

ORIGINALDecision No. 51945

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of ascertaining approximate equitable apportionment of costs in connection with a proposed grade separation on Olive Avenue in the City of Burbank.

Case No. 5315

Investigation as to the necessity of effecting grade separations between the tracks of Southern Pacific Company and Olive Avenue and Magnolia Boulevard in the City of Burbank, and division of the cost incident to such separation.

Case No. 5521

In the Matter of the Application of the CITY OF BURBANK, a municipal corporation, for an order or orders authorizing and requiring the construction of a grade separation of the crossing of Olive Avenue and the railroad of the SOUTHERN PACIFIC COMPANY and of the crossing of Magnolia Boulevard and the railroad of the SOUTHERN PACIFIC COMPANY, designating the portions of the work to be done respectively by said City and said railroad corporation and allocating the cost thereof between said parties.

Application
No. 35062

Samuel Gorlick, Assistant City Attorney, and Archie L. Walters, City Attorney, by Samuel Gorlick and Carl I. Wheat, Special Counsel, for the City of Burbank, applicant.

Randolph Karr and Walt A. Steiger, for Southern Pacific Company and Southern Pacific Railroad Company, defendants in C-5315 and C-5521; protestants in A-35062.

Robert E. Reed, George C. Hadley, R.B. Pegram and Paul F. Overton, by R.B. Pegram and Paul E. Overton, for the Department of Public Works, Division of Highways, State of California; Milner E. Gleaves, Deputy County Counsel, for the County of Los Angeles; Robert W. Walker and Richard K. Knowlton, by Richard K. Knowlton, for The Atchison, Topeka and Santa Fe Railway Company; H.F. Holley, Secretary, Los Angeles County Grade Crossing Committee; Graham R. Mitchell, for the Brotherhood of Locomotive Engineers; T.M. Chubb, by R.A. Houseman, Chief Engineer and General Manager, Department of Public Utilities and Transportation, City of Los Angeles; and Col. Frank C. Lynch, for Lockheed Aircraft Corporation, interested parties.

H.F. Wiggins of the Commission staff.

O P I N I O N

Under date of August 7, 1951, pursuant to Assembly Concurrent Resolution No. 97, adopted by the California Assembly on June 18, 1951, and by the Senate on June 22, 1951, this Commission issued an Order of Investigation for the purpose of ascertaining whether a proposed grade separation at Olive Avenue and the Southern Pacific tracks, in the City of Burbank, should be authorized and the costs thereof apportioned among the parties concerned. In accordance with the request of the City of Burbank as set out in Resolutions of its City Council No. 8745, dated August 19, 1952, Exhibit No. 2 herein, and No. 9125, dated April 14, 1953, Exhibit No. 3, formal hearings were not held at that time since the Department of Public Works had not then determined the exact location, in the vicinity of the proposed separation, of State Highway Route No. 4, sometimes called the Golden State Freeway.

On January 15, 1954, the City of Burbank, pursuant to Resolution of its City Council No. 9524, dated December 22, 1953, Exhibit No. 4, filed Application No. 35062 requesting this Commission to authorize grade separations at two crossings of the Southern Pacific tracks in Burbank, one at Olive Avenue (B-472.2) and the second at Magnolia Boulevard (B-472.1). It was also requested that the Commission allocate the costs of these separations as well as the portions of the work to be done.

The Commission issued a second Order of Investigation, No. 5521, on February 2, 1954, to ascertain whether the "public safety, convenience and necessity" require the two proposed grade separations, and, if so, then to apportion the costs thereof.

Public hearings were held at Burbank on May 20, 1954, and at Los Angeles on May 19, 21, July 7, 8, September 15, 16, 17, October 27, 28, 29, December 15, 16 and 17, 1954, and January 6, 7, Febru-

ary 14, 16, 17 and 18, 1955, before Examiner Grant E. Syphers. Commissioner Ray E. Untereiner conducted the hearings during the six days in January and February, 1955.

On the last-named date, the matter was submitted subject to the filing of briefs by the parties. Opening and reply briefs now have been filed and the matter is ready for decision.

