

**ORIGINAL**

Decision No. 76200

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the status, safety, maintenance, use and protection or closing of crossings at grade of the tracks of The Western Pacific Railroad Company and Southern Pacific Company in Cities of Oakland, San Leandro and Hayward and County of Alameda.

Case No. 8367  
(Filed April 3, 1969)

Robert S. Rutledge, for Standard Specialty Company, petitioner.  
Richard W. Bridges, for The Western Pacific Railroad Company; Harold S. Lentz, for Southern Pacific Company; and William C. Sharp, for the City of Oakland; respondents.  
Malcolm Barrett and Warren P. Marsden, for San Francisco Bay Area Rapid Transit District, interested party.  
William J. McNertney, Counsel, and M. E. Getchel, for the Commission staff.

C O P I N I O N

By Decision No. 72654 dated June 27, 1967, the Commission issued an order relating to the safety, maintenance, use and protection or closing of crossings at grade of the tracks of The Western Pacific Railroad Company and Southern Pacific Company in the Cities of Oakland, San Leandro and Hayward and the County of Alameda. By Decision No. 75593 dated April 22, 1969, Case No. 8367 was reopened for further hearing for the purpose of determining whether Decision No. 72654, as amended, should be altered, amended or revoked, in so far as said decision relates to Crossings Nos. 4-10.4 at 44th Avenue and 4-10.45 at 45th Avenue in Oakland.

Public hearing was held before Examiner Daly on May 23, 1969, and June 23, 1969, at San Francisco, with the matter being submitted on the latter date.

Rehearing was granted on the petition of Standard Specialty Co., a corporation, located at 1028 - 44th Avenue, Oakland, California. The petition was supported by Harry Jensen, Gain Manufacturing, Melrose Spring, B & V Packing, and United Pharmaceutical Company. All are engaged in industrial businesses located on 44th Avenue between East 12th Street and San Leandro Boulevard in the City of Oakland.

By Decision No. 72654 the Commission ordered the closing of the 44th Avenue crossing and the installation of automatic gates at the 45th Avenue crossing. With respect to the 44th Avenue crossing the Commission made the following reference:

"The staff recommended closing the crossing. The City of Oakland believes that the crossing should remain open because the adjacent area is light industrial, which is served by large tractors and trailers. If the crossing is closed the city claims that many of the businesses located on 44th Avenue could not be served unless a turn-around area is provided for large vehicles. BART indicated that it would make the turn-around area available."

The 44th Avenue crossing was closed on April 4, 1969, but no turn-around area was provided. According to its attorney, BART did not agree to build a turn-around area, but merely agreed to grant a right-of-way underneath its aerial structure to the City of Oakland, which was to construct and maintain the turn-around facility. The attorney for the City of Oakland admitted that this was the understanding, but that the area made available by BART provided a radius of only 30 feet, whereas a radius of 60 feet is required.

The testimony of Mr. Bertrand Fraza, president of Standard Specialty Company, is as follows:

"Petitioner is primarily engaged in the candy business. It has 35 employees and has an average of 30 trucks a day calling at its place of business. Prior to the closing of 44th Avenue traffic would move smoothly in a through direction and although

there was some delay in unloading trucks there was never any congestion or difficulty in leaving the plant. With the closing of 44th Avenue trucks are required to turn around by backing on to unimproved property located across the street, or by backing down 44th Avenue and on to East 12th Street. If a driver elects to turn around there is always the danger of jackknifing his equipment or backing into a creek located on the unimproved property. In either event an exiting truck experiences additional difficulties because of the congestion caused by trucks waiting to make pickup or deliveries at petitioner's place of business or at other places of business located on the street. In the event of an emergency neither fire equipment nor an ambulance could gain easy access to petitioner's plant.

"Petitioner has received complaints from suppliers and from truck companies because of the difficulties experienced in serving petitioner. Drivers seeing the congestion refuse to wait and as a result petitioner has experienced a number of missed pickups and deliveries."

Petitioner also introduced pictures which vividly depict the traffic congestion. Exhibit 4A shows seven trucks waiting in a line on 44th Avenue. These trucks along with parked automobiles would appear to make ingress or egress almost impossible.

A traffic engineer for the City of Oakland Traffic Engineering-Parking Department conducted a traffic survey of 44th Avenue. On the afternoon of May 15, 1969, he counted 29 trucks of two-axles or more making pickups or deliveries during a period of 1 hour and 20 minutes. He checked again on May 16, 1969, at 2:45 p.m. and at that time there were two four-axle trucks, two two-axle trucks and one three-axle truck providing service to business located on 44th Avenue. The witness testified that the City of Oakland has always opposed the closing of 44th Avenue because of the adverse traffic effect that it would have. According to the witness the City of Oakland is primarily concerned with the dangerous condition that exists when trucks back down 44th Avenue and on to heavily traveled East 12th Street.

