

ORIGINAL

Decision No. 77480

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Delano, a municipal corporation of the State of California, for permission to construct Ninth Avenue at grade across existing tracks of the Southern Pacific Company, in a location southerly of Eleventh Avenue, easterly of Glenwood Street and westerly of High Street.

Application No. 50688
(Filed November 18, 1968)

John Hourigan, for the City of Delano, applicant.
Harold S. Lentz, for Southern Pacific Company, protestant.
Ray Hamilton, for R & B Trading Company, interested party.
M. E. Getchel, for the Commission staff.

O P I N I O N

This application seeks authorization for construction of a crossing of the Southern Pacific tracks at Ninth Avenue in Delano, Kern County. Public hearing was held before Examiner Gilman in Delano on June 4 and 5, August 26, 27, 28 and November 4 and 5, 1969.

Testimony was received from the city's Director of Public Works, its City Manager, Assistant City Manager, Mayor pro tem, a traffic consultant, the president of the Delano Chamber of Commerce and local businessmen. Southern Pacific presented testimony of a Division Engineer, a trainmaster, a piggyback freight manager, an engineer experienced in grade crossing costs and a signal engineer.

The matter was submitted on briefs, the last of which was filed January 22, 1970.

Historical Background

Ever since Delano was founded in the 1870's, its prosperity has depended upon its ability to supply and support the agricultural

economy of the surrounding region. The railroad's ability to ship agricultural commodities has historically been an essential element in the city's economy.

As in other cities which developed with the coming of the railroad, the older sections are laid out in a grid pattern parallel to the railroad which practically divides the community into two halves (cf. Appendix A). The newer outlying sections are laid out in a different grid pattern which parallels the county road system.

In a city bisected by a railroad, the provision of an adequate number of crossings is essential to the community's welfare and development. When the community is further bisected by a freeway paralleling the railroad the location of freeway overpasses and ramps should be coordinated with existing railroad crossings.

Such coordination was not accomplished when U. S. 99 was reconstructed as a freeway through Delano in 1956. Eleventh was appropriately chosen for the central Delano overpass since it had an existing crossing; however, Ninth was chosen as the location for the central on and off ramps, despite the fact that the lack of a railroad crossing forced northbound freeway traffic to make a detour to reach the central business district^{1/} and other areas east of the tracks.

Until recently the City was unwilling to consider opening Ninth across the tracks because part of the necessary right of way was occupied by a packing shed operated by a local businessman. The crossing would also have cut through trackage utilized by Southern Pacific for making up trains and for piggyback loading, both necessary to take local agricultural products to market. When this shed was burned, the city began preliminary moves^{2/} to open the crossing. The railroad,

^{1/} Located between Eighth and Fortieth and between High and Jefferson.

^{2/} Including the filing of an action in eminent domain, City of Delano v. S. P. Co., Dkt. 102342, Superior Court, County of Kern.

deprived of the income from its lease to the packing shed operator, realigned the tracks which formerly serve the shed to serve as the nucleus for an improved piggyback facility.

Effect on Railroad Operations

A crossing at Ninth would cut through the tracks used for piggyback loading, thus rendering them useless for their designed purpose. The crossing would also occupy areas assigned for truck packing essential to the piggyback operations.

The crossing would interfere to a lesser degree with the trackage used for marshalling or making up trains. While such operations could be continued at the same location, keeping the new crossing reasonably clear would require a substantial increase in switching moves. These in turn would add extra operating expenses and delay, which could prevent agricultural shipments from making market.

The public interest requires that the railroad continue to provide piggyback loading in or near Delano. The city has contended that major portions of this facility were constructed after notification of the city's intention in regard to the crossings. The city hopes that this conduct, if sufficiently proven, would justify compelling the railroad to make a substantial contribution to replacement of the piggyback facility.^{3/} We cannot adopt this position. None of the railroad's facilities, including the piggyback construction, creates the need for a crossing at this location. Rather the need was created by the peculiarities of the freeway's construction. Thus, the extraordinary expenses involved here are not a normal incident of the construction and operation of a railroad and, thus, should not be a burden on those who require and use the railroad's services.

