

**ORIGINAL**Decision No. 64312

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into the safety, maintenance, operations, use and protection of Richmond Avenue crossing at grade over the tracks of the Southern Pacific Company in Santa Clara County, being Crossing No. E-65.2.

Case No. 7233

Randolph Karr and H. S. Lentz, for Southern Pacific Company, respondent.  
Arthur Philpott, for City of San Jose; John R. Kennedy and John Gunn, for County of Santa Clara; George D. Moe, for State of California, Department of Public Works, Division of Highways, respondents.  
William R. Keig, for Encinal School District, interested party.  
Elinore Charles, for the Commission staff.

O P I N I O N

Case No. 7233 is an investigation on the Commission's own motion into the safety, maintenance, operations, use and protection of Richmond Avenue crossing at grade over the tracks of Southern Pacific Company in the City of San Jose. <sup>1/</sup> Said crossing is designated as Crossing No. E-65.2.

The purposes of the investigation, as stated in the Commission's Order Instituting Investigation dated November 21, 1961, are:

1. To determine whether or not public safety and health require the installation and maintenance of additional or improved protective devices at said crossing.

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<sup>1/</sup> The record shows that the land upon which the subject crossing is located has been recently annexed by the City of San Jose.

2. To determine whether or not public safety and health require the abolishment of said crossing.
3. To prescribe the terms on which any such installation or maintenance of protection shall be done, and to make such apportionment of costs among the parties as may appear just and reasonable.
4. To enter any other order that may be appropriate in the lawful exercise of the Commission's jurisdiction.

Certified copies of the aforesaid order were served on Southern Pacific Company, the City of San Jose, the Board of Supervisors of Santa Clara County and the Department of Public Works of this State.

Public hearing of the matter was held before Examiner Carter R. Bishop at San Jose on March 7 and 8, 1962. With the filing of concurrent briefs on May 31, 1962, the matter was taken under submission.

At the outset of the hearing counsel for Southern Pacific Company moved for dismissal of the proceeding on various grounds. Principally, he urged that the Richmond Avenue crossing was not a public crossing, since the Commission had never formally approved it as such pursuant to Sections 1201 and 1202 of the Public Utilities Code. Since, in his opinion, the crossing is a private crossing he urged that the Commission not proceed further until the order of investigation should be broadened to include as respondents all the individuals whose property is adjacent to the railroad, presumably in the vicinity of the crossing. The motion was taken under submission.

In the course of the hearing the parties stipulated that no evidence would be received relating to apportionment of costs, and that if the Commission should order the installation of increased protection at the crossing, the parties, without delaying such

installation, would endeavor to agree informally as to the apportionment of the cost of such installation and that if they were unable so to agree the Commission would be petitioned to reopen the proceeding for the purpose of making just and reasonable apportionment of such cost.

Evidence on behalf of the Commission's staff was adduced through a senior transportation engineer. The results of his study of the Richmond Avenue Crossing were incorporated in a report, which was received in evidence. His study disclosed the following facts:

The crossing in question is over the single track of Southern Pacific's coast route between San Francisco and Los Angeles and is located between the stations of Coyote and Perry. In the vicinity of the crossing, Monterey Road (U.S. Highway 101)<sup>2/</sup> parallels, and is adjacent to, the easterly boundary of the railroad right of way. Richmond Avenue forms a "T" junction with the Highway, crosses the railroad and extends westerly therefrom for a distance of approximately one mile. At its westerly terminus, Richmond does not connect with any other thoroughfare. Thus, the only means of ingress or egress to or from any place on Richmond Avenue is over the railroad crossing here in issue.

The crossing, as previously indicated, lies within the corporate limits of the City of San Jose. The westerly boundary of that city, in the vicinity involved in this proceeding, coincides with the westerly boundary of the railroad right of way, so that, exclusive of the crossing, Richmond Avenue is entirely in unincorporated Santa Clara County territory.

