

ORIGINAL

Decision No. 77904

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California )  
 Department of Public Works for an )  
 order authorizing construction of nine )  
 crossings at separated grades, and )  
 related work, over tracks of Southern )  
 Pacific Company, The Atchison, Topeka )  
 and Santa Fe Railway Company and the )  
 U.S. Government in connection with )  
 construction of a viaduct to connect )  
 the East Approach of the San Francisco- )  
 Oakland Bay Bridge to West Grand Avenue )  
 at Peralta Street in the City of )  
 Oakland, referred to as "West Grand )  
 Avenue Viaduct". )

Application No. 48399

Joseph E. Easley and William Sherwood, for State  
 of California, Department of Public Works,  
 Division of Bay Toll Crossings, applicant.  
Harold S. Lentz, for Southern Pacific Transporta-  
 tion Company<sup>1/</sup>; Robert B. Curtiss, for The  
 Atchison, Topeka and Santa Fe Railway Company;  
 interested parties.  
M. E. Getchel, for the Commission staff.

O P I N I O N

By Decision No. 70764, dated May 24, 1966, in this pro-  
 ceeding, the State of California Department of Public Works  
 (Department) was authorized to construct a crossing at separated  
 grades of West Grand Avenue over the tracks of Southern Pacific  
 Company and The Atchison, Topeka and Santa Fe Railway Company  
 (Santa Fe) at the Oakland Army Base in the City of Oakland (City).  
 Said decision provided that construction and maintenance expense

<sup>1/</sup> The former Southern Pacific Company, which was the party appear-  
 ing at the hearing, was merged into Southern Pacific Transpor-  
 tation Company on November 26, 1969, and has ceased to exist.  
 The surviving company will be sometimes hereinafter referred to  
 as "Southern Pacific".

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should be borne in accordance with agreements entered into between the parties, and that if the parties failed to agree the Commission would apportion said expense by further order.

Subsequently applicant informed the Commission that the parties had been unable to reach agreement on the apportionment of costs and requested that the matter be set for hearing for the receipt of evidence on that issue. By Decision No. 74605, dated August 27, 1968, Application No. 48399 was reopened for such purpose. Hearings were held before Examiner Bishop in San Francisco on December 10, 11, 12 and 13, 1968 and on April 8, 9, 10 and 11, 1969. With the filing of reply briefs the matter was taken under submission on July 22, 1969.

At the direction of the Commission an Examiner's Proposed Report was filed on May 8, 1970; exceptions and replies thereto have been filed by parties to the proceeding and the matter is now ready for decision.

The facts concerning the overpass and related structures and their relationship to railroad facilities in the affected area, as well as the respective positions of the parties concerning the question at issue are fully set forth in the proposed report. That report is attached to this Opinion as Appendix A.<sup>2/</sup> Accordingly, we will proceed directly to a consideration of the exceptions and replies.

All of the exceptions taken, together with argument in support thereof, and the replies thereto by opposing parties have

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<sup>2/</sup> In Appendix B, attached hereto, are set forth corrections of typographical errors and of factual matter in the proposed report which have been noted since its issuance. Appendix C attached hereto, is a diagram showing the structures, rail lines and other facilities involved in this proceeding.

been carefully considered.<sup>3/</sup> The discussion hereinafter set forth will be generally confined to those exceptions deemed to reflect important points of contention.

Consistent with its position at the hearing and on brief, the Department takes exception to Conclusion No. 7 in the proposed report, which reads:

"In the expression in subparagraph (e) reading: '...and in addition, shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection (b)' the underscored words are to be construed as relating not just to the figure of ten percent set forth in subparagraph (b), but to the entire expression, viz: 'ten percent (10%) of the cost attributable to the presence of the railroad facilities.'"

Applicant contends that the reference to the percentage specified in subparagraph (e) is confined to the figure itself of 10 percent and means 10 percent of the cost of the overpass project. Applicant directs attention to the rule (Code of Civil Procedure, Section 1358) which provides, in part, that in the construction of a statute the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. Conclusion No. 7, says applicant, does not give effect to the language in subparagraph (e) which reads "dependent on the findings of the Commission with respect to the relation of the project to each category." Applicant proposes that if subparagraph (e) is to be

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<sup>3/</sup> Exceptions and replies were filed by the Department, Southern Pacific and Santa Fe.

construed as it has in the proposed report the following words be added to Conclusion No. 7:

"it being understood that, because of the different factual situations involved, the two subparagraphs cannot be applied in precisely the same manner."

The construction placed by the Department on the statutory language in question would charge the railroads with a minimum of about \$1,000,000 of the total project cost of approximately \$10,000,000. This is to be compared with the figure of \$154,765 found, in the proposed report, to be a reasonable aggregate Southern Pacific and Santa Fe apportionment, predicated on 10 percent of the estimated cost attributable to the presence of the railroad facilities. For reasons set forth in the proposed report applicant was willing to base the railroads' apportionment on 10 percent of the estimated costs of two hypothetical structures, reflecting an aggregate of about 4 percent of the total actual cost of the West Grand Avenue project. In its exceptions to the proposed report this percentage is further modified.

The interpretation placed by the examiner on the language of subparagraph (e) here in issue does not, in our opinion, violate the requirements of Section 1858 of the Code of Civil Procedure, above. Nor does it fail to give effect to the words "dependent on the findings of the Commission with respect to the relation of the project to each category." This latter point will be hereinafter treated in connection with another exception. The proposed Finding No. 7 is proper.

The Department takes exception to Conclusion No. 9 of the proposed report, which reads:

"Any items or costs which are not attributable to the presence of railroad facilities, or which would have been incurred without being subject to apportionment if the realignment of the crossing had been at grade, are properly excluded from the hypothetical structure."

