

ORIGINAL

Decision No. 77589

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California )  
Department of Public Works for an order )  
authorizing the alteration of existing )  
Crossing No. 2B-38.4 on State Route 90 )  
across the tracks of The Atchison, )  
Topeka and Santa Fe Railway Company in )  
the City of Anaheim, Orange County. }

Application No. 51302  
(Filed August 8, 1969)

William E. Sherwood, for the State  
Department of Public Works,  
applicant.  
Robert B. Curtiss, for The Atchison,  
Topeka and Santa Fe Railway  
Company, respondent.  
Ronald I. Hollis, for the Commission  
staff.

O P I N I O N

The State of California Department of Public Works  
(Department) was authorized to widen Imperial Highway State Route  
90 (Crossing No. 2B-38.4) over the tracks of The Atchison, Topeka  
and Santa Fe Railway Company (Santa Fe) in Anaheim by Decision  
No. 76552 issued December 16, 1969 in the above entitled proceeding.  
That decision provided that the construction expense, as well as  
the cost to maintain the automatic grade-crossing protection, would  
be borne in accordance with an agreement to be negotiated by the  
parties, or if they were unable to agree, by further order of the  
Commission. The Department advised the Commission that the parties  
had been unable to agree as to the apportionment of maintenance ex-  
penses and asked that this matter be reopened for further hearing.

Hearing limited to apportionment of maintenance expense of the automatic grade-crossing protection at Crossing No. 2B-38.4 was held on April 2, 1970 at Los Angeles before Examiner Robert Barnett.

Imperial Highway crosses the tracks of the Santa Fe in the City of Anaheim approximately 50 feet south of Orangethorpe Avenue at Crossing No. 2B-38.4. At the present time the crossing consists of two traveled lanes, one in each direction, with a small median strip between the lanes, and is protected by two No. 8 flashing light signals augmented with gates. The Department was authorized to widen the crossing to provide for two lanes in each direction plus a left turn lane. The width of the traveled roadway at present is about 42 feet including shoulders and the width after the contemplated improvement will be about 89 feet. Crossing protection after the improvement will consist of four No. 8 flashing light signals augmented with hydraulic gates, two of which will be on the median strip. There will also be installed a so-called Harmon motion detector which will serve the purpose of minimizing the amount of down time of the gates and eliminating the over-ringing of the signals. This device will cause the bells to stop ringing and the gates to move to an upward position when a train which has entered the circuit and activated the signal comes to a complete stop or backs up; the motion detector will be backed up by a basic track circuit.

In order to be fail-safe Santa Fe's plans for the new crossing protection also contemplate the installation of aluminum standards for the signals in lieu of the cast iron standards at the existing signals and the installation of fiberglass gate arms in lieu of the wooden gate arms on the existing signals. The parties have agreed that the cost of installation of the crossing protection at the improved crossing is to be divided 50-50 but have failed to agree on how the cost of maintenance of crossing protection shall be borne.

The sole issue in this proceeding is whether or not the grade-crossing protection at this crossing after completion of the widening program has been "altered" within the meaning of Section 1202.2 of the Public Utilities Code.<sup>1/</sup>

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1/ Section 1202.2

In apportioning the cost of maintenance of automatic grade-crossing protection constructed or altered after October 1, 1965 under Section 1202, as between the railroad or street railroad corporations and the public agencies affected, the Commission shall divide such maintenance cost in the same proportion as the cost of constructing such automatic grade-crossing protection is divided. The liability of cities, counties and cities and counties to pay the share of maintenance costs assigned to such local agencies by the Commission shall be limited to funds set aside for allocation to the Commission pursuant to Section 1231.1. The railroad or street railroad corporations and the public agencies affected may agree on a different division of maintenance costs. If the public agency affected agrees to assume a greater proportion of the cost of maintenance than the apportionment of the 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. (Added 1965, ch. 1644.)

It is the position of the Santa Fe that, (1) Commission Decision No. 72226 ((1967) 67 CPUC 62)<sup>2/</sup> establishes that what is being done at this crossing does constitute an alteration because the installation of a Harmon motion detector represents the installation of a "predictor" in the sense that that term was used in said decision, and (2) if Decision No. 72226 is considered not to cover the instant situation the Commission should determine in this proceeding that the modified crossing protection does constitute an alteration within the meaning of the code section because it will provide a substantially safer crossing than the existing crossing.