The territory in the vicinity of the crossing is agricultural, including that area traversed by Richmond Avenue. Along

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<sup>2/</sup> Hereinafter sometimes referred to as "the Highway".

this road are a few scattered houses and farm buildings. A check, made by the staff, of traffic moving over the crossing during the 12-hour period from 7:00 a.m. to 7:00 p.m. on February 6, 1962, showed the following totals: 28 passenger automobiles, 15 other motor vehicles, and 23 pedestrians. A total of eight railroad trains passed over the crossing during the same period.

The existing crossing protection consists of two Standard No. 1 "cross-buck" signs, one on either side of the track, one highway stop sign, located on the westerly approach to the crossing, and a group of preliminary warning signs (one of which is painted on the pavement) located on Richmond Avenue 350 feet or more west of the crossing. Of the two roadside signs in this group, one is a "stop ahead" sign and the other a reflectorized "advanced warning" railroad crossing sign. There is no stop sign on the Highway side of the crossing.

The grade of approach to the crossing for a motorist traveling easterly is approximately one or two percent. Going westerly toward the crossing from the Highway, however, the motorist must negotiate a grade of approach varying from 11 percent to 9 percent, then to 14 percent just before the crossing is entered. From a point 100 feet westerly of the track the vision to the south is obscured by an orchard. The view of the track to the north from this position is unobscured for some 2,000 feet. At the aforementioned stop sign the view of the track both to the north and to the south is clear. A row of trees located between the railroad track and the Highway obscures the view up and down the track for a motorist on the Highway as he approaches the junction with Richmond Avenue, either from the north or south. However, after he has

turned off the Highway preparatory to crossing the track , his view both north and south is unobscured.

The Highway speed limit in the vicinity of the crossing is 65 miles per hour and the vehicles on the Highway frequently travel at high speed past the Richmond junction.<sup>3/</sup> As of the date of hearing there was no left-turn storage lane for northbound motorists on the Highway who plan to enter Richmond and cross the railroad track.<sup>4/</sup> There is a level space on Richmond between the Highway and the approach grade to the crossing, where vehicles coming off the Highway from either north or south may stop before proceeding westerly across the track.

Railroad speed limits at the crossing are 55 and 79 miles per hour for freight and passenger trains, respectively. According to a witness for Southern Pacific the railroad grade descends toward the north, so that northbound trains have no difficulty in operating at maximum speeds. Full tonnage freight trains going south operate at considerably lower speeds. All locomotives are equipped with Mars oscillating headlights. They are turned on in the daytime as well as at night.

The staff report shows that since 1926 four deaths have resulted from train-vehicle collisions at the Richmond Avenue crossing, and injuries have been sustained by seven persons during the same period. The deaths occurred in 1948, 1953, 1955 and 1958. The injury accidents occurred in 1948, 1949 and 1950. There was a total of eight accidents during the period in question.

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<sup>3/</sup> According to the record, a year-round average of approximately 21,000 vehicles per 24-hour period operate over the Highway past the Richmond Avenue junction.

<sup>4/</sup> We take official notice of the fact that a left-turn storage lane, as above-described, has since been provided.

The staff report discloses that informal requests have been received by the Commission from the superintendent of the Encinal School District (in which Richmond Avenue is located) and others seeking the installation of an automatic crossing signal at the crossing here in issue. Said superintendent testified in support of the requests. The policy of the board of trustees of the Encinal School District, he stated, is to forbid the Encinal school buses to cross the railroad tracks at a point not protected by automatic warning device.