Applicant contends that testimony of all the railroad and public agency witnesses was to the effect that even where the phrase "attributable to the presence of the railroad facilities" applies, the practice is to determine the limits of the project and to expect a 10 percent contribution from the railroad based upon all costs incurred within those limits. Review of the portions of transcript cited does not bear out this contention. Those instances which were given reflected special situations under greatly different circumstances than those involved in the project under consideration.

Applicant further asserts that a major factor in determining apportionments of overpass construction or reconstruction costs is the situation which prevailed prior to construction, rather than the relationship of tracks and streets or roads existing after construction or reconstruction. Thus it alleges that the old Port of Oakland Overhead did not pass over an Army track, as stated in Finding No. 11 of the proposed report and that the 26th Street Overpass did not pass over an Army track, as stated in Finding No. 12. Thus, if the new structure had been built on the old alignment (including reconstruction of the 26th Street Overpass), applicant contends, no part of the cost would have been attributable to the Army. This circumstance it contends should be a guide to the problem at hand.

It appears that the Department is correct as to its criticism of Finding No. 11. However, the record is clear that at least the "J" line of the westerly portion of the West Grand Avenue

Overpass now passes over the Army track in question.<sup>4/</sup> The record clearly shows, however, that Finding No. 12 correctly states the facts, in that the old 26th Street Overhead did pass over a track which was used by the Army, whether or not it was actual federal property.

In arriving at a fair and just apportionment of costs, it is proper to consider the circumstances which prevailed both in the "before" condition and in the "after" condition. The fact that the West Grand Avenue Overpass, in following the logical, direct route from West Grand Avenue to the vicinity of the Bay Bridge toll plaza necessarily passed over a multitude of Army tracks, as well as those of the railroads, has an important bearing on such apportionment and cannot be ignored.

The Department believes that Conclusion No. 9 should be amended to eliminate the words "or which would have been incurred without being subject to apportionment if the realignment of the crossing had been at grade". As pointed out in Southern Pacific's reply, the reason for excluding from the hypothetical structure all costs that would have been incurred without apportionment even if the project had been at grade, is that such costs are clearly not attributable to the presence of railroad facilities. Conclusion No. 9 as framed in the proposed report is proper.

The Department, consistent with its position regarding proposed Conclusion No. 9, has, in its Exception No. 7, set forth revised figures for the estimated cost of its eastern hypothetical which restore certain cost elements (actually incurred in connection with construction of the overpass) that the examiner had excluded.<sup>5/</sup>

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<sup>4/</sup> In Appendix B hereof, the necessary correction has been made in Finding No. 11 and Finding No. 13 has been clarified.

<sup>5/</sup> The table on sheet 32 of the proposed report compares the respective estimates of the Department, Santa Fe and the examiner of the costs of the hypothetical structure.

These were in the group designated "Miscellaneous Expense". A tabulation of the individual categories of such expense, as set forth in said exception, totals \$124,700. Yet in its tabulation of structure cost elements the Department has shown this item as \$155,000. No reason is given for the substantially higher figure. At the same time, in its proposed revision applicant now accepts the examiner's figures for roadway on grade, utility relocation, and right-of-way costs. The adjustments made by applicant in its exceptions reflect a revised estimated total cost for the hypothetical of \$2,856,848. This is to be compared with its original estimate of \$2,998,800, that of the examiner, which is \$2,815,848, and that of the railroads, which is \$2,449,900. Since we have hereinabove concluded that Conclusion No. 9 of the proposed report is proper, the upward adjustments in "Miscellaneous Expense" and other items affected thereby, as proposed by the Department, are not justified.

Southern Pacific and Santa Fe also object to the total estimated cost of the eastern hypothetical submitted by the examiner, because he has not adopted their modified structure, as developed by the Santa Fe engineer witness. As stated in the proposed report, the latter structure ignores the presence of the two Wood Street tracks of the Santa Fe (in fact, if built, it would not clear trains using those tracks). The reason for submitting such a hypothetical, with its lower cost because of its shorter length, is that the overpass, as built, does not eliminate the existing grade crossing over the Wood Street tracks. Since a grade crossing is not eliminated at these tracks, says Santa Fe, subparagraph (a) of Section 1202.5 of the Code applies and no construction toward the

cost of the overpass by reason of the presence of those tracks is chargeable to the Santa Fe.<sup>6/</sup>

The basis upon which the examiner concludes that the hypothetical proposed by the railroads should be rejected and one adopted which clears the tracks in question and consequently increases the aggregate contribution of the railroads is not clear to those entities. Their surmise is that, because a substantial portion of the traffic which formerly used the Wood Street crossing is now diverted to the overpass, the examiner is, in effect, invoking subparagraph (b), as if the crossing had been actually eliminated. It appears that the key to the examiner's treatment of this phase of the problem is found on page 28 of the proposed report. The sentence in question (as corrected in Appendix B hereof) reads as follows:

"The underscored portion of the above-quoted Code provision is vague and ambiguous; it certainly gives the Commission wide discretion, subject of course to the specific requirements stated in the earlier portions of the subparagraph, in apportioning the construction costs of those grade separations which come within the scope of said subparagraph."

The statutory reference in the quoted sentence is to that portion of subparagraph (e) of Section 1202.5 which reads as

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<sup>6/</sup> As stated in the proposed report, Southern Pacific's position is that no contribution is required of it at all since no grade crossing of Southern Pacific is eliminated by construction of the overpass. However, if the Commission concludes that some contribution is, nevertheless required of it, and a hypothetical structure is utilized, Southern Pacific approves of the structure proposed by the Santa Fe.



follows: <sup>7/</sup>

"....and in addition shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection (b), dependent on the findings of the Commission with respect to the relation of the project to each category." (Emphasis supplied.)

