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ORIGINAL

Decision No. 77464

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
THE COUNTY OF LOS ANGELES for the)
widening of Carson Street (Crossing)
6M-16.15-C) over the San Pedro Line)
of the Southern Pacific Company in)
the County of Los Angeles.)

Application No. 50922
(Filed February 28, 1969)

Ronald L. Schneider, Deputy County Counsel,
for John D. Maharg, County Counsel for
the County of Los Angeles, applicant.
Walter A. Steiger, for the Southern Pacific
Transportation Company, protestant.
Raymond Toohey, for the Commission staff.

O P I N I O N

The County of Los Angeles seeks to widen and improve Carson Street (Crossing 6M-16.15-c) over an industrial drilltrack of the San Pedro Line of the Southern Pacific Transportation Company and requests an early interim decision granting authority to proceed with construction and installation of crossing protection without delay.

Public hearing was held before Examiner DeWolf at Los Angeles on February 3, 1970 and the matter was submitted subject to filing of concurrent briefs on the question of apportionment of costs.

Interim Decision No. 76946 dated March 17, 1970 authorizes the construction of the widened crossing and the improved protection.

The concurrent briefs on the question of apportionment of costs of construction and maintenance have been filed and this matter is ready for decision.

The County of Los Angeles contends that the Southern Pacific should be charged with the entire cost of construction and maintenance of the crossing protection. The county makes four claims. First, in accepting a franchise from the County of Los Angeles, the Southern Pacific Transportation Company made a contractual commitment to pay the installation cost of protective devices. The Public Utilities Commission should honor this commitment. This claim states that in 1958 the Pacific Electric Railway Company applied to the County of Los Angeles for a franchised crossing of Carson Street. This franchise was thereafter granted, and was unconditionally accepted by the railway company. A franchise is, of course, a form of contract.

Section 6 of Ordinance No. 7272 provides as follows:

"Sec. 6. The grantee, its successors or assigns, shall erect or construct and maintain, at its own expense and without cost to the County of Los Angeles, all warning or protective devices authorized or ordered by the Public Utilities Commission of the State of California, for the protection of traffic in connection with spur track authorized by the ordinance."

The second claim of the county is that there is no reason of public policy preventing the Public Utilities Commission from honoring and validating the franchise agreement commitment of the Southern Pacific Transportation Company for the reason that California courts have long held that public utilities accept franchise rights in public streets subject to an implied obligation to relocate their facilities therein at their own expense when necessary to do so for a proper governmental use of the streets.

The third claim of the county is that the Osborne Street case policy should be applicable to franchise crossings. On the surface, this case does not fit within Osborne since the Carson Street crossing is a franchised one, and new, rather than additional, protective devices are to be installed. The latter difference is not material here since both the county and the railroad are agreeable to and are not contesting the installation of new protection at the crossing.

The fourth claim of the county is that if the Osborne approach is adopted by the Commission in franchise situations, the franchise itself presents a "special condition" when the parties have agreed in the franchise to a particular method of cost apportionment. The county suggests that there are four special conditions in this case that should be taken into consideration by the Commission in determining the apportionment of costs. One is the express condition of the grant of franchise, and the other three arise from the fact that Carson Street is a franchise crossing, the fact that the new crossing protection was

suggested by and will principally benefit the railroad rather than the public entity, and the fact that the principal issue in this proceeding is the question of cost apportionment, rather than one of public safety and convenience.

The Southern Pacific in its brief contends that it has been clearly established by prior Commission decision that Section 6 of Los Angeles County Ordinance No. 7272 has no force or effect. The authority to apportion grade crossing costs lies exclusively within the jurisdiction of the Commission. It further contends that this is a matter of statewide concern, which does not come within the field of county affairs, and that the Commission should disregard the franchise provision costs pursuant to the Osborne Street decision, imposing said costs equally between the county and the railroad.

The Southern Pacific states that following the granting of the franchise, the Pacific Electric on January 16, 1958, filed Application No. 39739 with this Commission for authority to construct the grade crossing, which application was granted by Decision No. 56297, dated March 3, 1958. Said decision required that the crossing be protected by two Standard No. 1 crossing signs. Ordinance No. 7272 granted a franchise to construct, maintain and operate the track in Carson Street for a width of 66 feet. At the hearing herein, the railroad proposed and the Commission ordered that upon the widening of the crossing from 66 feet to not less than 84 feet, the protection to be installed should consist of four Standard No. 8 flashing light signals augmented by automatic gate arms. A total of four No. 8s and gates are to be installed, two for each direction of travel. Two are to be located in the center median. The street is to be

widened to not less than 84 feet, the county seeks an easement for street purposes from the railroad for a right-of-way 100 feet in width. This would necessitate the granting of an easement 17 feet wide on each side of the existing 66 foot crossing.

