

ORIGINAL

Decision No. 72226

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of County of Monterey to reconstruct Grade Crossing No. E-133.9, Corda County Road, across right of way of the Southern Pacific Company.

Application No. 45058

and following proceedings wherein petitions for modification have been filed:

- County of Monterey, Espinosa Road
- City of Davis, Fifth Street
- City of Anaheim, Katella Avenue
- Various crossings of SP Co., UPR Co., and The AT&SF Rwy. Co.
- Crossings of PE Rwy. Co., La Verne and Pomona

- Application No. 45785
- Application No. 45895
- Application No. 46574
- Case No. 7521
- Case No. 7739

Investigation of crossing of The Atchison, Topeka and Santa Fe Railway Company at Lovekin Boulevard, Riverside County.

Case No. 8063

and following proceedings wherein allocation of maintenance costs has been deferred:

- City of Los Angeles, Alcazar Street
- County of Merced, Shaefer Road
- County of Stanislaus, Kiernan Avenue
- City of Riverside, Kansas Avenue
- City of San Jose, Stokes Street
- Same
- City of Los Angeles, Woodman Avenue
- City of Industry, Amar Road
- City of Brawley, K Street
- San Fernando Road, Los Angeles
- City of San Jose, Santa Clara Street
- City of Azusa, Todd Avenue
- City of Guadalupe crossings
- City of Tehachapi crossings
- City of Downey, Woodruff Street

- Application No. 46864
- Case No. 7983
- Case No. 7982
- Case No. 8057
- Application No. 45927
- Case No. 7872
- Application No. 46151
- Case No. 8107
- Case No. 8108
- Case No. 7999
- Application No. 47421
- Application No. 46876
- Case No. 7405
- Case No. 8082
- Case No. 8110

(Appearances are listed in Appendix A)

O P I N I O N

These reopened proceedings result from a Commission order dated September 8, 1965. Said order provides that the purposes, in part, of reopening are:

- "1. To receive evidence as to the status of construction or alteration of the automatic grade crossing protection authorized or ordered in each of said proceedings.
- "2. To determine the proper construction and application of Public Utilities Code Section 1202.2, and particularly the first sentence thereof.
- "3. To determine, in those proceedings wherein decisions have been issued allocating maintenance costs, whether such decisions should be altered or amended.
- "4. To determine, in those proceedings wherein decisions heretofore issued have deferred the allocation of maintenance costs, whether orders should now issue allocating such costs."

The Commission order of September 8, 1965 resulted from enactment during the 1965 legislative session of Public Utilities Code Section 1202.2 (Stats. 1965, Ch. 1644). Said section reads as follows:

"1202.2. 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. (Added 1965, Ch. 1644.)"

Public hearings were held on the reopened proceedings before Examiner Gravelle at San Francisco on January 5, 6, 7 and 31, February 1, and March 14, 1966 and at Los Angeles on March 15, 1966. The matters were submitted on the latter date subject to the filing of opening briefs 30 days after the receipt of transcripts, and reply briefs 15 days thereafter. Reply briefs were filed on July 15, 1966.

Applications Nos. 45058, 45785, 45895 and 46574 and Cases Nos. 7521 and 7739 are proceedings in which the Commission has issued decisions allocating the maintenance cost of automatic grade-crossing protection to the railroads involved and in which the railroads thereafter filed petitions for modification. The remaining applications and cases that were reopened by the September 8, 1965 order involve decisions in which the Commission deferred allocation of maintenance cost of automatic grade-crossing protection pending further orders.

The facts relative to the status of construction of each of the crossings involved in these matters, with particular reference to the date of October 1, 1965, were presented at the hearings; there is no dispute as to such facts. The main issue which concerned the parties to the reopened proceedings was the interpretation which should be placed on the language of Section 1202.2 and secondarily how such interpretation affects each of the crossings involved. To these two points the parties have devoted the main thrust of the testimony presented at the hearings as well as the arguments set forth in the briefs. Within this interpretative issue the parties directed particular attention to the meaning which should be attributed to the words "constructed or altered" as used in Section 1202.2.

Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 14 were addressed either partially or wholly to such interpretation. It would serve no useful purpose to set forth at length the position of each of the parties to these proceedings who expressed themselves on the question. The briefs deal in great detail, in many pages and a myriad of citations, with the proper solution. None of the parties is in complete accord with each other; even the positions of the railroads vary to some degree. We will attempt, without reference to a particular advocate, to set forth what we will term the major contentions made in these proceedings.