The railroads argue that proper construction of the statutory wording in question requires the specific application of each of subparagraphs (a), (b), (c) and (d) to each of the specific situations presented in connection with the complex structure and adjacent railroad tracks, to which each such subparagraph would be applicable if it were the only subparagraph involved. In its reply the Department, however, asserts that the railroads make much of parts of the project, but carefully avoid looking at the project as a whole.

Subparagraph (e), by its terms, is invoked when the Commission finds that "a particular project does not clearly fall within any one of the above categories." If the paragraph was intended to apply in the rigid manner urged by the railroads it appears that subparagraph (e) might just as well be deleted from the Code and parties be left to apply the individual preceding subparagraphs as best they might to each individual situation, with the attendant complications that naturally arise in such a complex set of circumstances as is presented in this proceeding.

We are inclined to agree with the statement in the proposed report to the effect that the particular language in subparagraph (e) here under consideration necessarily accords the Commission considerable discretion in

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<sup>7/</sup> Subparagraph (e) of Section 1202.5 is quoted in full on sheet 8 of the proposed report.

apportioning costs which come within the purview of that subparagraph. Therefore, we are justified, in the process of arriving at a reasonable, fair and equitable result, in considering all of the circumstances relating to the particular portion of the Overpass under consideration. Among these is the inescapable fact that the eastern hypothetical proposed by the railroads is one that would never be constructed, because if it were the Santa Fe would be unable to use the Wood Street tracks. Another circumstance that has a bearing within the purview of subparagraph (e) is that construction of the Overpass, while it has not resulted in the elimination of the old Wood Street grade crossing, has resulted in elimination of the great preponderance of vehicular movement over the crossing. Through traffic now moves over the Overpass, the crossing traffic being limited to the relatively small amount of local traffic serving the few establishments located on the street. This has resulted necessarily in a great reduction in accident potential.

The conclusions reached in the proposed report which would reject the eastern hypothetical of the railroads and adopt that of the Department, with cost modifications as indicated in the report, are sound.

Predicated on its reasoning relative to the "before" and "after" conditions as they affect the tracks of the Army Base, the Department argues that the cost apportionment to the railroads based on the estimated cost of the eastern hypothetical should include the cost of that portion of such structure attributable to the presence of the Army tracks. The parties are agreed on the use of linear feet over the rights-of-way traversed on the Overpass for the determination of ratable portions of the entities involved. Using the eastern hypothetical adopted in the proposed report, the relative lengths and percentages involved are as follows:

Army	610 feet	44.04 percent
Southern Pacific	565 feet	40.79 percent
Santa Fe	210 feet	15.17 percent

Since no portion of the cost of the West Grand Avenue Overpass, under the terms of the agreement between applicant and the Department of Defense, is to be borne by the latter, applicant contends that the ratable shares of the railroads should be based on the total estimated cost of the hypothetical, divided between the two railroads in the proportions reflected by the following percentages:

Southern Pacific	565 feet	73 percent
Santa Fe	210 feet	27 percent

As a matter of equity and justice there is no reason why the United States Department of Defense should not bear its fair share of the cost of construction of the Overpass. 610 linear feet of the eastern portion of the actual structure are elevated by reason of the presence of the Army track facilities. If the Army's legitimate share is not borne by the railroads it will be a part of the cost to be borne by the people of the State of California. Under such circumstances it simply amounts to shifting the burden of the people of the nation as a whole, who support the defense establishment, to the people of this State.

In any event no expense will be incurred by the Army. However, regardless of such reasoning as applicant has advanced in support of its position, we are in agreement with the proposed report that it would be manifestly unjust and unfair to require the railroads to bear the Army's share of the construction costs in addition to their own. The conclusions proposed by the examiner with respect to this issue are proper.

The railroads take exception to the proposed Conclusion No. 17, which, in part, reads as follows:

"The maximum amount of 10 percent of the cost attributable to the presence of the railroad facilities, permitted by subparagraph (e) of Section 1202.5 will be reasonable in apportioning costs to Southern Pacific and, insofar as the Wood Street tracks and Track 47 are involved, to the Santa Fe."

Both roads contend for 5 percent in lieu of the figure of 10 percent proposed by the examiner. Southern Pacific argues that a full ten percent to the railroad is not permissible because of the requirement, in subparagraph (e), that the "reasonable percentage" to be assigned shall be "dependent upon the findings of the commission with respect to the relation of the project to each category." Since the project bears a direct relationship to subparagraph (a) which provides for no contribution by the railroad) and also to subparagraph (b) (in which the maximum figure of 10 percent is found) a reasonable percentage, says the railroad, must be something less than 10 percent, lest the relationship to subparagraph (a) be ignored.

Santa Fe's argument points to subparagraph (d) of Section 1202.5, which provides that where the project consists of alteration or construction of an existing separation for increasing the capacity of the structure for highway purposes 10 percent of the cost shall be apportioned against the railroad. Santa Fe asserts that only to a rather minor degree was the project constructed to increase the capacity of the 26th Street Overhead to accommodate traffic which then went over the overhead and which could be anticipated to go over it in the future.<sup>3/</sup> For this reason Santa Fe

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<sup>3/</sup> The record, in our opinion, discloses that increasing the capacity of the existing structures was in fact an important purpose in the new construction. This was accomplished by increasing the number of traffic lanes and by eliminating the circuitry involved in traversing the old structures, among others.

believes that a 5 percent contribution would be reasonable, and in fact generous.