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2/ Pertinent excerpts are:

"It is reasonable to assume that the Legislature did not have in mind minor changes to crossing protection when it used the word 'altered', neither did it have in mind any particular classification of protection at a crossing. What it did have in mind, and we so find, is a change in protection which thereby makes the crossing safer for the public." (67 CPUC at 67.)

"We find that in any case in which a higher numbered category of automatic grade-crossing protection as set forth in General Order No. 75-B is installed to replace or supplement a lower numbered standard of protection, or where predictors are installed on or in addition to existing protection there shall have occurred an alteration bringing Section 1202.2 into effect; provided the Commission by order or resolution approves such alteration and prescribes or approves the proposed terms of the apportionment or division of costs therefor. In any case not encompassed by the foregoing the Commission shall decide with or without hearing whether or not a crossing has been 'constructed or altered' as those terms are used in Section 1202.2." (67 CPUC at 68.)

It is the position of the Department that the addition of the same type of automatic protection that is in existence does not constitute an "alteration" within the meaning of Public Utilities Code Section 1202.2 or under Commission Decision No. 72226. The Commission staff supports the Department's position.

At this crossing, prior to widening, the Santa Fe was charged with 100 percent of the cost of maintenance of the grade-crossing protection. If the Department's position is sustained the Santa Fe will continue to pay 100 percent of the cost of maintenance on the widened crossing. If the Santa Fe's position is sustained Santa Fe will pay only 50 percent of the cost of maintenance on the widened crossing.<sup>3/</sup> Because of the large number of grade crossings in the State which will be widened in the future and are now maintained 100 percent by the railroads the question to be decided in this case takes on added importance.

An engineer for the Department testified that after the highway is improved the highway will be safer than it is today. This is because the highway is going to be widened to increase its capacity, nearby intersections will be equipped with traffic signals which will be connected with the railroad signals to provide for a smoother flow of traffic and better control of traffic approaching the railroad, and there will be better lighting at the crossing. Among other things, these additional devices will reduce the possibility of rear-end collisions between automobiles.

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<sup>3/</sup> If the cost of maintenance of the crossing before widening is 100 and after widening is 150 the Department would have the Santa Fe pay 150; the Santa Fe says it should only pay 75.

He said that when a highway is widened as it approaches a grade crossing the grade crossing must also be widened. Otherwise instead of improving the highway you have in fact made it less safe because of the bottleneck created. It would be poor engineering and a disregard of safety factors to widen the highway and not at the same time widen the grade-crossing.

He testified that the addition of two automatic gates will not result in a change of protection which makes the crossing itself safer because prior to the widening the crossing is protected by gates and after the widening the crossing will be protected by gates. On cross examination the witness stated that a motion detector device which minimizes the down time of gates would probably improve the safety of the crossing because the longer the gates are down the more drivers become irritated, the more signals at nearby intersections do not function in a normal manner, and vehicles stopped on the highway cause a potential accident hazard.

Another engineer for the Department testified that the addition of two additional gates at this crossing will not make the crossing safer insofar as the possibility of vehicular-train accidents are concerned. In the witness's opinion automobile accidents at or near a grade crossing not involving a train have nothing to do with the safety of the crossing. The witness stated, in answer to a question concerning the danger of an automobile running into the standard on which the flashing light was attached, that "the point I am trying to make is that the

rear-enders may be because of the crossing -- excuse me, not because of the crossing, because the crossing protection has been activated, but the rear-ender is not a crossing accident. It is not a crossing accident at the crossing. The crossing, itself, is just as safe with the gates down with no traffic there or with a hundred cars backed up. And if ten of them rear-ended, the crossing, itself, is just as safe under both these conditions. So I am not sure exactly what you are getting at when you are talking about running into the standard. The standard, as I see it, is a hazard in itself to the highway traffic but it is not a hazard to the crossing. It actually is a benefit to the crossing because it is a safety device put in there to make the crossing safer. But insofar as highway traffic is concerned this standard out here is a hazard because of just what you said, a car going off the road and hitting it." The witness stated that a device which reduces the down time of the gates does provide some increase in safety because motorists do get impatient.