The "No Change" Theory

One contention advanced is that since any apportionment under Section 1202.2 is made pursuant to the exclusive jurisdiction of Section 1202, by which the Commission is given authority over railroad grade crossings, the Commission could refuse to apportion maintenance costs in the exercise of its discretion. This contention concludes that the Commission before employing Section 1202.2 must decide that the public interest requires the apportionment of the cost of maintenance of automatic grade crossing protection. This theory, in effect, results in no change in the law by the adoption of Section 1202.2. It is clear that the Commission, prior to the enactment of said section, had jurisdiction to apportion both the cost of construction of automatic grade-crossing protection as well as the cost of maintaining that protection. The Commission had historically, as a matter of discretion, declined to apportion to persons other than the railroad any of the cost of maintenance of automatic protection. The purpose of Section 1202.2 was obviously to change what had been done historically. Section 1202.2 does not,

it is true, state that the Commission must in every case apportion maintenance cost to someone other than the railroad. It provides rather that such apportionment shall be made on the same basis as the cost of construction. Thus, as a matter of discretion, the Commission could conceivably adopt a policy by which all the cost of construction and, hence, all the cost of maintenance were apportioned to the railroad. If such a policy were to be adopted the practical effect of Section 1202.2 would be nil. Such policy, however, would thwart the desired legislative intention of that section. That is not to say that in a given fact situation and when the public interest requires it, the Commission could not apportion both the cost of construction and the cost of maintenance to a railroad.

Finding

Under Sections 1202 and 1202.2 the Commission must first decide whether the cost of construction of automatic grade-crossing protection should be apportioned between or among the parties; thereafter, it is mandatory upon the Commission that the apportionment of the cost of maintenance must follow in the same proportion. Section 1202.2 does not strip the Commission of its discretionary power; neither does it give us an excuse for evading a clear mandate of the Legislature.

"Constructed or Altered"

The words "constructed or altered" as they appear in Section 1202.2 have reference to automatic grade-crossing protection. They must be applied, however, with reference both as to what constitutes constructed or altered and as to when in point of time the acts of constructing or altering shall be deemed to have been accomplished.

There is little disagreement among the parties with regard to what construction means. It seems clear that the original installation of automatic grade-crossing protection where none existed before is what the Legislature had in mind when it used the word "constructed." It may be argued that a change in automatic protection which is so substantial that it amounts to a complete change therein should also be considered as construction, but it may be just as logically argued that such major change is merely an alteration of that which existed previously and, hence, is not a construction. We find that the installation of automatic grade-crossing protection, which includes the devices necessary to actuate the signal at such crossing, whether new or previously existing, where no such automatic grade-crossing protection theretofore existed shall constitute a construction and shall be encompassed by the word "constructed" as used in the first sentence of Section 1202.2.

With respect to the word "altered" as used in Section 1202.2 the parties, while in substantial agreement with regard to various concrete examples of changes that could be considered alterations, also had some differences that led them far apart. It was pointed out that the addition of a coat of paint or a new and improved light might technically constitute an alteration. It was also pointed out that the addition, for example, of an entire new set of flashing light signals where the same device was already in place might not necessarily improve the protection at a crossing and, hence, should not be considered an alteration. In the course of the hearings there developed an equating of the word "altered" to the word "upgrading." There was, however, no unanimity over what

constituted an upgrading, that is, whether such word meant merely going to a higher numbered standard of protection as set forth in General Order No. 75-B or whether such word meant making the crossing in some way safer for the public. The example previously mentioned wherein additional protection identical to that already in place was considered by some to be an upgrading and by others not to be such upgrading may be cited. If the criterion is a higher standard of protection, it follows that the crossing protection was not upgraded; if the criterion is a safer crossing, the question occurs, why install the additional protection if the crossing is not thereby made safer?

It is reasonable to assume that the Legislature did not have in mind minor changes to crossing protection when it used the word "altered", neither did it have in mind any particular classification of protection at a crossing. What it did have in mind, and we so find, is a change in protection which thereby makes the crossing safer for the public. Its lack of further definition must be taken to leave to the expertise and discretion of the Commission when such a change takes place. The practical problem then exists as to whether the Commission must decide on a case-by-case basis whether or not a particular change in the automatic protection at a crossing constitutes an alteration and brings Section 1202.2 into play. It also brings into focus the question of whether or not a Commission order, resolution or other authorization is necessary to effectuate Section 1202.2. Certain improvements in automatic crossing protection may now be made by a public agency and railroad without specific Commission authorization; notice is merely given to the Commission upon completion of the work involved. This procedure has in the past expedited the improvement of crossing protection

by avoiding the time required to secure prior Commission authorization by way of decision or otherwise. In such cases in the past, however, the expenditure of State funds from the Crossing Protection Maintenance Fund was not involved. It would be ludicrous to believe that the Legislature in enacting Sections 1202.2 and 1231.1 abdicated to local public agencies the expenditure of State funds without any specific State authorization; hence, we must conclude that in each case wherein a Section 1202.2 construction or alteration takes place the Commission must authorize or ratify in some manner the acts to be done before Section 1231.1 funds become available to the public agency. That does not mean that we cannot here determine certain specific cases in which we will consider an alteration to have taken place and leave others that might be unique to be settled on an ad hoc basis. The Commission by Section 1202.2 is not made into a rubber stamp of the parties to a private agreement who change the protection at a particular crossing. A careful reading of the section indicates that two categories of action are contemplated. One is the situation in which costs are apportioned by the Commission and the other is the situation in which costs are divided by the parties. Of course, costs may be divided by the parties and thereafter apportioned by the Commission on the same basis that the division between the parties was made. But absent such Commission apportionment there would exist only a private agreement between a local agency and a railroad which private agreement would not be sufficient to effect payment from the fund established by Section 1231.1.