It is to be observed that while Southern Pacific argues vigorously for the 5 percent figure in its brief and in one part of its exceptions, by statements elsewhere in the latter pleading it appears to accept the figure of 10 percent recommended in the proposed report. On page 1 of the exceptions is the following sentence:

"Moreover, if the Commission should agree to Southern Pacific's objections to the Examiner's proposed treatment of the Santa Fe's Wood Street tracks, the result will be to increase the share of the cost to be paid by Southern Pacific by approximately \$6,000."

The approximate figure of \$6,000 reflects the difference between \$115,831, Southern Pacific's proposed apportionment for that road as set forth in its proposed substitute conclusion, numbered 5 (for a part of conclusion No. 17 in the proposed report) and \$109,860, the amount proposed for Southern Pacific in said conclusion No. 17. Both of these figures reflect 10 percent of the respective estimates of Southern Pacific and the examiner of the ratable share of the construction costs attributable to the presence of Southern Pacific tracks.

After setting forth the arguments of the parties the proposed report states that, in the light of all the circumstances surrounding the West Grand Avenue Overpass project, 10 percent will result in a reasonable apportionment to the railroads (sheet 34). This expression is consistent with the earlier statement of the examiner (at sheet 25) to the effect that justice will not be served if a seemingly pertinent Code provision

is applied to a particular situation as if the rest of the project relationships did not exist. It is also consistent with the point we have hereinabove made that the key wording in subparagraph (e) accords the Commission considerable discretion in apportioning costs under that subparagraph. It is to be remembered that the percentage figure in question relates only to the cost of those portions of the project which are attributable to the presence of the railroad facilities, not to the total cost of the entire project. We are of the opinion that, considering the project in all of its complex and varied relationships, 10 percent will reflect a reasonable apportionment to the railroads. The proposed conclusions of the examiner relating to this question are proper.

The last point which we will specifically consider<sup>9/</sup> relates to the western hypothetical structure as proposed by the Department for the purpose of ascertaining a reasonable apportionment of the cost of the Overpass attributable to the presence of the Santa Fe Baldwin Lead track. The estimated cost of that hypothetical structure is \$1,291,600. The Department contended at the hearing and in its briefs that Santa Fe should pay \$129,160, or 10 percent of the total, on the theory that the presence of the Baldwin Lead track made necessary the elevation of the structure above grade in that vicinity. Santa Fe points out that the elevated structure in question (the "J" line portion of the Overpass) is made necessary by

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<sup>9/</sup> In its exceptions Southern Pacific expanded the argument previously made in its briefs to the effect that subparagraph (d) of Section 1202.5 has no application to the question presented in this proceeding, on the ground that the construction of the West Grand Avenue Overpass did not "consist of an alteration or reconstruction of an existing grade separation". We will not comment on this further than to state that the argument is developed step-by-step by a chain of legalistic reasoning, including citation of such cases as *Breidert v. SP*, 272 C.A. (2d) 398 (which can be clearly distinguished) until a conclusion is reached which is contrary to the cold facts.

the presence of an Army track, to the east, and the lanes of the Bay Bridge approach, to the west of said Baldwin Lead. Santa Fe is willing to contribute \$4,048. This is 10 percent of the amount (\$40,481) determined by multiplying the cost per linear foot of the western hypothetical by 70 (the scaled length of that portion of the hypothetical which would pass over the Baldwin Lead right-of-way). The examiner adopts the Santa Fe's figure as reasonable.

In its exceptions the Department modifies its original position as set forth above. It is willing now to charge Santa Fe with 10 percent of the estimated cost of only a portion of the western hypothetical. This portion is measured by the scaled distance of 600 feet, from the beginning of the easterly approach of the hypothetical to the Baldwin Lead track. The estimated cost of that portion of the structure the Department calculates as \$347,400, being the product of 600 and the same cost per linear foot of the entire structure that was used by Santa Fe, as above. Thus the Department's new proposal is to require the Santa Fe to pay \$34,740, in lieu of \$129,600, by reason of the presence of the Baldwin Lead.

The reasons, as set forth in the proposed report, for not requiring Santa Fe to contribute more than \$4,048 to the cost of the Overpass on account of the Baldwin Lead are not weakened or nullified by the changed position of the Department. We are of the opinion that \$4,048 is a reasonable apportionment for the purpose in question. The conclusions relating thereto in the proposed report are sound.

In connection with the immediately preceding subject Santa Fe takes exception to the examiner's proposed conclusion No. 19, which states in effect that the Department's westerly hypothetical structure and the estimated cost thereof are reasonable

for the purposes for which they are employed. Santa Fe concedes that the amount of \$4,048 is reasonable, but argues that the hypothetical as designed by the Department is not reasonable for the indicated purpose. It is manifestly inconsistent to say that the amount of the apportionment is reasonable but that the structure by means of which such apportionment was determined is unreasonable. The proposed conclusion should be allowed to stand.

Hereinafter, an additional finding of fact is made and a revised conclusion of law is reached. These are formulated in the light of suggestions advanced by parties in their exceptions. No discussion appears necessary.

We adopt as our own all proposed findings of fact set forth in the Examiner's Proposed Report (being Nos. 1 to 25, inclusive), as corrected or clarified in Appendix B, hereof. We also make the following additional finding of fact:

No. 26. The West Grand Avenue project was constructed on a new alignment because it would have been impractical, uneconomic and poor engineering to construct it on the old alignment and because the new alignment was the direct route between West Grand Avenue, the Army Base and the Bay Bridge toll plaza.

We adopt as our own the proposed conclusions of law, with the exception of No. 2, set forth in the Examiner's Proposed Report (being No. 1 and Nos. 3 to 25, inclusive, as corrected in Appendix B hereof).

