

ORIGINAL

Decision No. 56444

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the)	
County of Fresno, State of California,)	
for permission to construct and maintain)	
a public highway crossing at grade across)	Application No.
the right of way and track of the Visalia)	38843
Branch of The Atchison, Topeka and Santa)	
Fe Railway Company at its intersection)	
with Leonard Avenue between North Avenue)	
and Jensen Avenue, Fresno County, California.))	

Robert M. Wash, for County of Fresno, applicant.
Merrill K. Albert, John K. Willey and Wilbur L. Seabridge, for The Atchison, Topeka and Santa Fe Railway Company, protestant.
Charles J. Astrue, for the Commission staff.

O P I N I O N

By its application in this proceeding the County of Fresno seeks an order authorizing it to construct and maintain a public highway crossing at grade across the tracks of the Visalia Branch of The Atchison, Topeka and Santa Fe Railway Company at a point where said track crosses Leonard Avenue in an area of the county located approximately eight miles Southeast from the city of Fresno.

Hearing

Public hearings were held in Fresno on September 27, 1957 and January 10, 1958 before Examiner J. F. Mastoris. The matter was submitted upon receipt of briefs and authorities on February 19, 1958.

Description of Area

The area in question is basically flat in terrain and predominantly rural in character with small to medium-size grape growing farms located on all sides of the proposed crossing. The city of Sanger is situated approximately four miles east and the city of Fowler approximately four and one-half miles southwest; U. S. Highway No. 99 is located slightly over six miles west. Santa Fe's branch line runs easterly in this area until it reaches a point slightly over one-half mile west of the proposed crossing when it curves in a southeasterly direction and continues on in this manner across Leonard Avenue. Leonard Avenue is a county road, running in a north-south direction, commencing in the north at Kings Canyon Road, a major east-west state highway, and extending southerly to the north end of Santa Fe's tracks, a distance of about three miles. It begins again south of the tracks and continues southerly approximately two miles to the end at American Avenue. It begins again at Lincoln Avenue one mile south of American Avenue, extending southerly approximately four miles to the junction with U. S. Highway No. 99, north of the city of Selma. If this crossing were open the county would have a continuous road from the aforementioned state highway to American Avenue, a length of approximately five miles.

De Wolf Avenue, another county road, runs parallel to Leonard Avenue and is situated one-half mile west of it; it extends from the state highway in the north to U. S. Highway No. 99.

Temperance Avenue, Armstrong Avenue and Fowler Avenue also run parallel to Leonard Avenue being situated one and one-half, two, and two and one-half miles west respectively. McCall Avenue is a mile and a half to the east and also runs north-south. All five roads intersect the Santa Fe tracks in the north-south direction. Two other roads in the vicinity are significant in evaluating this application. North Avenue runs perpendicular to Leonard Avenue and is located about 900 feet south of the crossing; it crosses Santa Fe's tracks about one-fourth of a road mile from the proposed site; Highland Avenue is one-half mile east of Leonard Avenue and extends northerly from North Avenue to the aforementioned state highway.

Santa Fe's tracks at the proposed crossing consist of the main line and two sidings, one being on each side of the main line, or a total of three sets of tracks. The north siding is 1627 feet long from switch to switch while the southerly siding is 2537 feet in length; this latter track terminates prior to reaching the North Avenue crossing. Both sidings are used only for storage of freight cars; cars can be parked on all four quadrants at the immediate crossing approaches. Based upon the average freight car length of 50 feet approximately 42 cars can be parked on the southerly siding and 23 on the northerly tracks under present conditions. There are cars stored at these tracks with heavy full-capacity storage evident about six months of the year. Nearby similar storage tracks are located at Lone Star two and one-half miles to the west and Del Rey, three miles southeast of this intersection.

The proposed crossing is surrounded by vineyards and vegetation except that a young orchard is situated in the immediate southwest quadrant. The roadways leading to the crossing from both sides are partially paved and average less than 16 feet on the north side to 20 feet in width. Prior to the closing by Santa Fe in 1955 a small road intersected the tracks connecting both ends of Leonard Avenue; the width of this road was between 13 and 14 feet. The county proposes to enlarge it to 24 feet. Because of the physical arrangement of the storage tracks there is a slight indentation of the road westward at the crossing proper.