Neither would a private agreement dividing costs bring into play Section 1231.1 funds if the Commission should determine

that it would decline to apportion costs on the basis upon which the parties have agreed. In such case the Commission could apportion costs of installation and therefore maintenance as it saw fit or leave the parties to the agreement to deal among themselves without benefit of Section 1231.1 funds.

We find that in any case in which a higher numbered category of automatic grade-crossing protection as set forth in General Order No. 75-B is installed to replace or supplement a lower numbered standard of protection, or where crossing gates are installed in addition to existing protection, or where predictors are installed on or in addition to existing protection there shall have occurred an alteration bringing Section 1202.2 into effect; provided the Commission by order or resolution approves such alteration and prescribes or approves the proposed terms of the apportionment or division of costs therefor. In any case not encompassed by the foregoing the Commission shall decide with or without hearing whether or not a crossing has been "constructed or altered" as those terms are used in Section 1202.2.

October 1, 1965

The next logical question concerns the significance of date of "October 1, 1965" as used in Section 1202.2. Various respondent cities and counties and the Department of Public Works contend that the instant section cannot be given retroactive effect by applying it to matters in which the Commission had, prior to October 1, 1965, apportioned maintenance costs to the railroad, but where physical construction or alteration had taken place after October 1, 1965. The railroads reply that there is nothing retroactive about this date inasmuch as it was subsequent to the

effective date of the legislation and therefore prospective in nature. Several basic facts should be kept in mind when considering the date here involved. First, the applicability of the date may be considered a one-time matter; it may affect all of the crossings involved in these reopened proceedings. It is clear that once these have been disposed of no future problem with respect to this date will exist. Second, the Commission retains continuing jurisdiction to rescind, alter or amend any of its orders or decisions upon proper notice and an opportunity to be heard. Third, it is within the province of the parties, railroad or public agency, to delay by review or request for rehearing or for extension of time for the completion of work ordered by the Commission. In some of these cases, for instance, the statute may be applicable when it would not have been applicable in the absence of review or request for rehearing or for an extension of time to complete the work. It is evident, despite contrary contentions of some parties, that "constructed or altered after October 1, 1965 under Section 1202.2" is not such clear language as to remove any doubt of the legislative intent. Certainly once work commences on an existing grade-crossing protection, it has been altered, but not completely altered; certainly once construction of a new grade-crossing protection is commenced it is being constructed, although it is not fully constructed until the work is completed.

We find in the matters here reopened that where any work of construction or alteration had commenced prior to October 1, 1965 based on the facts of record herein, without regard to the degree of completion of such work, and the Commission had apportioned maintenance cost, Section 1202.2 is not applicable.

Application to Specific Matters

Exhibits Nos. 10, 11, 12, 13, 15 and 16, together with the testimony of the sponsoring witnesses, set forth the physical facts relative to each of the crossings involved in these reopened proceedings. We hereafter refer to each of said crossings and apply the foregoing findings thereto to determine whether any of our previous orders should be altered or amended.

Applications Nos. 45058 and 45785 involve two crossings, Crossing No. E-133.9, Corda Road and Crossing No. E-111.5, Espinosa Road. Decision No. 68216 apportioned the cost of automatic grade-crossing protection 50 percent to Southern Pacific Company and 50 percent to County of Monterey in accordance with an agreement of the parties. No physical work had been performed at the respective crossings prior to October 1, 1965, although preliminary engineering work and financial budgeting had taken place. We find that finding 4 and ordering paragraph 4 of Decision No. 68216 should be modified to provide that the cost of maintenance of automatic grade-crossing protection should be borne 50 percent by the Southern Pacific Company and 50 percent by the County of Monterey pursuant to Section 1202.2 of the Public Utilities Code.

Application No. 45895 involves Crossing No. AE-75.9, Fifth Street, in the City of Davis. Decision No. 67891 apportioned the total cost of construction of the crossing and its automatic protection to the City of Davis and the total cost of maintaining said automatic grade-crossing protection to the Southern Pacific Company. Three hundred and thirty man-hours of work were performed

at the crossing prior to October 1, 1965 out of a total of 1,379 man-hours. We find that no modification of Decision No. 67891 is required.

Application No. 46574 involves Crossing No. BK-512.4, Katella Avenue, in the City of Anaheim. Decision No. 68035 apportioned the total cost of construction of the crossing and its automatic protection to the City of Anaheim and the total cost of maintaining said automatic grade-crossing protection to the Southern Pacific Company. Three hundred man-hours of work were performed at the crossing prior to October 1, 1965 out of a total of 836 man-hours. Work commenced August 11, 1965. We find that no modification of Decision No. 68035 is required.

