

ORIGINAL

Decision No. 71801

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application
of the Cities of Vernon and Huntington
Park to Construct a Public Street Across
the Right-of-Way of the Southern Pacific
Company at Randolph Street
(Amended Title)

Application No. 48075
(Filed November 24, 1965)
(Amended January 25, 1966)

David D. Grayson, for the City of
Vernon, and Robert Thoreson, for
the City of Huntington Park,
applicants.
Randolph Karr and Walt A. Steiger,
by Walt A. Steiger, for Southern
Pacific Company, interested party.
Harry S. Fenton, John B. Matheny,
Melvin R. Dykman, and Joseph C.
Easley, by Joseph C. Easley, for
the State of California, Department
of Public Works, amicus curiae.
David R. Larrouy, for the Commission
staff.

SECOND ^{INTERIM} ~~FINAL~~ OPINION.

(2010)

After hearing, an Interim Opinion and Order was issued in the above matter (Decision No. 70846, dated June 14, 1966). The interim order authorized the alteration of the existing crossing of Boyle Avenue-State Street over the Southern Pacific Company (Railroad) tracks (Crossing No. 6C-6.09); the upgrading of the protection at said crossing from two Standard No. 8 flashing light signals to two Standard No. 8 flashing light signals supplemented with automatic gates; the construction of a new crossing approximately 175 feet west of the Boyle Avenue-State Street

crossing; and ordered that the new crossing (Crossing No. 6C-6.06) be protected by one Standard No. 3 flashing light signal, supplemented with one automatic crossing gate.

East of Boyle Avenue-State Street, Randolph Street is a single two-way street on the south side of the Railroad's right of way. West of Boyle Avenue-State Street, one roadway of Randolph Street is north of the Railroad's right of way and one roadway is south thereof. Prior to alteration pursuant to the interim opinion and order herein, vehicular traffic westbound on Randolph Street, crossing Boyle Avenue-State Street, will be required to make a right turn on the latter street, cross the Railroad's right of way via the latter street, and make a left turn across southbound Boyle Avenue-State Street traffic onto the north roadway of Randolph Street. When constructed, the new crossing (Crossing No. 6C-6.06) will permit traffic westbound on Randolph Street, from east of Boyle Avenue-State Street, to cross the latter street on the south side of Randolph Street and cross the Railroad's right of way via a new crossing west of Boyle Avenue-State Street.

Ordering paragraph 5 of Decision No. 70846 provides that "The allocation of the costs of the removal, construction, installation and maintenance of the crossings and crossing protection herein referred to is deferred pending further order."

The deferral was granted to permit the parties to brief the question of allocation of maintenance costs of the crossing protection at the existing Boyle Avenue-State Street crossing.

The application was originally filed by the City of Vernon on November 24, 1965. This City and the Railroad had executed an agreement dated October 12, 1965 (Exhibit "C"), the material portions of which read as follows:

"RECITALS:

The parties hereto desire to evidence by this instrument their agreement with respect to the widening of Boyle Avenue-State Street and the opening of Randolph Street, Crossing No. 6C-6.09, in the City of Vernon, County of Los Angeles, State of California.

"AGREEMENT:

NOW, THEREFORE, it is mutually agreed as follows:

"1. Railroad shall furnish all necessary labor, materials, tools and equipment to perform the work of:

(a) reconstructing 250 linear feet of existing track with 113 lb. rail.

(b) installing 104 feet of planking in street areas.

(c) installing 3 California Public Utilities Commission Standard No. 8 flashing light grade crossing signals augmented with automatic crossing gates controlled by grade crossing predictors together with actuating and operating circuits and adequate instrument housing at the Boyle-State Street intersection at Randolph Street, Crossing No. 6C-6.09, in the City of Vernon, Los Angeles County, California.

"Said installation shall include the removal of two existing California Public Utilities Commission Standard No. 8 flashing light grade crossing signals.

"3. City agrees to reimburse Railroad promptly upon receipt of bills therefor for all costs and expense incurred by Railroad in connection with the work outlined in Section 1 hereof.

"4. After installation of said signals has been completed, Railroad shall physically maintain them so long as they remain in place. The obligation to bear the cost of maintenance of said signals, including the crossing gate arms and appurtenances, shall be in accordance with the recently enacted Assembly Bill No. 346.

"7. Railroad agrees to grant both City and the City of Huntington Park, by separate instruments, an easement for highway purposes reserving full railroad rights across Railroad's operating property as shown on said print A.E. 16192-A."

The City of Huntington Park has joined the application as the new crossing (Crossing No. 6C-6.06) is located therein and it has agreed to bear a portion of the expenses of the crossings (Exhibit "D"). Hereafter the word "City" will include either or both Vernon and Huntington Park.