In lieu of the proposed conclusion of law No. 2 we reach the following conclusion:

No. 2. The overpass project involves in part the "reconstruction of an existing grade separation" as that expression is used in subparagraph (d) of Section 1202.5 and in part provides



a new route for traffic of various sorts not utilizing the 26th Street Overpass.

SUPPLEMENTAL ORDER

IT IS ORDERED that the costs of construction of the West Grand Avenue Overpass, construction of which was authorized by Decision No. 70764 in this proceeding, shall be apportioned as follows:

- (a) To Southern Pacific Transportation Company: \$109,860.
- (b) To The Atchison, Topeka and Santa Fe Railway Company: \$44,905, plus an amount computed by capitalizing at five percent per annum the direct and computable savings to said company resulting from the elimination of the cost of physical maintenance, and from the elimination of the cost of maintaining crossing protection at the former Track 47 grade crossing.
- (c) To the State of California, Department of Public Works: the remainder of said costs.

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

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

*L. de la Cruz*  
*J. de la Cruz*

Chairman  
*William J. ...*  
Commissioners  
*Vernon L. ...*

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California  
Department of Public Works for an order  
authorizing construction of nine cross-  
ings at separated grades, and related  
work, over tracks of Southern Pacific  
Company, The Atchison, Topeka and Santa  
Fe Railway Company and the U.S. Govern-  
ment in connection with construction of  
a viaduct to connect the East Approach  
of the San Francisco-Oakland Bay Bridge  
to West Grand Avenue at Peralta Street  
in the City of Oakland, referred to as  
"West Grand Avenue Viaduct".

Application No. 48399

Joseph C. Easley and William Sherwood,  
for State of California, Department  
of Public Works, Division of Bay  
Toll Crossings, applicant.  
Harold S. Lentz, for Southern Pacific  
Transportation Company<sup>1/</sup>; Robert B.  
Curtiss, for The Atchison, Topeka  
and Santa Fe Railway Company;  
interested parties.  
M. E. Getchel, for the Commission staff.

PROPOSED REPORT OF EXAMINER CARTER R. BISHOP

By Decision No. 70764, dated May 24, 1966, in this proceed-  
ing, the State of California Department of Public Works (Department)  
was authorized to construct a crossing at separated grades of  
West Grand Avenue over the tracks of Southern Pacific Company and  
The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) at

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<sup>1/</sup> The former Southern Pacific Company, which was the party appearing  
at the hearing, was merged into Southern Pacific Transportation  
Company on November 26, 1969, and has ceased to exist. The  
surviving company will be sometimes hereinafter referred to as  
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the Oakland Army Base in the City of Oakland (City). Said decision provided that construction and maintenance expense should be borne in accordance with agreements entered into between the parties, and that if the parties failed to agree the Commission would apportion said expense by further order.

Subsequently applicant informed the Commission that the parties had been unable to reach agreement on the apportionment of costs and requested that the matter be set for hearing for the receipt of evidence on that issue. By Decision No. 74605, dated August 27, 1968, Application No. 48399 was reopened for such purpose. Hearings were held before Examiner Bishop in San Francisco on December 10, 11, 12 and 13, 1968 and on April 8, 9, 10 and 11, 1969. With the filing of reply briefs the matter was taken under submission on July 22, 1969.

Applicant presented evidence principally through two engineers of the staff of its Division of Bay Toll Crossings: a principal bridge engineer and a surveys and rights of way engineer; other witnesses were an administrative civil engineer employed by the County of Los Angeles and the assistant general manager of the Department of Public Utilities and Transportation of the City of Los Angeles. Southern Pacific offered evidence through the assistant to its chief engineer and its public projects engineer. A regional engineer of the Santa Fe testified on behalf of that company. A senior transportation engineer of the Commission's staff assisted in the development of the record.

The West Grand Avenue Viaduct project involves a separation structure passing over two tracks of the Santa Fe in Wood Street, over a track of the Santa Fe identified as Track No. 47, over 28 tracks of Southern Pacific, over 15 tracks owned by the federal

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government (a yard of the Oakland Army Base), over the Oakland Army Terminal, over another Army track and a Santa Fe track known as the Baldwin Lead, thence over at least a part of the San Francisco-Oakland Bay Bridge Toll Plaza, where it connects with the Bridge approach. On the westerly portion of the project the Viaduct connects with the previously existing Port of Oakland Overhead, which has been reconstructed to become a part of the eastbound structure of the viaduct. The over-all length of the viaduct project is 1.3 miles. It was opened to public travel on April 16, 1968. The cost of the project was approximately \$10,000,000.

The viaduct was constructed to increase the traffic-carrying capacity of facilities connecting the adjacent and downtown sections of Oakland with the Bay Bridge and the Army Base and to provide direct access, via the Bay Bridge approach, to traffic moving between the Army Base and locations east thereof, on the one hand, and points north and east of the Bay Bridge distribution structure, on the other hand.<sup>2/</sup> The Viaduct replaces the so-called 26th Street Overpass. The approach to that structure began just north of the new Viaduct west of Wood Street, crossing Santa Fe Track 47 at grade; the structure then paralleled the Southern Pacific tracks and crossed above them to the west, varying in distance from about 900 to 1100 feet northerly of the West Grand Avenue Viaduct crossing of said tracks. The 26th Street Overpass came to grade into Wake

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<sup>2/</sup> In 1930, before the Bay Bridge was built, the Hoover-Young San Francisco Bay Bridge Commission recommended an alignment over Goat Island (now Yerba Buena Island); this alignment included two approaches on the Oakland side, one of which was on the same alignment as that on which the West Grand Avenue Project has been built. At the time, however, that approach was not built.