At the Richmond Avenue crossing the practice is to stop the bus on the paved shoulder of the Highway. Richmond Avenue students who are to board the bus in the morning wait on the west side of the tracks until the bus stops. The driver looks to see that no train is approaching, then supervises the loading of the children. Students are discharged at the crossing at various times during the period from 12:05 p.m. to 3:50 p.m. According to the superintendent, there have been as many as 23 children boarding the bus at Richmond Avenue. At the time of the hearing there were eight such students.<sup>S/</sup> He stated that a real hazard exists in the morning, in that children as young as five years of age will arrive early at the crossing and wait for the bus without supervision. He pointed out that if an automatic signal were installed the school bus would cross the railroad track and pick up the students closer to their homes, thus eliminating this hazard.

The most desirable solution to the problem, in the opinion of the staff engineer, would be to close the crossing. This recommendation was based upon the low vehicular usage, the high accident

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<sup>S/</sup> According to the staff engineer, 13 children crossed the track on the morning of February 6, 1962, to board the school bus.

record and the steepness of the grade of approach. He pointed out, however, that this would necessitate the construction of a connecting link between Richmond Avenue and Laguna Avenue or Scheller Avenue, which parallel Richmond approximately one-half mile to the north and to the south, respectively. In this connection, the record shows that Santa Clara County has no plans for such construction unless and until there is residential development in the area. The engineer, therefore, recommended that standard No. 8 flashing signals be installed and that some reduction be made in the approach grade on the east side of the crossing. He estimated the cost of installation of the signals to be approximately \$11,000. He pointed out that the Commission for many years has specified a maximum grade of approach for new crossings of six percent. A reduction of the present grade to this figure would entail raising the level of the Highway by one foot in the vicinity of the crossing. The witness estimated the total cost of approach grade adjustment to be at least \$25,000.<sup>6/</sup>

Evidence on behalf of Southern Pacific was offered through a transportation analyst, the district trainmaster, the senior assistant division engineer and the company's public projects engineer. The trainmaster described rail operations over the crossing. Exhibits introduced by the assistant division engineer reflected 24-hour counts of vehicles moving over the Richmond Avenue crossing on February 17-18, 1959, and on February 1-2, 1962. The totals were 77 and 53 vehicles for the respective periods. During the same 24-hour periods 24 and 20 trains, respectively, crossed

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<sup>6/</sup> At the conclusion of cross-examination of the staff witness, counsel for Southern Pacific again moved for dismissal of the investigation, on the ground that the staff study included no recommendation as to apportionment of costs. The motion was taken under submission.

Richmond Avenue. Considering the volume of vehicular and rail traffic involved, it was the opinion of this witness that the protection now provided at the crossing is adequate.

The carrier's public projects engineer estimated the installation cost for standard No. 8 flashing signals to be \$8,380. Annual maintenance and operating expense he estimated at \$420, which figure he capitalized at 5 percent per annum to produce an amount of \$8,400. This witness also was of the opinion that the existing protection is adequate, considering the volume of vehicular traffic. He considered that the erection of the stop sign on the west side of the track had effected the elimination of crossing accidents.<sup>7/</sup> In considering the installation of crossing devices, the witness stated, it is necessary to compare the relative needs of the various grade crossings throughout the State. The available funds, public and private, he said, must be reserved for the most important crossings. A desirable solution of the matter here in issue, in his opinion, would be for the Commission to order the Richmond Avenue crossing closed a year hence in order to give the city and county respondents time within which to construct a connecting road such as hereinbefore mentioned.

A witness for the City of San Jose testified that the City, in its plans for roadways in the involved area, considers Richmond Avenue important and desires that the crossing remain open.

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<sup>7/</sup> As hereinbefore indicated, since 1955 there has been only one accident at the crossing, namely, in 1958. On June 28, 1955, by Resolution No. ET-765 this Commission approved (in conformity with Section 459.5 of the Vehicle Code) the erection of the stop sign. It appears from the record that the sign was erected some time prior to 1958. The accident in that year involved a westbound vehicle and a northbound train.



The City, however, would not place the crossing in question high on a priority list for the expenditure of funds for improved crossing protection. But in view of the record of fatalities at the crossing, the witness said it would be difficult for the City to oppose any action which would prevent future accidents.