^{3/} The city has budgeted only \$100,000 for its share of the total cost of the project.

Areas Benefitted

The city's proposal is designed to eliminate the detour for northbound freeway traffic destined to points within central Delano east of the freeway. It will not, however, benefit southbound traffic; nor is there any significant benefit to traffic destined to points west of the freeway.

Even within the eastern portion of the city the benefitted destination area is further limited by the availability of other equally practical routes. The traffic destined to points north of Eleventh is not disadvantaged by the presently required detour to Eleventh. Traffic destined to the area south of Seventh or Eighth would tend not to backtrack from Ninth.

There seems to be some question as to how far to the east the benefitted area extends. The city's engineer, and its city manager both emphasized that Ninth was important for the newly developing area north and south of Ninth, east of Lexington. The city's traffic consultant witness, on the other hand, emphasized the importance of the crossing for destinations within that portion of the central business district, well to the west of Lexington. He originally indicated that a peripheral route to the east-central route via Lexington would remain the route of preference after the crossing was constructed. Subsequently, however, this witness indicated that Ninth would become the route of preference for the east-central zone, but only after stop signals were changed to deter use of the Lexington alternate route.^{4/}

It is not necessary to determine this issue; the benefit, if any, to the area adjacent to and east of Lexington will not be permanent. The city's General Plan provides for eventual development of a

^{4/} This route would involve use of the Woolomes off ramp, cross under the tracks on High Street, with a right turn at Garces, thence to Lexington.

major arterial from a freeway off ramp south of Woolomes, along the present alignment of Lexington. This arterial will be well suited to serve as access from the freeway northbound into this developing area.

Consequently, we consider the permanently benefitted area to be limited to the portion of the central business district south of Eleventh.

Alternate Route

Before the freeway was constructed all northbound Route 99 traffic entered Delano under the High Street railroad overpass. A freeway off ramp was constructed at Woolomes to allow this same route to continue to be used as access into Delano. The city's presentation indicates that a major portion of the traffic expected to use the crossing at Ninth will be diverted from this underpass.

The city claims that the underpass, though it obviously prevents train-vehicle collisions, is nevertheless, more hazardous than the proposed route over a grade crossing. The source of this hazard is the operations of a local business which discharges heavily loaded trucks into the highway at a point obscured by the overpass.

The city also points out that using this route to the Central Business District requires more than a mile of travel on city streets while the route via Ninth covers the same distance on the freeway, and that freeway travel is statistically less hazardous than travel on city streets.

Before taking the unusual course of authorizing a grade crossing intended to be, in large measure, a substitute for a grade-separated crossing, we would require a clear and convincing showing that the proposed route was at least as safe as the existing alternate.

Since the record contains no accident statistics for the underpass area, we are unable to make any rational analysis of this

issue. And since safety is an issue of overriding importance, we will not extensively discuss the city's projected savings of time and expense attributable to rerouting the traffic in question to Ninth. We will note, however, that the total cumulative value stated in terms of money is very small in comparison with the initial and recurring costs of the project (cf. footnote No. 5 below). We also note that this estimate apparently ignores the substantial number and length of time each day the proposed crossing would be occupied by railroad operations.

Drivers who choose to use the proposed crossing and who arrive when the gates are down will be delayed and inconvenienced. While the record provides no precise measure of the total inconvenience so caused, it will plainly be enough to substantially offset the benefits to more fortunate drivers who arrive when the crossing is unoccupied. Thus the net benefit of the crossing will be far less than that predicted by the city's consultant witness.

Costs

Plan A designates the railroad's plan for replacement of the existing facilities at a location adjacent to that now utilized.

The removal and relocation work would cost over \$133,000; purchase of additional land needed might well cost \$10,000. Actual construction of the crossing would add approximately \$21,000; installation of the necessary traffic warning signals would be approximately \$49,500. The appraised value of the land owned by the railroad to be occupied by the street extension is in excess of \$30,000 exclusive of its operational value; the street construction outside of the rails will add another undetermined sum.