An engineer for the Santa Fe testified that the widened crossing with four Standard No. 8 flashing lights augmented by automatic gates will be safer than the old crossing which had only two gates. He believes that the addition of two gates on medians will provide additional warning to motorists and make the warning signals at the crossing easier to see. In addition, the Harmon motion detector will make the crossing safer. Present circuits might keep the gates down as much as two minutes whereas a Harmon motion detector can, in some circumstances, reduce that down time to 15 seconds.

The witness defined a motion detector as a device that detects the motion of a train whether it is coming toward the crossing, whether it is stopped, or whether it is going away from the crossing. Without a motion detector, if a train comes within the circuits that operate the gates and stops, the gates will remain down for at least two minutes. With the motion detector the stop will be noted and the gates will raise to permit traffic through the crossing within 15 seconds after the train has stopped. The difference between the motion detector and a predictor is that the predictor is actually an analogue computer. It will measure the difference in voltage and current when the train comes onto a circuit and will compute the speed of the train coming toward the crossing. It will then decide when the train will arrive at the crossing and will put the gates down at approximately 25 seconds before arrival. The predictor costs approximately \$2,100 to \$2,500 as compared to the motion detector's price of \$390 to \$450. Maintenance of the predictor is higher than maintenance of the motion detector.

#### Discussion

In our opinion when a crossing protected by two Standard No. 8 flashing light signals each augmented by gates is widened and the widened crossing is protected by four Standard No. 8 flashing light signals each augmented by gates the grade-crossing protection has been altered within the meaning of Public Utilities Code Section 1202.2.<sup>4/</sup>

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<sup>4/</sup> Because of the large number of grade crossings in the state now protected by two Standard No. 8 flashing light signals each augmented by gates and maintained 100% by the railroads, which will be widened to accommodate traffic growth, this opinion will have a broad impact. State funds allocated to public entities for grade-crossing protection maintenance pursuant to Section 1231.1 may prove to be insufficient as the public entities' share of maintenance increases.



The title of the Application filed in this case reads "Application of the State of California Department of Public Works for an order authorizing the alteration of existing Crossing No. 2B-38.4" (emphasis added). The Department admits that this Application was filed pursuant to Public Utilities Code Section 1202 (b). Section 1202 (b) states that the Commission has the exclusive power "to alter, relocate, or abolish by physical closing any such crossing heretofore or hereafter established." In its brief the Department

"stipulates that the crossing is being physically 'altered' under Section 1202 (b). Widening a grade crossing does in fact 'alter' the crossing. However, 'altered' in Section 1202.2 is referring to 'altered' automatic grade-crossing protection, and not an 'altered' crossing."

Nonetheless, the Department doesn't explain how it arrives at the conclusion that widening a grade crossing physically alters the grade crossing, but that widening the grade-crossing protection and adding two Standard No. 8 flashing lights each augmented by gates does not physically alter the protection.

We need look no further than general rules of statutory construction to determine the meaning of the word "altered" in Section 1202.2. The dictionary definition of "alter" is "to cause to become different in some particular characteristic (as measure, dimension, course, arrangement, or inclination) without changing it to something else." (Webster's Third New International Dictionary of the English Language Unabridged 1964.) In this case we have the words "alter" and "altered" used in a manner that does not

suggest anything out of the ordinary. The words "alter," "altered," and "alteration," are found throughout Chapter 6 of the Public Utilities Code. In addition to Section 1202 (b) and 1202.2 a form of the word "alter" is found in Section 1202 (c), 1202.5 (d) and 1206. Giving different meaning to these words should be avoided.

In our opinion, the analysis in Shorb v. Barkley (1952) 108 Cal App 2d 873, 877, 240 P 2d 337, construing the word "designate" is applicable here. "Words used in an ordinary sense in one part of an enactment are to be construed in the same sense in another in the absence of express definition. (3) The word "designate" in the phrase "the Planning Commission shall ..." "designate" found in section 2 must be deemed to have been used in the same sense as the word "designated" in the phrase "as designated by the Planning Commission" found in section 9, which is to say "to point out" in the one case and "as having been pointed out" in the other. (4) An intent different from that expressed may not be deduced by giving a different meaning to the same expressions or adding words which are not used."

When it is agreed that widening a crossing from 42 feet to 89 feet and increasing the crossing from two traveled lanes of traffic to four traveled lanes of traffic is an alteration of the crossing we are compelled to find that moving the crossing protection from its position in the before condition to its widened position in the after condition and adding two additional Standard No. 3 flashing light signals augmented with gates is an alteration of the grade-crossing protection.

