

ORIGINAL

Decision No. 67352

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the status, maintenance, operation, use, safety and protection of that crossing, at grade, of the track of THE ATCHISON, TOPEKA and SANTA FE RAILWAY COMPANY, near the San Juan Capistrano Airport, Orange County, and located at Mile Post 198.55.

Case No. 7823
(Filed January 21, 1964)

Matthew H. Witteman, for The Atchison, Topeka and Santa Fe Railway Company; respondent.
Jack Callahan; Ernest A. Thompson, for the City of San Juan Capistrano; and G. R. Mitchell, for the Brotherhood of Locomotive Engineers; interested parties.
Lawrence Q. Garcia and Lloyd C. Young, for the Commission staff.

O P I N I O N

The above-entitled investigation was instituted for the purpose of determining whether or not a private crossing over the single-line track and right of way of The Atchison, Topeka and Santa Fe Railway Company (Railway), on a road between the old U.S. Highway 101 and the San Juan Capistrano Airport, should be closed, and, if not closed, what protection should be ordered to be installed thereat and who should pay the costs of such protection.

A public hearing was held before Examiner Rogers in San Juan Capistrano on April 21, 1964, and the matter was submitted. Notice of the hearing was sent to various parties including the Board of

Supervisors of Orange County and the Orange County Road Department, neither of which made an appearance at the hearing.

The Railway's main line between Los Angeles and San Diego was established sometime prior to 1916 in approximately the same right of way as at present. In 1916 the ownership of the land which includes the crossing herein referred to (crossing at Milepost 198.55) was owned by a family named "Daneri". In 1916 this family granted to the Railway an easement for a right to construct and maintain rip rap protection along the creek to the west of and adjacent to the right of way. In exchange for such easement the Railway granted the Daneri family, their heirs, personal representatives, successors and assigns, a permanent crossing over the track. It was agreed that the crossing was "for the sole use and benefit of the first parties, and that the gates to be installed thereat should at all times be kept closed and fastened so that said crossing shall not be used by others". This is the crossing herein referred to. By mesne conveyances a portion of the Daneri property, including the crossing, was acquired by Jack Callahan in or about the year 1951. Jack Callahan developed on his property a private airport known as the "San Juan Capistrano Airport," which is used and usable for light planes and helicopters. He has 12 regular parking customers who pay him by the month and he charges by the night for transient guests. He sells high test aviation gasoline and a tank load of such gasoline is delivered by truck across the track over said private crossing approximately once every two months.

For all practical purposes the only access to this airport is by an unpaved private road over property lying between old

U.S. Highway 101 and the Railway's right of way, which property is owned by parties not involved in this matter. This private road is east of the Railway's right of way and is entirely in the City of San Juan Capistrano. The Railway's right of way is immediately adjacent to the city, but outside the city limits and in the County of Orange. The private access road approaches, grades, protective devices and train speeds are as follows:

1. Tracks	1	(main line, on 2 deg. curve)
2. Approaches	8	feet wide, dirt
3. Crossing	12	feet wide, paved, 90 deg.
4. Approach grades	3%	east of track
	6%	west of track
5. Protective devices	1	stop sign
	1	sign "Stop Here"
	2	private property signs of A.T.&S.F. Ry.
6. Maximum permitted train speed	35	miles per hour
7. Number of trains per day	14	
8. Accident record	None	

The private road is used by Jack Callahan, by persons renting space at his airport or using the airport, by the gas delivery truck and by neighbors who obtain irrigation water from a pump on the airport side of the Railway. The number of automobiles using the crossing varies from zero to over 100 per day.

The sight distances as determined by the Commission's engineer are as follows:

	Sight Distances	
	Looking to the NORTH of the road	Looking to the SOUTH of the road
<u>From points EAST of the track, at distances shown</u>		
100 ft. from track	150 ft.	40 ft.
25 ft. " "	600 ft.	300 ft.
16 ft. " "	660 ft.	1,150 ft.
<u>From points WEST of the track, at distances shown</u>		
100 ft. from track	1,000 ft.	1,150 ft.
25 ft. " "	800 ft.	3,000 ft.
16 ft. " "	800 ft.	3,000 ft.

There have been negotiations and correspondence concerning this crossing with various parties. The city is not interested in improving the road or the protection at the crossing. The County Road Commissioner has recommended a public crossing provided that the City of San Juan Capistrano arrange for the construction. Jack Callahan is interested in a better crossing with adequate protection, but stated that he has no funds with which to assist in construction.

