

ORIGINAL

Decision No. 64451

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF RIALTO,

Complainant,

vs.

Case No. 7254

PACIFIC ELECTRIC RAILROAD COMPANY,

Defendant.

Robert A. McGill, for City of Rialto,
complainant.

E. D. Yeomans and Walt A. Steiger, by
Walt A. Steiger, for Pacific Electric
Railway Company, defendant.

Jack D. Eolt and Edgar C. Keller, by Jack D. Eolt,
for Rialto Orange Company; and Charles A.
Lewis for Order of Railway Conductors and
Brakemen, interested parties.

Lloyd C. Young, for the Commission staff.

O P I N I O N

The City of Rialto, complainant herein, requests that an order be made requiring the Pacific Electric Railway Company, defendant, to "abandon its franchise and spur track on Riverside Avenue, Rialto, California with removal of ties, tracks, debris...". As justification for its request the city alleges that said spur track has not been used for approximately eighteen months; that said track is in bad condition due to damage caused by a derailment; that the spur switch has been spiked open; that the spur will not be used in the foreseeable future; that the spur track and parkway in which it is located constitute a traffic hazard; and that it is necessary to remove said track in order to improve Riverside Avenue.

Defendant, on the other hand, denies that the track will not be used in the foreseeable future or that it constitutes a traffic hazard; admits and alleges that said track serves only one industry; that the last service was on June 24, 1960; and that said track is not now in serviceable condition.

Defendant further contends and alleges that public interest requires retention of the spur track; that it proposes to make the necessary repairs and restore the service; that as said track is a part of an interstate rail system this Commission is without jurisdiction in the matter; that an order requiring abandonment would be unconstitutional, being a taking of property without due process of law; and that the City of Rialto is not a proper party complainant.

Defendant's objection to complainant's request is based on a promise of future business from one industry, the Rialto Orange Company, and the possession of a 50-year franchise granted by the city on October 8, 1912.

The position of Rialto Orange Company is that it needs defendant's rail service and would use it if the service were available.

A public hearing was held in Rialto on May 16, 1962, before Examiner Mark V. Chiesa. Oral^{1/} and documentary evidence having been adduced, the matter was submitted for decision.

Having considered the evidence, the Commission finds:

^{1/} Testimony was given in support of the complaint by the city administrator and chief of police of the City of Rialto; for defendant by the vice-president and general manager of the Pacific Electric Railway Company and his assistant; and for the Rialto Orange Company by its secretary-manager.

1. That the track which is the basis of this complaint is within the City of Rialto in the center of Riverside Avenue, enters said street from the west at a point just south of Second Street, and continues southerly approximately 1,400 feet along said street to a point south of Rialto Avenue where it turns southeasterly and southerly an additional 300 feet to the plant of the Rialto Orange Company. The northerly 850 feet of said trackage are in the center of and within an unpaved 35-foot curbed-in parkway and the southerly 550 feet are within a paved street (Exhibits 1 and 2 filed with the application and Exhibit 7 in this proceeding); said trackage is part of a so-called "drill and spur" single track approximately 2,194 feet in length, leading from defendant's San Bernardino main line beginning at a point approximately 120 feet west of Riverside Avenue and ending at Date Street.

2. That the portion of said trackage which is in Riverside Avenue is a spur track which, for several years to June 24, 1960, served only the Rialto Orange Company.

3. That the last service performed over said spur track was on June 24, 1960, and that said track has not been in serviceable condition since said date.

4. That the costs of repairing said track to a serviceable condition would be approximately \$9,380.

5. That for the period of 3-1/2 years prior to the time said spur track became inoperable (January 1957 to June 1960), defendant Pacific Electric Railway Company handled for the account of Rialto Orange Company 46 cars of oranges, 2 cars of apples, and 3 cars of potatoes, or an average of 14-1/2 cars per year.

6. That Rialto Orange Company has available and uses the rail service of The Atchison, Topeka and Santa Fe Railway.

7. That defendant's franchise from the City of Rialto authorizing the operation of said track in Riverside Avenue was granted on October 8, 1912, for a period of 50 years.

8. That Riverside Avenue is the principal north-south street in the City of Rialto and that the portion of said street occupied by said spur track and parkway is within the main shopping and business area.

10. That in order to eliminate traffic hazard and improve the safety conditions within the main business district it is necessary to reduce the width of, or entirely remove, the present parkway situated in the center of Riverside Avenue.

The record shows that as recently as January 10, 1962, defendant did not look unfavorably upon the abandonment of the spur because it was "getting little or no business from the Rialto Orange Company" (Exhibit 3). At the hearing defendant reversed its position because the Rialto Orange Company had, in the meantime, objected to the abandonment and had stated it could give defendant as many as 35 cars per year. The evidence does not justify an assumption that this amount of business would be forthcoming, nor does it show how much gross or net revenue would be derived therefrom, nor that it would be sufficiently compensable to justify the rehabilitation of the track. Further, there was no showing what amount of business, if any, the Rialto Orange Company has lost by reason of the present inoperable condition of said tracks, except as was indicated by the number of cars that were

shipped in the years 1957 to 1960, which business, according to defendant, does justify the retention of the service.

Defendant's position that said track is part of an interstate rail system is not supported by the evidence.

The City of Rialto is a proper party complainant.

The Commission having carefully considered the record, further finds that retention of defendant's spur track which lies within Riverside Avenue in the City of Rialto is not in the public interest and that public convenience and necessity no longer require that it be operated.

O R D E R

A public hearing having been held, the Commission being fully advised in the premises and good cause appearing,

IT IS ORDERED that:

1. The Pacific Electric Railway Company is hereby directed to abandon and remove its trackage within Riverside Avenue in the City of Rialto from a point between First and Second Streets, where said track enters Riverside Avenue, to a point south of Rialto Avenue, where said track leaves Riverside Avenue, as more particularly shown on map filed as Exhibit 7 in this proceeding. The cost of removing the track described herein shall be borne equally by the City of Rialto and Pacific Electric Railway Company. The work shall be completed within 120 days of the effective date of this order.

2. Within thirty days after the removal of said track, as provided herein, defendant shall so advise the Commission in writing.

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

Dated at San Francisco, California,
this 23rd day of OCTOBER, 1962.

George L. Grover
President

[Signature]

[Signature]

Arnell W. Page

Fredrick B. Hallock
Commissioners