The Golden State Freeway is proposed to be constructed through the City of Burbank in a northwesterly-southeasterly direction, generally paralleling and approximately 300 feet from the tracks of the Southern Pacific Railway in the area under consideration. There are four streets concerned herein which cross the freeway route and also the railroad tracks at approximate right angles, namely, Providencia Avenue, Verdugo Avenue, Olive Avenue and Magnolia Boulevard. Three of these streets, Olive, Magnolia and Verdugo, will cross the freeway at separated grades; but the instant proposal contemplates that only two of them, Olive and Magnolia, will cross the railroad tracks at separated grades. It is planned, because of the physical factors involved, to close Providencia at the freeway. Accordingly, the problem we have before us embraces three issues: (1) is there public necessity for grade separations at Olive and Magnolia, (2) if these separations are necessary, how should the costs thereof be apportioned, and (3) should the crossings at Verdugo Avenue and Providencia Avenue and the railroad tracks be closed. Before resolving these issues we hereinafter summarize the principal parts of each party's presentation.

City of Burbank

Testimony presented by the City of Burbank included a history of the proceedings and a description of the territory involved. It was pointed out that neither Olive Avenue nor Magnolia Boulevard is a state, federal or county highway, although both are major city

streets.

Exhibit No. 6 is a copy of the Freeway Agreement between the City of Burbank and the Department of Public Works, dated June 16, 1953, setting out the conditions under which the freeway is to be constructed and the obligations of each of the parties thereunder.

The estimated costs of the two separations were set out in Exhibit No. 1 as \$1,486,600 for Olive Avenue and \$1,441,200 for Magnolia Boulevard, or a total of \$2,927,800. These costs are for the building of overpasses over the railroad and the freeway. It was the opinion of the city witness that this was the most practical type of construction since underpasses would be more difficult and costly to construct and would present problems as to flood conditions as well as police and lighting problems. Exhibit 1 also contains plans and profiles for the proposed structures. It was recommended that so-called integrated structures be constructed, or, in other words, one structure should pass over the freeway and the railroad at each of the two crossings.

Testimony was presented by numerous public witnesses as to the convenience and necessity of the proposed separations. Among these public witnesses were doctors, operators of ambulance services, a representative of the Chamber of Commerce, pastors, the Fire Chief and the Chief of Police. This public witness testimony tended to show that the present grade crossings cause delays to traffic and thereby inconvenience the public who use them. In the case of such users as doctors, police and the fire department, it was contended that the delays may be of serious import.

Various maps, charts and photographs, showing the nature of the growth of the City of Burbank and the traffic conditions at the two crossings concerned, were presented. In addition, it was pointed out that there are a large number of defense industries in the area

and that a considerable amount of traffic goes to and from them. The evidence showed that there are approximately 50 train movements, excluding switching movements, daily over the two crossings. Some 14,000 vehicles use the Olive Avenue crossing and 16,000 vehicles use the Magnolia Boulevard crossing on a typical weekday.

Exhibit No. 18 is a resolution of the Burbank City Council dated January 9, 1951, in which it is stated that Olive Avenue should have a number one priority in the construction of grade separations and Magnolia Boulevard number two. This contention was supported by population studies of the City showing its growth and by estimates of traffic volumes at these two crossings.

Exhibit No. 28 sets out the yearly cost to the public of the grade crossings at Olive Avenue and Magnolia Boulevard based upon hourly vehicle delays. The estimate assumes that delays to a passenger automobile cost \$1.80 per hour, delays to a truck \$5.00 per hour, and delays to a bus \$14.00 per hour. Translated into yearly figures, it was estimated that these delays could be assigned a monetary value of approximately \$50,000 for 1954, and that this amount would increase to approximately \$75,000 by 1975.

The City also contended that the existing grade crossings, because of the heavy use, present a hazard which can best be eliminated by grade separations. Exhibit No. 111 is a report of the Interstate Commerce Commission concerning grade crossing accidents, and was presented for the purpose of showing that such accidents are a frequent occurrence at grade crossings of this type.

In summary, the position of the City is that grade separations at the two crossings are in the public interest and should be constructed. As to the cost thereof, the City has made no definite commitment although Exhibit No. 4, a resolution of the City Council dated December 22, 1953, states that the City of Burbank is willing

"to assume its reasonable proportionate share of the costs."

Relative to the crossings at Verdugo and Providencia Avenues, the City introduced Exhibit No. 25, a resolution of its City Council dated July 6, 1954, stating in effect that the Council will agree to closing any existing grade crossing in the vicinity of Olive and Magnolia if this Commission so orders.

