

INTERIM OPINION AND ORDER DENYING
MOTION TO DISMISS

The Los Angeles Transit Lines, applicant herein, is a California corporation operating as a street railroad corporation, a railroad corporation and a passenger stage corporation in the transportation of passengers by street railroad, interurban railroad, trolley coach and motor coach in and around the City of Los Angeles. In the conduct of these operations applicant for many years has operated, and at present continues to operate, street railroad and interurban railroad service over tracks and facilities located on Grand Avenue between 39th Street and Santa Barbara Avenue in the City of Los Angeles. Specifically, applicant operates three rail lines over these facilities, the "5", "9" and "F" lines. The "5" line is an interurban line running from Eagle Rock through Los Angeles and Inglewood to Hawthorne. The "F" line runs from 116th Street and Vermont through downtown Los Angeles to the Union Station and the "9" line runs from Crenshaw Boulevard and 48th Street through downtown Los Angeles to Lincoln Park Avenue and Mission Road.

The present tracks and facilities concerned were installed about 1930 pursuant to Decision No. 22740, dated August 4, 1930, on Application No. 16745, and have been maintained and operated since 1946 under authority of Franchise Ordinance No. 90343 of the City of Los Angeles, the exercise of which was authorized by this Commission in Decision No. 39163, dated June 25, 1946, on Application No. 27425 (46 C.R.C. 533).

The Division of Highways of the Department of Public Works of the State of California has notified applicant that, in connection with the construction of the Harbor Freeway, it intends

to permanently close Grand Avenue between 39th Street and Santa Barbara Avenue and to provide for a crossing of the tracks with the freeway at Santa Barbara Avenue. According to a study made by applicant this will require the abandoning of tracks and facilities on Grand Avenue between Jefferson Boulevard and Santa Barbara Avenue, and on Jefferson Boulevard between Grand Avenue and Main Street. The present "5" and "F" lines, which now operate along Grand Avenue and Jefferson Boulevard between the intersections of Grand Avenue and Santa Barbara Avenue and Jefferson Boulevard and Main Street, will be rerouted from the intersection of Jefferson Boulevard and Main Street via Main Street, Broadway Place and Santa Barbara Avenue, crossing under the proposed freeway at Santa Barbara Avenue. The "9" line, which now operates from the intersection of Broadway and Olympic Boulevard via Broadway, Pico Boulevard and Grand Avenue to Santa Barbara Avenue, will be rerouted via Broadway Place, Main Street, Broadway Place and Santa Barbara, between the intersections of Broadway and Olympic Boulevard to Grand Avenue. This "9" line will also cross under the proposed freeway at Santa Barbara Avenue.

Under date of March 21, 1953, the Los Angeles Transit Lines filed the instant application requesting "... a determination by the Commission approving the relocation of tracks and facilities and reroutings of service and determining the manner, including the particular point of crossing of the Harbor Freeway with Applicant's tracks and facilities, and the terms of installation, operation, maintenance and use of such crossing and the proportions in which the expense of the relocation and installation of track, facilities, and the crossing shall be divided between

"Applicant and said State of California, acting through and by the Department of Public Works, who are the parties affected thereby." This application also alleges that Los Angeles Transit Lines will be damaged in a total sum of \$446,320, which sum was broken down as follows: direct damages resulting from the cost of relocating those tracks and facilities which are within the freeway right of way, \$19,383, and consequential damages in the total sum of \$426,937. These consequential damages allegedly occur due to the following items: the injuries and damages sustained by being required to abandon and remove tracks and facilities now located on Grand Avenue between Jefferson Boulevard and Santa Barbara Avenue, exclusive of the freeway crossing, and on Jefferson Boulevard between Main Street and Grand Avenue, \$60,678; the cost of installation of new tracks and facilities on Santa Barbara Avenue between Broadway Place and Grand Avenue, outside the freeway right of way, \$66,259; anticipated loss of revenue resulting from the above-described changes, \$300,000.

Under date of April 7, 1953, this Commission issued an Order to Show Cause directing the parties to "... show cause, if any they have, why the Commission should not proceed after hearing to fix the proportions in which the expense of the relocation and installation of track, facilities, and the crossing shall be divided between petitioner and the State of California acting through and by the Department of Public Works, to fix the just compensation to be paid for the acquisition or taking of, or damage to, petitioner's property and interest specified in the petition, to designate the party or parties to the proceeding who shall pay such compensation and the party or parties to whom such

"compensation shall be paid, and to make its final order of condemnation."

