

Decision No. 77394

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the status, safety, maintenance, use, and protection or closing of the crossings of Oro Avenue and Gertrude Avenue at grade over the tracks of S.P. Co. in County of San Joaquin.

Case No. 8867

Harold S. Lentz, for Southern Pacific Transportation Company,^{1/} and Robley E. George and Thomas Zuckerman, for San Joaquin County, respondents.
George D. Moe and Melvin R. Dykman, for State of California, Department of Public Works, Division of Highways, and Timothy J. Hackman, for Stockton Unified School District, interested parties.
Janice E. Kerr, Counsel, for the Commission staff.

O P I N I O N

This investigation was instituted by the Commission on November 19, 1968, into the crossings of Oro Avenue, DC-93.3, and Gertrude Avenue, DC-93.4, in the County of San Joaquin.

Public hearings were held in Stockton, California, before Examiner Fraser, on March 26, 1969 and January 13, 14, 1970. An order (Decision No. 75611) was signed on April 29, 1969 which brought the Stockton Unified School District in as a new party. Evidence was presented by the Commission staff, the State Department of Public Works, San Joaquin County, the Stockton Unified School District and the Southern Pacific Transportation Company.

These crossings were involved in two other recent proceedings. Oro Avenue is three blocks east and Gertrude Avenue

^{1/} Subsequent to hearing Southern Pacific Company changed its name to Southern Pacific Transportation Company.

five blocks east of Anteros Avenue. San Joaquin County filed Application No. 45570 on July 1, 1963 to request authority to construct "Anteros Avenue" at grade across the track of the Southern Pacific Transportation Company near Stockton. Ex parte Decision No. 65997 was issued on September 10, 1963. It authorized construction of the crossing subject to the filing of an agreement between the parties prior to the commencement of construction. The construction was commenced and completed except for the installation of No. 8 flashing light signals. No agreement was ever filed or even executed because the county and the railroad could not agree on the apportionment of maintenance costs. The matter was therefore scheduled for hearing and Decision No. 67576 was issued on July 21, 1964. The latter decision concluded that three crossings (Anteros, Oro and Gertrude) in a six block area were too many and merely increased the chances of an accident. It further concluded that Oro was the most dangerous crossing and should be closed. The decision thereupon ordered that the Anteros Avenue crossing be opened and protected with No. 8 flashing light signals, subject to the concurrent closing of the Oro Avenue crossing. The County Supervisors refused to close the Oro Avenue crossing, and the railroad thereupon erected a barrier at Anteros. Both parties petitioned for a rehearing which was denied. San Joaquin County filed Application No. 49271 on April 10, 1967, and restated the original request to open Anteros Avenue over the Southern Pacific tracks. Protests were filed by the railroad and by several people who reside near the proposed crossing. A hearing was held and Decision No. 74953 was issued on November 19, 1968. The decision authorized the county to construct the crossing, paying all costs of construction and practically all maintenance

cost. The decision on the Oro and Gertrude Avenue crossings was deferred to be considered in a special proceeding, which is the current investigation. The record on each of the prior proceedings was incorporated herein by reference.

The record in Application No. 49271 includes the following information. Anteros Avenue is located one block east and extends parallel to both the freeway (Highways 99 and 50) and the Stockton city limits.

The applicant's evidence in Application No. 49271 emphasized the following facts: that three crossings are the minimum required in the area; that the tracks are on a six foot mound at the Oro Avenue Crossing and that a warehouse is located next to the tracks so as to block the view of those driving south over the crossing. It was noted that trailers or low-body trucks could hang-up on the railroad embankment thereby closing the crossing to both trains and vehicles. It was further noted that Gertrude Avenue is located on Franklin High School property for three blocks north of the crossing which makes it a private road since it has never been deeded to the county and is blocked for 24 hours each year to prevent its becoming a county road by public use. Gertrude is also posted during the school season while school is in session. A sign is placed in the middle of Gertrude Avenue just north of the intersection of Gertrude and Miner Avenues. Traffic is thereby encouraged to turn west on Miner and proceed on Miner to Oro Avenue. Miner parallels the railroad and is located one block north of the tracks. The sign used to block Gertrude is a small one which is mounted on a stand and reads: "Street Closed". Cars can pass on either side of the sign and occasionally do, to reach the school athletic fields