The Southern Pacific Company

The position of the railroad as disclosed by the testimony presented is two-fold: (1) the grade separations are not economically justified, and (2) the railroad should not be required to pay any costs over and above the value of the benefits it receives. Witnesses pointed out that the railroad has been operating through Burbank since 1874. The crossings at Olive and Magnolia were not opened until some time afterward, probably between the years 1888 and 1912. In this connection various documents and maps were presented showing the history of the railroad in that area.

Witnesses for the railroad stated that there would be no savings to that company in its train operations as a result of grade separations. In support of this contention it was testified that the switching operations are usually performed at night-time and completed before 6:00 a.m. The main line train operations are not unduly hampered by the grade crossings. Evidence and exhibits relative to the number of trains traveling these two crossings as well as the number of cars in these trains were presented. Likewise, exhibits and statistics as to accidents which have occurred at these crossings from January 1, 1944, to the time of the hearings were introduced.

Other testimony included traffic studies at Verdugo, Olive, Magnolia and Providencia Avenues, setting out the number of motor vehicles crossing the tracks and the number delayed due to trains.

It was stated that these studies show delays caused by trains to be slight and in fact not as great as the delays caused by the traffic signals adjacent to the tracks at the intersection of Olive and Magnolia with Front Street.

As an alternate proposal, the railroad took the position that the crossings could be safely operated by the installation of flashing light signals and automatic gate arms at estimated costs of \$28,900 at Magnolia and \$32,945 at Olive. Other testimony indicated that there would be but slight benefits derived by the railroad from grade separations at these two crossings. Exhibit No. 99 estimates these benefits to be as follows:

Olive Avenue - Total Annual Benefit	\$ 580.00
Capitalized at 5% this would amount to	\$11,600.00
Magnolia Boulevard - Total Annual Benefit	\$ 517.00
Capitalized at 5% this would amount to	\$10,340.00

These benefits were alleged to be derived from annual maintenance savings, accident damages which would probably be avoided, and the avoidance of overtime payments to employees as a result of extra work caused by accidents. One railroad witness testified as to the Federal practice which is to limit the railroad contribution to 10% of the structure. This practice is applicable where Federal funds are used and is set out in General Administrative Memorandum No. 325, a copy of which was received in evidence as Exhibit No. 83. It was alleged by the railroad that this Federal practice represents a system used by an informed agency in the field of highway construction and therefore should be of weight in this proceeding. Parenthetically, we here point out that the Federal highway program involves, in many instances, the separation of grades where public safety, convenience and necessity would not warrant such separations and, lawfully, little, if any, allocation of costs could be made against a railroad. This is not the situation in the instant

proceeding. The Federal highway program seeks the building of highways without the usual delays incident to proceedings involving grade separations which are required to be instituted before regulatory bodies. This Commission's jurisdiction to allocate costs against a railroad in a grade separation proceeding requires a finding that public safety, convenience and necessity require such separation.

(Erie Railroad v. Board of Public Utilities Commissioners, 254 U.S. 394, 410-411, 65 L. ed. 322, 334; A.T. & S.F. Ry. Co. v. Public Utilities Commission, 346 U.S. 346, 353, 355, 98 L. ed. 51, 60, 61.)

Additional testimony relative to the economic position of the railroad was presented. This consisted of statistical data concerning transportation in the United States generally, and data as to freight revenues, operating income, freight cars and trains used. An economic study relative to the allocation of costs of the proposed grade separations was introduced. This study discusses the economic conditions involved generally, and specifically analyzes the conditions in Burbank. It advocates that the costs be allocated on the basis of relative benefits and gives no consideration to the so-called barrier or obstruction theory. This study further points out that it is a dubious practice to assign monetary value to intangible benefits, and that therefore the allocation of costs should be based primarily on direct financial benefits to the railroad.

Staff of the Public Utilities Commission

An engineer of the Public Utilities Commission staff presented testimony as to the economic justification for the two separations. He explained Exhibit No. 1 which primarily consists of a tabulation on an annual basis of the estimated monetary costs attributable to the existing grade crossings. The elements considered are vehicle delays, the maintenance of existing crossing protection, damages to vehicles and railroad property and economic losses attributable to

injuries and deaths. At Olive Avenue the estimate is \$26,297 per year and for Magnolia Boulevard it is \$24,008 per year, or a total of \$50,305. Capitalized at five per cent, this would amount to \$1,010,000. However, this witness, on cross-examination, conceded that part of these costs are chargeable to the community, particularly such elements as vehicle delays and some portion of damage to vehicles as well as the economic losses from injuries and deaths. No specific allocation of these items, as to which are chargeable to the railroad and which to the community, was provided.