A public hearing was held before Commissioner Huls and Examiner Syphers at Los Angeles on April 22, 1953, at which time the applicant Los Angeles Transit Lines presented its direct case, consisting of testimony by its vice-president and the marking for identification of thirteen exhibits. Cross-examination of the witness was reserved. The Department of Public Works presented five exhibits, three of which were marked for identification and two of which were received in evidence. The two exhibits received in evidence were R-1, a copy of a complaint filed in the Superior Court of Los Angeles County by the Department of Public Works against the Los Angeles Transit Lines seeking to evict the transit lines from the property within the freeway site, and R-2, a copy of the answer in that court action, number 607310. No testimony was presented by the Department of Public Works.

It was stipulated that the files of the Superior Court in Case No. 607310 might be considered by reference in this proceeding. From this stipulation and from exhibits R-1 and R-2, it appears that the complaint in the court action, filed December 15, 1952, requested the court to declare the rights of the parties and to order the transit lines to vacate the site, together with a request for an injunction against the transit lines, and a request for damages and costs. The transit lines filed a demurrer thereto on January 19, 1953, contending the jurisdiction in the matter lay with the Public Utilities Commission and not the court. The demurrer was overruled on March 2, 1953, and the matter set for hearing on November 16, 1953.

The Department of Public Works, in the instant proceeding, made a motion to dismiss on the grounds that the Public Utilities Commission has no jurisdiction and that the Superior Court is the proper forum in which to determine this controversy. It is the position of the Department of Public Works that after such a court determination, then this Commission might have jurisdiction to determine the costs involved as to the crossing of the street railroad lines with the Harbor Freeway.

A Memorandum of Points and Authorities has been filed by each of the parties hereto and the matter is now before us for ruling on the motion to dismiss. After a full consideration of the record as thus far established and the Memoranda of Points and Authorities filed, we conclude to deny the motion to dismiss and to set the matter for further hearing.

The contention of the Department of Public Works with which we are concerned in ruling on this motion is that this Commission has no jurisdiction over the matter as it presently exists. We do not agree with this contention. Article XII, Section 23, of the California Constitution confers upon this Commission general powers over public utilities. The legislature in furtherance of that grant of general powers has specifically conferred upon this Commission certain exclusive powers in relation to grade crossings:

"1202. The Commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa,

"subject to the provisions of Sections 1121 to 1127, inclusive, of the Streets and Highways Code so far as applicable.

(b) To alter, relocate, or abolish by physical closing any such crossing heretofore or hereafter established.

(c) To require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, city, or other political subdivision affected."

Likewise, the Commission has been granted the power to fix just compensation in these matters:

"1206. The commission may fix the just compensation to be paid for property or any interest in or to property to be taken or damaged in the separation of grades at any crossing specified in Section 1202, or for property or any interest in or to property to be taken or damaged in the construction, alteration, or relocation, under the order or with the approval of the commission, of elevated tracks or subways for any railroad or street railroad over or under any public road, street, highway, or private right of way, or of any public road, street, or highway over or under the tracks of any railroad corporation or street railroad corporation, and upon the payment of the compensation so fixed may make a final order of condemnation."

In the light of the foregoing and other statutory provisions which may be relevant to this matter, we hold that this Commission does have jurisdiction over the instant case since it *involved the matter and things comprehended by sections 1202 and 1206, supra* ~~is a matter involving the relocation of the tracks and facilities of a street railroad and since it also is a matter which will involve a separation of grades of a public highway with the tracks of the street railroad.~~ Furthermore, it is clearly the intention of the Legislature not to limit the powers of this Commission with

regard to such matters, and in this connection we have in mind Section 661 of the Streets and Highways Code which reads, in part, as follows:

"This chapter shall not limit the powers and duties vested by law in the Railroad Commission of this State, and in the event of any conflict with regard to the powers and duties given the department in this chapter, those of the Railroad Commission shall prevail."

That one of the parties hereto is an agency of the State of California does not limit the powers of this Commission.

(Southern California Edison Company vs. Railroad Commission, 1936
6 Cal. 2d 737, 749.)

We do not now rule on procedural questions such as the procedure set up in the Government Code for filing claims against the State, nor do we rule upon the jurisdiction of the Superior Court of Los Angeles County relative to the court suit herein mentioned. We specifically confine our present holding to an overruling of the motion to dismiss made by the Department of Public Works, and will proceed to a hearing of this matter on its merits.

INTERIM ORDER

Application as above entitled having been filed, the Commission having issued an Order to Show Cause, a public hearing having been held thereon, argument and Memoranda of Points and Authorities having been submitted, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the motion to dismiss be, and it hereby is, denied.

IT IS FURTHER ORDERED that this matter be set for further hearing before Commissioner Huls and Examiner Syphers at a time and place to be set.

Dated at San Francisco, California, this 21st day of July, 1953.

A. F. Indurain
President

Justin J. Cassin
Harold Huls

Bernett Pottel

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.