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Avenue. Traffic coming off the Overpass there proceeded to the junction of Wake and Maritime Streets, whence it proceeded either southerly on Maritime or Wake into the Army Base or westerly over the Port of Oakland Overhead to the Bay Bridge Toll Plaza and thence onto the bridge.

The 26th Street and Port of Oakland overpasses were wooden, two lane structures. The former was originally built as a railroad structure to carry the trans-bay traffic of Interurban Electric Railway (Interurban) over the tracks of Southern Pacific, when such trains began operating over the Bay Bridge in 1939. Subsequently, service by Interurban was discontinued. During World War II the United States Army took over the 26th Street Overpass as part of the Oakland Army Base and converted it from a railway separation to a two-lane vehicular overhead. The record indicates that the Army did not seek or acquire authorization from the Commission to convert the structure to a vehicular overhead.

In 1944, the Army granted a license to the City of Oakland to use the 26th Street Overpass. It appears that this structure was open to the general public from the time of its conversion to vehicular use. The evidence indicates that the City of Oakland did not seek or acquire authorization from the Commission to utilize the overpass as a public or publicly used crossing.

Movement over the 26th Street Overpass to or from either the Army Base or the Bay Bridge involved a somewhat circuitous route. The new West Grand Avenue Viaduct follows a direct route. It is a 4-lane separated structure of concrete, leading directly from 4-lane West Grand Avenue to the Bay Bridge Toll Plaza, with on-and off-ramps for

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the Army Base, and with approaches on the west end from and to points in the direction of Berkeley and the MacArthur Freeway, as well as to and from the Bay Bridge.

Although the viaduct is built to freeway standards, it is not designated a freeway, but an approach to the Bay Bridge. As such its design and construction were carried out by the Division of Bay Toll Crossings of the State Department of Public Works.

Construction of the viaduct did not eliminate any grade crossings of Southern Pacific. Neither the old route over the 26th Street Overpass nor the new viaduct route involved crossing tracks of that carrier at grade. The viaduct does eliminate the crossing of Santa Fe Track 47 at grade.<sup>3/</sup>

With respect to the situation at Wood Street, crossing of the two Santa Fe tracks in that street at grade was formerly involved, both as to local traffic from and to locations on that street and as to traffic moving over the 26th Street Overpass. Through traffic now moves over the West Grand Avenue Viaduct, of course, but access roads have been constructed on either side of the viaduct (as it rises from grade about one and one-half blocks east of Wood Street) leading to and from Wood Street for the local traffic. Such traffic, in going into or out of Wood Street necessarily moves over the tracks of the Santa Fe in that street.

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<sup>3/</sup> The viaduct also eliminates a crossing at grade of Wake Avenue by a track connecting the Army's Knight and Baldwin freight yards.

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The application states that it is filed pursuant to Sections 1201-1205, inclusive, of the Public Utilities Code. The parties are agreed that the proceeding is one under Section 1202 of the Code. This leads to Section 1202.5, the first paragraph of which reads as follows:

"In prescribing the proportions in which the expense of construction, reconstruction, alteration or relocation of grade separations shall be divided between railroad or street railroad corporations and public agencies, in proceedings under Section 1202, the commission, unless otherwise provided in this section, shall be governed by the following standards:" (emphasis supplied).

Thereinafter are set forth paragraphs (a) to (h) inclusive, in which are stated the standards to be applied, under various factual situations, in the apportionment of the costs of grade separations. The respective railroads, on the one hand, and the Department, on the other, are not in agreement as to which subparagraph or subparagraphs of Section 1202.5 of the Code is or are applicable to the circumstances presented by the West Grand Avenue Viaduct.

#### POSITION OF APPLICANT

Applicant argues that the viaduct project is directly related to subparagraphs (b) and (d) of Section 1202.5. Subparagraph (b) reads as follows:

"Where a grade separation project initiated by a public agency will directly result in the elimination of one or more existing grade crossings, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall apportion against the railroad an amount computed by capitalizing at 5 percent per annum the direct and computable savings to the railroad resulting from the elimination or reduction of the cost of physical maintenance of such crossing or crossings, and from

the elimination or reduction of the cost of maintaining crossing protection at the existing grade crossing or crossings, and in addition shall apportion against the railroad 10 percent (10%) of the cost attributable to the presence of the railroad facilities. The remainder of such costs shall be apportioned against the public agency or agencies affected by such grade separation." (Emphasis supplied.)

The project provides for the elimination of a Santa Fe grade crossing at Track 47 and, applicant points out, eliminates the major portion of traffic on the Wood Street crossing of that railroad.

Sub-paragraph (d) of Section 1202.5 reads, in part, as follows:

"Where the project consists of an alteration or reconstruction of an existing grade separation for the purpose of increasing the capacity of the structure for highway purposes, the commission shall apportion ten percent (10%) of the cost against the railroad and the balance against the public agency or agencies affected by such grade separation." (Emphasis supplied.)

The project, according to the Department, provides for the "reconstruction" of two existing grade separations, namely, the Port of Oakland Overhead over a track of the Santa Fe and the 26th Street Overpass over tracks of Southern Pacific. Accordingly, it is the Department's position that this portion of the project is related to subparagraph (d). Applicant also points out that the basic purpose of the project was to increase the vehicular capacity of the existing facilities and argues that the viaduct project does not constitute a new route, but does provide for a new movement of traffic.