The witness also presented Exhibit No. 112, which is a supplemental report concerning the crossings at Verdugo (B-472.4) and Providencia Avenues (B-472.5). This report sets out that since the proposed separations at Olive and Magnolia will cost approximately \$2,900,000, they should be utilized to the fullest possible extent. Accordingly, the witness recommended that nearby grade crossings such as Verdugo and Providencia be closed.

Engineering Study Committee

An engineering study committee made up of representatives of the City of Burbank, the County of Los Angeles, the Los Angeles County Grade Crossing Committee, and the Department of Public Works presented recommendations which are set out in Exhibit No. 1. These recommendations are (1) Olive Avenue and Magnolia Boulevard are important traffic arteries, (2) the freeway route, which will parallel the railroad tracks in this area, affects the proposed grade separations both as to location and cost, (3) the existing railroad tracks when occupied by trains divide the City of Burbank into two parts. This is important since Burbank is an active defense and production center and considerable traffic must cross the railroad tracks.

Los Angeles County Grade Crossing Committee

The Los Angeles County Grade Crossing Committee, through its

secretary, presented Exhibit No. 16; which is the Committee's priority rating as to grade separations in Los Angeles County. It should be noted that the crossings at Olive and Magnolia are numbers 9 and 10 on this priority list.

Brotherhood of Locomotive Engineers

A representative of the Brotherhood of Locomotive Engineers advocated that the Railroad should be required to participate in the costs of the proposed grade separations on the basis of benefits received, but in no case should this exceed ten per cent.

County of Los Angeles

The County of Los Angeles appeared specially, taking the position that it was not subject to the jurisdiction of the Public Utilities Commission in this proceeding since no county highway is involved and since the crossings concerned are entirely within the city limits of the City of Burbank. The County representative stated that on March 18, 1954, the Board of Supervisors of Los Angeles County adopted a resolution agreeing to participate in the cost of the separations at Olive and Magnolia in an amount not to exceed \$300,000. This amount will be paid \$100,000 per year for 3 years commencing with the 1956-57 budget.

We are not prepared to agree that this Commission would not have authority to allocate against the County of Los Angeles a portion of the costs involved in these grade separations. Certainly, the County of Los Angeles is affected by these separations not only because of the fact that these grade separations are within the territorial limits of said County but because of the location of the Los Angeles County Flood Control District which is to be overpassed as a part of the grade separation program involved herein. The County benefits by this District and is intimately related to it. However, in all the circumstances, we are of the opinion that the amount of \$300,000

which said County will contribute to the costs of these separations constitutes a fair and reasonable assessment against it. Therefore, there is no occasion or necessity for determining the jurisdictional point presented by the County's contention.

State Department of Public Works

The State Department of Public Works likewise appeared specially since the crossings involved are not within the state highway system. Its appearance was for the purpose of offering evidence to assist the Commission. An Engineer of this Department testified that, if integrated structures (those crossing both the freeway and the railroad tracks) are not constructed, the freeway may not be built at grade but may be constructed in a trench under the existing streets. Exhibits Nos. 20, 21 and 90 are resolutions of the California Highway Commission adopting the route of the freeway in this area. The latest of these resolutions sets out that the construction of this freeway is not conditional upon the approval of Federal Access Funds for construction. In other words, the position of this Department is that the freeway will be constructed regardless of the availability of Federal funds.

Exhibits Nos. 22, 23 and 91 are resolutions of the California Highway Commission establishing a freeway, and Exhibits Nos. 24, 33 and 34 are maps showing the proposed construction.

The position of this Department is contained in two statements of position filed during the proceedings and is summarized as follows: The Department is not concerned with the merits of the application for the allocation of costs and accordingly neither supports nor opposes this application. However, it is particularly interested in an early determination of the issues in the proceedings, since this will facilitate the completion of the final plans for the construction of the freeway in the area concerned. In the event this

Commission orders the separation of grades at the crossings of Olive and Magnolia with the railroad tracks, the Department of Public Works takes the position that the desirable type of structure would be an integrated one at each of the crossings. If such structures are constructed, the Department agrees to pay the construction costs of those portions of the separation structures located between the outer edges of the State Freeway right of way as it is finally established. This shall include those portions of the structures over the outer highways or frontage roads which are to be constructed adjacent to the main thoroughfares of the freeway proper. The Department secondly agrees to maintain those portions of the separation structures below the deck surfaces thereof and between the outer edges of the main thoroughfares of the freeway. This offer is made subject to certain conditions as set out in the Statement of Position and Final Statement of Position filed by this Department.