Counsel for the County of Santa Clara stated that the County is opposed to closing of the Richmond Avenue crossing. The County, he said, has no plans for improving the roads in the area unless and until residential development takes place. It was his understanding that, in the event improved protection or change of grade is ordered, the County would not be involved, since the crossing is located entirely within the City of San Jose, and the approach is from a State highway.

Counsel for the State Department of Public Works pointed out that the suggested plan of revising the grade of the Highway one foot (in order to accommodate a crossing approach grade of six percent) would be of no benefit to the Department and said that in some respects such a change would be detrimental to motorists entering the highway.

Briefs were filed by Southern Pacific and by the Commission's staff. In its brief the railroad reiterated its position that the Richmond Avenue crossing is a private crossing; and further that if the crossing were a public crossing, the use thereof is so unsubstantial and the cost of automatic protection so high that no protection should be ordered; and that the crossing should be closed after permitting the County sufficient time to establish connecting roadways to serve the area.

The staff in its brief argued that the crossing is a public crossing, and that if it is merely a publicly used crossing,

unlawfully established, or even if it is a private crossing, the Commission has power under Sections 1202 and 7537, respectively, of the Public Utilities Code to prescribe improved protection for, and access to, said crossing. In conclusion the brief urges the adoption of the recommendations of the staff witness.

#### Discussion and Findings

First to be considered is the argument, and evidence adduced in support thereof, of Southern Pacific that the crossing here in issue is a private crossing. The record shows that on April 14, 1914, Southern Pacific granted to the County of Santa Clara an easement "for the construction, maintenance and use of a public highway at grade" across the railroad right of way at the location now traversed by Richmond Avenue; that on April 22, 1926, the Commission wrote a letter to the general manager of Southern Pacific setting forth a plan for the assignment of a number to each grade crossing in the State, and requesting that the company furnish the Commission with a list "of all public grade crossings in Santa Clara County" together with certain additional information; that such a list, dated October 11, 1926, designated Form H and listing "publicly used crossings", included thereon Richmond Avenue at mile post 65.2; that Richmond Avenue is in fact a public county road; and that there has been no Commission order relating to the opening of the crossing, which was constructed some time subsequent to April 14, 1914, and prior to October 11, 1926.

Based upon the aforesaid evidence we find that the Richmond Avenue crossing is a public crossing. The failure of the involved public body or bodies to obtain Commission authorization to construct the crossing does not convert it into a private crossing.

We turn now to the questions of improved protection and approach grade changes at the Richmond Avenue crossing. The record shows that the crossing has the poorest accident record of any crossing between Hillsdale Boulevard, in San Jose, and Morgan Hill, a distance of 18 miles. The record further shows that of all of these public crossings, Richmond Avenue is the only one without automatic protection; that it has the steepest approach grade; and that its vehicular traffic count is among the lowest, if not the lowest of any of said crossings.<sup>8/</sup>

This crossing has the same inherent hazards that prevail at other crossings in the area, where a high speed highway parallels a high speed railroad track, with a row of ornamental trees between the two, and with limited space in which to stop after leaving the Highway before crossing the track. While it appears that a clear view of the track may be had for a considerable distance in either direction after such a stop is made, the steep approach to the track from the Highway creates an additional hazard in that a vehicle could easily stall on the track. Under such circumstances, a train coming downhill at high speed, although beyond the limit of sight at the Highway level, could reach the crossing in a sufficiently short interval of time to cause an accident. This situation could not be cured by the erection of a stop sign on the Highway side of the crossing.

The above-described hazard could be reduced by a substantial reduction in the approach grade from the Highway.

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<sup>8/</sup> It should be noted that the traffic counts, both of staff and Southern Pacific, were taken during the winter. It is reasonable to expect that the count would be much higher later in the year when the fields and orchards are being worked and particularly at harvest time.

