

ORIGINAL

Decision No. 62557

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion to determine whether or not a grade separation should be constructed at Public Utilities Commission Crossing Nos. D-9.0 and 4-8.9 (23rd Avenue, Oakland) and if said grade separation is to be constructed, the proportions in which the expense of constructing and maintaining such separation shall be divided among the railroads involved and applicable public agencies.

Case No. 7155

In the Matter of the Application of THE WESTERN PACIFIC RAILROAD COMPANY and SOUTHERN PACIFIC COMPANY to replace manually-operated crossing protection with standard No. 8 flashing light signals equipped with automatic gate arms, at 23rd Avenue, in the City of Oakland, County of Alameda, State of California.

Application No. 42942

In the Matter of the Application of the City of Oakland, a municipal corporation, to construct a separation of the grade of 23rd Avenue at the crossing thereof by the SOUTHERN PACIFIC COMPANY and THE WESTERN PACIFIC RAILROAD COMPANY.

Application No. 43287

Randolph Karr and Harold S. Lentz, for Southern Pacific Company, applicant in A.42942, protestant in A.43287 and respondent in C.7155.

Walter L. Treanor, for The Western Pacific Railroad Company, applicant in A.42942, protestant in A.43287 and respondent in C.7155.

Frederick M. Cunningham, for City of Oakland, applicant in A.43287, protestant in A.42942 and respondent in C-7155.

Frank Annibale and Donald A. Way, for City of Alameda, interested party in A.42942 and 43287, and respondent in C.7155.

J. F. Coakley by John A. Lewis, for the County of Alameda, interested party in A.42942 and 43287.

M. E. Getchel, for the Commission staff.

O P I N I O N

The City of Oakland filed Application No. 43287 which seeks authority to construct a grade separation in Oakland at the crossing of 23rd Avenue and the Southern Pacific and Western Pacific tracks. Previously, the Southern Pacific Company and The Western Pacific Railroad Company had filed Application No. 42942 which seeks authority to replace the present manually operated crossing protection with No. 8 flashing light signals equipped with automatic gates. Applications Nos. 42942 and 43287 were consolidated for hearing.

A duly noticed public hearing was held on Applications Nos. 42942 and 43287 before Examiner Donald B. Jarvis, in Oakland, on June 28 and 29, 1961.

Prior to the June hearing, Southern Pacific filed a motion seeking an order which would bring into the proceeding the County of Alameda and the City of Alameda as necessary parties. The motion was based upon Public Utilities Code Section 1202(c) and alleged that the County of Alameda and the City of Alameda were "affected" political subdivisions within the purview of Section 1202(c).

Southern Pacific renewed its motion at the June hearing. The Presiding Examiner ruled that it would be necessary for Southern Pacific to establish a prima facie case in support of the motion before it would be granted. The remainder of the June hearing was devoted to the presentation of evidence with respect to the motion. At the conclusion of the June hearing, the Presiding Examiner granted the motion with respect to the City of Alameda and denied the motion with respect to the County of Alameda. Subsequently, the Commission commenced Case No. 7155; an investigation on the Commission's own motion to determine whether or not a grade separation should be constructed at 23rd Avenue, and if one were to be

constructed, the proportions in which the expense of constructing and maintaining the separation should be divided among the railroads and applicable public agencies. The City of Oakland, City of Alameda, Southern Pacific and Western Pacific were named as respondents in Case No. 7155.

Case No. 7155 was consolidated for hearing with Applications Nos. 42942 and 43287. A hearing was held in these matters before Examiner Jarvis in Oakland on August 28, 1961.

At the August 28 hearing Southern Pacific presented evidence indicating that it had transmitted to the City of Oakland an offer containing an agreement for apportioning costs between Southern Pacific, Western Pacific and the City of Oakland. The offer was made under the authority of Section 1202.5(h) of the Public Utilities Code. Western Pacific joined in the offer. The offer was contained in Exhibit No. 11 and provided that Southern Pacific and Western Pacific would contribute toward the cost of a grade separation at 23rd Avenue the sum of \$330,137 plus 10 per cent of the approved estimated cost of the separation. In addition, the railroads offered to convey to the city, without additional charge, their usual form of easements for the structure over their rights of way. The offer had an expiration date of September 29, 1961.

