

ORIGINALDecision No. 57252

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the CITY OF SAN JOSE,)
 CALIFORNIA, for permission to con-)
 struct Phase I of the proposed)
 Southwest Expressway at grade across)
 existing tracks of The Western)
 Pacific Railroad Company.)

Application No. 39561

Harry Kevorkian, for applicant.
E. L. Van Dellen, for The Western Pacific
 Railroad Company, protestant.
Charles J. Astrue, for the Commission staff.

O P I N I O N

By this application, filed November 15, 1957, the City of San Jose seeks an order of this Commission authorizing the construction at grade of a public highway designated as the Southwest Expressway across the tracks of The Western Pacific Railroad Company at two points in the City. One point of crossing involves three tracks, the other one track.

Public hearings were held before Examiner Rowe on March 27, April 17, and May 19, 1958, in San Jose, and on May 6, 1958, in San Francisco and the matter was duly submitted upon the filing of concurrent briefs which now have been received.

The evidence of record indicates that the public interest, convenience and necessity require that the Phase I of the public highway, designated as Southwest Expressway, be constructed. In its path is the main line of the Southern Pacific Company and also the tracks of The Western Pacific Railroad Company. Applicant advises that it intends to construct a grade separation where the Southern Pacific Company tracks cross the proposed highway. The present

application requests authority to cross The Western Pacific Railroad Company tracks at grade at two points. According to the testimony of the City officials, it is proposed that these grade crossings be located approximately 1,500 and 2,000 feet respectively to the west of the Southern Pacific Company crossing.

The City manager conceded that the tracks of The Western Pacific Railroad Company should be separated from the highway at the point of crossing. It was stated that the City did not have sufficient funds for such purpose. However, it was suggested that it was the expectation of the City that the State Highway Department would take over the highway upon its completion and construct a grade separation structure. The City manager testified that in his opinion the City should enter into an agreement to hold the railroad harmless in such event.

Because the City, by its testimony, has made it clear that it does not have sufficient funds to pay such construction costs now, it is difficult to see how it could do so in the immediate future. Also, because such an agreement would likely provide for allocating construction costs in a manner inconsistent with the prescribed apportionment established by the legislature for use by the Commission in allocating costs, it is felt that this Commission is not in a position to require the execution of such a contract as a condition to granting the requested authority.

The protestant railroad company sought to prove that the Expressway should be located in the vicinity of Sunol Street thereby eliminating one of the two grade crossings and placing the crossing at a point where much less rail operation would occur. The Commission is of the opinion that, while this alternate location may be more convenient for protestant and might be more desirable because it

would involve less construction cost and decrease grade crossing hazards, it also should not be ordered. Many factors of cost and of public interest, convenience and necessity involved in relocating the highway to Sunol Street have not been covered by any evidence of record. In addition it is the opinion of the Commission that the location of city streets and highways should be primarily a matter for determination by city officials.

The witnesses for the railroad protestant testified that there are a number of possibilities of relocating tracks whereby one grade crossing could be eliminated. Also, such changes would be made in the event of a separation so that only one would be required.

From a consideration of all the evidence of record, this Commission finds that the proposal of applicant is not a request for permanent grade crossings, that it does not contemplate grade crossings which are the safest or most feasible, and that, by further study and negotiations, applicant can devise plans whereby its objective of crossing protestant's railroad tracks can be effected in a more just, feasible and safe manner. The application will consequently be denied without prejudice.

O R D E R

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

IT IS ORDERED that Application No. 39561 is denied, without prejudice.

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

Dated at San Francisco, California, this 26th day of August, 1958.

E. Leo Fox
 President

John E. Mitchell

Walter J. ...

Theodore J. ...

Commissioners

Commissioner....Ray E. Untereiner....., being necessarily absent, did not participate in the disposition of this proceeding.