Applicant takes the position also that the project falls within subparagraph (e) of Section 1202.5, which reads as follows:



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"In the event the Commission finds that a particular project does not clearly fall within the provisions of any one of the above categories, the commission shall make a specific finding of fact on the relation of the project to each of said categories, and in apportioning the costs, it shall apportion against the railroad an amount computed by capitalizing at five percent (5%) per annum the direct and computable savings to the railroad resulting from the elimination or reduction of the cost of physical maintenance and from the elimination or reduction of the cost of maintaining crossing protection, at the existing crossing, if any, and in addition shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection (b), dependent on the findings of the commission with respect to the relation of the project to each category. The remainder of such cost shall be apportioned against the public agency or agencies affected by the project." (Emphasis supplied.)

The basis for this position is that the project is not just for the purpose of eliminating a grade crossing or of constructing a grade separation. Applicant concludes that the project, as a whole, falls under subparagraph (e).

Since the area in question and the project as constructed were heavily influenced by the presence of the railroads, according to applicant, it contends that a strict application of the subparagraph would require a contribution from the railroads of 10 percent of the total cost, namely, \$1,003,799. The Department believes, however, that due consideration should be given to the fact that the two existing grade separations could have been reconstructed and the grade crossing (over Santa Fe track 47) could have been eliminated without having provided the highway-highway separation at the junction of Maritime Avenue and Wake Street in the Army Base. While California law does not expressly authorize the use of hypothetical grade separation projects, the Department believes that they can be a useful device to aid in calculating the "reasonable percentage" contemplated by Section 1202.5(e) of the Code.

A witness for the Department testified concerning two hypothetical overpass structures, designed in line with the foregoing, including estimates of their costs and the amounts which, under the Department's interpretation of the statutes, would have been allocable to the railroads, had such structures been built.<sup>4/</sup> The easterly hypothetical was shown on the same alignment as that of the actual structure, arising from grade at the same point as does the latter, proceeding westerly above the Santa Fe Wood Street and No. 47 tracks, the tracks of Southern Pacific and the group of Army tracks immediately westerly thereof, and returning to grade at a point approximately 800 feet westerly of the last of said tracks. This hypothetical project, as in the actual structure, separates into two structures, for eastbound and westbound traffic, respectively, and includes approach segments at grade at each end, as well as roads to and from Wood Street.

The westerly hypothetical structure, as conceived by the Department, also follows the alignment of the overpass structure as built, but only embraces that portion of said structure which carries the westbound traffic, and only a part of that. Applicant's witness pointed out that the structure for the eastbound traffic, the Old Port of Oakland Overhead, was already in existence. He did not include in his hypothetical project any of the cost of the rebuilding of that overhead. Moreover, his hypothetical westbound structure does not include on-and-off ramps and connecting roads

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<sup>4/</sup> Applicant recognizes that the estimated cost of a hypothetical project is, by its nature, somewhat speculative.

for traffic to and from the Bay Bridge approach in the direction of Berkeley and the McArthur Freeway. This proposed hypothetical overpass rises from grade approximately 800 feet east of the Santa Fe Baldwin Lead track, passes above that track, an Army track and above all the lanes of the Bay Bridge approach and returns to grade to the west of that highway. This westerly hypothetical project includes the construction of westbound approach lanes from the Wake Avenue intersection, and a road connecting the hypothetical overpass with the Bay Bridge Toll Plaza.

The construction costs of these easterly and westerly hypothetical overpass structures, as estimated by the Department's witness, would be \$2,998,793 and \$1,291,600, respectively. An allocation of 10 percent of these costs to the railroads, the witness calculated, would reflect amounts of \$299,879 and \$129,160, respectively, making a total apportionment of \$429,039 to Santa Fe and Southern Pacific of the estimated costs of construction of the two hypothetical overpass structures. The Department argues that, since its hypotheticals were based upon a recognition of all existing controls and the costs were derived from actual contract plans and costs, they are reasonable hypotheticals. It points out that the figure of \$429,039 is slightly more than four percent of the cost of the West Grand Avenue Viaduct project and contends that such a percentage is a reasonable one for the railroads' share of the construction cost.

The Department has no recommendation as to how the railroads' share of the cost should be divided between Santa Fe and Southern Pacific. <sup>5/</sup>

POSITION OF SOUTHERN PACIFIC

Southern Pacific's position is that, as far as that company is concerned, the only applicable provisions of Section 1202.5 of the Code are contained in subparagraph (a), and that if this position is rejected the only other applicable provisions are those in subparagraph (e), above.

Subparagraph (a) reads as follows:

"Where a grade separation project, whether initiated by a public agency or a railroad, will not result in the elimination of an existing grade crossing, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall require the public agency or railroad applying for authorization to construct such grade separation to pay the entire cost." (Emphasis supplied.)

As the record shows, no grade crossing of Southern Pacific tracks has been eliminated by reason of the Viaduct. Because of this fact, also, Southern Pacific considers subparagraph (b) to be inapplicable to it.

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<sup>5/</sup> The project passes over 16 tracks of the Army Base. The record shows, however, that no portion of the construction cost is to be borne by the Federal government. Also, the agreement between the Department and the City, entered into prior to construction provided that all expenses incurred by the City in connection with the project should be borne by the Department.

Further, it is the position of this carrier that subparagraph (d) is also inapplicable. Southern Pacific contends that by use of the term, "existing grade separation", this provision contemplates replacement of a separation having the same status as the new separation, namely, a separation of a "street" or "public or publicly used road or highway". The 26th Street Overpass, it asserts, was not a "street" or a "public or publicly used road or highway" because the requisite authority to establish such a street or public or publicly used road or highway was never obtained from the Commission.<sup>6/</sup>

Again, in using the words "existing grade separation" the provision in question, according to Southern Pacific, clearly contemplates replacement by the party having ownership, control or jurisdiction of the "existing grade separation", whereas the Division of Bay Toll Crossings neither owned, controlled nor had jurisdiction of the 26th Street Overpass.