Case No. 7521 and Case No. 7739 involve some 160 separate crossings in the general Los Angeles area. Decision No. 67887 apportioned the cost of alteration of the crossing protection therein 50 percent to the railroad involved and 50 percent to the public agency or agencies involved and the total cost of maintaining said automatic grade-crossing protection to the railroads. It set a schedule for completion of said improvement of protection which extends on a yearly basis through June 30, 1968. Certain of the crossings involved in Decision No. 67887 had been altered or were in the process of being altered as of October 1, 1965. As to those crossings which we will hereinafter list, no modification of Decision No. 67887 is required. As to the remaining crossings ordered improved in Decision No. 67887, said decision should be modified to provide that maintenance cost of such automatic grade-crossing protection should be borne 50 percent by the railroad involved and 50 percent by the public agency or agencies involved pursuant to Section 1202.2 of the Public Utilities Code.

No Modification of Decision No. 67887

<u>Crossing Number</u>	<u>Street</u>	<u>Public Agency Involved</u>	<u>Railroad Involved</u>
B-483.65	Hancock Street	Los Angeles City	So. Pacific
B-483.7	Mission Road and Eastlake Avenue	Los Angeles City	So. Pacific
B-484.0	San Pablo Street	Los Angeles City	So. Pacific
B-484.75	Vineburn Avenue	Los Angeles City	So. Pacific
B-485.0	Worth-Boca Street	Los Angeles City	So. Pacific
B-487.3	Westminster Ave.	Alhambra	So. Pacific
B-487.4	Fremont Avenue	Alhambra	So. Pacific
B-488.0	Marengo Avenue	Alhambra	So. Pacific
B-490.7	Del Mar Avenue	San Gabriel	So. Pacific
B-491.2	San Gabriel Blvd.	San Gabriel	So. Pacific
B-492.6	Encinita Avenue	Rosemead & Temple City	So. Pacific
B-492.7	Lower Azusa Road	Rosemead & Temple City	So. Pacific
B-493.3	Temple City Blvd.	Rosemead, Temple City and El Monte	So. Pacific
B-510.2	Pomona Boulevard	Los Angeles County	So. Pacific
B-515.9	East End Avenue	Pomona	So. Pacific
B-522.4	Vineyard Avenue	Ontario	So. Pacific
2-120.4	Highland Avenue	Irwindale & Duarte	AT&SF
2-122.4	Myrtle Avenue	Monrovia	AT&SF
2-124.3	Santa Anita Avenue	Arcadia	AT&SF
2-131.1	Walnut Street	Pasadena	AT&SF
2-131.2	Holly Street	Pasadena	AT&SF
2-131.4	Colorado Boulevard	Pasadena	AT&SF
2-131.5	Green Street	Pasadena	AT&SF
2-131.8	Del Mar Street	Pasadena	AT&SF
2-131.9	Bellevue Drive	Pasadena	AT&SF
2-133.4	Fremont Avenue and Grevelia Street	South Pasadena	AT&SF
2-133.45	Magnolia Street	South Pasadena	AT&SF
2-133.5	Fairview Avenue	South Pasadena	AT&SF
2-133.6	Hope	South Pasadena	AT&SF
2-133.7	Mission & Meridian	South Pasadena	AT&SF
2-133.8	El Centro	South Pasadena	AT&SF
2-134.5	Pasadena Avenue	South Pasadena	AT&SF
2-134.51	Pasadena Avenue	South Pasadena	AT&SF
2-134.8	Arroyo Verde Road	South Pasadena	AT&SF
2-135.7	Avenue 60	Los Angeles City	AT&SF
2-151.3	Serrapis Avenue	Pico Rivera	AT&SF
2-151.45	Passons Boulevard	Pico Rivera	AT&SF
3-8.0	Maple Avenue	Montebello	Union Pacific
3-8.3	Greenwood Avenue	Montebello	Union Pacific
3-8.5	Montebello Blvd.	Montebello	Union Pacific
3-9.8	Lexington Road	Pico Rivera	Union Pacific
3-12.3	Rose Hill Road	Industry & L.A. County	Union Pacific
3-13.9	Workman Mill Road (State Route 170)	State of California	Union Pacific
3-18.3	Stimson Avenue	Industry	Union Pacific
3-19.9	Anaheim-Puente Rd.	Industry	Union Pacific
3-33.5	East End Avenue	Pomona	Union Pacific

Case No. 8063 involves Crossing No. 2C-44.6, Lovekin

Boulevard, in Riverside County. Decision No. 68731 apportioned ,

installation cost of automatic grade-crossing protection 50 percent to the County of Riverside and 50 percent to The Atchison, Topeka and Santa Fe Railway Company and the cost of maintaining said protection to the latter company. Decision No. 69067 modified Decision No. 68731 by deferring until further order of the Commission any apportionment of the maintenance cost. The automatic protection was operative by August 25, 1965. We find that the original order in Decision No. 68731 should be affirmed and The Atchison, Topeka and Santa Fe Railway Company should bear the cost of maintenance of automatic grade-crossing protection at Crossing No. 2C-44.6.

Application No. 45927 and Case No. 7872 involve Crossing No. L-49.4, Stokes Street, in the City of San Jose. Decision No. 68729 apportioned total installation cost of automatic grade-crossing protection to the City of San Jose and total maintenance cost thereof to Southern Pacific Company. Decision No. 69066 modified Decision No. 68729 by deferring until further Commission order the apportionment of the cost of maintenance of the automatic protection. As of October 1, 1965 no work had been done at this crossing. We find that Decision No. 68729 should be modified to provide that maintenance cost of the automatic grade crossing protection at Crossing No. L-49.4 should be borne 100 percent by the City of San Jose pursuant to Section 1202.2 of the Public Utilities Code.