Our use of the dictionary definition of "alter" and our attempt to construe the word consistently throughout Section 1202 of the Public Utilities Code does not mean that we consider every difference in the before and after condition of a grade crossing to be an alteration within the meaning of the Code. As we said in Decision No. 72226 "It is reasonable to assume that the legislature did not have in mind minor changes to crossing protection when it used the word 'altered'." So, changing the lights on the crossing protection, or changing the gate arm, or painting the crossing protection is not an alteration within the meaning of Section 1202.2.

Even if we decided that a straightforward dictionary definition of a simple word like "alter" should be eschewed the position of the Department and the staff is not improved. The Department argues that "alter" as used in Section 1202.2 includes the concept of making the crossing safer and "that where, as here, you have two eight's and gates and you add two additional eight's and gates after widening a road, you are simply maintaining the same standard of safety that existed before the widening which was and is the highest standard of protection for a grade crossing." If this argument is valid, which we are not prepared to admit, then it can be argued that the crossing itself was not "altered" by widening. Prior to the widening there was one crossing and after the widening there remained one crossing, and, prior to the widening each lane of traffic was protected by a flashing light

and an automatic gate, after the widening each lane of traffic is protected by a flashing light and an automatic gate; therefore, since the same standard of safety has been maintained after the widening as before there has been no alteration of the crossing.

The Department argues that Decision No. 72226 interprets Section 1202.2 to mean that crossing protection is "altered" only when there is "a change in protection which thereby makes the crossing safer for the public". It argues that adding more of the same protection is not such a change; the added protection is required for the widening and does not make the crossing safer for the traveling public. The Department seems to assume that the word "change" means adding something different, or replacing that which is there with something different, such as gates added at a crossing where there had been no gates. The Department asserts that there is no "change" when more eight's and gates are added to a crossing already protected by eight's and gates. We feel that the Department has placed too narrow an interpretation on the word "change". Its interpretation renders meaningless the statement of the Commission in Decision No. 72226 to the effect that cases not involving so-called upgrading of protection shall be decided on an individual basis. (See footnote 2.) Placing Standard No. 8 flashing lights augmented with gates on medians in the center of a crossing where there were no such eight's and gates before is a change in protection in the crossing which thereby makes the crossing safer for the public. Obviously a crossing as wide as this one will be after it is widened would be less safe if there were no flashing lights and gates placed on medians in the center of the crossing.

Because of the view we take in this matter there is no need to decide, in this case, whether a Harmon motion detector is a "predictor" within the meaning of Decision No. 72226.

Findings of Fact

1. Imperial Highway crosses the tracks of the Santa Fe in the City of Anaheim approximately 50 feet south of Orangethorpe Avenue at Crossing No. 2B-38.4. At present the crossing consists of two traffic lanes, one in each direction, with a small median strip between the lanes and is protected by two Standard No. 8 flashing light signals augmented by gates. The Department has been authorized to widen the crossing to provide for two lanes in each direction plus a left-turn lane. The width of the traveled roadway at present is about 42 feet and the width after the widening will be about 89 feet. Crossing protection after the improvement will consist of four Standard No. 8 flashing light signals augmented with hydraulic gates, two of which will be on the median strip.
2. The Department and the Santa Fe have agreed that the cost of installation of the crossing protection at the widened crossing is to be divided 50-50.
3. When a crossing protected by two Standard No. 8 flashing light signals each augmented by gates is widened and the widened crossing is protected by four Standard No. 8 flashing light signals each augmented by gates the grade-crossing protection has been altered within the meaning of Public Utilities Code Section 1202.2.

4. The cost of maintenance of automatic grade-crossing protection at Crossing No. 2B-38.4, after widening, should be divided 50 percent to the Department and 50 percent to the Santa Fe.

The Commission concludes that the cost of maintenance of automatic grade-crossing protection at Crossing No. 2B-38.4, after widening, should be as set forth in the following order.

O R D E R

IT IS ORDERED that the cost of maintenance of the automatic grade crossing-protection at Crossing No. 2B-38.4, after widening, shall be divided 50 percent to the Department of Public Works and 50 percent to The Atchison, Topeka and Santa Fe Railway Company.

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

Dated at San Francisco, California, this 11th day of AUGUST 4, 1970.

*Auzan*  
Chairman

*William J. ...*

*John ...*  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.