or to proceed through the school property. A similar sign blocks the other end of the campus two blocks to the north. The vice principal of the high school testified that about 260 students drive to school and park in the student lot west of Gertrude and North of Miner. The parking area access ramps are all located on Miner Avenue. A county engineer testified that the Oro Avenue crossing is unsatisfactory due to the railroad embankment, the offset alignment and various other factors. He advised that it would take at least \$60,000 to make the Oro crossing as good as Anteros, if the latter is opened to public use. He concluded that to improve Oro Avenue crossing to handle heavy traffic would cost from \$75,000 to \$100,000. He stated he would not recommend spending \$60,000 on the Oro crossing under the present circumstances as the expenditure would not be justified. Traffic counts taken during a 24-hour period by a mechanical counter were placed in evidence. They were taken on a day when school was in session during 1964, 1965 and 1967. Gertrude Avenue just north of the tracks registered 2,970 vehicles in 1964, with 2,465 vehicles south of the tracks. In 1964 Oro Avenue registered 2,558 north of the tracks and 1,407 south of the tracks. The 1967 traffic counts were approximately the same. A traffic engineer testified that he estimated the Anteros crossing would be used by 1,000 vehicles per day. A railroad representative testified that there are six to eight trains a day on six days of the week (Sundays are excluded). He stated the trains move from 8:00 p.m. to 9:00 a.m. although there are occasional movements during the day. Another witness presented the conclusions from a safety study, made at railroad crossings, which recommended that automatic gates be installed at all new crossings in addition to No. 8 flashing lights.

The following paragraph is included from Decision No. 74953 in Application No. 49271. It illustrates the position of the respondent and the staff in 1968.

"The map shows Anteros as the closest location for a north-south street east of the freeway. Gertrude is centrally located in the urban area east of the freeway, but it is narrower than Anteros south of the tracks and its use is restricted or blocked at various times by the School District. It passes through the grounds of a large high school one block north of the crossing and has no warning devices to advise of approaching trains. The northern portion of Oro Avenue ends just south of the tracks at Railroad Avenue. If one is proceeding north on Oro it is necessary to turn east on Railroad Avenue - south of the tracks - drive 80 feet, then turn left (north), climb over the elevated railroad tracks and continue northerly on Oro Avenue. This off-set and the elevated tracks restrict the Oro Crossing to light traffic. The expense of eliminating the off-set and mound would be prohibitive and county engineers have recommended that nothing be done to improve the Oro Crossing. The Commission staff and the railroad have recommended that the Oro Crossing be closed as a prerequisite to opening Anteros."

The Commission Staff

Both streets cross the Oakdale branch of the Southern Pacific, which is a single track and accommodates from two to eight freight trains during each 24 hours (Sundays excluded). The Oro crossing was opened in 1926 and the Gertrude crossing in 1950. The crossings are described as follows in Exhibit No. 1 dated March 24, 1969. The Oro crossing is 24-feet wide, with a 2 percent and 4 percent gradient on its approaches. It has no automatic gates or

flashing lights, but there are warning signs on the approaches and a "railroad crossing" sign where the tracks cross the road. Train and vehicle movement over the crossing were classified as slow. The accident record at Oro Avenue from December 31, 1958 through December 31, 1968 reveals an accident occurred on February 27, 1964 in which one person was injured and a second accident on July 16, 1964 with another injury. A 12 hour-vehicle count from 7:00 a.m. to 7:00 p.m., taken on January 15, 1969, listed 2,430 passenger cars, 85 trucks, 12 school buses and 37 miscellaneous vehicles, for a total of 2,543 vehicles over the crossing during the observed period. The Gertrude crossing is 62-feet wide, with approaches of 46 feet on the north and 26 feet on the south. The gradient is 2 percent ascending and there is a railroad crossing sign next to the track and an "R X R" painted on the street on each side of the crossing. The accident record at the Gertrude crossing from December 31, 1958 to December 31, 1968 lists an accident on May 7, 1964 in which no one was killed or injured and an accident on May 31, 1965, with one injured and one killed. A 12-hour vehicle count from 7:00 a.m. to 7:00 p.m., on Thursday, February 20, 1969, includes 1,612 passenger cars, 19 school buses, 16 trucks and 41 miscellaneous for a total of 1,688 vehicles.

The staff recommended that both crossings remain open and that flashing lights and automatic gate arms be installed at both crossings. It was further recommended that Oro Avenue be realigned to eliminate the sharp right angle turns south of the crossing and that the approaches be reduced to a maximum gradient of 2 percent. It was recommended that the Gertrude Avenue crossing should be provided with guard rails or a plank crossing, with costs to be paid

by the railroad. It was suggested that the county pay the entire cost of realigning and altering Oro Avenue and that the county and the railroad each assume 50 percent of the cost of installing automatic protection of crossings.

