe that a public need was shown for providing additional protection there. In our judgment, standard No. 8 flashing light signals should be installed, as proposed. Also, the approaches should be widened to 24 feet.

South Villa Avenue accommodates a territory which has developed substantially in recent years. Many residents would suffer great inconvenience if this crossing were closed. Only a circuitous route would then be available to them. The evidence does not justify the closing of this crossing.

The proposed connecting highway between Palermo Road and South Villa Avenue might accommodate the local traffic, if the crossing at South Villa Avenue were closed. But there is no assurance that such a road would be constructed in the immediate future. Upon the present record, we would not be warranted in recommending its establishment as an alternative to closing South Villa Avenue.

The need for closing the crossing at North Villa Avenue was convincingly shown. The roadway is both narrow and unimproved; the approaches are steep; and the view of trains is obstructed at

all four corners. The volume of traffic using the crossing is insubstantial. Clearly, there is no justification for the continuance of this hazardous crossing.

There remains the question of apportioning the expense of installing protective devices, and of widening the approaches, at Palermo Road. As indicated above, the views of the parties are somewhat divergent. The railroad contends that if one of the crossings (either North Villa or South Villa Avenue) were closed, the county should bear one-third of the cost. The latter contends that, under these circumstances, it should bear only one-fourth of the cost. In reaching a conclusion, we should consider the benefits which the parties, respectively, would derive from the installation of the signals and the improvement of the crossing. The public clearly would benefit from the installation of signals at Palermo Road, since this would afford additional safeguards to those using the highway. However, it might suffer some inconvenience through the closing of North Villa Avenue. On the other hand, the railroad would benefit through the elimination of a hazardous crossing, thereby avoiding to that extent the ever present danger of accident, with resulting liability for damages, particularly where high speed passenger train operation may be involved. Also, it would be relieved from the maintenance of the crossing at North Villa Avenue. Balancing these considerations, we believe that the railroad should bear two-thirds, and the county one-third, of the cost of installing these signals. The railroad also should bear the expense of widening the approaches within the boundaries of its right of way.

An order will be entered accordingly.

O R D E R

An investigation as above entitled having been instituted by the Commission on its own motion, due notice thereof having been given to all parties affected, a public hearing having been held thereon, the matter having been duly submitted and the Commission now being fully advised,

IT IS ORDERED that:

(1) Within sixty (60) days after the effective date hereof, Western Pacific Railroad Company shall abolish by physical closing the crossing at grade of North Villa Avenue with its main line railroad track in the unincorporated town of Palermo, in Butte County, said crossing being designated by the Commission pursuant to General Order No. 75-B as crossing No. 4-199.7; that in abolishing said grade crossing, Western Pacific Railroad Company shall remove said crossing and its approaches, within the limits of its right of way, and erect suitable barriers, in such manner as effectively to physically close said crossing to public use and to prevent its use by vehicular or other traffic.

(2) Within sixty (60) days after the effective date hereof, the Board of Supervisors of Butte County shall file with this Commission a certified copy or copies of appropriate ordinance or ordinances, or resolution or resolutions, duly and regularly passed and adopted, instituting all necessary steps to legally abandon and effectively close to public use the existing public crossing at grade of North Villa Avenue over said main line track of Western Pacific Railroad Company in said town of Palermo, said crossing being designated by the Commission pursuant to General Order No. 75-B as crossing No. 4-199.7.

(3) Within sixty (60) days after the effective date hereof, Western Pacific Railroad Company shall remove from the crossing at grade of Palermo Road (formerly known as Gibraltar Avenue) over its main line track in said town of Palermo (designated as crossing No. 4-199.5, pursuant to General Order No. 75-B) the two standard No. 1 crossing signs now located there, and install in lieu thereof and place in operation two standard No. 8 flashing light signals (as defined in General Order No. 75-B) which shall be connected with the main line track occupying said crossing; that circuit plans for said flashing light signals shall be filed with the Commission before commencement of the installation of said signals.

(4) Within sixty (60) days after the effective date hereof, Western Pacific Railroad Company and the County of Butte shall widen the approaches to the present grade crossing at Palermo Road (crossing No. 4-199.5) to a width of 24 feet, and they shall improve the grades of approach of said highway, in a manner satisfactory to the Commission, within the boundaries of the railroad right of way.

(5) The expense of installing said protective devices, and of widening and improving said roadway, shall be apportioned between and borne by Western Pacific Railroad Company and the County of Butte, on the following basis, viz.: Western Pacific Railroad Company shall assume, pay and bear two-thirds of the cost of installing said standard No. 8 flashing light signals at Palermo Road, and the entire cost of the maintenance thereof, and also the entire cost of widening and improving the approaches of said highway within the boundaries of the railroad right of way; and the County of Butte shall assume, pay and bear one-third of the cost of installing said standard No. 8 flashing light signals.

(6) In all other respects said investigation proceeding, Case No. 5276, is hereby discontinued.

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

Dated at San Francisco, California, this 25th day of September, 1951.

[Signature]
President
Justice F. Casper
Harold H. Kule
John L. Mitchell
Commissioners