For the purpose of the decision which we will render, herein, we have assumed that the freeway will not be constructed and would not have been constructed in a "slot" and that said freeway will be constructed at grade. The physical, factual and legal consequences which will flow from such assumption, we hereby adopt for the purpose of our decision herein. Therefore, the contention of the railroad that it was denied due process by not being permitted to show that it would be impossible or infeasible to construct the proposed freeway in a "slot" becomes immaterial and moot.

Necessity for the Separations at Olive and Magnolia

After consideration of all of the evidence presented herein and the briefs and statements which have been filed, we hereby find that public safety, convenience and necessity require the construction of grade separations at the intersections of the tracks of the Southern Pacific Company and Olive Avenue and Magnolia Boulevard.

While these two crossings are less than a quarter of a mile apart, the peculiar facts in this case justify a grade separation at each crossing. The Golden State Freeway will generally parallel the railroad tracks in the area concerned, and will necessitate separations between Olive Avenue and Magnolia Boulevard and the freeway, within about 300 feet of the railroad tracks. Because of this situation the two grade separations at the railroad tracks will be parts of integrated structures which also cross the freeway.

The evidence in this case clearly demonstrates that the area involved is one of rapid growth and heavy traffic. The present use of the grade crossings in the light of the facts herein, involving public safety, convenience and necessity, as we have found that it does, is of a sufficient amount to justify the proposed separations, and the evidence in this record indicates that such construction will eliminate delays to traffic, inconvenience to both the railroad and the highway users, and the possibility of collision between trains and motor vehicles and pedestrians on the public highways.

Closing of the Crossings at Verdugo and Providencia

We further find that public safety, convenience and necessity require that the existing grade crossings at Verdugo Avenue and Providencia Avenue should be closed. The construction of the two separations at Olive Avenue and Magnolia Boulevard, according to the record, will afford adequate means of crossing the tracks, and in the interest of safety the other two grade crossings should be eliminated. This will provide the railroad with more than 7,000 feet of unobstructed track between Burbank Boulevard and Alameda Avenue. Likewise, the grade separations will provide the highway users with two unobstructed crossings over the railroad tracks.

Allocation of Costs

In approaching the resolution of the issues involving the allo-

cation of costs presented by this record, we must ever keep in mind that a public utility, such as a railroad corporation, is organized for public purposes and performs a function of the state. (Smyth v. Ames, 169 U.S. 466, 544, 42 L. ed. 819, 848; New York and N.E. R. Co. v. Town of Bristol, 151 U.S. 556, 571, 38 L. ed. 269, 274.) It exercises an extraordinary privilege and occupies a privileged position. (United Fuel Gas Co. v. Railroad Commission, 278 U.S. 300, 309, 73 L. ed. 390, 396.) The authority to charge rates, to exercise the power of eminent domain and other powers is given by the state, primarily, for the public benefit. (Smyth v. Ames, supra, p. 544 U.S. Report.) Therefore, it is clear that the duty and obligation of a railroad towards the public is much greater than that of the ordinary private corporation.

In the allocation of costs of these structures, we have in mind the position of the Department of Public Works to the effect that it will pay the construction costs of those portions of the separation structures located between the outer edges of the State Freeway right of way and also those portions of the structures over the actual highways or frontage roads which are to be constructed adjacent to the main thoroughfares of the freeway proper. The estimated costs of the two structures are approximately \$2,927,800, and the estimated cost of the work which the State Department of Public Works, Division of Highways, has offered to perform is approximately \$1,585,371. We also have in mind the offer of the County of Los Angeles to pay \$300,000; but the relief afforded by this contribution should lighten the burden on the city taxpayers, not the railroad. This leaves an estimated amount of \$1,342,429 to be allocated among the railroad, the City of Burbank and the County of Los Angeles.