Department of Public Works

An engineer from the State Division of Highways of the Department of Public Works testified that the Division of Highways has started planning a new freeway interchange to connect with Highway 99 in the vicinity of Anteros Avenue. He further testified that this freeway interchange and its access roads would affect the Anteros crossing and may require it to be closed. It was noted that no construction is scheduled until sometime after 1980 and the plans for the project have not been completed as yet. It is therefore possible that the project may be postponed, altered, or temporarily abandoned due to some factor which becomes evident in the future.

County of San Joaquin

The county traffic engineer placed in evidence traffic counts taken at the Oro and Gertrude Avenue crossings in 1964, 1965 and 1967 (Exhibit No. 4). It is the same record of traffic counts placed in evidence in Application No. 49271 and previously referred to herein. He testified that recent engineer surveys made in the area have indicated there has been no change in traffic volume or flow since the 1964 to 1967 counts were taken.

The Deputy Director of Public Works for the county testified that the Anteros Avenue crossing has never been opened. It is still blocked at the railroad right-of-way and the railroad and county are still negotiating regarding the easement over the tracks, the distribution of costs and who will undertake certain of the work to be

done. He further testified that the last decision of the Commission concerning Anteros Avenue ordered the crossing to be opened within a period of time which has been extended to January 1, 1971, and the county still feels it is essential for both the Oro and Gertrude crossings to remain open even after Anteros Avenue becomes a public crossing.

Stockton Unified School District

The school district Director of Transportation testified as follows: Franklin High School is located just north of the Gertrude Avenue crossing; all school buses transporting students either enter or leave over Gertrude Avenue, and if it is closed an area will have to be cleared on the school property of sufficient size to permit buses to make a complete 180° turn; ambulances and fire engines enter the school grounds over the Gertrude crossing to save time and an estimated 70 percent of the student body of 1700 enter and leave by the Gertrude Avenue crossing; and many of the buses use the Oro Avenue crossing also, either coming to the school or bringing the children home. The principal of Franklin High School testified that the accident on May 31, 1965 at the Gertrude Avenue crossing in which one person was killed and one injured occurred on a holiday when school was not in session. The Director of Finance for the school district testified that all of the money in the current budget has been spent and next year's budget is to be smaller than the current budget. He testified that he has been advised the school district expenses may have to be reduced by one million dollars on the next budget. He stated proposed expenditures have therefore been greatly reduced with the exception of salaries and retirement benefits, which cannot be altered. He advised that many of the school district's

normal projects have been eliminated and others will be curtailed. He further advised that the school district lacks sufficient funds to properly perform all of its assigned functions. It cannot assume the responsibility for installing automatic signal protection at railroad crossings.

Southern Pacific Transportation Company

Counsel advised the respondent railroad has officially changed its name to the "Southern Pacific Transportation Company". It is no longer the Southern Pacific Company.

An engineer placed diagrams (Exhibits 5,6,7) of the crossings in evidence, with detailed drawings of the automatic protection and gates proposed for each crossing. He testified if the Gertrude crossing is closed and the Oro Avenue crossing remains open, the installation of the automatic protection and gates at the latter crossing will cost \$20,500, with an annual maintenance cost of \$780; if the Oro crossing is closed and Gertrude is to remain open, the installation will cost \$23,600 and annual maintenance will be \$1,080; if both crossings remain open and have to be protected the installation will cost \$41,800 and annual maintenance \$1,650. He further testified that he computed these cost totals in February of 1969; the costs would now be at least 10 percent higher and the estimates will have to be brought up to date before the start of construction. He agreed with the staff engineer's opinion that automatic gates must be installed to properly protect the public at a railway crossing.

Issues

1. Whether one or both crossings should be closed.
2. What protection should be installed and who should pay for the installation.

3. Whether the proposed freeway interchange construction should be a contributing factor in determining how many crossings will be needed.

4. Whether the school district should continue as a necessary party; and if so, whether it should be assessed for any costs due at the Gertrude Avenue crossing.

5. Whether the 1964 Commission finding of fact on an application involving Anteros Avenue that three crossings (Anteros, Oro, Gertrude) are too many in a six block area must be adopted herein, unless there is a change of circumstances.

