

ORIGINAL

Decision No. 68035

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of the)
CITY OF ANAHEIM to widen a City Street)
Across the Right of Way of the SOUTHERN)
PACIFIC COMPANY and the apportionment)
of future maintenance costs.)

Application No. 46574
(Filed April 17, 1964)

Alan R. Watts, for the applicant.
Randolph Karr and William E. Still, for
Southern Pacific Company, protestant.
John P. Ukleja, for the Commission staff.

O P I N I O N

Applicant City proposes to widen and improve Katella Avenue to accommodate additional vehicle and pedestrian traffic by the widening and alteration of Crossing No. BK-512.4 at grade of Katella Avenue and the Southern Pacific Company.

A public hearing was held in Anaheim, California, on August 19, 1964, before Examiner DeWolf, at which time four witnesses testified, three exhibits were received in evidence, and the matter was submitted.

The applicant alleges that the public need will be served by the proposed widening of the crossing by reason of the following conditions: The City of Anaheim is presently widening Katella Avenue to a maximum width of 94 feet, to provide for three traffic lanes in either direction; the existing railroad

crossing is two lanes in width, one lane in either direction; the overcrossing of the Santa Ana Freeway to the west is to be widened and connected directly to the freeway for both on and off traffic; the road is carrying an average daily volume of approximately 20,000 vehicles, and present estimates place the average daily volumes at 30,000 vehicles within a year; the two-lane crossing will be extremely hazardous and congestive until it is widened.

Previous to the taking of evidence counsel for protestant Southern Pacific Company moved to dismiss the application and read into the record the asserted legal grounds therefor and protestant's position with respect thereto.

Counsel for the City of Anaheim stated that funds are available for the improvement of the crossing and that the costs of the improvement and installation of protection will be paid for by the City of Anaheim.

A traffic engineer for applicant testified that approximately 20,000 cars use the crossing and that certain road improvements will increase the traffic to twenty-five or thirty thousand per day in a short time, and that the allegations of the application are true and correct. The witness testified the "Angels", a major league baseball team has moved to Anaheim and a stadium will be built near the crossing which will produce an estimated 16,000 cars during two and one-half hours, and that new ramps for the Santa Ana Freeway are scheduled to be in operation this winter and will increase the traffic at this point. The witness testified that the crossing is 24-feet wide at present while Katella Avenue is 80- to 86-feet wide and will be improved to 94-feet wide at most points.

The City traffic engineer also testified that the City would approve the installation of automatic gates in addition to the flashing lights requested in the application.

Counsel for protestant renewed the motion to dismiss the application at the completion of applicant's evidence, examined three witnesses and offered three exhibits, which were received in evidence. Exhibit No. 1 is a blueprint of the crossing with Katella Avenue and shows Santa Ana Freeway also crossing Katella Avenue and the spur tracks of the railroad. Exhibit No. 2 is a map of the City of Anaheim, attached to the application and Exhibit No. 3 is a 52-page folder of statistical data compiled by the Southern Pacific Company.

Protestant's witnesses testified that both the Southern Pacific Company and the Pacific Electric Railway Company have joint operating rights on this line which is used for freight trains only that make five round trips for the Southern Pacific and one round trip for the Pacific Electric; that there is a 300-foot spur track just north of Katella Avenue; that this location will be at the throat of a small yard; that freight traffic is expected to increase on this line; that trains operate at 30 m.p.h. with an average of 20 m.p.h., and that the movements are pretty well spread over a 24-hour period. The witnesses further testified that at times switching moves occupy this crossing for a period up to 10 minutes. A civil engineer testified for protestant that a grade separation would be a better improvement at this crossing but that in the absence of necessary funds, he recommended four

automatic crossing gates with No. 8 flashing lights, and estimated the cost of such signals with grade crossing predictors as follows:

Four gates, lights and predictors	\$23,750
Maintenance per year	1,541

An engineer for the Commission staff appeared and examined some of the witnesses and agreed with the witnesses who testified as to the type of protection needed at this crossing with the added recommendation of installation of two 20,500 lumen, mercury vapor lamps for illumination of this crossing at night.

All parties appearing herein agreed as to the type of protection needed at this crossing, and the other issue remaining is the apportionment of costs.