Those who supported the petition also testified that they have occasion to have trucks calling at their respective places of business and have observed considerable traffic congestion since the closing of the 44th Avenue crossing.

One of those who testified in support of the petition, Mr. Herbert Gould, is the owner of the unimproved property which is used by some of the truck drivers for the purpose of turning their equipment. He testified that he proposes to build on the property, but only in the event 44th Avenue is reopened. If the crossing is not reopened it is his intention to sell the property.

The staff recommends that Crossing No. 4-10.4 remain closed. The attorney for The Western Pacific Railroad Company made the following statement at the close of the hearing:

"I asked at the last hearing for a continuance in order to investigate the possibility of providing a truck turn-around if the crossing were to remain closed. I have to report at this time that we haven't made as much progress as we hoped, although we have made some progress. I have management's authority for the Western Pacific to proceed with the acquisition of the necessary land and the construction of the truck turn-around provided we can make proper arrangements with the City of Oakland and with the Bay Area Rapid Transit District and with the complainant in this case. We have had preliminary talks with the City of Oakland on the technical aspects of the turn-around itself. We have contacted the owner of the private property (Mr. Gould) which will have to be acquired, had a preliminary talk with him and he is not adverse to selling the land."

After consideration the Commission finds that:

1. Grade Crossing No. 4-10.4 located at 44th Avenue in the City of Oakland was closed pursuant to Commission order upon the representation that it served a small area, had low vehicular usage, and was in close proximity to another grade crossing. It was felt that it did not justify the expense of installing and maintaining automatic gates, but would be hazardous if left open and protected by less than automatic gates.

2. The area in the vicinity of the 44th Avenue crossing is light industrial in nature, is dependent upon service by truck carriers, and a number of passenger vehicles and trucks converge on the area during business hours.

3. With the closing of 44th Avenue, a dangerous traffic condition has been created as the result of trucks attempting to gain ingress and egress to businesses located on 44th Avenue between East 12th Street and the Western Pacific right-of-way crossing 44th Avenue. Some trucks to effect egress must back up to 12th Street.

4. A turn-around for vehicles on 44th Avenue at the Western Pacific right-of-way would alleviate some of the dangerous traffic conditions outlined in Finding No. 3 above, and would eliminate some of the congestion occasioned by the passenger vehicles and trucks which converge in the area.

5. Opening the crossing would alleviate some of the traffic conditions mentioned in Findings Nos. 3 and 4 above, but might also attract more vehicles into the congested area seeking through access via 44th Avenue and then San Leandro Boulevard.

6. Opening the crossing may require crossing signal coordination with street traffic signals at San Leandro Boulevard and High Street as San Leandro Boulevard traffic awaiting the signal at High Street may back up and block 44th Avenue trapping vehicles on the tracks as a train approaches.

7. A suitable turn-around is preferable to a gate-protected crossing because it would contribute more to the alleviation of the dangerous traffic conditions.

The Commission therefore concludes that unless The Western Pacific Railroad Company furnishes the Commission and all parties of record with its plans for construction of a turn-around and that

unless all parties have indicated agreement to such plans and apportionment of construction and maintenance costs within 45 days after the date hereof, further hearings shall be held.

O R D E R

IT IS ORDERED that:

1. Unless an adequate turn-around facility for trucks has been agreed upon by the parties of record to this proceeding at the 44th Avenue grade crossing of The Western Pacific Railroad Company in the City of Oakland and that unless the parties are in agreement as to the apportionment of construction and maintenance costs thereof and the Commission is so advised within 45 days from the date hereof, further hearings in this proceeding shall be held for the following purposes:

- a. Determination of the adequacy of turn-around facilities as proposed by The Western Pacific Railroad Company.
- b. Apportionment of the construction and maintenance costs for such facility if found to be adequate by the Commission.
- c. Consideration of additional evidence that may be presented as to the protection needs of the 44th Avenue grade crossing should an adequate turn-around facility not be determined per above Item 1a.

2. The suspension of further work in carrying out the provisions of Decision No. 72654 regarding Crossings Nos. 4-10.4 at 44th Avenue and 4-10.45 at 45th Avenue in the City of Oakland shall continue until further order by the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23rd  
day of SEPTEMBER, 1969.

*Alvin A. ...*  
President  
*J. B. ...*  
*...*  
*...*  
*...*  
Commissioners

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