

EMM

ORIGINAL

Decision No. 72618

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the status, safety,
maintenance, use and protection or
closing of the crossing at grade of
the lines of the SOUTHERN PACIFIC
COMPANY in the County of Kern,
California, with Searles Road;
Crossing No. BAM-428.6.

Case No. 8109

In the matter of the petition of
SOUTHERN PACIFIC COMPANY to modify or
rescind Resolution No. ET-1012 regard-
ing Crossing BAM-428.6, Searles Road,
in Kern County, California.

Application No. 47113

Walt A. Steiger, for Southern Pacific Company;
Dennis N. Reid and William K. Triplett, Office
of the County Counsel, for County of Kern,
and J. S. Latham, for Trona Railway Company,
respondents.

Joseph Wooldridge, for Young, Wooldridge and
Paulden and Richard B. Lynch, for Muroc Unified
School District, interested parties.

Robert C. Marks, Counsel, and William L. Oliver,
for the Commission staff.

O P I N I O N

On the night of January 25, 1964 a serious accident occurred at the crossing of Searles Road with tracks of the Owenyo Branch of Southern Pacific Company, No. BAM-428.6. On May 5, 1964 the Commission passed Resolution No. ET-1012 requiring train crews to set fusees and flag trains across the crossing during the hours of darkness.

Subsequently, Southern Pacific filed Application No. 47113 requesting that it be relieved of the requirement of the resolution. On January 12, 1965 this investigation was instituted to broaden the scope of the inquiry respecting this crossing.

After hearing on a joint record, we issued Decision No. 69527 on August 10, 1965. This decision conditionally relieved Southern Pacific of the burden of Resolution No. ET-1012. The condition was that flashing light signals equipped with automatic gate arms be constructed. This protection was placed in service March 10, 1966. The resolution was rendered ineffective and Application No. 47113 terminated.

Case No. 8109 was kept open for the purpose of allocating costs if the parties could not agree. They could not, and a further hearing was held before Examiner Power on November 30, 1966 at Bakersfield and the matter resubmitted, subject to the filing of statements of position and replies thereto. The last of these was received on January 3, 1967 and the matter is ready for decision.

There is only one issue before us and that is the division of costs for the automatic protection. The County contends that Southern Pacific derived immediate benefit through rescission of Resolution ET-1012 and should pay one hundred percent. The railroad argued that the County should pay one hundred percent upon either of two theories. The first of these is that this crossing has not been authorized by the Commission, therefore it is a new crossing, and following custom, the party requesting same should pay all costs. The second theory was that the County had agreed to do this in a written contract (Exhibit No. 3 is a copy of it).

The Commission cannot accept the county theory. It is true that the railroad did receive direct benefit from the improvement. However, the ET-1012 protection was an obvious stopgap. The use of fusees alone proves that. The protection in the resolution was not within any standard in General Order No. 75-B. The use of

trainmen to flag across crossings is undesirable because it puts them as pedestrians into the traveled portion of streets and highways, a dangerous place to be.

The first railroad contention is one that is contrary to the known facts. Searles Road appears in the Commission's inventory of public grade crossings, dated January 1, 1931, with the same designation it has now, BAM-428.6. BAM designates Southern Pacific's Owenyo Branch, now usually referred to as the Lone Pine Branch. This is a designation indicating a public crossing. Filings by Southern Pacific even earlier (in 1926) refer to Searles Road as a county road.

The precise nature of the transaction that took place in 1948 was never brought out at the hearings. However, the most reasonable inference from the facts that, (a) the crossing had been public for more than twenty years and, (b) that an easement was granted, would be that it was a relocation or widening of an existing crossing. The Commission's authorization was not obtained and the Commission could have taken any appropriate action that it saw fit to take. This would not, however, change an old crossing into a new one.

We have referred above to a written contract (Exhibit No. 3). This agreement, prepared by Southern Pacific or Southern Pacific Railroad Company, was entered into on February 16, 1948 by companies of the Southern Pacific group and the County of Kern. It purports to grant a 60-foot easement to the county for road purposes. It goes on to a paragraph reading as follows:

"Second party (county) agrees, at its sole cost and expense and without cost to first party, to construct and maintain said street or highway, including the installation of any crossing protection ordered by the Public Utilities Commission of the State of California."

Southern Pacific relies on this contract provision to relieve it of bearing any portion of the cost of installation of the signals at Searles Road. Since this project was completed after October 1, 1965 it is subject to Sections 1202.2, 1231 and 1231.1 of the Public Utilities Code. Therefore the railroads would escape not only any liability for installation but also from the maintenance costs of this installation.

Under Sections 1231 and 1231.1 counties are entitled to certain subventions from the State funds set up under these sections. Section 1231 authorizes allocation to Kern County of one half of the cost to that county of the improvement. Increasing the county's share of installation from 50 percent to 100 percent would increase the exposure of the Section 1231 fund from 25 percent to 50 percent. We say exposure because, under the section the Commission has discretion to allow less than one-half of installation cost under this section.

Section 1231.1, on the other hand, is automatic. The contract would impose an increase of the burden on this fund from 50 percent to 100 percent of the maintenance cost for this project. This creates a situation in which a State fund can be burdened by a contract to which the State is not a party.

We have previously considered this question in Decision No. 71801, dated December 30, 1966 in Application No. 48075 (Cities of Vernon and Huntington Park, Randolph Street). For the reasons therein set forth the Commission is of the opinion that we are not bound by contracts of the kind before us in this proceeding.

In the Commission's view none of the three contentions of county and railroad have merit. A fair and reasonable division of cost would be fifty percent to each.

The Commission finds that:

1. From some time prior to January 1, 1931 the Searles Road crossing has been a public crossing.
2. The contract between Southern Pacific Company and Southern Pacific Railroad Company, first party, and County of Kern, second party, and dated February 16, 1948 imposes a burden on funds appropriated to implement Sections 1230 and 1231.1 of the Public Utilities Code.
3. Neither the State of California nor any agency thereof was a party to said contract.
4. The crossing protection provided for in the Commission's Resolution No. ET-1012 would not provide adequate permanent protection for Searles Road crossing.
5. County of Kern and Southern Pacific Company will benefit equally from the increased protection hitherto installed at Searles Road crossing.
6. A fair and reasonable division of the costs of installing the automatic protection at the crossing here involved is 50 percent to the county and 50 percent to the railroad.
7. Crossing protection required by Decision No. 69527 has been completed and is in service.

The Commission concludes that:

1. The costs of installing the automatic protection at Searles Road crossing should be divided equally between Southern Pacific Company and the County of Kern.
2. The maintenance costs for said automatic protective devices shall be divided in the same proportion as the cost of construction has been apportioned herein, in accord with and pursuant to the provisions of Section 1202.2 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. The costs of installing and maintaining flashing light signals equipped with automatic gate arms at Searles Road crossing No. BAM-428.6 should be divided one-half to Southern Pacific Company and one-half to the County of Kern.

2. Commission Resolution No. ET-1012 is rescinded.

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

Dated at San Francisco, California, this 20th day of JUNE, 1967.

[Signature]
President

[Signature]

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Commissioners