Statutes Involved

Section 1202, Public Utilities Code:

The commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa.

(b) To alter, relocate, or abolish by physical closing any such crossing heretofore or hereafter established.

(c) To require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, city, or other political subdivision affected.

Section 1202.2 (Added 1965):

In apportioning the cost of maintenance of automatic grade-crossing protection constructed or altered after October 1, 1965 under Section 1202, as between the railroad or street railroad corporations and the public agencies affected, the commission shall divide such maintenance cost in the same proportion as the cost of constructing such automatic grade-crossing protection is divided. The liability of cities, counties and cities and counties to pay the share of maintenance costs assigned to such local agencies by the commission shall be limited to funds set aside for allocation to the commission pursuant to Section 1231.1. The railroad or street railroad corporations and the public agencies affected may agree on a different division of maintenance costs. If the public agency affected agrees to assume a greater proportion of the cost of maintenance than the apportionment of the cost of construction, the difference shall be paid by the public agency from funds other than the State Highway Fund or any other state fund.

Section 1231.1 (Added 1965):

In each annual budget report prepared by the California Highway Commission and the Department of Public Works under Section 143.1 of the Streets and Highways Code, commencing with the 1966-67 fiscal year, a sum not to exceed one million dollars (\$1,000,000) shall be set aside for allocations to the Public Utilities Commission, for the purpose of paying to cities, counties, and cities and counties the share of the cost of cities, counties, and cities and counties of maintaining automatic grade-crossing protection. The specific amount of the total allocation shall be determined by the California Highway Commission and shall constitute the amount necessary for such maintenance. In arriving at such amount, the California Highway Commission shall consult with representatives of the Public Utilities Commission. Any amounts not expended by the Public Utilities Commission in any one fiscal year may be credited to subsequent annual allocations.

Funds appropriated for the purposes specified herein shall be available for allocation and expenditure without regard to fiscal years.

Staff Contentions

The staff agreed that the facts and recommendations as set forth in the application should be accepted with the exception of the suggested allocation of installation (and maintenance) costs at the existing crossing (Boyle Avenue-State Street).

It is the position of the staff that the Commission has the exclusive power (Public Utilities Code Section 1202) to determine the allocation of costs relative to existing crossings and that this power should be exercised in the public interest; that the Commission should disregard the agreement of the parties, and should apportion installation costs 50 percent to the Railroad and 25 percent each to the Cities.

The staff urges that if the Commission were to give effect to the agreement (Exhibit "C") it would necessarily order that the Cities pay 100 percent of the installation costs of automatic protection. In that event, the staff urges the fund set up by Section 1231.1 would be obligated to pay 100 percent of maintenance which would be the cities' share. The staff states the public interest would not be served by allowing private parties to enter into agreements of this type whereby the State would become obligated to bear the entire expense of maintaining automatic protection at grade crossing alterations. The staff argues that by private agreement the parties have attempted to bind the State to pay all maintenance costs and that if this practice is followed, the fund, as set up by Section 1231.1, would considerably be depleted.

Railroad Contentions

The Railroad states that there are three significant provisions in the agreement between it and the Cities insofar as this proceeding is concerned:

1. The Railroad will grant to the Cities an easement for highway purposes consisting of an area of 15,464 square feet without cost to the Cities.

2. The easement covers a longitudinal strip of right of way to be used for street widening, for which the railroad would normally expect to be compensated, rather than the usual crossing easement which covers no more right of way than necessary to carry a street from one side of the tracks to the other and for which the railroad does not normally expect more than nominal compensation.

3. The City of Vernon will reimburse the Railroad for all costs and expenses for work performed under the agreement.

4. The maintenance of automatic protection shall be in accordance with the provisions of law.

The Railroad states that the only issue in the case is: Should the agreement of the Cities and the Railroad be allowed to stand, or should, or can, the Commission abrogate the agreement insofar as it provides that the Cities shall assume 100 percent of the cost of widening and upgrading the existing Boyle Avenue-State Street crossing.

The Railroad states there is no question but that this Commission has jurisdiction under Section 1202, Public Utilities Code, to allocate the cost of installing a new grade crossing or to allocate the costs of altering an existing grade crossing between the Cities and the Railroad.

The position of the Railroad is that when a city and a railroad have voluntarily come to terms concerning such costs (including the purchase of land), the Commission should not vary

the terms of such agreement unless there are sound factual reasons to apportion such installation costs in a manner different than that agreed to by the parties concerned. The imposition of a different apportionment should be based on the facts of the case and should not be based on the effect of an agreement on the State maintenance fund.

