

ORIGINALDecision No. 66656

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety,
 maintenance, operation, use and
 protection of the following
 crossing at grade with the lines
 of The Western Pacific Railroad
 Company in or near the City of
 San Jose, County of Santa Clara,
 State of California: Crossing
 No. 4-G-17.2, San Antonio Street.

Case No. 7639
 (Filed June 4, 1963)

Walter G. Treanor, for The Western Pacific Railroad
 Company; Marvin G. Haun, for the County of
 Santa Clara; and Donald C. Atkinson, for the
 City of San Jose, respondents.
Elmer Siostrom, for the Commission staff.

O P I N I O N

This is a proceeding instituted by the Commission for the purpose of investigating the safety, maintenance, operation, use and protection of that crossing at grade with the tracks of The Western Pacific Railroad Company and San Antonio Street in and near the City of San Jose. An interim order requiring the installation of automatic signal devices and requiring the sharing of the cost of the installation on the basis of 50 percent to be borne by the railroad and 25 percent each by the City and the County was entered September 24, 1963. (Decision No. 66069.)

The issue remaining for determination at this time is whether the Commission should order the City and County to share in the costs of maintaining the signals after they have been installed. A hearing was held before Examiner Rowe in San Jose on August 21, 1963, at which the parties were granted permission to file concurrent briefs limited to this issue only. Such briefs have been filed.

The City and County contend that the Commission lacks jurisdiction to apportion the cost of maintaining the signals between them and the railroad. They further maintain that in any event the cost of crossing protection maintenance is the sole responsibility of the railroad.

The railroad took the position that the Commission does possess such jurisdiction and requests that the City and County be ordered to bear 50 percent of the cost of maintaining the signals and that it bear the remaining 50 percent.

The Commission, over a long period of years, has consistently exercised the power to allocate or apportion both installation and maintenance costs of crossings, whether at grade or separated, and of protective devices thereat. In the exercise of the power the full maintenance costs of protective devices have been allocated to the railroad. Neither the power nor the exercise thereof has hitherto been abridged or annulled by any decision of the Supreme Court or by any act of the Legislature.

In Decision No. 66454 dated December 10, 1963 (City of Concord), at mimeograph pages 8 and 9 the Commission stated:

"An allocation of crossing maintenance costs must not result from an arbitrary exercise of power and it must be fair and reasonable. ... The long-established policy of this Commission has been to require the railroads to pay the costs of maintaining protective devices. ... The Commission finds no reason to change this policy under the facts of this case. 'It should be recognized that the railroad has a continual obligation to participate in the matter of constructing and maintaining reasonable and adequate crossings over its tracks, both

at grade and at separated grades. This obligation is inherent, notwithstanding the fact that the traffic on the railroad may increase or decrease.' ... The growth of a community is a normal occurrence which a railroad must be prepared to meet in the discharge of its lawful duty. The Olivera Road Crossing is a product of the normal growth of the City of Concord. Crossing protection benefits the railroad as well as the general public.

"To require the railroad corporation, here concerned, to assume the expense of maintaining protective devices at the crossing, here involved, is doing nothing more than requiring it to discharge a fundamental, elementary and existing public obligation imposed upon it as a result of its own chosen activity in operating as a railroad." (Citations omitted.)

Based upon the evidence of record in this matter the Commission makes the following findings and conclusion:

Findings of Fact

1. The necessity for automatic crossing signals at Crossing No. 4-G-17.2, over the tracks of The Western Pacific Railroad Company at San Antonio Street in and near the City of San Jose and Santa Clara County, results from the normal growth of said City and County.
2. The assessment of maintenance costs, herein, against The Western Pacific Railroad Company is just, fair and equitable and constitutes a public obligation which said railroad should bear.

Conclusion of Law

The Western Pacific Railroad Company should be ordered to pay for the cost of maintaining the protective signal devices at the crossing.

O R D E R

IT IS ORDERED that The Western Pacific Railroad Company shall pay the cost of maintaining the protective signals (two Standard No. 8 flashing light signals as described in General Order No. 75-B) at the grade crossing (Crossing No. 4-G-17.2) of its tracks over San Antonio Street in and near the City of San Jose and Santa Clara County.

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

Dated at San Francisco, California, this 21st day of January, 1964.

William B. Burnett
President
Ed. E. Mitchell
George H. King

Commissioners

*We dissent.
We would apportion maintenance costs 50% to the railroad, 25% to the city, and 25% to the county.*

*George G. Grover
Frederick B. Hallock*