Application No. 46151 involves Crossings Nos. BY-459.4 and BY-459.5, Woodman Avenue and Oxnard Avenue, respectively, in the City of Los Angeles. Decision No. 67487 authorized the installation of certain automatic grade-crossing protection but deferred

any apportionment of cost thereof. Decision No. 68728 thereafter apportioned total construction cost of the automatic protection to the City of Los Angeles and total maintenance cost thereof to Southern Pacific Company. Decision No. 69068 modified Decision No. 68728 by deferring until further Commission order the apportionment of maintenance cost. The crossing protection at each crossing was operative prior to October 1, 1965. We find that the order in Decision No. 68728 should be affirmed and Southern Pacific Company should bear the cost of maintaining automatic grade-crossing protection at Crossings Nos. BY-459.4 and BY-459.5.

Application No. 46864 involves Crossing No. 6T-3.83-C, Alcazar Street, in the City of Los Angeles. Decision No. 68777 apportioned the cost of installation of the automatic grade-crossing protection 50 percent to the City of Los Angeles and 50 percent to Pacific Electric Railway Company and deferred until further Commission order any apportionment of the cost of maintenance of automatic protection. As of October 1, 1965 no work had been performed at the crossing. We find that Decision No. 68777 should now be modified to provide that the cost of maintenance of automatic grade-crossing protection at Crossing No. 6T-3.83-C should be borne 50 percent by the City of Los Angeles and 50 percent by Pacific Electric Railway Company pursuant to Section 1202.2 of the Public Utilities Code.

Application No. 46876 involves Crossing No. 6TD-23.15, Todd Avenue, in the City of Azusa. Decision No. 69498 apportioned the entire cost of construction of said crossing to the City of Azusa and deferred any apportionment of the cost of maintenance of automatic protection. As of October 1, 1965 no work had been

performed at this crossing. Decision No. 69498 should now be modified to provide that the City of Azusa should bear 100 percent of the cost of maintaining said automatic grade-crossing protection pursuant to Section 1202.2 of the Public Utilities Code.

Application No. 47421 involves Crossing No. 4G-16.9, East Santa Clara Street, in San Jose. Decision No. 69251 apportioned the cost of installation of automatic crossing protection 50 percent to the City of San Jose and 50 percent to The Western Pacific Railroad Company and deferred apportionment of maintenance cost thereof. No work was performed at this crossing until subsequent to October 1, 1965. We find that Decision No. 69251 should now be modified to provide that the cost of maintenance of automatic crossing protection at Crossing No. 4G-16.9 should be borne 50 percent by the City of San Jose and 50 percent by The Western Pacific Railroad Company pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 7405 involves Crossings Nos. E-275.8 and E-275.9, Eleventh and Tenth Streets, respectively, in the City of Guadalupe. Decision No. 69497 apportioned the cost of installation of automatic grade-crossing protection at Crossing No. E-275.9, Tenth Street, 50 percent to the City of Guadalupe and 50 percent to Southern Pacific Company, while at Crossing No. E-275.8, Eleventh Street, the cost was apportioned 25 percent to the City of Guadalupe, 25 percent to the County of Santa Barbara and 50 percent to Southern Pacific Company. Apportionment of the cost of maintenance of automatic protection was deferred. No work at the crossings was performed prior to October 1, 1965. We find that Decision No. 69497 should be modified to provide that maintenance cost of

automatic grade-crossing protection be apportioned on the same basis that installation cost was therein apportioned, pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 7982 involves Crossing No. B-106.2, Kiernan Avenue, in Stanislaus County. Decision No. 68938 apportioned the cost of installation of automatic grade-crossing protection 50 percent to the County of Stanislaus and 50 percent to Southern Pacific Company and deferred any apportionment of the cost of maintenance thereof. Four hundred and eighty man-hours of work out of a total of 808 man-hours were performed at this crossing prior to October 1, 1965. This matter is the first herein where pursuant to our foregoing discussion and findings the Commission still retains discretion to apportion the cost of maintenance of automatic protection. In light of the obvious legislative intent to change what had been the historical Commission practice we will apportion maintenance cost herein on the same basis as installation cost. We find that Decision No. 68938 should be modified to provide that the cost of maintenance of automatic grade-crossing protection should be apportioned 50 percent to the County of Stanislaus and 50 percent to Southern Pacific Company.

Case No. 7983 involves Crossing No. B-143.9, Shaefer Road, in the County of Merced. Decision No. 68856 apportioned the cost of installation of automatic grade-crossing protection 50 percent to the County of Merced and 50 percent to Southern Pacific Company and deferred any apportionment of the cost of maintenance thereof. Two hundred and twelve man-hours of work out of a total of 556 man-hours were performed at this crossing prior to October 1, 1965. Here, too, the Commission has discretion in the apportionment of

maintenance cost. We find that Decision No. 68856 should be modified to provide that the cost of maintenance of automatic grade-crossing protection should be apportioned 50 percent to the County of Merced and 50 percent to Southern Pacific Company.

