

ORIGINALDecision No. 50287

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of San Diego, County of San Diego, State of California, for an order authorizing the improvement of a crossing at separate grades of Balboa Avenue, and the Atchison, Topeka and Santa Fe Railroad, commonly referred to as the Balboa Avenue Underpass, in the City of San Diego, County of San Diego, State of California.

Application No. 35466

ORDER DENYING MOTION TO DISMISS

The Atchison, Topeka and Santa Fe Railway Company has filed a motion to dismiss the application of the City of San Diego.

Allegations of Application. Balboa Avenue and Santa Fe tracks cross at separated grades at the "Balboa Avenue Underpass." City proposes to widen Balboa Avenue to a six-lane street from its present two-lane width. Such widening of the existing grade separation is proposed in connection with an extension of Balboa Avenue easterly to provide a second connecting street to the Clairemont area, now served by the Jellett Street grade crossing, .8 of a mile south of the Balboa Underpass. The new facility should reduce traffic hazard at the Jellett grade crossing. Plans for the proposed improvement have been furnished to Santa Fe, the improvement has been discussed with the local office of Santa Fe, and the latter has agreed to draw plans for reconstruction of the existing bridge. The detail plans for the railroad bridge have not been submitted by Santa Fe. The structure is to be a two-span bridge with a center pier in the division island of the street. City will prepare plans

for the street improvement. Balboa Avenue will have six twelve-foot lanes with an eight-foot median strip and six-foot shoulders, thus providing for a four-lane through street with acceleration and deceleration lanes for the Morena Boulevard and Balboa Avenue interchange. A plan view, highway profile, and vicinity map are set forth in Exhibit B to the application.

Prayer of Application. City requests as follows:

1. That the Commission issue an order authorizing reconstruction of the undercrossing.

2. That such order authorize construction of the project upon the terms and division of costs as may be provided for in an agreement to be entered into between Santa Fe and City, or in the event the parties fail to agree, that the division of costs be determined as provided by law.

3. That the order provide for a two-year period within which to complete the work.

4. That the order provide that service be maintained on the railroad during construction.

5. That an ex parte order be issued.

Summary of Motion to Dismiss. The application is premature. Commission jurisdiction has not been properly invoked in that City has not followed the jurisdictional procedures set up in the Public Utilities Code and the Commission's procedural rules relating to applications for crossings, apportionment of costs in grade separations, and condemnation of rights necessary for crossings. Although the application is far from clear, City's intent is three-fold:

1. City desires permission to widen a highway across Santa Fe's right of way and construct a new and widened grade separation structure.

2. City seeks to have the Commission apportion the cost of the

new structure between City and Santa Fe.

3. Although not set forth in the application, it must be assumed that City is endeavoring to condemn a right of way across Santa Fe's tracks for such widened highway.

To invoke the Commission's jurisdiction properly to accomplish such purposes, City must make specific allegations and proof. In order to condemn property, a petition must pray:

1. That the Commission fix the just compensation to be paid for the acquisition of property specified in such a petition.

2. That the Commission designate the parties who shall pay compensation and the owners and claimants of the property condemned to whom compensation shall be paid.

3. That the Commission make its final order of condemnation.

Santa Fe also asserts that the application is uncertain and ambiguous in certain respects.

Applicable Statutory Provisions. Section 1201 (1951 codification of former section 43(a)) provides in substance that no crossing shall be constructed without prior Commission authorization. Under sections 1202 through 1205 (codification of former section 43(b)) the Commission has exclusive power to prescribe the terms of installation, use, and protection of each crossing; to alter, relocate, or abolish crossings; and also to require grade separations, to prescribe the terms upon which such separations shall be made; and to prescribe the proportions in which the expense shall be divided between the railroad and the State or other political subdivision affected.

Former section 43(c) was codified as sections 1206 through 1220. Under section 1206 the Commission may fix the just compensation to be paid for property taken or damaged in the separation of grades at a crossing, or in the construction, alteration, or relocation of grade separations, "and upon the payment of the compensation so fixed may make a final order of condemnation." These powers may

be exercised by the Commission in connection with the taking or damage of the property of public utilities, but not the private property of private persons. (Chase Lumber Co. v. Railroad Commission, 212 Cal. 691.)

Sections 1207 through 1218 set forth in detail the procedure to be followed in an eminent domain proceeding before the Commission under section 1206. Such a proceeding may be commenced by the filing of a petition setting forth the purpose of the proceeding, the use for which the property is sought to be taken, a description of such property, and the names and addresses of all owners and claimants thereof. The petition shall pray that the Commission fix the just compensation to be paid for the property specified, designate the parties who shall pay the compensation and the owners and claimants to whom the compensation shall be paid, and make a final order of condemnation. (Sec. 1207.) The remaining sections specify the procedure to be followed after the filing of such a petition.

Findings and Conclusions. The application herein, unlike the pleading involved in Re Department of Public Works (Decision No. 50245, Application No. 34844), does not seek an order authorizing City to immediately prosecute the widening and reconstruction, requiring Santa Fe to permit City to enter upon Santa Fe's right of way for such purposes, and further requiring Santa Fe to perform and complete the railroad work necessary to permit City to proceed. The dismissal order in that matter pointed out that a proceeding for crossing authorization and cost apportionment, commenced by the filing of an application under sections 1202 through 1205, is separate and distinct from an eminent domain proceeding, commenced by the filing of a petition under section 1206, and that such separate proceedings may not be instituted by the filing of a single pleading.

The present application requests that the project be authorized

upon such terms and division of costs as may be provided for in an agreement to be entered into between the parties. Many orders granting authorizations in connection with crossings provide that, if the parties are unable to arrive at an agreement, costs may be apportioned by the Commission in a supplemental proceeding.

It is possible that the parties may arrive at an agreement concerning all matters involved in the proposed project. If they do not agree, and City concludes to institute a proceeding in eminent domain, it may do so in the appropriate court, or it may avail itself of the alternative procedure set forth in the Public Utilities Code, and file a petition under section 1206.

The application herein is in substantial compliance with our procedural rules, and is sufficient to commence a proceeding under sections 1202 through 1205 of the Code.

IT IS ORDERED that the motion to dismiss is hereby denied. The application will be set for hearing.

Dated, San Francisco, California, this 20th day of July, 1954.

Robert E. Mitchell
President
J. J. [unclear]
Samuel [unclear]
James [unclear]
Commissioners