As we have previously said, "The authority of this Com-

mission to allocate costs stems primarily from Section 1202 of the Public Utilities Code and is an exercise of the police power on the part of the State of California through the medium of its Agency the Public Utilities Commission." (Re Los Feliz Road, Decision No. 47420, dated June 30, 1952, in Application No. 32385, Case No. 5327, 51 Cal. P.U.C. 788, 795.) In the exercise of this police power "there is the proper limitation that such allocation of costs must be fair and reasonable." (The Atchison, Topeka and Santa Fe Railway Company v. Public Utilities Commission of the State of California, 346 U.S. 346, 352, 98 L. ed. 51, 60.)

The principal position of the railroad in these proceedings is that the costs should be allocated on the basis of benefits. This Commission is not bound to follow the so-called "benefits" theory as a single test of allocating costs. Commenting upon this problem, in its opinion affirming a judgment of the Supreme Court of California which had upheld a decision of this Commission in allocating costs of a proposed grade separation structure, the Supreme Court of the United States stated: "It was not an arbitrary exercise of power by the Commission to refuse to allocate costs on the basis of benefits alone. The railroad tracks are in the streets not as a matter of right, but by permission from the State or its subdivisions. The presence of these tracks in the streets creates the burden of constructing grade separations in the interest of public safety and convenience. Having brought about the problem, the railroads are in no position to complain because their share in the cost of alleviating it is not based solely on the special benefits accruing to them from the improvements." (A.T. & S.F. Ry. Co. v. Public Utilities Commission, supra, 352-353 of U.S. Report.)

According to the testimony presented by the Southern Pacific Railway Company, the calculable benefits would amount to \$21,940.00

(Exhibit No. 99) and would result from a reduction in grade crossing maintenance costs as well as accident damages and costs paid by the railroad. However, it should be pointed out that these calculations were for the crossings at Olive Avenue and Magnolia Boulevard only. If consideration is given to the crossings at Verdugo Avenue and Providencia Avenue which are to be closed, the railroad's estimate of calculable benefits might well be doubled. Furthermore, the alternate proposal of the railroad was that crossings could be safely operated by the installation of flashing light signals and automatic gate arms at estimated costs of \$28,900.00 at Magnolia Boulevard and \$32,945.00 at Olive Avenue. If similar protection were placed at Olive Avenue and Providencia Avenue, these costs might well be doubled.

In addition to the calculable benefits, there are advantages to the railroad which were not specifically calculated in dollars and cents - such as the more than 7,000 feet of unobstructed track that will be made available to it, the elimination of delays and the ever-present hazard of loss occasioned by accidents. It is the judgment of this Commission, and we find, that the railroad should be charged for these advantages.

A third element in the situation arises from the fact that the railroad tracks present an obstruction to the traffic on the streets. The railroad is reasonably chargeable with some part of the cost of eliminating this obstruction.

A consideration of these three factors - (1) the calculable benefits, (2) the advantages which cannot be calculated in dollars and cents, (3) the fact that the railroad presents an obstruction or barrier, and (4) the continuing obligation of the railroad to bear a fair and reasonable share of the cost incident to the separation of grades in the interest of public safety, convenience and

necessity, along with all other factors in the case - present a firm legal basis upon which this Commission may exercise its judgment in the allocation of costs to the railroad.

On the other hand, the grade separations will be of great value to the highway users. They, likewise, will avoid the delays and dangers of grade crossings. Since the highways concerned are city streets, the advantages derived accrue to the City of Burbank, and since the growth of the City is rapid and, correspondingly, the use of these highways is increasing, such advantages are of no little consequence.

Accordingly, in allocating costs in this matter, we give consideration to all of the factors involved, including, but not limited to, the justification and necessity for the structures, the benefits and advantages accruing to each of the parties, the obligation of each of the parties and the factors of safety, public convenience and necessity.

In the final analysis, this Commission must rely upon its informed judgment and knowledge in arriving at the exact amounts to be assessed against the parties affected by these grade separations. In fact, the law authorizes and expects us to do exactly that. In expounding the function and duty of an administrative agency, the Supreme Court of the United States, speaking through Mr. Justice Holmes, stated the rule as follows:

"But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so. They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions, - impressions which may lie beneath consciousness without losing their worth. The board was created for the purpose of using its judgment and its knowledge." (C.B. & Q. Ry. Co. v. Babcock, 204 U.S. 585, 598, 51 L. ed. 636, 640.)

Accordingly, we shall exercise our judgment and knowledge in light of

the record herein.