However, the Department of Public Works opposes a reduction to either 8 or 9 percent because the level storage space remaining between the Highway and the crossing would be insufficient to conform with its design standards. However, the evidence shows that certain other crossing approaches in this area had little or no level storage space adjacent to the State Highway. If a reduction to the minimum design standard of 6 percent were made, it would be necessary to raise the Highway grade one foot, at a cost which, it appears, would not be justified. In any event, the steepness of the crossing approach can well be modified in the upper portion by reducing the 14 percent, and increasing the 9 percent, sections to a uniform grade of not over 11 percent.

The circumstances under which children board and leave the school buses at the crossing present an additional hazard which should not be tolerated. On the other hand, the school district certainly cannot be criticized for prohibiting its buses from passing over the Richmond Avenue crossing as long as said crossing is not provided with flashing automatic signals. The installation of such signals would remove the hazard to the school children.

The proposal of Southern Pacific that the crossing be ordered closed a year hence to permit the County to construct a connecting road between Richmond Avenue and Laguna Avenue or Scheller Avenue is not practicable.<sup>9/</sup> The County witnesses have made it clear that the county has no plans for such construction as long as the area remains essentially agricultural. The record

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<sup>9/</sup> Such connecting road in either case would be one-half mile in length. If a connection were made with Scheller Avenue it would also be necessary, the record shows, to make improvements in a portion of Hale Avenue.

does not disclose when, if ever, such residential development can be expected to occur.

After careful consideration of the evidence and argument we find that public convenience, necessity and safety require that the crossing of the Southern Pacific Company track at Richmond Avenue (Crossing No. E-65.2) in the City of San Jose be improved by the installation and construction of 2 standard No. 8 flashing light signals together with other protection as set forth in the ensuing order.

As hereinbefore stated, the parties stipulated that they would endeavor to reach informal agreement as to the apportionment of costs, should the Commission order improved crossing protection. In the event the parties should be unable to reach such agreement, the Commission will entertain a petition requesting that the proceeding be reopened for the receipt of evidence relative to a just and reasonable apportionment of said costs. In no event shall installation of the improved crossing protection hereinafter ordered be delayed by the cost apportionment negotiations.

The motions for dismissal are denied.

O R D E R

Based upon the evidence and upon the findings set forth in the preceding opinion,

IT IS ORDERED that:

1. The grade crossing, No. E-65.2, of Southern Pacific Company's main line track and Richmond Avenue in the City of San Jose be further protected by the installation and construction of two Standard No. 8 flashing light signals, being the type shown in General Order No. 75-B equipped with reflectorized "Stop on Red

Signal" signs. An additional set of lights shall be installed on the signal standard so as to provide adequate warning to both vehicles turning right and vehicles turning left from the State Highway onto Richmond Avenue crossing.

2. The City of San Jose shall negotiate with the State Division of Highways in order to obtain a uniform approach grade to Crossing No. E-65.2 of minimum slope possible, but in no event greater than 11 percent, and shall reconstruct said approach accordingly.

3. The acquisition and construction of said flashing light signals at said Crossing No. E-65.2 required by ordering paragraph 1 shall be effected by Southern Pacific Company, and the reconstruction of the aforesaid grade crossing approach required by ordering paragraph 2 shall be effected by the City of San Jose within six months after the effective date of this order.

4. Within thirty days after completion of work pursuant to this order Southern Pacific Company and the City of San Jose shall each so advise this Commission in writing.

5. In the event the parties are unable to reach agreement as to apportionment of the cost of effecting the improved crossing protection and approach herein ordered, the Commission will entertain a petition seeking reopening of the proceeding for the receipt of evidence relating to such apportionment and the

issuance of a supplemental order apportioning said costs on a just and reasonable basis.

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

Dated at San Francisco, California, this 25th day of September, 1962.

George G. Grover  
President  
W. L. ...  
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...  
Fredrick B. Holshoff  
Commissioners