

Decision No. 66381**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety, use)	
and protection of the following)	
crossing of SOUTHERN PACIFIC COM-)	
PANY in or near the City of Fresno,)	Case No. 7463
County of Fresno; Crossing No.)	
BA-206.9, Thorne Avenue.)	

ORDER OF MODIFICATION

By Decision No. 66068, dated September 24, 1963, in Case No. 7463, the Commission issued an interim order providing for the installation of protective signals at Thorne Avenue crossing in the County of Fresno. The apportionment of costs between the County of Fresno and the Southern Pacific Company was on the basis of 50 percent to be paid by each.

On October 3, 1963, Southern Pacific Company filed a petition for rehearing and a request for oral argument before the Commission en banc.

Case No. 7463 has been consolidated with Case No. 7464 relating to the Prune Avenue and Warren Avenue crossings in the City of Fremont. By Decision No. 64942, dated February 13, 1963, an interim order was issued in said matter authorizing the installation of signals and apportioning the installation costs on the basis of 50 percent to the City of Fremont and 50 percent to the Southern Pacific Company and the Western Pacific Railroad.

By Decision No. 66068 the Commission found that "public convenience and necessity and safety require that the Southern Pacific Company tracks at Thorne Avenue (Crossing No. BA-206.9)

in the County of Fresno be further protected by the installation and construction of a total of two Standard No. 8 flashing light signals" By ordering paragraph 3 of said decision, costs of installation of the improved crossing protection were apportioned on the basis of 50 percent to be paid by the County of Fresno and 50 percent to be paid by the Southern Pacific Company. Apportionment of maintenance costs was deferred pending a final decision on this issue in the consolidated matters.

Southern Pacific Company in its petition for rehearing now claims, among other things, that the apportionment of the costs of installation of the protection devices at Thorne Avenue crossing is an issue in this proceeding and is contested by reason of an agreement (Exhibit No. 16) entered into by the Southern Pacific and the County of Fresno, which agreement, if interpreted as contended by Southern Pacific, would require the County of Fresno to pay for both the costs of installation and maintenance. Accordingly, it is claimed that since the Commission did not make a finding as to the aforesaid agreement, its order requiring an allocation of installation costs upon the basis of 50 percent is premature. Upon consideration, Southern Pacific's contention in this regard has merit. The order herein will delete ordering paragraph 3 of Decision No. 66068 which apportions the cost of installation on the basis of 50 percent to be paid by the County of Fresno and 50 percent to be paid by Southern Pacific.

Southern Pacific also contends that the Commission, contrary to the requirements of Section 1705 of the Public Utilities Code, made no finding as to (1), the need for an interim order prior to submission; (2), the need or requirement for automatic crossing protection; (3), any change in circumstances which require additional protection; (4), adequacy or inadequacy of existing

protection; and (5), whether the need for additional protection is attributable to an increase in vehicular traffic, particularly truck traffic. Finally it contends that the ultimate finding of convenience and necessity does not comply with Section 1705 of the Public Utilities Code and the mandate of the Supreme Court in Cal. Motor Trucking v. Public Util. Comm'n, 59 Adv. Cal. 283 (1963) at 286.

The Commission finds that Decision No. 66068 should be amended by deleting the last paragraph on page 2 and adding thereto the following findings of fact:

1. Thorne Avenue crossing over the tracks of Southern Pacific (Crossing No. BA-206.9) in the County of Fresno is a public crossing at grade which is presently protected by two Standard No. 1 crossing signs.
2. Train traffic over said crossing consists of 10 trains per day, including two passenger trains.
3. Vehicular traffic over said crossing consists of an average of 2,000 vehicles per day.
4. Said train and vehicular traffic create a hazard to the public safety at said crossing. During the period 1930 through July 27, 1961, there have been five accidents at the crossing, with one person injured.
5. The protection afforded by two Standard No. 1 crossing signs at said crossing is not adequate to protect the public safety.
6. Public convenience and necessity and safety require that the Southern Pacific tracks at Thorne Avenue (Crossing No. BA-206.9) in the County of Fresno be further protected by the installation and construction of a total of two Standard No. 8 flashing light signals.
7. The issues of apportionment of the costs of installation and maintenance of said improved crossing protection are not ready for decision at this time. It would be adverse to the public safety to withhold the installation and construction of said improved crossing protection pending a final determination of said issues. Accordingly, the improved crossing protection should be installed and constructed as provided for in the order herein.

The final order will resolve the issue of the maintenance costs in Cases Nos. 7463 and 7464 and the issue of the installation costs in Case No. 7463.

Therefore, good cause appearing,

IT IS ORDERED that:

1. Ordering paragraph 3 of Decision No. 66068 reading as follows:

"3. The costs for installing and constructing the signals set forth in ordering paragraph 1 hereof shall be apportioned on the basis of fifty percent to be paid by the County of Fresno and fifty percent to be paid by the Southern Pacific Company."

is hereby deleted therefrom.

2. The last paragraph on page 2 of Decision No. 66068 is hereby deleted and the findings hereinabove set forth shall be inserted in lieu thereof.

3. In all other respects Decision No. 66068 shall remain in full force and effect.

4. The petition for rehearing and for oral argument before the Commission en banc filed by Southern Pacific Company is hereby denied.

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

Dated at San Francisco, California, this 26th day of November, 1963.

Shelley A. Brundage
President
George T. Trover
Freddie B. Holoboff
Commissioners