

ORIGINALDecision No. 74661

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of SOUTHERN PACIFIC COMPANY for)
 apportionment of maintenance costs)
 of automatic protection at Old)
 Soledad Canyon Road, Crossing No.)
 B-426.0, in the County of Los)
 Angeles, California.)

Application No. 50077
 (Filed March 7, 1968)

Harold S. Lentz, for applicant.
Joseph C. Easley, for State of
 California, Department of
 Public Works; and Ronald L.
Schneider, for County of
 Los Angeles; interested parties.
William L. Oliver, for the Commission
 staff.

O P I N I O N

The Southern Pacific Company seeks an apportionment of the annual maintenance costs of the automatic grade crossing protective devices at Soledad Canyon Road Crossing No. B-426.0, between it and the County of Los Angeles, under Section 1202.2 of the Public Utilities Code.

Public hearing was held before Examiner DeWolf at Los Angeles on May 15, 1968, at which time it was submitted upon the filing of briefs, which have now been filed by the applicant and the Commission staff. The County of Los Angeles did not file a brief.

The issue in this proceeding is the applicability of Section 1202.2 of the Public Utilities Code to this particular grade crossing protection project. Section 1202.2 states:

"In apportioning the cost of maintenance of automatic grade crossing protection constructed or altered after October 1, 1965. . . the Commission shall divide such maintenance cost in the same proportion as the cost of constructing such automatic grade-crossing protection is divided."

The project in question, Old Soledad Canyon Road, was started prior to October 1, 1965 and completed after October 1, 1965. So the question is whether the maintenance costs of the signals should be assessed to the parties on the same basis as are the construction costs (50/50 in this case) or whether the Southern Pacific Company should be required to bear all of the maintenance costs following the Commission's long standing practice in such matters prior to the enactment of Section 1202.2.

The railroad contends that a project completed after October 1 should fall within Section 1202.2 even though a portion of the work was done prior to October 1. The Commission's staff argues that Section 1202.2 should apply only to those projects on which at least 50 percent of the work was done after October 1.

One witness testified for applicant and other evidence offered by applicant was admitted on stipulation. The other parties did not offer any evidence.

The evidence discloses that applicant and the County of Los Angeles entered into an agreement dated May 26, 1965, for installation of automatic protection at this crossing, and that the County agreed to reimburse the railroad for 50 percent of the cost of installation of the protection which has been paid, and that the work was commenced on September 24, 1965, and that the protection was completed and placed in service after October 1, 1965. The Commission has not heretofore considered the contract of the parties or the apportionment of the cost of installation. The witness testified that 148 hours of work on the crossing was done before October 1, 1965, and 396 hours after said date.

No evidence was offered by the County of Los Angeles or the Commission staff, and the briefs on file by the applicant and the Commission staff state that the maintenance cost in this case should be divided in the same proportion as the cost of installation, 50 percent to the Southern Pacific Company and 50 percent to the County of Los Angeles.

The briefs allege that this case is similar to other cases on file and requests findings of fact and law as a policy decision to enable the settling of other cases on file. The parties compare this case to maintenance costs settled in Decision No. 72226 and other interpretations of Section 1202.2 of the Public Utilities Code. This case and other pending crossing matters referred to are cases not previously considered by the Commission while Decision No. 72226 cited by applicant involves reopened crossing matters previously heard by this Commission in which the division of the cost of construction has been apportioned.

Decision No. 72226 has set forth the policy of the Commission under Sections 1202 and 1202.2 and made the following 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."

The Commission is not required to apportion the cost of maintenance in the same proportion as a division of the cost of

construction or alteration which is made by an agreement between the parties, but must first make its apportionment thereof. The last sentence of Section 1202.2 provides:

"...If the public agency affected agrees to assume a greater proportion of the cost of maintenance than the apportionment of 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 1202.2 of the Public Utilities Code makes no reference to the degree of completion of the work on October 1, 1965, and any such reference by the Commission at this time would merely delay the change intended by the Legislature in Section 1202.2. Decision No. 72226 fully defines all the terms involved and said decision is confirmed and adopted herein.

The petition for a proposed report filed by applicant will be denied for the reason that issuance thereof in this case where the facts are not in dispute will serve no useful purpose.

Findings of Fact

1. The division of the cost of relocation and improvement of crossing protection at Soledad Canyon Road Crossing No. B-426.0, as provided in the agreement, 50 percent to the railroad and 50 percent to the County is reasonable and hereby approved.

2. The Commission finds that the maintenance cost of the improved automatic protection at Soledad Canyon Road, Crossing No. B-426.0 in the County of Los Angeles, California, should be apportioned in accordance with Section 1202.2 of the Public Utilities Code, 50 percent to the Southern Pacific Company and 50 percent to the County of Los Angeles.

Conclusions of Law

The cost of maintenance will be apportioned pursuant to Section 1202.2 of the Public Utilities Code in all cases where the construction or alteration was completed after October 1, 1965, without regard to the degree of completion of work as of October 1, 1965, provided there has been no previous order of the Commission apportioning cost of maintenance and there has been no unreasonable delay in completion of the work, and provided also that the division of the cost of construction and alteration is found to be reasonable by the Commission.

The application will be granted.

O R D E R

IT IS ORDERED that the maintenance cost of the improved grade crossing protection at Soledad Canyon Road, Crossing No. B-426.0 is hereby apportioned 50 percent to the Southern Pacific Company and 50 percent to the County of Los Angeles, pursuant to Section 1202.2 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 11th day of SEPTEMBER, 1968.

William J. Aguirre, Jr.
President
John E. McArthur
William M. Bennett
Augustine
Jack P. Morrissey
Commissioners

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