Case No. 7999 involves Crossing No. B-479.3-C, San Fernando Road and Frederick Street in the City of Los Angeles. Decision No. 69201 apportioned the cost of installation of automatic grade-crossing protection 50 percent to Southern Pacific Company and for San Fernando Road 50 percent to the State of California, Department of Public Works and for Frederick Street 50 percent to the City of Los Angeles. Apportionment of the cost of maintenance of automatic protection was deferred. No work was performed prior to October 1, 1965. We find that Decision No. 69201 should be modified to provide that the cost of maintenance of automatic grade-crossing protection at Crossing No. B-479.3-C should be apportioned on the same basis as installation costs were apportioned, pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 8057 involves Crossing No. BJ-545.3, Kansas Avenue, in the City of Riverside. Decision No. 68730 apportioned the installation cost of automatic grade-crossing protection 50 percent to the City of Riverside and 50 percent to Southern Pacific Company and apportioned the cost of maintenance thereof to the railroad. Decision No. 69065 modified Decision No. 68730 by deferring any apportionment of maintenance cost. As of October 1, 1965 no work had been performed at this crossing. We find that Decision No. 68730 should now be modified to provide that the cost of maintenance of automatic grade-crossing protection at Crossing No. BJ-545.3 be borne 50 percent by the City of Riverside and 50 percent

by Southern Pacific Company pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 8082 involves Crossings Nos. B-360.5, North Green Street and B-360.9, Hayes Street, in the City of Tehachapi. Decision No. 69526 and Decision No. 71132 on rehearing apportioned the cost of installation of automatic grade-crossing protection 50 percent to the City of Tehachapi and 50 percent to Southern Pacific Company and deferred any apportionment of the maintenance cost thereof. No work at these crossings had been performed as of October 1, 1965. We find that Decision No. 69526 should be modified to provide that the cost of maintenance of automatic grade-crossing protection at Crossings Nos. B-360.5 and B-360.9 should be borne 50 percent by the City of Tehachapi and 50 percent by Southern Pacific Company pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 8107 involves Crossings Nos. 6T-20.38-C, Amar Road and 6T-20.73-C, Temple Avenue, in the City of Industry. Decision No. 69179 apportioned the cost of installation of automatic grade-crossing protection at said crossings 50 percent to Pacific Electric Railway Company, 37-1/2 per cent to the City of Industry and 12-1/2 percent to the County of Los Angeles and deferred the apportionment of maintenance cost thereof. No work had been performed at these crossings as of October 1, 1965. We find that Decision No. 69179 should be modified to provide that cost of maintenance of automatic protection should be apportioned on the same basis as installation cost thereof was apportioned, pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 8108 involves Crossing No. BN-686.7, "K" Street, in the City of Brawley. Decision No. 69180 apportioned installation cost of automatic grade-crossing protection 50 percent to the City of Brawley and 50 percent to Southern Pacific Company and deferred apportionment of the cost of maintenance thereof. As of October 1, 1965 no work had been performed at this crossing. We find that Decision No. 69180 should be modified to provide that the cost of maintenance of automatic grade-crossing protection be apportioned 50 percent to the City of Brawley and 50 percent to Southern Pacific Company pursuant to Section 1202.2 of the Public Utilities Code.

Case No. 8110 involves Crossing No. BK-497.1-C, Woodruff Avenue, in the City of Downey. Decision No. 69556 apportioned the cost of installation of automatic grade-crossing protection 50 percent to the City of Downey and 50 percent to Southern Pacific Company and deferred the apportionment of cost of maintenance thereof. As of October 1, 1965 no work had been performed at the crossing. We find that Decision No. 69556 should be modified to provide that the cost of maintenance of automatic grade-crossing protection be borne 50 percent by the City of Downey and 50 percent by Southern Pacific Company pursuant to Section 1202.2 of the Public Utilities Code.

Remaining Issues

The County of Santa Barbara filed a written argument in Case No. 7405 on February 3, 1966 in which it alleges that the Commission is without jurisdiction to apportion maintenance cost under Section 1202.2 between public agencies. Decision No. 69497 had apportioned construction cost among the City of Guadalupe,

County of Santa Barbara and Southern Pacific Company. The practice of dividing construction costs between or among affected public agencies under Section 1202 is of long standing. Section 1202.2 merely carries over to the realm of maintenance cost a like authority. The latter section, in fact, speaks not of the public agency affected but of "public agencies affected" and clearly recognizes division among multiple political subdivisions. Indeed, it is conceivable that the Commission might at some time apportion construction and maintenance costs between public agencies only, although such is not the case here. We must reject the argument of Santa Barbara County.

On September 1, 1965 the Department of Public Works filed a petition seeking to await a decision in Case No. 8249 before proceeding with these matters. Said petition is denied.

After consideration, the Commission concludes that orders should be entered in certain of the matters involved herein consistent with the foregoing discussion and findings and that the orders in the remaining matters unmodified herein should be affirmed.

