

Decision No. 71259

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of application of THE)
 CITY OF RICHMOND, a municipal corpo-)
 ration of the State of California,)
 for the construction of Grade)
 Separation Structure, at the Barrett)
 Avenue Crossing of the Southern)
 Pacific Company Main Line railroad)
 tracks, P.U.C. Crossing No. A-15.1.)

Application No. 47862

In the matter of application of THE)
 CITY OF RICHMOND, a municipal corpo-)
 ration of the State of California,)
 for the construction of Grade)
 Separation Structure, at the Kearny)
 Street Crossing of the Southern)
 Pacific Company Main Line railroad)
 tracks, P.U.C. Crossing No. A-15.6.)

Application No. 47863

James P. O'Drain, for the City of Richmond,
 applicant.
Harold S. Lentz, for Southern Pacific Company;
Warren P. Marsden, for San Francisco Bay
 Area Rapid Transit District; Melvin R.
Dykman, for State Department of Public Works,
 interested parties.
William L. Oliver, for the Commission staff.

O P I N I O N

The City of Richmond requests authority to construct grade separations at the Barrett Avenue and Kearny Street crossings of the Southern Pacific Company main line tracks.

A public hearing was held before Examiner Daly on July 12, 1966 at San Francisco. The matter was submitted upon briefs since filed and considered.

The City of Richmond and Southern Pacific Company presented no evidence. The parties reached a stipulation as to the need for the separations upon the condition that the Roosevelt Avenue and Pennsylvania

Avenue crossings are closed. The parties further stipulated that the apportionment of costs would be determined by a written agreement.

The Department of Public Works claims an interest in this proceeding because of the evidence presented in Case No. 8244, which established a grade separation priority list for the year 1966 (Decision No. 70134). During the course of said hearing it was determined that to finance the construction of the Barrett Avenue and Kearney Street separations the City of Richmond's share of the cost would be advanced by the Bay Area Rapid Transit District (BART). The Kearney Street crossing was given a priority of No. 1 and the Barrett Avenue crossing was given a priority of No. 5 on the 1966 list. The Department of Public Works petitioned and was granted rehearing in said proceeding, based upon its contention that the Barrett Avenue and Kearney Street crossings, along with certain other crossings, failed to qualify for the list because of the contributions to be made by BART. On July 12, 1966 the Commission, by Decision No. 70961, rejected the position taken by the Department and affirmed the priority list established by Decision No. 70134.

In the instant proceeding the Department of Public Works relies upon Section 190 of the Streets and Highways Code, which provides in part:

" . . . An allocation shall be made of one-half of the estimated cost, after deducting therefrom any contribution to be made by the railroad corporation involved, towards any project which qualifies thereunder. . . "

According to the Department, BART is a railroad corporation and its contribution of the City of Richmond's share of the cost in each instance must first be deducted from the total cost. The remainder represents the City's share to which the Department may allocate funds as provided by Section 190 of the Streets and Highways Code. If BART is a railroad corporation within the meaning of the Code, then unless BART assumes the total cost of the grade separations herein considered (less the contributions of Southern Pacific Company), the City of Richmond must contribute City monies to the project.

The primary purpose of this proceeding is to determine the need for the proposed grade separations, and the parties have stipulated to that need. Where the parties reach, or may reach, an agreement as to the cost of construction and the apportionment thereof, it is not the practice of this Commission to intrude. If the parties should fail to agree on an apportionment, this Commission would then determine it, but the portion of the cost to be borne by the City would be fixed without specifying any particular source of City funds. If the City should then be entitled to an allocation under Section 190 of the Streets and Highways Code, this Commission would not be the agency which would make such an allocation or a tribunal which might be called upon to order it to be made.

In a proceeding to require these grade separations to be constructed, we might consider the availability of City funds for such construction, including any allocation which might be made pursuant to Section 190; but in this proceeding the separations are merely being authorized. The issue raised by the Department of Public Works is not relevant here.

After consideration the Commission finds that:

1. Public convenience and necessity require the construction of grade separations at the Kearny Street and Barrett Avenue crossings of the Southern Pacific Company tracks in the City of Richmond.
2. Upon the construction of the grade separations herein the Roosevelt Avenue and Pennsylvania Avenue grade crossings in the City of Richmond should be closed.
3. The apportionment of cost should be by agreement of the parties.

O R D E R

IT IS ORDERED that:

1. The City of Richmond is hereby authorized to construct crossings at separated grades of Kearny Street and Barrett Avenue over and under the tracks of Southern Pacific Company, in Contra Costa County, at the locations

and substantially as shown by plans attached to the application, to be identified as Crossings Nos. A-15.6-A and A-15.1-B. Clearances shall conform to the provisions of General Order No. 26-D.

2. Construction and maintenance expense shall be borne in accordance with agreements to be entered into between the parties relative thereto, and copies of said agreements, together with plans of said crossings approved by Southern Pacific Company, shall be filed with the Commission prior to commencing construction. Should the parties fail to agree, the Commission will apportion the cost of construction and maintenance by further order.

3. Within thirty days after completion pursuant to this order applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within three years unless time be extended or if conditions are not complied with.

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

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1966.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.