

ORIGINAL

Decision No. 68777

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 widen and improve Pacific Electric Railway Company's San Bernardino Line Spur Track Crossing of Alcazar Street.

Application No. 46864
(Filed August 3, 1964)

Roger Arnebergh, City Attorney, by
Warren I. Wolfe, for applicant.
Walt A. Steiger, for Pacific Electric
Railway Company, protestant.
John P. Ukleja, for the Commission
staff.

O P I N I O N

Applicant City proposes to widen, realign and improve Alcazar Street to accommodate additional vehicle and pedestrian traffic and to widen and alter Crossing No. 6T-3.83-C at grade of Alcazar Street and the Pacific Electric Railway Company's line. ✓

A public hearing was held in Los Angeles, California, on October 13, 1964, before Examiner DeWolf, at which time five witnesses testified, twelve exhibits were received in evidence, and the matter was submitted.

The applicant alleges that the public need will be served by the proposed improvement of the crossing; that the County of Los Angeles has prepared plans for the widening, realignment and improvement of Alcazar Street and has authorized the City to

contract for the construction, and that the Council of the City of Los Angeles has approved the project. Sketches of the proposed improvement are attached to the application as Exhibits A and B.

The application alleges that the Pacific Electric Railway Company's San Bernardino Line single track spur crosses Alcazar Street approximately 100 feet west of Soto Street, the intersection at Alcazar and Soto Streets being slightly offset. San Pablo Street is immediately west of said crossing and parallel to Soto Street. By way of two awkward jogs at San Pablo Street, Alcazar Street becomes Henry Street west thereof. The contiguous area north of Alcazar Street between San Pablo Street and Soto Street is predominately light manufacturing; the contiguous area south thereof is predominately commercial and multiple residential, with governmental facilities in proximity therewith. Alcazar Street presently has a roadway width of approximately 25 feet. A traffic count on June 30, 1964, showed that 4,416 vehicles traversed the Alcazar Street crossing at Soto Street during a 24-hour period, generating traffic delay and congestion.

The City proposes that the crossing be widened, realigned and improved with curbs, gutters, sidewalks and asphalt concrete pavement providing a 64-foot wide roadway and two 8-foot wide parkways. The application alleges that the widening, realignment and improvement of Alcazar Street will eliminate the awkward jogs at San Pablo and Henry Streets and at Alcazar and Soto Streets, thus creating safer and more efficient traffic flow with Henry Street, the Hazard Park, General Hospital and other governmental agencies in the area.

The City presented the testimony of three of its project engineers in support of the application and offered Exhibits 1 through 7 which were received into evidence.

The Railroad appeared and protested the application, but did not oppose the improvement of the crossing. The issues raised by the protestant involve the type of signal protection to be installed and the apportionment of the costs of the crossing improvement and the signal protection, and the claim of the protestant for compensation for additional easements over the railroad right of way for the realignment of the street at the crossing. Applicant has recommended the installation of two No. 8 flashing lights for the protection of this crossing, while the Railroad recommends that the flashing lights be augmented with gates.

The evidence is that the Railroad's operations at the crossing usually begin after midnight and extend through 6 or 7 a.m., and generally coincide with the minimum traffic flow. Exhibit 11 is as follows:

Alcazar Street - Relocation, Widening and Lowering.

RAIL TRAFFIC

Service Provided: Seven days per week
two to three round trips daily

Major Move consists of from 10 to 12 cars per day.
Other Moves made for switching purposes vary in number of cars handled from 0 to 5 or 6.

Speed of trains permitted by timetable: 30 m.p.h.
Actual speed generally observed: Northbound 10 m.p.h.
Southbound 15 m.p.h.

The improvement of the crossing by the City calls for lowering of 400 feet of track one and one-half feet and the realignment of

the intersection so that present portions of the street easements would be returned to the Railroad, while other portions of the Railroad right of way would be required for the street intersection. The locations of these portions are set forth in Exhibit 8, which is a blueprint of the Railroad right of way and this intersection.

Exhibit 9 is the estimate of costs of the protection and improvement of this crossing as follows:

Alcazar Street - Relocation,
Widening and Lowering
Summary of Estimates of Cost

Track Reconstruction for Relocated & Widened Crossing	\$ 6,770
Track Lowering	
Within Limits of Crossing	880
Outside Limits of Crossing	4,180
Paving	
Within Limits of Existing Crossing	640
Within limits of Widened and Relocated Crossing	260
Total Track and Paving	<u>\$12,730</u>
Grade Crossing Protection	
2 No. 8 F.L. Signals with Gates	\$15,165
2 No. 8 F.L. Signals	8,845
Total - Track, Paving, No. 8 Signals with Gates	\$27,895
Total - Track, Paving, No. 8 Signals	21,575

Exhibit 12 is the Railroad's proposed apportionment of the costs of upgrading the crossing as follows:

Proposed Allocation of Costs
Alcazar Street - 6T-3.83-C

	<u>Railroad</u>	<u>City</u>
Signal Work		
Replace #3 with 2 No. 8's with gates	\$ 7,582	\$ 7,582
Track reconstruction in existing street (35')	2,250	
Track reconstruction for relocated widened street		4,520
Track lowering		5,060
Paving - width of existing	640	
Paving - widened portion		260
	<u>\$10,472</u>	<u>\$17,422</u>

Witnesses for the Railroad testified to the value of the easements used in the proposed realignment of the crossing; they measured the portions vacated and the additional amounts to be taken into the crossing and totaled up the same in Exhibit 10, as follows:

Alcazar Street - Relocation,
Widening and Lowering

Property Values

Longitudinal Highway Easement	680 sq. ft. @ \$1.50	\$ 1,020
Lateral Highway Easement (Crossing)	5945 sq. ft. @ 1.50	8,918
Slope Easements 400 f 500	= 900 sq. ft. @ 1.50	1,350
Slope & Drainage Easements 589 f 470 f 788	= 1847 sq. ft. @ 1.50	2,770
		<u>\$14,058</u>
LESS		
Highway Vacation & Quitclaim	2600 sq. ft. @ 1.50	3,900
	Net Fee Value	<u>\$10,158</u>
	Easement Value	\$ 5,079

The Commission finds that:

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

2. There are no issues in connection with the application of the City to improve the crossing. The only issues concern the necessity for the installation of improved crossing protection and the apportionment of the cost of the additional crossing protection and cost of improvements including claims for additional easements and apportionment of these costs.

3. The recommendation of the Railroad engineer for improving the protection of the railroad crossing of Alcazar Street (Crossing No. 6T-3.83-C) when the street is widened and realigned by installation of two Standard No. 8 flashing light signals supplemented with two automatic crossing gates is reasonable, and should be adopted, and said signals should be co-ordinated with the Soto Street traffic lights.

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

5. The claim of the protestant Railroad for compensation for the additional area required to improve this crossing is without any precedent and further the Railroad benefits equally with the City in the easements dedicated at the crossing to service of the public.

6. The Railroad receives no benefit from the change in railroad grade alignment and the cost of this should be borne by the City.

7. The cost of installation of the signal protection should be borne equally by the City and the Railroad.

8. Allocation of the cost of maintaining protective devices at the crossing, herein concerned, should be deferred until further Commission decision is issued.

O R D E R

IT IS ORDERED that:

1. The City of Los Angeles is authorized to widen and improve the grade crossing at Alcazar Street and the Pacific Electric Railway Company tracks (Crossing No. 6T-3.83-C) substantially in the manner and in accordance with the plans introduced in this proceeding, subject to the conditions as herein set forth.

2. 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 the Pacific Electric Railway Company.

3. Pacific Electric Railway 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.

4. Crossing protection at said crossing shall be by two Standard No. 8 flashing light signals (General Order No. 75-B) supplemented by two automatic crossing gates. The City of Los Angeles and the Pacific Electric Railway Company shall each bear fifty per cent of the costs of installation of said flashing lights and automatic gates at said crossing.

5. Allocation of maintenance costs for protective devices at the crossing is deferred until further order of this Commission.

6. 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.

7. The improvements herein provided for are to be completed within one year 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 23rd day of MARCH, 1965.

Quillfella J. J. J. J. J.
Patricia J. J. J. J.

My dissent is to be separately stated.
William J. J. J. J.

Fredrick B. Holbrook

President

George T. Grover

Augusta

Commissioners

SEPARATE CONCURRING OPINION OF COMMISSIONER GATOV:

At the Commission conference of March 9, 1965, I joined in several orders which followed the past practice of assessing all signal maintenance cost to the railroads. To avoid any delay in the processing of the cases then before us (some of which had been ready for decision for several weeks), I signed the orders as written but did not then have the opportunity to submit a separate written opinion explaining the views I have reached on this subject. The instant case offers a suitable occasion for that explanation.


I do not oppose a policy approach. It may well be both practical and fair to lay down a general rule applicable to all but the most exceptional crossing situations. I note, for example, that even the two Commissioners who opposed last year's policy determination have themselves almost invariably urged a 50-50 apportionment of maintenance costs. Even certain pieces of pending legislation seek to establish a consistent rule applicable to all cases. At the same time, however, I believe that it is inappropriate to adopt such a broad rule in a single case involving only one crossing, one railroad, and one public entity. Being general in application, the rule should be general in formulation. It is clear this problem is statewide in character and will increase commensurate with the phenomenal growth of the State. An opportunity, therefore, should be afforded all railroads, public agencies, and interested persons to participate, and our own staff should be called upon to develop pertinent information. Specifically, I do not believe that the record in Cases Nos. 7463 and 7464 (Decision No. 66881) provides a sufficient basis for an order binding in all future crossing cases.

Were this an appropriate time, I would urge the institution of a broad investigation to determine whether or not a General Order should be promulgated to govern signal maintenance cost. However, the pending legislation to which I have referred makes it impractical at this moment to undertake such an inquiry. If adopted, any of the proposed statutes would largely eliminate the issue and would, it seems, render a Commission investigation unnecessary. I believe it preferable to await the action of the Legislature.

Meanwhile, orderly procedure calls for continuation of past Commission practice. I do not feel that action in a single limited case is an appropriate basis for undoing the present policy any more than it was an appropriate basis for establishing that policy. For the present, therefore, I will vote to continue the existing practice.

I note that in the past the Commission has sometimes deferred the issue of signal maintenance cost and at other times has decided this issue when signal protection is ordered; on March 9, 1965, both types of order were issued. Apparently the immediate effect is the same--without an order apportioning maintenance costs, such costs will necessarily be paid by the railroad because they will own and maintain the equipment. My own preference for the time being is to defer all decisions on this issue, and I suggest that future orders be prepared accordingly. It may not make any difference, but a postponement of decision is more consistent with my own feeling that this issue still needs to be resolved by legislation or by a future Commission investigation.

Dated at San Francisco, California, this 23rd
day of MARCH, 1965.


A. W. Gatov, Commissioner

COMMISSIONER PETER E. MITCHELL DISSENTING:

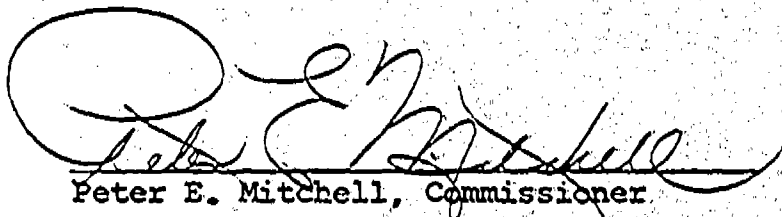
I dissent in the order as written. The subject of signal maintenance cost is not recent in origin for this Commission. Nor is it novel with any regulatory body possessed with jurisdiction over the operation of railroads. Indeed, the wealth of material published on this issue alone, laid end to end, would encircle the entire railroad network on the North American continent.

The California Public Utilities Commission has conducted a multitude of proceedings in this area with the railroads, governmental agencies and our staff participating. The Interstate Commerce Commission has made infinite studies on railroad maintenance cost. Even the National Association of Railroad and Utilities Commissioners has periodically entered into the discussion. The simple truth is there is a plethora of opinions, all available for review.

The facts may expand with the passage of time. There are more automobiles on the highways today; hence, additional railroad crossings. But these developments are foreseeable. They will not affect the determination of whether railroad crossing signal protection is a cost of the railroad doing business or an expense of the government in protecting its citizens.

A major weakness of the so-called governmental administrative process is the refusal of regulatory bodies to make prompt and expeditious decisions. In this specific instance, for us to commit the legislature by waiting until it acts; for us to inform the parties that we may institute a future investigation; for us to do nothing - is to evade our inherent responsibility.

The California Public Utilities Commission has a duty to execute without delay the matters before it, and to sign such orders as are responsive to the best judgment of its members. If a majority of the Commission desires an investigation into any facet of utility regulation, now is the time for action, not next week, next month, or next year.



Peter E. Mitchell, Commissioner

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DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

The issue of maintenance costs is neither new nor complex. It has only recently been the subject of a thorough hearing at which the position of affected parties and particularly the California railroads was stated fully. Not that it had to be, since this Commission well knows the problem, but nonetheless a complete hearing was again afforded, and this policy which merely imposes upon the proper party, that is the railroad, the obligation to maintain railroad property and to pay for such has in effect recently been approved by the Supreme Court of the State of California when it denied review in that proceeding entitled S.F. No. 21885, Southern Pacific Company, a corporation, Petitioner, vs. The Public Utilities Commission of the State of California, et al., Respondents.

It has been plain to the Public Utilities Commission of the State of California and to its predecessor in name, the Railroad Commission of the State of California, that the railroads of California should properly maintain railroad property and the cost thereof should not be thrown over to the municipalities of California. The common sense logic of such a Commission conclusion is apparent when it is borne in mind that this Commission was created for the protection of ratepayers. There has been a consistent effort thus far by a minority of the Commission to impose the burden of certain railroad costs upon municipalities and taxpayers thereof. This attempt to depart from a long historical policy does not serve the public interest even though it does serve the private railroad interest.

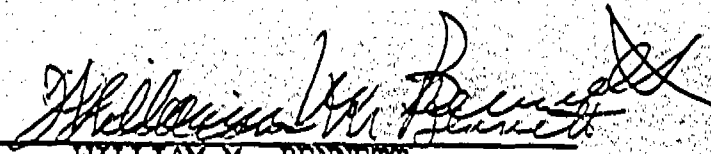
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Neither does it serve the public interest to defer decision on this issue. In my opinion by law there is an absolute obligation to decide issues within a reasonable time. To delay this issue may avoid the decision making process but I have grave doubt that the law permits us to avoid issues simply by an arbitrary deferral. This Commission has an obligation to itself and to the parties before it to render decisions with some degree of expedition. Failure to do so constitutes less than a complete performance of public duty. And with the backlog of cases which is beginning to mount once again to which is now to be added these maintenance cases, we shall soon become the Commission of tomorrow's decision but never today. It may be basic but the fact that it is basic does not make it less true, that regulatory agencies were created in the first instance because the courts were not equipped to decide with reasonable diligence the complexities of regulation. And so among other attempts to expedite the process, regulatory bodies with sufficient staff were created so that results could obtain with some degree of promptness. I deem it a serious matter along with the other pending cases which are acquiring a vintage because of delay and indecision that we should now apply that delaying tactic to these cases. It is not an excuse that the Legislature may by statute determine the assignment of costs; nor is it an excuse that certain members of the Commission favor this legislation. Until by law our obligation to decide is removed or modified, it is incumbent upon this Commission with this as in other cases to render decisions and to vote.

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The responsibility of decision is ours under the provisions of constitutional and statutory law and we can neither escape nor long defer them out of the hope that the Legislature may relieve us of a problem.

In closing, so far as I am concerned I shall continue to insist that this issue of maintenance costs be decided and not deferred. I point out that I am ready to vote upon such matters and I am indeed anxious to vote upon all of those other cases which have been prolonged, procrastinated, deferred and delayed. That much abused phrase "regulatory lag" is beginning to acquire a serious relevance to our activities.


WILLIAM M. BENNETT
Commissioner

San Francisco, California

March 23, 1965