

ORIGINAL

Decision No. 40860

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application and)
 Petition of LOS ANGELES TRANSIT LINES,)
 a corporation, Applicant and Petitioner,)
 for determination as to manner and terms)
 of installation, operation, maintenance)
 and use of crossing of Harbor Freeway by)
 street railroad tracks near Grand Avenue)
 and Santa Barbara Avenue in Los Angeles;) Application No. 34186
 for authority to relocate tracks and)
 facilities; for authority to reroute)
 operations; for determination of how ex-)
 pense of relocation of crossing, tracks)
 and facilities is to be borne; and for)
 the fixing of compensation for damages,)
 vs. The State of California, acting by)
 and through the Department of Public Works,)
 respondent.)

Gibson, Dunn & Crutcher, attorneys, by Max Eddy Utt
 and John J. Waller, and Stanley M. Lanham, for applicant
 and petitioner. Robert Reed, Norris Burke, George Moe,
 George C. Hadley, R. B. Pegram and Ford Hendricks, by
R. B. Pegram and Ford Hendricks, for State of California,
 Department of Public Works, and J. W. Greathead, for
 State Division of Highways, respondents. Roger Arnebergh,
 Assistant City Attorney, T. M. Chubb, Chief Engineer and
 General Manager, and Clark H. Sturm, Research Engineer,
 by T. M. Chubb, for City of Los Angeles, Board of Public
 Utilities and Transportation, Charles H. Thorpe, in
 propria persona, and Carl F. Fennema, for Downtown
 Business Men's Association, interested parties.
Arthur F. Ager, Supervising Transportation Engineer,
 for the Commission's staff.

INTERIM OPINION

By Decision No. 48868, dated July 21, 1953, in Application
 No. 34186, this Commission denied a motion to dismiss the instant
 proceeding and ordered the matter set for further hearing. The
 facts and the law leading to that action are set out in detail in
 Decision No. 48868, supra.

In summary, this controversy arises as a result of the
 construction of the Harbor Freeway by the Division of Highways of
 the Department of Public Works of the State of California and in

connection therewith the contemplated closing of Grand Avenue between 39th Street and Santa Barbara Avenue. As a result of this construction it will be necessary for the Los Angeles Transit Lines to abandon certain tracks and facilities on Grand Avenue and on Jefferson Boulevard and to relocate these facilities and tracks so that they will cross under the proposed freeway at Santa Barbara Avenue. The Los Angeles Transit Lines contends this action will cause it to be damaged in the total sum of \$446,320, consisting of the following items:

Cost of relocating tracks and facilities within the freeway right of way	\$ 19,383
Injuries and damages resulting from track removal	60,678
Installation of new tracks and facilities outside the freeway right of way	66,259
Anticipated loss of revenue	<u>300,000</u>
Total	\$446,320

The Department of Public Works moved to dismiss the application on the grounds that the Public Utilities Commission has no jurisdiction over the matter, contending that the Superior Court is the proper forum in which to decide this controversy. This motion was denied as above indicated and the matter set for further hearing.

Further hearing was held before Examiner Syphers in Los Angeles on October 19, 1953, at which time the Los Angeles Transit Lines completed the presentation of its direct case. The presentation included the offer in evidence of Exhibits A-1 to A-12 and A-14 which was offered in replacement of a prior exhibit which had been designated as A-13. The Department of Public Works objected to these exhibits with the exception of Exhibit A-4 and requested that the matter be submitted to the Commission for ruling on their objections. The Los Angeles Transit Lines agreed to this procedure and accordingly the matter was submitted for that purpose. Both parties hereto

were granted the privilege of filing briefs. These briefs have now been filed and the matter is ready for ruling on the admissibility of this evidence.

Exhibits A-2 and A-3 are maps of the area concerned and Exhibit A-4 is a copy of Los Angeles Franchise Ordinance No. 90,343. This ordinance is the one under which the Los Angeles Transit Lines has been conducting operations in the area. There are no objections to Exhibit A-4, and the maps are material and relevant to show the factual situation. These three exhibits will be received in evidence.

