

Decision No. 65531

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THE CITY OF LOS ANGELES, a municipal corporation, to construct Tujunga Avenue at grade across the tracks of the Coast Line of the Southern Pacific Company, being Crossing No. E-459.1.

Application No. 39208

Commission Investigation into that grade crossing located at the intersection of Vineland Avenue and the tracks of the Southern Pacific Company in the City of Los Angeles, being Crossing No. E-459.6.

Case No. 6144

Roger Arnebergh, by Arthur Karma, Deputy City Attorney; Thomas V. Tarbet, Assistant General Manager, Department of Public Utilities and Transportation, City of Los Angeles, for City of Los Angeles, respondent.

E. D. Yeomans and Walt A. Steiger, by Walt A. Steiger, for Southern Pacific Company, respondent.

Earl D. Murphy, Allen B. Stephenson, Robert Bezzart, for City of Alhambra; Darrell Essex, Assistant City Manager, for City of Santa Fe Springs; Warren P. Marsden and George D. Moe, by George D. Moe, for Department of Public Works, State of California; Malcolm Davis, for Union Pacific Railroad Company; A. M. Shelton, for Atchison, Topeka and Santa Fe Railway Company; N. H. Templin, Road Commissioner for County of Los Angeles, interested parties.

Howard F. Christenson and William F. Hibbard, for Commission staff.

O P I N I O N

By Decision No. 57793, dated December 30, 1958, this Commission authorized the City of Los Angeles "to construct Tujunga Avenue at grade across the Coast Line tracks of Southern Pacific Company" subject to certain specified conditions. The order further provided that the authority to construct said grade crossing "shall not become effective for any purpose unless the City of Los Angeles and/or Southern Pacific Company shall, prior to or concurrently with the construction of the Tujunga Avenue crossing, widen the Vineland Avenue Crossing No. E-459.6 and its approaches to a minimum of 48 feet . . .", this widening being subject to certain other conditions and requirements specified in that decision. Likewise, the decision provided the type of crossing signals to be installed at each of the two crossings. By Decision No. 59433, dated December 21, 1959, an order was issued, modifying Decision No. 57793 so as to "permit the construction of the Tujunga Avenue crossing as specified therein prior to the widening of the Vineland Avenue crossing with the specific requirement that the Vineland Avenue crossing shall be widened and improved as provided in Decision No. 57793 immediately following the completion of the construction of the Tujunga Avenue crossing."

Subsequently, the Commission was advised by the Southern Pacific Company that it had been unable to reach an understanding with the City of Los Angeles concerning the maintenance of the crossing protection in connection with the above-described crossings.

Decision No. 57793 contained the following provision:

"If the parties are unable to agree upon any division of maintenance cost of signals, the matter may again be referred to this Commission."

Upon this state of the record, the Commission issued an order reopening the proceedings on February 23, 1960, "for the specific purpose of allocating the cost of maintaining crossing protection for the two described crossings."

Public hearings were held on December 13 and 14, 1961, in Los Angeles before Examiner Grant E. Syphers, on which dates evidence was adduced and on the last-named date the matter was submitted, subject to the filing of briefs by the parties. These briefs have been filed and the matter is ready for decision.

At the outset of the hearings it was stipulated between the City of Los Angeles and the Southern Pacific Company that the sole issue in this matter was "the question of allocating costs of replacing broken gate arms." Since this stipulation was entered into between the only two parties that would directly be affected as to the costs of maintaining the crossing protection for the two described crossings, the issue is thus limited.

The railroad's position was that all of the costs of maintaining these gate arms should be borne by the city, whereas the city's position was that the entire cost should be borne by the railroad. A witness for the railroad testified as to the reasons for the railroad's position. These include:

1. The increasing vehicular traffic in this state has resulted in an increasing number of damaged and broken gate arms.

2. The cost of maintaining automatic protection is becoming burdensome upon the railroad.

3. The gates and protective devices are becoming more complex and costly.

4. There is a trend throughout the state to expect railroads to increase protection provided at existing crossings.

5. Sufficient protection for grade crossings can be obtained by either stop signs or the use of No. 8 flashing light signals. Any additional protection above these should be borne by the city.

6. There is no benefit to the railroad as a result of the opening of a crossing at Tujunga Avenue, and likewise no benefit because of the installation of automatic gate arms at Vineland Avenue.

The railroad presented evidence in which it was pointed out that the cost of repairing broken gate arms in Southern California from January 1, 1955, to July 1, 1961, amounted to \$70,991, at an average cost per accident of \$98.73. In the City of Los Angeles the average cost is \$119.01 because the traffic density is greater. It was also testified that the use of automatic gates is increasing rapidly and the cost of maintaining them is a burden to the railroad. Further testimony disclosed that in most cases of crossing gate damage the Police Department does not have a written report thereof and that it is extremely difficult to determine who caused the damage.

The Deputy Chief of Police for the City of Los Angeles presented testimony relative to the traffic citations issued during the period of April to October, 1961, concerning such offenses as

failure to stop at a railroad crossing when a warning device is operated and failure to stop at a grade crossing where there is a boulevard stop sign. He pointed out that there has been some difficulty with the Southern Pacific Company regarding the reporting of accidents in that Southern Pacific Company employees only give the names of the parties involved and no additional information. Testimony was presented by witnesses for the City of Los Angeles and the County of Los Angeles to the effect that the costs of maintaining and repairing gate arms which are the property of the railroad should be borne by it. The substance of this testimony was that the railroad is in a better position to investigate accidents and that it has been customary for the railroad to pay the costs of grade crossing protection.