The Commission's engineer concluded that the crossing is the only access to and from the airport and that the crossing is unduly hazardous because of lack of protection, restricted visibility and the rough, narrow approaches to the track. He recommended that the crossing be protected with two Standard No. 8 flashing light signals, that the right of way be improved to a width of 24 feet with grades of approach not to exceed six per cent, and that the costs of making these improvements be allocated between the Railway and Jack Callahan, and that if the improvements are not made the crossing be closed.

Jack Callahan testified that his airport is very important to the public; that it is used on numerous occasions by public officials; and that in his opinion the road is perfectly safe. He stated that he is not in any position to help pay the costs of any signal protection or improvement at the crossing.

An engineer for the Railway testified that this crossing was installed in 1916; that there have been realignments of the track, but the crossing location is the same as the original; that according to the original agreement gates were to be installed at the crossing on the west side of the right of way and the gates were to be kept locked to prohibit the public from using the crossing, and that the gates are in place as required by the agreement.

Jack Callahan testified that the gate is in place as required by the original grant, but the gate is kept open, the crossing is used by the general public and once a year he closes the gate to keep the crossing from becoming a public right of way.

The City Administrator of the City of San Juan Capistrano stated that the crossing is not in the city; that the city does not desire to participate in the cost of improving the crossing, and that it concurs with the staff engineer that the property owner and the Railway should pay the costs of any improvement.

A representative of the Brotherhood of Locomotive Engineers stated that the Brotherhood is concerned with grade crossing accidents; that this is a private crossing, and the gate at the crossing was formerly padlocked; that most of the recent crossing accidents have occurred at so-called private crossings; and that in addition to the 14 regular trains over this crossing each day, each

of which proceeds at a speed of 35 miles per hour, there are numerous extra trains. It was his opinion that this is a dangerous crossing, and he recommended to the Commission that until such time as the parties can reach an agreement relative to the allocation of costs of adequate protection and improvements, the crossing gate should be locked and kept locked.

Upon the record herein, the Commission finds that:

1. The crossing at Milepost 198.55 is a private crossing in the County of Orange across the main line track of The Atchison, Topeka and Santa Fe Railway Company between Los Angeles and San Diego, although said crossing is being permitted to be publicly used.

2. The right to use this crossing was acquired by Jack Callahan's predecessor in interest; that the crossing is a private crossing agreed to be closed by a gate but is now being permitted to be publicly used; that Jack Callahan operates a private airport; that access to said airport is via said crossing; that as many as 100 automobiles per day use said crossing; and that the gate at said crossing is closed only once each year.

3. Visibility at this crossing is limited; the crossing is narrow and the protection consists of a sign at the right of way, "Stop Here", and a boulevard stop sign.

4. A minimum of 14 trains per day use the track at the crossing; there are additional trains; and the maximum permitted speed at crossing is 35 miles an hour.

5. There have been no accidents at the crossing.

6. The crossing is hazardous to both trainmen, passengers on trains, and the public using the crossing.

7. The City of San Juan Capistrano, the County of Orange, the Railway, and the owner of the airport property west of the Railway at the crossing refuse to contribute to the cost of improving the crossing.

8. The public convenience, necessity and safety require that the crossing be widened, paved and protected and the costs of improvements and protection allocated between the Railway and Jack Callahan as stated in the order herein.

O R D E R

IT IS ORDERED that:

1. The crossing at Milepost 198.55 over the track of The Atchison, Topeka & Santa Fe Railway Company in Orange County shall within ninety days after the effective date hereof be improved so that the width of the crossing shall be twenty-four feet and the grades of approach shall be not greater than six per cent and protection shall be by two Standard No. 3 flashing light signals. It shall be identified as Crossing No. 2-198.5. Construction shall be equal or superior to Standard No. 1 of General Order No. 72.

2. The construction expense shall be divided equally between the Railway and Jack Callahan. The Railway shall bear the cost of maintaining the crossing in the right of way and protective devices.

3. This investigation shall remain open until further order of the Commission. If it is determined that the requirements of

ordering paragraph 1 are being complied with the investigation shall, by further order herein, be discontinued. If it is determined that the requirements of ordering paragraph 1 are not being complied with, further hearing shall be held with a view to ordering the closure of said crossing.

The Secretary of the Commission is directed to cause personal service of this order to be made upon The Atchison, Topeka and Santa Fe Railway Company, Jack Callahan, City of San Juan Capistrano, the Brotherhood of Locomotive Engineers, the Board of Supervisors of Orange County and the Director of the Orange County Road Department. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 17th day of JUNE, 1964.

William L. Bernard
 President

Robert E. [unclear]

George L. [unclear]

Frederic B. Holbrook
 Commissioners