Department of Public Works Contentions

The Department of Public Works did not appear at the hearing, but was given permission by the Commission to submit a brief. Its arguments are limited to the issue of whether the Commission should disregard an agreement between a city and a railroad which purports to determine the proportion of maintenance costs which will be paid from the Public Utilities Code Section 1231.1 fund.

The Department refers to the second sentence of Section 1202.2, Public Utilities Code, which sentence reads as follows:

"The liability of cities, counties and cities and counties to pay the share of maintenance costs assigned to such local agencies by the commission shall be limited to funds set aside for allocation to the commission pursuant to Section 1231.1."

It states that the plain meaning of this sentence is that if the Public Utilities Commission decides under Section 1202 to apportion maintenance costs to a local agency and divides that cost pursuant to the formula set out in Section 1202, the local agency is liable only to the extent that funds are available from Section 1231.1. It states that the practical effect of this sentence is that local agencies cannot be required by the Commission

to pay for the cost of maintaining automatic grade crossing protection from their own funds.

The Department further urges that the Section 1231.1 fund is limited and that the fund provided is not sufficient to pay for the cost of maintaining all of the automatic grade crossing protection in the State and that as a result the Commission should consider not only whether the public should bear a portion of the cost of maintaining grade crossing protection, but whether any one railroad is receiving a disproportionate amount of public funds under Sections 1202.2 and 1231.1 and whether sufficient funds are available to pay for the cost of maintenance.

In addition, the Department urges the Commission to consider the consequences which would flow from an interpretation of Section 1202.2 which would enable a railroad to become eligible for an allocation of Section 1231.1 funds without an independent evaluation by the Commission of whether the proposed division of costs is fair and equitable. The Department argues that under certain circumstances the granting of the money to a city would result in an expenditure of public funds for an illegal purpose in violation of Section 31 of Article IV of the California Constitution.

Discussion

The position of the staff and the Department is well taken. We are of the opinion that, in the first sentence of Section 1202.2, the words "in the same proportion as the cost of constructing such automatic grade-crossing protection is divided" refer to a division of construction costs by the Commission in a contested matter under Section 1202. Absent the agreement of the parties, we would, in this case, divide such construction costs equally between the railroad and the cities; the maintenance costs would therefore also be equally divided.

Ordinarily we would have no objection to a different division of costs by agreement of the parties, but here the agreement which has been made would prejudice a state fund which is not represented by any signatory to the agreement. Under the agreement, the railroad would grant a valuable easement to the cities; in return the railroad would be relieved of its 50 percent share of construction costs (to be paid instead by the cities) and would also be relieved of its 50 percent share of maintenance costs (to be paid instead by the State). Section 1202.2 contemplates no such result. Under the circumstances, the Commission will not approve the division of costs which is called for in the agreement.

We recognize that the parties may wish to reconsider their agreement in the light of the foregoing discussion, for the agreement will not have the effect which they contemplated at the time of its execution. If they still wish the cities to bear all construction costs and are willing to agree that the state fund bear only half of the maintenance costs, the Commission will be disposed to give effect to such arrangements by an appropriate order.

Findings

The Commission finds that:

1. The Commission may consider, but is not bound by, the terms of any of the agreements set forth in the pleadings herein, and under the provisions of Section 1202 of the Public Utilities Code has the power and duty to apportion the cost of construction, alteration, protection, and maintenance of protection at each of the crossings herein considered.

2. The easement involved is of value as it is a longitudinal easement rather than the usual crossing easement. It constitutes the consideration for the City's agreeing to pay for the cost of construction and automatic protection devices at the new crossing of the Railroad's right of way (Crossing No. 6C-6.06) and the alteration of the protection at the Boyle Avenue-State Street crossing (Crossing No. 6C-6.09).

3. In the absence of an agreement to the contrary, the costs of construction and protection at Crossing No. 6C-6.06 and all of the costs of alteration and protection at Crossing No. 6C-6.09 should be borne fifty percent by the Railroad and fifty percent by the Cities of Vernon and Huntington Park.

Conclusion

The Commission concludes that submission should be vacated to permit the parties to reconsider their agreement in the light of this opinion.

SECOND INTERIM ORDER

IT IS ORDERED that submission of this matter is vacated, and that the parties shall, within sixty days after the effective date hereof, report to the Commission concerning the status of the aforementioned agreement.

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

San Francisco

Dated at _____, California, this
30th day of DECEMBER, 1966.

(12/13)

Peter E. Mitchell President
George J. Trover
Augustan

~~Commissioner Frederick B. McLebourn~~ Commissioners
not participate in the disposition of
this proceeding.

Commissioner William M. Bennett, being
necessarily absent, did not participate
in the disposition of this proceeding.