There were many packing sheds located in the immediate vicinity of this crossing in the early 1920s however because of fruit packing economics said sheds had disappeared by 1938; there are no team track facilities at present.

The average daily automobile traffic counts during 1955 disclosed that 301 automobiles traveled past the intersection of De Wolf and North Avenues, 181 at Temperance and North and 93 at North and Highland. There is no evidence of a traffic count at North and Leonard. Santa Fe operates an average of four south-bound and two northerly bound trains in this area, or a total of six trains per day. Train speeds average 50 miles per hour except that speed is reduced to 40 miles per hour at the location of the proposed crossing.

Applicant's Contention

The county contends and presented substantial evidence in support thereof that the public had been habitually using this crossing as a public crossing for more than thirty years prior to its closing in 1955. Some residents of the affected territory testified that the public crossed at this intersection as far back as 1911. During these years the applicant was allowed to make improvements, expending county funds upon this site and developing adjacent roads, including Leonard Avenue, on each side of the crossing as though it were a public crossing. Because of this long and established prior use the county alleges it is merely applying for authority to re-open a crossing which in effect has always belonged to it. Further it is argued that this long use by the traveling public is strong evidence showing current need and necessity essential under present requirements. The closing without notice by Santa Fe precipitated this application.

In addition to the evidence establishing prior public use the county maintains that the application if granted would benefit the residents in this area because an open crossing would save mileage, eliminate the circuitious routing and difficult turning now evident and avoid the hazard and inconvenience of the present turns and stops. The applicant contemplates the use of Leonard Avenue as a continuous thoroughfare from Kings Canyon Road south to another major east-west highway and the closed crossing blocks this plan. Moreover there are several fruit packing sheds within a radius of

three miles north and south of the proposed crossing and most farmers, it is alleged, have historically used Leonard Avenue to haul their produce and crops to the processing plants and to the wineries. Furthermore an open crossing would relieve the present difficulty connected with transporting primary and high school children to and from school. In the past the subject crossing had been one of the main routes for school buses; in fact the use of this intersection by such buses was the reason given by Santa Fe for closing the tracks in 1955. It is claimed that at present the buses must go down to the farmhouses, deliver children that live next to the crossing, turn around in the road, return to Jensen Avenue three-quarters of a mile to the north and enter a highway against heavy traffic. Both turning movements are alleged to be unsafe school bus operations. The school district's buses make three trips a day in this manner. The county also states this operation requires additional bus mileage of 1400 miles annually resulting in approximately \$450 per year more operating cost.

There is no evidence of train-automobile accidents occurring at this intersection in the past and as a result it is alleged that it is not a dangerous crossing or if it is there is nothing to indicate it is any more hazardous than any other crossing in the vicinity.

In lieu of the proposed crossing the railroad offered the county a plan for constructing a parallel road along Santa Fe's northerly right of way line from the site of the proposed crossing to the junction with North Avenue. Said offer was rejected by the

county upon the ground that the road would be unnecessarily expensive and would result in a dangerous turning radius at the North Avenue intersection. Moreover such arrangement would not provide for the continuity of travel along Leonard Avenue desired by this application.

The county declared that it has appropriated the necessary funds and is willing to pay for the cost of construction of such crossing in whatever amount is deemed equitable by the Commission.

The Position of the Railroad

Santa Fe declared that the facts disclosed at the hearing refute the county's claim that there is a present need for this crossing. The railroad contends that long prior use by the public in and of itself does not justify present and future public convenience and necessity, that the convenience in mileage and routing to the local farmers and to the school district is slight as compared to the many disadvantages that would ensue if the intersection were opened. It was pointed out that the crossing at North Avenue combined with the access of Highland Avenue adequately provides continuity of travel for those persons driving in a north-south direction, that the numerous crossings near Leonard Avenue are sufficient for the nature and type of community and for the purposes required by the county.

Moreover if the application were granted an unsafe grade crossing would be created because of the obstructions to visibility caused by the aforementioned freight cars on the storage tracks

combined with the foliage of the vineyards. The railroad also claims that it would lose valuable storage space if the intersection were open.

