

ORIGINALDecision No. 56740

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission investigation into the
 safety, maintenance, operation, use
 and protection of certain crossings
 of public highways and the tracks of
 Southern Pacific Company in the City
 of Modesto.

Case No. 5832

The CITY OF MODESTO, CALIFORNIA, a
 municipal corporation,

Complainant,

vs.

Case No. 5767

SOUTHERN PACIFIC COMPANY, a corpora-
 tion,

Defendant.

ORDER OF DISMISSAL

On May 16, 1956, the City of Modesto, by its complaint, alleged inadequacy of protection at two grade crossings of railroad tracks and city streets (H Street, Crossing No. B-113.1, and I Street, Crossing No. B-113.0). Like inadequacy of protection was alleged at L Street and said tracks, L Street being a state highway. After answers were filed, an amended complaint was filed which omitted the Department of Public Works and the Division of Highways as defendants. The railroad company and the Department of Public Works entered into a contract for the installation of improved protection at the L Street crossing. On October 16, 1956, the Commission instituted its own investigation of the three crossings above referred to. This action was taken in order to eliminate procedural objections to consideration of the real issue of adequacy of protection at these crossings in Case No. 5767.

A public hearing has been held, at which insufficient evidence was adduced to justify Commission action, and many continuances have been granted at the request of the parties. In his request that the hearing set for January 22, 1958 be taken off calendar, the city attorney for the City of Modesto stated:

"As the correspondence in your file on this matter reveals, the determination of the construction of an under- or overpass across the tracks of the railroad tracks has a direct bearing upon the relief sought by the city in the above-entitled cases. (The above cases, Nos. 5832 and 5767.) Inasmuch as the matter of the construction of an under- or overpass has not yet been resolved and the matter is still being studied by the Department of Public Works of the State of California, it seems inappropriate to proceed with the adjourned hearing on January 22, 1958. While the city desires to obtain the relief sought in the above-entitled proceedings if agreement cannot be reached with the State on the construction of an under- or overpass until this determination is made, we feel that the adjourned hearing in the above cases properly should be postponed until after that determination."

In consenting that the matters might be taken off calendar, the attorney for the State Department of Public Works, by letter dated December 18, 1957, in referring to the study discussed by the city attorney, stated:

"The Department of Public Works has commenced a comprehensive traffic study of the vehicular traffic in the metropolitan area of the City of Modesto. The preliminary phase of this study has been completed. Based on the survey thus far completed, the Department concludes that it will require from 18 months to three years to review the survey to determine the recommendations and conclusions as to what highway improvements will be required to handle vehicular traffic in the Modesto area.

"Since the grade crossing protection and the railroad separation problems are normally negotiated between the interested parties, namely the City, the Railroad and the State, and since negotiations relative to these matters are presently pending and must necessarily extend over a considerable period of time, it would appear that the Commission should give consideration to dismissal of the cases without prejudice.

"If it should become apparent that the matters cannot be resolved by negotiation, or the parties refuse to negotiate further, then any one of the parties involved could institute proceedings before the Commission as may be appropriate."

It appears, from the evidence of record and from the statements in the above correspondence, and the Commission finds, that the instant proceedings now do not present an issue.

Therefore, IT IS HEREBY ORDERED that the amended complaint in Case No. 5767 is dismissed without prejudice, and that Case No. 5832 is discontinued.

Dated at San Francisco, California, this 27th
day of May, 1958.

W. E. [Signature] President
[Signature]
[Signature]
Theodore [Signature]
Commissioners