

Decision No. 51169**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the)	
BOARD OF SUPERVISORS OF THE COUNTY OF)	
KERN, STATE OF CALIFORNIA, for an order)	
authorizing the construction of a crossing)	Application No. 34724
by the County of Kern over the tracks of)	
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY)	<u>PETITION FOR MODIFICA-</u>
in the vicinity of Mile Post No. 2-890.1.)	<u>TION OF ORDER</u>

Clayton T. Cochran, for applicant County of Kern.
Robert W. Walker and Henry M. Moffat, for The Atchison,
 Topeka and Santa Fe Railway Company, protestant.
Martin J. Lewis, for the Commission Staff.

O P I N I O N

By Application No. 34724 filed September 15, 1953 the Board of Supervisors of Kern County requested authority to construct a crossing of a county road over the tracks of The Atchison, Topeka and Santa Fe Railway Company in the vicinity of Mile Post 890.1 in said County and near the City of Bakersfield. In the prayer of said application the County stated that the entire cost of construction shall be borne by applicant and that it shall in every way be made safe for the passing thereover of vehicles and other road traffic.

This application was granted by Decision No. 49265 dated October 27, 1953 which provided that applicant shall bear the entire construction expense and maintenance costs outside of lines two feet outside of rails. Said decision further provided that said railway company shall bear maintenance cost between such lines. The authorization, by its terms becomes void if not exercised within one year unless time be extended. The protection provided consisted of two Standard No. 8 flashing light signals (G.O. No. 75-B).

On August 9, 1954 applicant County filed its petition for modification of the Order contained in Decision No. 49265, so that

the expense of installation of the Standard No. 8 flashing light signals be eliminated or that their cost be shared equally by the railway company.

As justification for the requested modification of the order contained in Decision No. 49265 applicant alleges:

"The said application for this crossing did not request the installation of Standard No. 8 flashing light signals, but contemplated merely the ordinary standard warning signals ('crossbuck' signs). Paragraph VI of said application reads:

"That applicant recommends the installation of the usual standard warning signs at the railroad tracks and railroad crossing signs three hundred feet distant from either side of the crossing."

"Applicant recognizes that this language so used in Paragraph VI of the application is not altogether specific, and that by the words 'standard warning signs' the applicant could have appeared to the Commission to intend the signals provided for in the said Order. The flashing light signals were not in the mind of applicant, however, for two reasons:

"(1) The crossing is not one of sufficient use and hazard to merit anything more than the simple or reflectorized 'crossbuck' warning signs; and

"(2) In applicant's offering to bear 'the entire expense of construction of crossing', the said expense was intended by applicant to include, as far as signs are concerned, the two or three hundred dollars necessary for the reflectorized 'crossbuck' signs and not the heavy burden of the sixteen thousand dollars or so necessary for the No. 8 flashing light signals.

"Paragraph VII of the said application contains a misstatement of fact, to wit:

" 'Traffic consists in part of many heavy tank trucks and trailers daily.'

"This is due to misinformation furnished to applicant. Unquestionably, this error of applicant must have misled the Commission into believing that there was a serious potential hazard here.

"An actual visual count of two days, made by the staff of the Road Commissioner of Kern County, showed no oil tankers using the crossing. The results of said counts are as follows:

"A. April 28, 1954 (Wednesday), a 24-hour metered count was made, showing a total of 224 vehicles. During this period a visual tabulation was made between the hours of 9 A.M. to 5 P.M., showing the following type and number of vehicles:

Passenger cars	65	3-axle vehicles	11
Pickup Trucks	47	4-axle vehicles	1
Tractors	2	5-axle vehicles	0
2-axle vehicles	45	6-axle vehicles	2

"A total of 173 vehicles were picked up on the visual count, leaving a balance of 51 vehicles crossing between 5 P.M. and 9 A.M. the following morning:

"B. In order to compare this count, another was taken on May 7, 1954 (Friday), showing a metered count of 165 vehicles from 9 A.M., May 7, 1954, to 9 A.M., May 8, 1954. The visual count during this period was taken from 9 A.M. to 5 P.M., May 7, 1954, showing the following:

Passenger cars	44	3-axle vehicles	16
Pickup Trucks	37	4-axle vehicles	0
Tractors	0	5-axle vehicles	0
2-axle vehicles	1	6-axle vehicles	0

"A total of 98 vehicles were picked up on the visual count, leaving a balance of 67 vehicles crossing between 5 P.M. and 9 A.M. the following morning.

"Counts of train movements at the same point as the above-reported vehicle counts were made on the same days, with the following results:

"Between the hours of 9 A.M. and 5 P.M.: on April 28, 1954, 8 freight and 6 passenger trains; on May 7, 1954, 6 freight and 5 passenger trains.

"The proposed point of crossing is approximately one mile distant from the Santa Fe Bakersfield freight yard, and this short distance includes passage over the Kern River bridge. It is most improbable that such trains as use this line would ever venture to travel at a high rate of speed so close to the freight yard and over the bridge.