O R D E R

IT IS ORDERED that:

1. Ordering paragraph 4 of Decision No. 68216 in Applications Nos. 45058 and 45785 is stricken and the following substituted:

4. The maintenance costs for automatic protection installed at the crossings herein considered shall be borne 50 percent by the County of Monterey and 50 percent by Southern Pacific Company."

Finding No. 4 of Decision No. 68216 is also stricken.

2. Decision No. 67887 in Cases Nos. 7521 and 7739 is modified by striking ordering paragraph 9 thereof and substituting the following:

9. Maintenance cost of signals, circuits and gates is apportioned 50 percent to the railroad involved and 50 percent to the public agency or agencies involved, with the exception of the following numbered crossings wherein such costs are to be borne by the railroad company involved:

<u>Crossing Number</u>	<u>Street</u>	<u>Railroad Involved</u>
B-483.65	Hancock Street	Southern Pacific Company
B-483.7	Mission Road and Eastlake Avenue	Southern Pacific Company
B-484.0	San Pablo Street	Southern Pacific Company
B-484.75	Vineburn Avenue	Southern Pacific Company
B-485.0	Worth-Boca Street	Southern Pacific Company
B-487.3	Westminster Avenue	Southern Pacific Company
B-487.4	Fremont Avenue	Southern Pacific Company
B-488.0	Marengo Avenue	Southern Pacific Company
B-490.7	Del Mar Avenue	Southern Pacific Company
B-491.2	San Gabriel Blvd.	Southern Pacific Company
B-492.6	Encinita Avenue	Southern Pacific Company
B-492.7	Lower Azusa Road	Southern Pacific Company
B-493.3	Temple City Blvd.	Southern Pacific Company
B-510.2	Pomona Boulevard	Southern Pacific Company
B-515.9	East End Avenue	Southern Pacific Company
B-522.4	Vineyard Avenue	Southern Pacific Company
2-120.4	Highland Avenue	The Atchison, Topeka and Santa Fe
2-122.4	Myrtle Avenue	The Atchison, Topeka and Santa Fe
2-124.3	Santa Anita Avenue	The Atchison, Topeka and Santa Fe
2-131.1	Walnut Street	The Atchison, Topeka and Santa Fe
2-131.2	Holly Street	The Atchison, Topeka and Santa Fe
2-131.4	Colorado Boulevard	The Atchison, Topeka and Santa Fe
2-131.5	Green Street	The Atchison, Topeka and Santa Fe
2-131.8	Del Mar Street	The Atchison, Topeka and Santa Fe
2-131.9	Bellevue Drive	The Atchison, Topeka and Santa Fe
2-133.4	Fremont Avenue and Grevelia Street	The Atchison, Topeka and Santa Fe
2-133.45	Magnolia Street	The Atchison, Topeka and Santa Fe
2-133.5	Fairview Avenue	The Atchison, Topeka and Santa Fe
2-133.6	Hope	The Atchison, Topeka and Santa Fe
2-133.7	Mission and Meridian	The Atchison, Topeka and Santa Fe
2-133.8	El Centro	The Atchison, Topeka and Santa Fe
2-134.5	Pasadena Avenue	The Atchison, Topeka and Santa Fe
2-134.51	Pasadena Avenue	The Atchison, Topeka and Santa Fe
2-134.8	Arroyo Verde Road	The Atchison, Topeka and Santa Fe
2-135.7	Avenue 60	The Atchison, Topeka and Santa Fe
2-151.3	Serrapis Avenue	The Atchison, Topeka and Santa Fe
2-151.45	Passons Boulevard	The Atchison, Topeka and Santa Fe

<u>Crossing Number</u>	<u>Street</u>	<u>Railroad Involved</u>
3-8.0	Maple Avenue	Union Pacific Railroad
3-8.3	Greenwood Avenue	Union Pacific Railroad
3-8.5	Montebello Boulevard	Union Pacific Railroad
3-9.8	Lexington Road	Union Pacific Railroad
3-12.3	Rose Hills Road	Union Pacific Railroad
3-13.9	Workman Mill Road (State Route 170)	Union Pacific Railroad
3-18.3	Stimson Avenue	Union Pacific Railroad
3-19.9	Anaheim-Puente Road	Union Pacific Railroad
3-33.5	East End Avenue	Union Pacific Railroad

3. Decision No. 68729 in Application No. 45927 and Case No. 7872 is modified by striking ordering paragraph 3 thereof and substituting the following:

3. The maintenance cost of the automatic grade-crossing protection shall be borne by the City of San Jose. Maintenance of the crossing between lines two feet outside of rails shall be borne by the Southern Pacific Company.

4. Decision No. 68777 in Application No. 46864 is modified by striking ordering paragraph 5 thereof and substituting the following:

5. The City of Los Angeles and the Pacific Electric Railway Company shall each bear 50 percent of the cost of maintenance of said flashing lights and automatic gates at said crossing.

5. Decision No. 69498 in Application No. 46876 is modified by adding thereto the following ordering paragraph:

4. Applicant shall bear the entire cost of maintenance of the automatic grade-crossing protection authorized herein.

6. Decision No. 69251 in Application No. 47421 is modified by adding to the body thereof:

The cost of maintenance of the automatic signal protection shall be borne equally by the city and the railroad.