It was stipulated between Southern Pacific, Western Pacific and the City of Oakland that if the offer were accepted within the time limit provided, Application No. 42942 should be dismissed. It was further stipulated that if the offer were accepted the matter could be determined without further hearing.

None of the parties indicated that it had any evidence to present with respect to the City of Alameda.

The matter was submitted subject to the filing of certain late-filed exhibits. One of these exhibits was to be a copy of the

action taken by the Oakland City Council with respect to the railroads' offer. On September 1, 1961, the City of Oakland filed late-filed Exhibit No. 13, which is a certified copy of Resolution No. 41254 C.M.S. adopted by the Oakland City Council on August 31, 1961. This resolution accepts the offer made by the railroads.

In view of the present posture of the record, the Commission finds that a further public hearing is not necessary.

Based upon the evidence of record herein, the Commission finds that:

1. The City of Alameda should be dismissed as a party in Application No. 43287.
2. The investigation on the Commission's own motion in Case No. 7155 should be discontinued.
3. Application No. 42942 should be dismissed.
4. The public safety, convenience and necessity require that Application No. 43287 be granted.
5. The Southern Pacific Company, The Western Pacific Railroad Company and City of Oakland have entered into an agreement providing for a division of the construction and maintenance expense of the grade separation project.
6. A grade separation project for 23rd Avenue has been given Priority No. 16 by Decision No. 61272 in Case No. 6898, pursuant to Statutes 1957, Chapter 2091, as amended by Statutes 1959, Chapter 1763.

O R D E R

A public hearing having been held and based upon the evidence of record in the aforesaid matters,

IT IS ORDERED that:

1. The City of Alameda is dismissed as a party in Application No. 43287.

2. The investigation on the Commission's own motion in Case No. 7155 is terminated.

3. Application No. 42942 is dismissed.

4. The City of Oakland is authorized to construct 23rd Avenue at separated grades over the tracks of the Southern Pacific Company and The Western Pacific Railroad Company in the City of Oakland, County of Alameda, at the location and in the manner described in Application No. 43287. This separation is to be identified as Crossings Nos. D-9.0-A and 4-8.9-A.

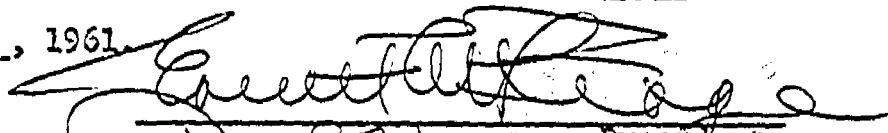
5. Construction and maintenance expense of the aforesaid grade separation shall be borne in accordance with the agreement entered into between the Southern Pacific Company, The Western Pacific Railroad Company and the City of Oakland as evidenced by Exhibits 11, 12 and late-filed Exhibit 13. A copy of the formal agreement between the parties shall be filed with the Commission within 180 days from the date hereof.

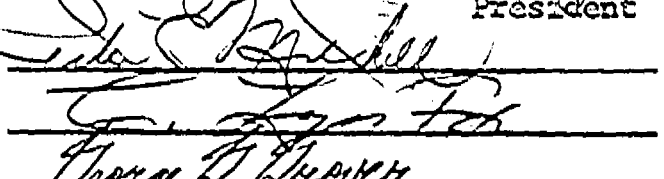
6. Upon completion of the overpass, the existing crossings of 23rd Avenue at grade (Nos. D-9.0 and 4-8.9) shall be abandoned and closed to public use and travel.

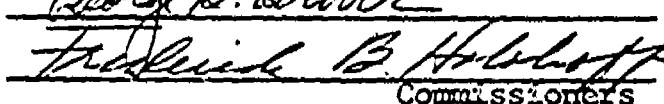
7. The City of Oakland shall advise the Commission in writing of the completion of the grade separation within thirty days after it has been completed. The authority herein granted shall expire if not exercised within three years unless time be extended or if conditions are not complied with.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 12th day
of SEPTEMBER, 1961.



President


George D. Hoover


Franklin B. Halchoff
Commissioners