"A map showing the proximity of the proposed crossing to the said freight yard is hereto attached, marked Exhibit A-1.

"The proposed new crossing is to take the place of an already existing private crossing. The new crossing is necessary to avoid trespass on private lands. As far, however, as usage and safety factors are concerned, there is nothing to indicate that the new crossing will increase the number of vehicles crossing the tracks at this point, and there is nothing to indicate any added hazard over conditions of past years. The need for any flashing light signals has never been felt at the existing crossing, and likewise no such need exists at the proposed crossing.

"Applicant is not prepared to lay out sixteen thousand dollars for flashing light signals at this point, for the reasons:

- (1) that such signals are not needed at this point;
- (2) that simple and inexpensive reflectorized 'crossbuck' signs are adequate protection for the proposed crossing;
- (3) that there are railroad crossing points in the County of Kern where such an expenditure for flashing lights might much more advantageously be made than here; and
- (4) that the County has been subjected to heavy expenditures due to earthquake damage.

"While applicant trusts that the herein correction of erroneous statements made in the original application, and the showing of new facts, including the traffic counts, as herein set forth, will result in the Commission feeling that the said Order should be modified to delete the provision making mandatory the installation of Standard No. 8 flashing signals and to permit in place thereof the installing of standard reflectorized ('crossbuck') warning signs, applicant strongly urges that if for any reason the Commission feels otherwise and still requires the installation of the flashing light signals, The Atchison, Topeka and Santa Fe Railway be ordered to pay one-half the cost of said flashing light signals. The Railway Company has no less interest than has the County of Kern in the existence of adequate protection at this point, and no less to gain than has the public, if anything more than 'crossbuck' signals be required at this crossing."

Public hearing on the petition for modification was held before Examiner John Rowe in Bakersfield on January 25, 1955. Evidence both oral and documentary was adduced and the matter was duly submitted for decision ten days thereafter or on February 4, 1955. Leave was granted to applicant and protestant railway company to submit written statements of their respective positions within said ten-day period. These documents have been filed.

The matter is now ready for decision.

The railway company has revised its estimate of the cost of the No. 8 flashing light signals to approximately ten thousand dollars instead of approximately sixteen thousand dollars. The county failed to sustain its contention that the proposed crossing will not be used by tank trucks and trailers. The uncontradicted evidence supports the finding that an average of 98 tank trucks, fifty per cent of which also pull trailers, transporting petroleum and gasoline will daily use this crossing as soon as it is constructed. This traffic will be diverted from its present use of the private Mohawk Crossing at Mile Post 890.6 which is protected by one Standard No. 3 swinging or wigwag signal.

At the proposed public crossing the passenger trains move at a speed of approximately sixty miles per hour and the freight trains at 30 to 35 miles per hour. At Mile Post 890.6 the passenger trains move at a speed of 70 to 75 miles per hour and the freight trains 40 to 45 miles per hour. The visibility at the proposed crossing (Mile Post 890.1) is restricted and is especially limited in foggy weather. The installation of the Standard No. 8 flashing light signals is found to be necessary. While it is true, as the protestant points out in its statement of position, the Commission usually assesses against the applicant the total cost of purchasing and installing the required signal devices, this is not an inflexible rule.

The railway company will find crossing conditions improved by the diversion of the petroleum and gasoline tank trucks and trailers from the private crossing at Mile Post 890.6 located near a refinery and other petroleum installations. The closing of the private crossing at Mile Post 890.0, as agreed to at the hearing by the representative of Gulf Oil Company, will be of some advantage to the railroad. The Commission is of the opinion and finds that the order in Decision No. 49265 should be modified to provide that the cost of acquiring and installing the Standard No. 8 flashing light signals be borne 75 per cent by applicant county and 25 per cent by The Atchison, Topeka and Santa Fe Railway Company, that the private crossing at Mile Post 890.0, controlled by Gulf Oil Company, shall be ordered closed and that the authorization granted by said decision should be extended for a period of six months after the effective date hereof.

O R D E R

Petition for modification of the Order in Decision No. 49265 having been filed, public hearing thereon having been held, and the Commission being advised in the premises,

IT IS ORDERED that the Order in Decision No. 49265 be and it hereby is modified (1) so that the authority granted therein as modified hereby may be exercised within six months after the effective date hereof, (2) so that instead of applicant being required to bear the entire construction expense, applicant shall bear all such expense except that The Atchison, Topeka and Santa Fe Railway Company shall bear twenty-five per cent of the cost of acquiring and installing the two Standard No. 8 flashing light signals (G. O. No. 75-B) required therein, and (3) the private crossing at Mile Post 890.0 shall be closed by said railway company by erecting effective barriers so as to prevent its use by vehicular traffic contemporaneously with

the opening to the public of the crossing to be identified as Crossing No. 2-890.1.

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

Dated at San Francisco, California, this 1st day of March, 1955.

John E. Mitchell
President
James J. Chesser
Raymond L. Lerner
William J. Walsh
Commissioners