7. Decision No. 69497 in Case No. 7405 is modified by adding thereto the following ordering paragraph:

8. The cost of maintaining the automatic grade-crossing protection required by the preceding paragraphs of this order are allocated to the Southern Pacific Company, the City of Guadalupe and the County of Santa Barbara on the same basis as the cost of installation as provided in the findings herein.

8. Decision No. 68938 in Case No. 7982 is modified by adding thereto the following ordering paragraph:

5. The cost of maintaining the automatic signals and gate arms set forth in ordering paragraph 1 hereof is apportioned on the basis of 50 percent to be paid by the County of Stanislaus and 50 percent to be paid by the Southern Pacific Company.

9. Decision No. 68856 in Case No. 7983 is modified by adding thereto the following ordering paragraph:

8. The cost of maintaining the signals and automatic gate arms set forth in ordering paragraph 1 hereof is apportioned on the basis of 50 percent to be paid by the County of Merced and 50 percent to be paid by the Southern Pacific Company.

10. Decision No. 69201 in Case No. 7999 as modified by Decision No. 70090 is further modified by adding thereto the following ordering paragraph:

6. The cost of maintenance of the No. 8 flashing light signals on San Fernando Road is apportioned 50 percent to the Southern Pacific Company and 50 percent to the Department of Public Works.

11. Decision No. 68730 in Case No. 8057 as modified by Decision No. 69065 is further modified by striking therefrom the language of ordering paragraph 3 thereof and substituting the following:

3. The maintenance cost for the two No. 8 flashing light signals installed at Crossing No. BJ-545.3 is apportioned on the basis of 50 percent to be paid by the City of Riverside and 50 percent to be paid by Southern Pacific Company.

12. Decision No. 69526 in Case No. 8082 as modified by Decision No. 71132 is further modified by adding thereto the following ordering paragraph:

7. The cost of maintenance of the automatic grade-crossing protection ordered herein is apportioned 50 percent to the City of Tehachapi and 50 percent to the Southern Pacific Company.

13. Decision No. 69179 in Case No. 8107 is modified by adding thereto the following ordering paragraph:

5. The maintenance cost of the No. 8 flashing light signals, supplemented with automatic crossing gates, is apportioned on the basis of 50 percent to be paid by the Pacific Electric Railway Company, 37-1/2 percent to be paid by the City of Industry, and 12-1/2 percent to be paid by the County of Los Angeles.

14. Decision No. 69180 in Case No. 8108 is modified by adding thereto the following ordering paragraph:

6. The cost of maintaining said No. 8 flashing light signals, supplemented with automatic crossing gates, is apportioned on the basis of 50 percent to be paid by the Southern Pacific Company and 50 percent to be paid by the City of Brawley.

15. Decision No. 69556 in Case No. 8110 is modified by adding thereto the following ordering paragraph:

7. The cost of maintaining the automatic grade-crossing protection is allocated 50 percent to the railroad and 50 percent to the City of Downey.

16. Decision No. 67891 in Application No. 45895 is affirmed. Decision No. 68035 in Application No. 46574 is affirmed. Decision No. 68731 in Case No. 8063 is affirmed. Decision No. 68728 in Application No. 46151 is affirmed.

17. In each matter herein where modification was made apportioning the cost of maintenance of automatic grade-crossing protection said apportionment is made pursuant to Section 1202.2 of the Public Utilities Code and allows participation by the public agency or agencies involved in the fund established pursuant to Section 1231.1 of the Public Utilities Code.

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

Dated at San Francisco, California, this 28th day of MARCH, 1967.

[Signature]
President
[Signature]
[Signature]
William Symons, Jr.
Sheel P. Morrissey
Commissioners

APPENDIX A

List of Appearances

Richard K. Karren, for City of San Jose; C. A. McGahan, for City of Davis; Alan R. Watts, for City of Anaheim; Bruce W. McClain, for Monterey County; Warwick Downing, for Monterey County; Leslie E. Corkill, for City of Los Angeles, applicants.

Harold S. Lentz, for Southern Pacific Company, respondent and petitioner.

Philip M. Wagy, for City of Tehachapi; Robert K. Cutler, by Thomas P. Anderle, for County of Santa Barbara; Ronald L. Schneider, for County of Los Angeles; Marshall W. Vorkink, for Union Pacific Railroad Co.; Robert E. Curtiss, for The Atchison, Topeka and Santa Fe Railway Co.; Merlan Dykeman, George D. Moe, Joseph C. Easley, for State Department of Public Works; Paul D. Foxworthy, for City of Azusa; Myron D. Hawk, for City of Alhambra; respondents.

Walter G. Treanor and J. W. Gavey, for The Western Pacific Railroad Co.; Richard W. Andrews, for Los Angeles County Road Department; George W. Ballard, for Brotherhood of Railroad Trainmen AFL-CIO; Howard D. Amacker, for Monolith Portland Cement Co., interested parties.

Vincent V. MacKenzie, W. F. Hibbard, for the Commission staff.