The Southern Pacific further states that two of the four No. 8 signals augmented with gates will be located outside the original franchise area of the crossing 66 feet wide, and will be situated adjacent to the 17 foot additional widths which will be added to the original 66 foot crossing at both ends thereof to make a new crossing right-of-way 100 feet in width. In other words, 50 percent of the new signals are not associated with the original franchise crossing, but are associated with and will be adjacent to the added area not covered by franchise. The railroad submits that this fact alone would justify the imposition of construction costs on a 50-50 basis. It should be observed that the county expects to receive and the railroad expects to give an easement for this added area, aggregating 34 feet in width, without cost to the county.

The Southern Pacific argues that the costs should be shared equally, and that reason is the preservation of the precedent established by a long line of Commission decisions holding that under Section 1202 of the Public Utilities Code the apportionment of such costs lies exclusively with the Commission and is a matter to be determined by it regardless of any prior agreements of the parties either by way of franchise or otherwise.

Discussion

In the "Osborne Street Decision", No. 73521, dated December 19, 1967, the Commission gave extensive consideration to the apportionment of costs in matters of this kind. It stated that "it shall be the policy of the Commission, when a grade crossing is widened and additional protective devices are installed, and there are no special conditions which require a different result, to apportion the costs of relocating existing protective devices and installing new protective devices equally between the railroad and the public entity." The showing in this matter does not disclose the existence of any special conditions which would justify the apportionment of the costs of the improvements to the Carson Street crossing (Crossing No. 6M-16.15-C) on other than an equal basis between the Southern Pacific Transportation Company and the County of Los Angeles. The policy enunciated in the Osborne Street decision should be followed here.

Findings and Conclusions

Upon consideration of the record the Commission finds that:

1. Ordinance No. 7272 forms no basis for construction of the widened crossing and the crossing protection involved in this proceeding, or the apportionment of the cost for the reason that large portions of the crossing protection are located outside of the original crossing, and this is not a special condition requiring a particular apportionment contemplated by the Osborne decision.

2. There are no special conditions appearing in this record which require a different result than apportionment equally between the railroad and the public entity.

3. The Commission has exclusive jurisdiction over apportionment of costs of protective devices at railroad crossings. Provisions in county ordinances requiring the railroad to pay all costs are of no force and affect. The matter is one of statewide concern.^{1/}

4. The cost of installing the grade crossing protection shall be apportioned equally between the County of Los Angeles and the Southern Pacific Transportation Company.

The Commission concludes that this application should be granted subject to the conditions set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The cost of installing the grade crossing protection shall be apportioned equally between the County of Los Angeles and the Southern Pacific Transportation Company.

^{1/} Santa Maria Valley Railroad Crossing in Santa Maria Decision No. 75355 dated February 25, 1969. Review denied by Supreme Court July 16, 1969.
City of Los Angeles, Tuxford Street crossing Decision No. 74420, dated July 17, 1968.

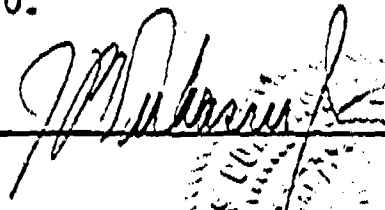
2. The maintenance cost of the grade crossing protection shall be apportioned equally between the County of Los Angeles and the Southern Pacific Transportation Company pursuant to the provisions of Section 1202.2 of the Public Utilities Code.

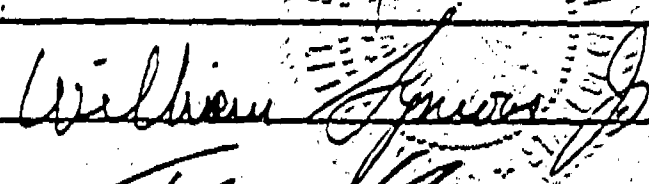
3. The Southern Pacific Transportation Company shall bear 100 percent of the costs of preparing track necessary within the limits of the widened crossing, and any paving work within lines two feet outside of outside rails in the existing crossing.


4. The County of Los Angeles shall bear 100 percent of all other costs of widening the crossing and approaches.

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

Dated at San Francisco, California, this 7th day of JULY, 1970.



Chairman




Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.