In the Los Feliz Road decision, supra, this Commission allocated the costs of a separation of grades between Los Feliz Road and the tracks of the Southern Pacific Company on the basis of fifty per cent (50%) to the railroad and the balance to the county and cities concerned. This appealed to us as a reasonable allocation under the circumstances of that case. A single structure was involved, at an estimated cost of \$1,493,200. It was required in order to eliminate a very serious barrier to traffic on a street used extensively for intercity through traffic as well as for local traffic.

There are apparent similarities between the situation in the Los Feliz Road case and the situation here presented. We entertain no doubt that the law applicable in that case is applicable here. However, the situations are not identical. In the present proceeding we have under consideration two grade separation structures, each more than a quarter of a mile long, within a few hundred yards of each other. It is not the railroad alone that necessitates and justifies them. They will carry the two city streets not only over the railroad but also over the Freeway and two frontage streets on either side of it, to the east of the railroad, and over the flood control channel to the west of the railroad. These are facts which must be considered along with other differences, which are present in the instant proceeding and were absent in the Los Feliz case. The evidence shows that the City of Burbank has seen fit to adopt for its purpose the program of the State Department of Public Works in the construction of the freeway in question. The facts and circumstances of this case will not permit this Commission to ignore that fact. Clearly, the City of Burbank will receive benefits from its adoption of the program of the State Department of Public Works. If the City of Burbank sees fit to adopt the program of the State Department of

Public Works and integrate these two grade separations with the freeway, it is not for this Commission to say that it should not. Nevertheless, the Commission must keep this fact in mind and give weight to it in assessing costs against the railroad. In such circumstances, the City of Burbank should be required to bear the burden, it having adopted the program which occasioned such costs.

To be sure that the railroad is not being called upon to bear an unfair or unjust share of the costs of these grade separations we will allocate and assess against it the sum of \$350,000. The balance remaining (\$992,429) will be allocated and assessed \$692,429 against the City of Burbank with \$300,000 being borne by the County of Los Angeles as a voluntary contribution. We hereby find such allocations and assessments to be just, fair and reasonable based upon the evidence and the special circumstances of this proceeding.

O R D E R

Application as above entitled having been filed, orders instituting investigation as above entitled having been issued, public hearings having been held thereon and the Commission being fully advised in the premises,

IT IS ORDERED that the City of Burbank be, and it hereby is, authorized to separate the grades of Olive Avenue and Magnolia Boulevard and the tracks of the Southern Pacific Company in the manner and at the locations more particularly described in the foregoing opinion, and substantially in accordance with the plans introduced in this proceeding, subject to the following conditions:

1. Of the remaining costs of the proposed structures, over and above the contributions of the State Highway Department, which remaining costs are estimated to be approximately \$1,342,429, the sum of \$350,000 shall be borne by the Southern

Pacific Company and the sum of \$692,429 shall be borne by the City of Burbank with the County of Los Angeles contributing the sum of \$300,000.

2. Upon completion of the construction of the said grade separations the cost of maintenance thereof shall be borne by the City of Burbank and the State Department of Public Works.
3. Prior to the commencement of construction, there shall be filed with this Commission for approval a set of plans and specifications for the proposed alterations of the grade separation crossings, which plans shall have been approved by the State Department of Public Works, the City of Burbank, and the Southern Pacific Company. In the event the parties refuse to approve such plans, this Commission may issue supplementary orders in this matter.
4. Prior to the beginning of actual construction of the separations herein authorized, the City of Burbank shall file with this Commission a certified copy of an appropriate ordinance or resolution, duly and regularly passed, instituting all necessary steps to legally abandon and effectively close the crossings at grade at Providencia Avenue and Verdugo Avenue, identified as Crossings Nos. B-472.5 and B-472.4, respectively. Upon completion of the separations herein authorized and upon their being opened to public use and travel, said Crossings Nos. B-472.5 and B-472.4 shall be legally abandoned and effectively closed to public use and travel.
5. The grade separation structures shall be constructed with clearances conforming to the provisions of General Order No. 26D of this Commission.
6. The separations are to be identified as Olive Avenue, Crossing No. B-472.2-A, and Magnolia Boulevard, Crossing No. B-472.1-A.
7. The authorization herein granted shall expire if not exercised within one year after the date hereof unless further time is

granted by subsequent order.

8. Within thirty days after completion of the proposed structures the Southern Pacific Company and the City of Burbank each shall notify this Commission in writing of that fact and of compliance with the conditions herein.

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

Dated at San Francisco, California, this 19th
day of August, 1955.

[Signature]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners