

ORIGINAL

Decision No. 68876

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

John J. Baluff and Matthew H. Witteman, by Matthew H. Witteman, for The Atchison, Topeka and Santa Fe Railway Company, respondent.
Jack Callahan; Bruce Winton and James Holbert; Ernest A. Thompson, for the City of San Juan Capistrano; Wendell Hartman, for the Orange County Road Department, interested parties.
Lawrence Q. Garcia and Lloyd C. Young, for the Commission staff.

OPINION AND ORDER ON FURTHER HEARING

The first hearing on the above-entitled matter was held on April 21, 1964, in San Juan Capistrano. As a result thereof the Commission, by Decision No. 67352, dated June 10, 1964, ordered that the crossing over The Atchison, Topeka and Santa Fe Railway Company (Railway) track (Crossing No. 2-198.5), which crossing is over a road which provides access from the old U. S. Highway 101 to the San Juan Capistrano Airport (Airport), should be improved within 90 days after the effective date in certain respects including the installation of two Standard No. 8 flashing light

signals with construction equal to or superior to Standard No. 1 of General Order No. 72. Service of the Order was made on Jack Callahan, the then owner of the Airport, and the Railway, among others, and became effective on or about July 6, 1964. Nothing was done thereafter towards the improvement of the crossing. On October 27, 1964, the Commission extended the time within which the parties should comply with Decision No. 67352 until December 31, 1964.

Investigation by the Commission staff after December 31, 1964, showed that no action had been taken towards the improvement of the crossing as ordered.

A further hearing was held in San Juan Capistrano before Examiner Rogers on March 10, 1965. All parties appearing at the prior hearing were notified thereof.

A Commission engineer testified that between January 2, 1965, and March 1, 1965, he checked the condition of the crossing and found there had been no compliance with Decision No. 67352.

James Holbert appeared at the hearing herein and testified that he and Bruce Winton are the present owners of the Airport property which they acquired in September, 1964, and that in August, 1964, they were apprised of the terms of Decision No. 67352.

The former owner of the property, Jack Callahan, testified that prior to their purchase of the Airport property, he advised Bruce Winton and James Holbert of the terms of Decision No. 67352.

James Holbert testified that he is attempting to acquire rights to property on which to construct a new road and crossing over the Railway's tracks to replace the existing road and crossing. This crossing would be approximately 425 feet southwest of the existing crossing at which point visibility of approaching trains would be improved. The record also shows that the crossing requires the construction of a road from old U. S. Highway 101 to the track over land which is involved in litigation. The witness testified that if he cannot secure rights for the latter crossing and necessary access road, he would be willing to improve the existing crossing pursuant to Decision No. 67352. The witness, however, could not or would not give a stated time within which the work on either crossing would be completed.

There is an existing unimproved grade crossing approximately 1,050 feet southwest of the existing crossing which, by acquisition of various rights of way, could be used for access to the Airport property. The owners of the properties over which access roads would be constructed will permit only temporary passage over their land. The representative of the City of San Juan Capistrano testified that the proposed new road would be acceptable to the City of San Juan Capistrano upon certain conditions not material to this order.

Upon the record on the original hearing and on the hearing herein, the Commission finds that:

1. Bruce Winton and James Holbert are, and have been since sometime in September, 1964, the owners and operators of the San Juan Capistrano Airport, and since August, 1964, said parties

have been familiar with and have had knowledge of the terms and conditions of Decision No. 67352.

2. The same conditions existed on March 10, 1965, relative to the crossing herein involved as existed on April 21, 1964; no steps have been taken toward improving the existing crossing or the protection thereat; and said crossing remains hazardous to trainmen, passengers on trains, and the public using the crossing.

3. The owners of the Airport have proposed plans for a new access road to cross the track of Railway approximately 425 feet southwest of the existing crossing (Crossing No. 2-198.5), but have no rights for the use or acquisition of the land on which to construct said road. The location of this road would be acceptable to the City of San Juan Capistrano.

4. There is an existing unimproved grade crossing of the Railway's track approximately 1,050 feet southwest of the existing crossing (Crossing No. 2-198.5), which could be used to provide access to the Airport property, but such crossing requires the construction of a road over land the owner of which will only give a temporary easement for passage.

We conclude that the protection and improvements required by Decision No. 67352 should be installed within 90 days after the effective date of this decision, or the crossing should be physically closed by effective barricades. Should the City of San Juan Capistrano file an application to construct a public crossing at either of the alternate locations described in paragraphs 3 or 4 of the above findings it will be given prompt consideration.

IT IS ORDERED that within 90 days after the effective date hereof The Atchison, Topeka and Santa Fe Railway Company, and Bruce Winton and James Holbert, in lieu of Jack Callahan, shall comply with ordering paragraphs 1 and 2 of Decision No. 67352, insofar as property within the Railway's right of way is concerned. If the protection has not been installed and the crossing improved within 90 days after the effective date hereof, The Atchison, Topeka and Santa Fe Railway Company shall physically close Crossing No. 2-198.5 by installing permanent barricades on each side thereof within ten days after the expiration of said 90-day period.

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, Bruce Winton and James Holbert, the City of San Juan Capistrano, 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 13th day of April, 1965.

Frederick B. Holladay
President
John E. Spitzkull
George E. Hoover
Augustus
William L. Beards
Commissioners