At the close of the evidence counsel for protestant renewed the motions to dismiss and read into the record the arguments therefor citing numerous changes in conditions and referring to statistics set forth in Exhibit No. 3, and opposed the assessment of the costs of these improvements to the railroad and generally raised constitutional questions as follows: (1) To assess Railroad with the cost of installing and maintaining of crossing protection would deprive Southern Pacific Company of its property without due process of law and without just compensation. (2) Taking the above action would subject Southern Pacific Company and its facilities and property to undue, unreasonable, and excessive burdens, in violation of the Constitution of the United States and this State. (3) Such assessment would contravene Article I, Section 10, of the United States Constitution, which provides in

part: "No State shall ... pass any ... law impairing the obligation of contracts ...". (4) Such assessment would contravene Section 16 of Article I of the Constitution of the State of California, which provides in part: "No ... law impairing the obligation of contracts shall ever be passed."

The Commission finds that:

1. The separation of grades at the proposed widened crossing is not practical at the present time for the reasons that this is a branch line and train volumes at this crossing are relatively low. There are a number of other main line crossings within the area on which any available funds should be spent prior to considering this location.

2. There are no issues in connection with the application of the City to widen the crossing. The only issues concern the necessity for the installation of improved crossing protection and the amount of the cost of the additional crossing protection.

3. The recommendation of the City traffic engineer, the Railroad engineer and the Commission staff engineer for improving the protection of the Southern Pacific railroad crossing of Katella Avenue (Crossing No. BK-512.4) when the street is widened, by installation of four Standard No. 8 flashing light signals supplemented with four automatic crossing gates, is reasonable, and should be adopted.

4. Public health, safety, convenience and necessity require that the protection of the crossing at Katella Avenue in the City of Anaheim be upgraded by installation of four Standard No. 8 flashing light signals (General Order No. 75-B) supplemented with four automatic crossing gates, to be done with the widening of said crossing, as provided in the following order.

Based upon the findings of fact, and in conformity with the policy and holding announced in Decision No. 66454, dated December 10, 1963, and Decision No. 66881, dated February 25, 1964, we conclude that the cost of maintaining protective devices at the crossing, herein concerned, should be borne exclusively by the Railroad. The motions to dismiss this proceeding should be denied.

O R D E R

IT IS ORDERED that:

1. The motions to dismiss this proceeding on constitutional grounds are denied.
2. The City of Anaheim is authorized to widen and improve the grade crossing at Katella Avenue and the Southern Pacific Company tracks (Crossing No. BK-512.4) substantially in the manner and in accordance with the plans introduced in this proceeding, subject to the conditions as herein set forth.
3. The work required to be performed at said crossing between lines two feet outside of rails and the work of installing signals and automatic gates shall be performed by Southern Pacific Company.
4. Southern Pacific Company shall bear the entire cost of preparing the tracks to receive the pavement for the widened portions of the crossing between lines two feet outside of rails and the full cost of improving the present crossing between such lines.
5. Crossing protection at said crossing shall be by four Standard No. 8 flashing light signals (General Order No. 75-B).

supplemented by four automatic crossing gates, and two 20,500 lumen, mercury vapor lamps. The City of Anaheim shall bear the costs of installation of said flashing lights and automatic gates at said crossing, and the installation of the two 20,500 lumen, mercury vapor lamps.

6. The maintenance costs of the crossing between lines two feet outside rails and for the automatic protection installed at the crossing shall be borne by the Southern Pacific Company.

7. The City of Anaheim shall bear the remainder of the expense of constructing and maintaining the proposed widened crossing and approaches, and the cost of maintenance of the mercury vapor lamps.

8. Within thirty days after the completion of the work hereinabove authorized applicant and protestant shall notify the Commission in writing of the compliance with the conditions hereof.

9. The improvements herein provided for are to be completed within six months from the date of this order.

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

Dated at San Francisco, California, this 13th day of OCTOBER, 1964.

~~Frederick B. Halberoff~~
~~President~~
~~George G. Grover~~
~~Commissioner~~

I concur except as to the determination that City bear all maintenance costs of crossing protection devices.

Frederick B. Halberoff Commissioners