Annual maintenance for the automatic signals would cost \$2,160^{5/}; the extra operating cost caused by the extension of the

^{5/} This minor element of cost should be compared with the City's estimate of total annual benefits to vehicles choosing the new route over the existing alternate of \$2,668.50 per year.

highway across part of the area used for piggyback and making up operations would cost almost \$16,000 annually. Capitalized at 8 percent, these recurring expenses would be equivalent to an initial outlay of \$227,000. The plan also makes some minor improvements in railroad facilities costing \$13,000 which should be deducted as not being proximately caused by the construction of the crossing. Giving the city the benefit of every possible uncertainty in these estimates, it seems unlikely that the total outlay for Plan A in present value terms would be substantially less than \$400,000.

The city's attorney suggested a variant on Plan A which we will designate Plan B. No reliable cost figures are available; the main advantage, if any, would be to reduce the relocation costs. It is unlikely that the reduction could exceed \$50,000. This plan has a major disadvantage in that it would increase truck traffic on Eleventh.

Plan C removes the piggyback facilities to an undetermined location outside of town. The substitute facilities and removal would cost nearly \$100,00, plus an undetermined amount for acquisition of land. The actual construction between the rails (\$21,000) and signal installation (\$49,000) would remain approximately the same as would the land occupied by the street (\$30,000) and annual signal maintenance.

There would be other continuing costs which should be annualized for comparison purposes. The extra operating costs attributable to a split facility would amount to approximately \$25,000 per year. An additional employee position would be required for 4-6 months each year, conservatively estimated at \$3,200 per year. Capitalized at 8 percent, total annual expenses have a present value of approximately \$379,500. The total outlay excluding the cost of land to be acquired for the new facility and street construction outside the rails is thus, at minimum, \$500,000.

Separation

Our rules require that an applicant for a grade crossing demonstrate that a separation is not practicable (cf. Rule 38D, Rules of Practice and Procedure of this Commission).

It has been demonstrated that a separation cannot be constructed at this location without a major reconstruction of either railroad facilities or adjacent streets or both. However, the city's General Plan indicates the city's intention to construct a grade separation at Eleventh. Such a structure, if built, could serve the traffic for which the presently proposed crossing is intended. Use of such a structure would entail a detour, but there are corresponding benefits both in safety and in the assurance that there would be no delays caused by an abstract grade crossing.

Given the extraordinarily high costs of the Ninth Avenue crossing, it is highly likely that its construction would detract from the city's ability to construct at Eleventh.

Thus, the Eleventh separation, prima facie, should be treated as a possible alternative to the proposal herein. There is nothing in the record to indicate that it would be an unsatisfactory alternative. Consequently, the applicant has not met its burden of proof on this issue.

Findings

1. The railroad's facilities described herein perform an indispensable service on behalf of the public.

2. A Ninth Avenue crossing would destroy the facilities' usefulness unless they are reconstructed in a different location.

3. A Ninth Avenue crossing would be used primarily for traffic between the northbound lane of U.S. 99 and portions of the central business district of Delano; it would also serve areas east of the central business district until such time as Lexington is developed as an arterial street.

4. An alternate route serves the traffic to the central business district via a crossing at separated grades.

5. The alternate route has not been demonstrated less safe than the route via the proposed crossing.

6. The proposed replacement of essential railroad facilities would cost at minimum approximately \$400,000.

7. The expected number of train moves per day across the proposed crossing would vary between as high as 90 during the peak shipping season to 37 in the non-peak seasons.

8. The city plans a grade separation at Eleventh; it has not been demonstrated that such crossing cannot adequately perform the same function as the Ninth Avenue crossing.

Conclusion

We conclude that even though the crossing would tend to remove a deficiency in Delano's traffic circulation, this benefit would be limited by the number of times the crossing would be blocked by railroad operations, and that the net benefits compared to existing and planned alternative routes via separated crossings are not sufficient to justify a grade crossing at Ninth Avenue especially in view of the cost of replacing the railroad facilities.

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O R D E R

IT IS HEREBY ORDERED that Application No. 50688 is denied.

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.

[Signature]
Chairman

[Signature]

[Signature]
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.