Findings and Conclusions

The Public Utilities Commission is called upon, in these cases, to balance various considerations of public convenience, necessity and safety, involved in authorizing grade crossings over a railroad's utility tracks, against the local public inconvenience which might ensue if the site remains closed.

Long prior use of a street by the public across a railroad's tracks by itself does not establish present need and necessity for a crossing. At present public use of this intersection is relatively light, certainly less than 75 cars per day, and there was no persuasive showing that it would increase in the future.

The number of persons who would be benefitted if the application were granted is comparatively small. There are five homes on Leonard Avenue between the north approach to the crossing and Jensen Avenue; the number has not increased since 1946. There are approximately six homes between the south approach and Central Avenue whose residents would probably use the proposed crossing. Likewise there has been no change in the number of homes bordering Leonard Avenue since 1946. On Highland between North and Jensen Avenues there are situated six permanent homes. The residents on the foregoing roads wishing to travel in a north-south direction

could use Highland Avenue one-half mile to the east along with the North Avenue crossing.

School bus convenience must be determined in light of the actual number of students to be benefitted. At present there are five or six grade school children living in homes between Jensen Avenue and the north approach; a smaller number live south of the track between North Avenue and Central Avenue. Only two high school students living between the tracks and Jensen Avenue would be affected as a result of this decision. Furthermore the routes of the school district in this area are flexible and are changed from time to time. The evidence also indicated that if the crossing remained closed the buses would still cross Santa Fe's tracks in this vicinity but once during each run; they would use North instead of Leonard Avenue. It will not be particularly hazardous when school buses turn around on Leonard Avenue in the north approach and move on to Jensen Avenue in view of the almost complete absence of traffic where such turn movements will be made. It also appears that the buses turn right on Jensen as well as left during the course of their runs and in view of the aforementioned flexibility of routes the danger of turning into onrushing traffic can be minimized by a slight revision of the route.

It should be pointed out that grade crossing fatalities have increased in 1957 as compared with 1956. Accidents during the first nine months of 1957 resulted in deaths of 134 persons while 94 met death in grade crossing mishaps during the same period in

1956. This was an increase of 42.6 percent. Past experience has shown that many perilous crossings are found in rural areas where there is high speed auto travel and high speed train travel. The presence of freight cars on the spur tracks on all four corners of the quadrant on any given day along with the aforementioned adjacent vineyards and young orchard would obscure visibility for approaching vehicles during a great portion of the year. The speed of the trains passing this intersection and the number, increased during harvest season to about ten a day, add another hazard.

There are other adequate crossings in the nearby vicinity. De Wolf Avenue, a properly maintained county road one-half mile to the west, along with the aforementioned Temperance, Fowler, Armstrong and McCall avenues, afford a sufficient number of north-south crossings for this region. Farmers carrying their produce to the aforementioned fruit packing sheds should not be greatly inconvenienced if this application is denied. The above-mentioned highways along with the Highland-North Avenue combination give satisfactory access to these plants. And it may be that Highland Avenue south of North Avenue could be developed in order to provide still another through north-south highway.

In this age of the automobile the problems arising from numerous railroad crossings at grade is a matter of great public concern; to eliminate unnecessary crossings and to minimize potential dangers created thereby is a governmental state ^{1/}policy. It is a policy of this Commission to avoid such grade crossings, bearing in mind public convenience, necessity and safety, wherever it is practicable to do so.

After carefully considering all the evidence of record, the arguments and briefs of counsel, we are satisfied that there is no present need for the proposed crossing. Therefore the application will be denied. The following order will so provide.

O R D E R

Public hearing having been held, the matter having been submitted, and the Commission being fully advised,

^{1/} City of San Mateo v Railroad Commission (1937) 9 Cal. (2) 1, 9.

IT IS HEREBY ORDERED that the application to construct Leonard Avenue at grade across the tracks of The Atchison, Topeka and Santa Fe Railway Company be and it hereby is denied.

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

Dated at San Francisco, California, this 15th day of APRIL, 1958.

(E. M. ...)
Paul ...
...
...

President

Commissioners