A representative of the City of Alhambra stated that it was the position of that city that the railroad should bear the entire maintenance cost of broken gate arms. Alhambra now has one crossing gate at Fremont Avenue and anticipates new crossing gate installations at Atlantic Boulevard, Garfield Avenue, and Chapel Avenue. All of these would be crossings of the Southern Pacific tracks.

The position of the Department of Public Works, Division of Highways, was stated to be that it was opposed to the transfer of any cost relating to broken gate arms to public bodies and that such costs should be borne by the railroad.

Upon the basis of this testimony the matter was submitted and statements of position were filed by the City of Los Angeles and the Southern Pacific Company. The position of the railroad was that the Commission has authority to allocate these costs to

the city and that it would be a proper exercise of the Commission's discretion to allocate to the city all of the costs of replacing broken gate arms involved in this proceeding. The position of the City of Los Angeles was that the Commission does not have jurisdiction to assess any of these costs to the city; that it is the historical obligation of the railroad to improve and maintain crossing protection; and that to apportion any part of the maintenance cost would be in violation of the Constitution of the State of California.

Upon consideration of all of the evidence adduced herein we make the following findings of fact:

1. Gate arms at grade crossings are frequently damaged or broken by motorists. The cost to the railroad of broken gate arm replacement in the City of Los Angeles for the period from January 1, 1955, to July 1, 1961, amounted to \$18,804, or an average of \$2,890 per year.

2. The railroad is advantaged by gate arms at grade crossings because of the resultant promotion of safety and the facilitation of train operations. Gate arms for the two crossings here concerned are a more effective method of affording protection than that provided by stop signs or No. 8 flashing light signals.

3. Gate arms are installed by the railroad or under its direction and are operated by it. Heretofore the railroads have been required to pay the cost of maintenance of gate arms which are a part of the mechanism necessary for the protection of the type of crossing here involved.

4. Crossing protection, equipment used in connection therewith, and mechanisms appurtenant thereto, including automatic gate arms, are the property of the railroad, subject to its direction and control and not of the City.

It must be borne in mind that the railroad's responsibility to keep at a minimum the hazards at all points of highway crossings with its line, is a continuing one, and allocation of the cost of providing protection, including maintenance, at grade crossings depends upon the circumstances and equities in each instance.

In view of the foregoing we have decided that in the instant proceeding, it is proper that the railroad assume the entire cost of maintaining the automatic gate arms installed at the two crossings with which we are presently concerned.

In passing it should be noted that we hold that in an appropriate case authority is vested in the Commission to assess a municipality for the expense of maintaining and replacing automatic gate arms located at grade crossings.

#### ORDER

A public hearing having been held and the matter now being ready for decision,

IT IS ORDERED that:

1. Southern Pacific Company be and it hereby is directed to maintain, and replace if necessary, automatic gate arms at the following two crossings: Crossing No. E-459.6, which is an intersection of Vineland Avenue and the tracks of the Southern Pacific Company in the City of Los Angeles, and Crossing, No. E-459.1, which

is an intersection of Tujunga Avenue and the tracks of the Coast Line of the Southern Pacific Company in Los Angeles.

2. In all other respects the orders of this Commission in Decision No. 57793, dated December 30, 1958, and Decision No. 59433, dated December 21, 1959, are hereby affirmed.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of June, 1962. MG

[Signature] President  
[Signature]  
[Signature]  
[Signature]

Commissioners

*I dissent. Crossing protection serves both the railroads and the motoring public. Both should share in the cost of maintaining it.*

*George H. Trover*  
Pres.

~~*I dissent.*~~

*I dissent. I will file my dissent later*

*Frederick B. Hobbuff*  
Commissioner



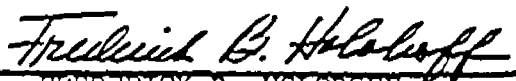
HOLOBOFF, Frederick B., Commissioner, dissenting

I dissent.

I would require that the expenses in issue here be shared by the railroad and the city. This conclusion follows after considering what I judge to be the real issue presented in this case. The question is not simply whether the entities involved herein, that is, the railroad as a public utility and the city as a municipal corporation should be required to share such expenses. Rather, I submit, it is the public consisting of the railroad's patrons or ratepayers and the city's taxpayers that is involved. Specifically, therefore, the issue is whether, in the absence of such sharing, it is just that one segment of the public, namely, ratepayers, bear the entire burden of maintenance costs which are necessitated by an admitted need to protect both such ratepayers and the general vehicle-using public.

Under our regulatory scheme, the determination of the railroad's rates and fares takes into account all proper and reasonable expenses of operation. One such expense, minor though it may be in relation to the total, would be the expense of repairing broken gate arms. It follows then, that if the railroad is required to pay the entire amount of such expenses, in principle and in fact it is the ratepayers thereof who ultimately bear such costs.

In my view such a result is unjust when it is considered that gate-arm type crossing protection benefits the taxpaying public as well. It is made even more unjust when it is considered that in most instances, as the record herein shows, the expense involved in repairing broken gate arms is occasioned by vehicles used by the public at large.

  
FREDERICK B. HOLOBOFF  
Commissioner

San Francisco, California  
June 5, 1963