6. Whether a finding of fact which is contrary to the 1964 finding constitutes a change in Commission policy on what is required (public necessity) to show a crossing is needed by the public.

Findings and Discussion

1. Both crossings should remain open with gates and automatic protection to be installed as rapidly as possible. The railroad is a branch line, with four to eight daily freight trains which operate at night, with an occasional movement during the day. The Oro crossing is in constant use, although the volume of traffic does not increase. The Gertrude crossing is critical to the school district and is extensively used by the public (see charts in Exhibit No. 1) even when the school district has its "street closed" signs up.

2.a. Two Standard No. 8 flashing light signals supplemented with predictorized automatic crossing gates should be installed at both the Oro crossing and the Gertrude crossing.

b. Oro Avenue should be realigned as pictured in Appendix F of Exhibit No. 1, and the grades of approach reduced so they do not exceed an ascending 2 percent on either side of the crossing.

c. The Gertrude Avenue crossing should be provided with guard rails or a plank crossing when the automatic gates are installed.

d. The cost of installing the automatic protection and gates at both crossings should be borne by the county and the railroad, with each paying half of the total cost. The cost of maintaining the automatic protection will be apportioned in accordance with Section 1202.2 of the Public Utilities Code.

e. The county should pay all the cost of realigning and altering Oro Avenue and the railroad should pay all the cost for guard rails or a plank crossing at Gertrude Avenue.

3. The freeway interchange will not be constructed before 1985. It is not even on the planning board in its final form and it may have to be moved or redesigned. It is too remote in time to be a factor in the present decision.

4.a. The motion to dismiss the school district as a party should be denied. The school district should not be required to pay any costs for installation or maintenance work at either crossing.

b. The testimony of the witnesses provided by the school district is unanimous on the importance of keeping the Gertrude crossing open. The interest expressed qualifies the school district as a necessary and proper party.

5. Prior findings are not binding on the Commission when there are changed circumstances.

6. There has been no change in Commission policy on what constitutes public necessity at a railroad crossing. The Commission staff, the county and the school district, all parties herein who represent segments of the public, favor keeping both crossings open. The respondent railroad maintained that three crossings are too many in a six-block area and therefore one should be closed, with

all costs at the remaining crossing paid by either the county or the school district. The railroad argument is not persuasive; the evidence presented shows the public need for three crossings and the safety requirements are satisfied by the installation of automatic signal protection and gates.

7. Public health, safety, convenience and necessity require that the Oro crossing and Gertrude crossing in the County of San Joaquin be improved and that the protection at each crossing be upgraded by the installation of two Standard No. 8 flashing light signals (General Order No. 75-B) supplemented with two automatic crossing gates, as provided in the following order.

Conclusion

The Commission concludes that the motion to dismiss the school district as a party should be denied and that the Oro and Gertrude crossings should both remain open with automatic protection as previously noted.

O R D E R

IT IS ORDERED that:

1. The motion to dismiss the Stockton Unified School District as a party is denied.
2. Within one year after the effective date hereof the Southern Pacific Transportation Company shall improve the crossings at Oro Avenue (No. D.C.-93.3) and Gertrude Avenue (No. D.C.-93.4) over the tracks of the Southern Pacific Transportation Company in the County of San Joaquin by the installation of No. 8 flashing light signals with automatic gate arms and a guard rail or plank crossing at the Gertrude Avenue crossing.

3. Within one year after the effective date hereof, the approaches to the Oro Avenue crossing shall be realigned and the grades of approach reduced by the County of San Joaquin, as provided in the findings herein.

4. The cost of installing and maintaining the improvements required by the preceding paragraphs of this order shall be allocated to the Southern Pacific Transportation Company and to the County of San Joaquin as provided in the findings herein.

5. Within thirty days after completion of work pursuant to this order the Southern Pacific Transportation Company and the County of San Joaquin shall each so advise the Commission, in writing.

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

Dated at Los Angeles, California, this 23rd day of JUNE, 1970.

William Spence Jr.
 President

[Signature]

[Signature]

Commissioners

I dissent


[Signature]

I dissent


Vernon L. Sturgeon 23-

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I dissent. There is no new evidence which should cause the Commission to reverse its Decision No. 67576 dated July 21, 1964. Indeed certain of the parties have deliberately refused to comply with Decision No. 67576 and I believe an explanation is due the Commission before we take any further action.



J. P. Vukasin, Jr.
Commissioner



Vernon L. Sturgeon
Commissioner