Exhibit A-1 consists of copies of correspondence between the Los Angeles Transit Lines and the Division of Highways. These letters relate to the proposed Harbor Freeway and its contemplated crossing of the tracks of the Los Angeles Transit Lines. They cover a period from May 14, 1951 to July 29, 1952 and discuss some of the plans in connection with the construction and also raise the issue as to the costs involved. These letters are in explanation of the instant controversy and we now hold that they are admissible in this matter for that purpose.

Exhibit A-5, a report to the Department of Public Utilities and Transportation of the City of Los Angeles by its Principal Public Utility Engineer, dated May 21, 1945, was offered to show the surrounding circumstances under which Franchise Ordinance No. 90,343 was passed. Obviously the ordinance itself is the best evidence and we will not allow outside material to vary its terms. However this background material may have some materiality since the applicant contends the ordinance is ambiguous and needs explanation. We do not now rule this is so, but merely hold the evidence to be admissible. Its proper weight will be determined after this matter is completely heard and all of the evidence of both parties has been presented. A similar situation exists as to the Department of Public Works' objections to certain testimony of applicant's vice president as to the

interpretation of Ordinance No. 90,343. This testimony has been received in evidence by the examiner and we will not now strike it from the record.

Exhibits A-6, a group of utility facility relocation contracts, A-7, a utilities notice, correspondence in connection therewith and a contract between the Los Angeles Transit Lines and the Department of Public Works relative to a relocation of facilities caused by a crossing of the Hollywood Parkway with Oakwood Avenue, and A-8, copies of various notices and correspondence from the Department of Public Works to the Los Angeles Transit Lines relative to relocation of utility facilities, tend to show administrative interpretation of Sections 700 to 711 of the Streets and Highways Code. Los Angeles Transit Lines claims it is entitled to compensation under these sections for the proposed relocation herein. We hold these exhibits to be admissible in this proceeding. Exhibits A-9 to A-12, inclusive, relate to the costs of removing the present facilities and installing new facilities. Since this is one of the principal elements related to this controversy these exhibits are held to be admissible.

The foregoing rulings are made after a consideration of all of the evidence presented to date in this proceeding and of all of the briefs which have been filed. In Decision No. 48868, supra, we held that this Commission does have jurisdiction over this matter under the provisions of Section 1202 and 1206 and other parts of the Public Utilities Code. We further held that this jurisdiction extends to an agency of the State of California, in this instance the Department of Public Works. We now reaffirm those holdings. Therefore, the objections to Exhibits A-1 and A-5 to A-12, inclusive, are overruled.

As to Exhibit A-13, the Los Angeles Transit Lines has indicated that it no longer relies on this exhibit but rather it relies on Exhibit A-14. The objection to A-13 will be sustained.

Exhibit A-14 has been submitted for the purpose of showing severance damages based upon alleged loss of business. The Department of Public Works has objected to this exhibit on the grounds that it is speculative and not relevant to the instant proceeding. After a careful consideration of the evidence and briefs in this regard we now sustain the objection. *mission* Furthermore, the exhibit itself is entirely speculative. We now find that as against the Department of Public Works no award should be made for loss of business.

Another matter has been raised in this proceeding which we believe should now be ruled upon and that is the contention of the Department of Public Works that the utility is required to file a claim under the California Claim Statutes, Government Code Sections 16,000 et seq. We hold that such action is not necessary before invoking the jurisdiction of this Commission. The Public Utilities Act which grants powers to this Commission is plenary and unlimited by any provision of the State constitution and is paramount to any other State statute in all matters affecting public utility regulations. Therefore, we hold that this matter is properly before this Commission. We do not rule upon the jurisdiction of the Superior Court of Los Angeles County relative to the court suit now pending between the parties. The parties have stipulated that the briefs in that suit, copies of which have been filed herein, may be considered in this proceeding.

The matter will proceed to hearing subject to the rulings hereinabove made.

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 and applicant having presented its direct case, 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 objections to Exhibits A-1 and A-5 to A-12, inclusive, be and they hereby are overruled and that the objections to Exhibits A-13 and A-14 be and they hereby are sustained.

IT IS FURTHER ORDERED that this matter be set for further hearing at a time and place to be determined by the Commission.

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

Dated at San Francisco, California, this 30th day of March, 1954.

A. J. [Signature]
President

Justice J. [Signature]

[Signature]

[Signature]

[Signature]
Commissioners