Southern Pacific also contends that subsection (d) is inapplicable to it because the new construction is not an "alteration or reconstruction" of the 26th Street Overpass, since (1) the structure was not under the control, ownership or jurisdiction of the Division of Bay Toll Crossings, (2) the new separation is

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<sup>6/</sup> In support of this argument the railroad cites Breidert v. Southern Pacific Company, 272 A.C.A. 479 (1969).

located approximately a quarter of a mile away from said Overpass,<sup>7/</sup>  
(3) the new separation handles different traffic and provides a new route, and (4) the new separation was not built because of the inadequacy or lack of capacity of the 26th Street Overpass to handle the traffic moving over it.

If Southern Pacific's contentions as to the lack of relationship to subparagraph (d) are not entirely adopted, asserts the railroad, the new project would still bear a relationship to subparagraph (a) as well as to subparagraph (d) since, assertedly, the overpass was built as much to provide a new route (from and to points in the direction of Berkeley and the MacArthur Freeway) as it was to provide increased capacity for existing traffic. Consequently, says the carrier, subparagraph (e) would then be the only applicable provision and Southern Pacific's contribution should, in any event, be less than 10 percent of the costs attributable to the presence of its railroad facilities.<sup>8/</sup>

Both Southern Pacific and Santa Fe agree with the Department that a hypothetical structure may be used to calculate apportionment of costs and that if an apportionment is to be made in connection with

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<sup>7/</sup> As scaled from a map of record the distance between the structures ranges (due to diagonal crossing of the 26th Street Overpass) from 900 to 1,100 feet.

<sup>8/</sup> Southern Pacific's brief points out that subparagraph (e) permits apportioning to the railroads a "reasonable" percentage of the cost "not exceeding the percentage specified in subparagraph (b)" and that the latter provides that the apportionment shall be "ten percent (10%) of the cost attributable to the presence of the railroad facilities". Southern Pacific concludes from this that subparagraph (e) incorporates the requirement that apportionment be limited to sharing in costs "attributable to the presence of the railroad facilities".

the West Grand Avenue Viaduct such a structure is necessary for that purpose. However, the railroads do not consider the hypothetical structures designed by the Department's engineers, as hereinabove described, to be fair and proper. A hypothetical structure designed for this purpose, the carriers contend, must exclude costs that are not attributable to the presence of railroad facilities. Thus, under their reasoning, costs which would have been incurred solely by reason of realignment and which would have been incurred even if the crossing were at grade, cannot be included in the hypothetical structure.

The Santa Fe regional engineer testified concerning a hypothetical structure which he had designed, similar to, but differing in certain respects from that developed by the Department engineer for the east end of the project. This hypothetical observes the same alignment as that of the Department and the grade has not been changed except that the east end has been shortened by 210 feet. The hypothetical is designed to clear the tracks of the Army and Southern Pacific and the Santa Fe Track No. 47, but does not clear the Wood Street tracks of that road; it comes to grade one block east of Wood Street, instead of about one and one-half blocks, as in the Department's hypothetical and in the actual construction. The reason given for this was that the Viaduct project has not resulted in the elimination of the grade crossings in Wood Street and, therefore, under subparagraph (a) of Section 1202.5 no contribution, assertedly, can be required.

The Santa Fe engineer presented an exhibit reflecting adjustments he had made in the estimated costs assigned by the Department engineer to the hypothetical "east end" overpass structure

developed by the latter witness. These costs were broken down into several categories; namely, bridge structures, roadway on grade, miscellaneous work, utility relocations, Southern Pacific expenditures, right of way costs, and engineering.

The adjustment made by the Santa Fe engineer in the bridge structure cost estimate, a reduction of \$172,500, was computed on a cost per linear foot basis and reflected the difference in lengths of the two hypothetical structures: 2,600 feet versus 2,390 feet. Estimated costs of roadway on grade were substantially reduced at grade beyond the ends of the hypothetical structures. Assertedly, this comports with the general practice of the railroads not to participate in such costs. The only amount included in the modified figure for this item was the cost of constructing the access roads from and to Wood Street.

The category of miscellaneous expense included many items, such as relocation of buildings, steel sign structure, "Class B" concrete (curbs, gutter, sidewalks), chain link fence, and Oakland Army Base electrical work. The record shows that the great preponderance of the cost of this group of items would have been incurred had the project been constructed at grade over its entire length.<sup>2/</sup> In other words, such expenditures were not attributable to the presence of the railroad facilities. By elimination of such expense from the cost of the hypothetical structure the Santa Fe witness reduced the total of miscellaneous expense from \$164,000 to \$26,200.

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<sup>2/</sup> The easterly limit of the project is at the intersection of West Grand Avenue and Cypress Street, three blocks east of Wood Street and approximately one and one half-blocks east of the point at which the Overpass structure begins.



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Adjustments were also made in the cost estimates for the categories of utility relocations, right of way costs, and engineering expense, to eliminate all expense which was not attributable to the presence of railroad facilities. The total estimated cost of the Department's hypothetical structure of \$2,998,793 was reduced by the Santa Fe witness, in developing estimated costs of the railroad's hypothetical structure, to \$2,449,900.

Southern Pacific is of the opinion that the Santa Fe witness properly eliminated (1) those costs which would have been incurred even if the crossing had been at grade or if there were no railroad facilities present, and (2) that portion of the costs attributable to the presence of the two Santa Fe tracks in Wood Street. The hypothetical structure proposed by the Santa Fe witness for the purpose of apportionment costs is in accord with Southern Pacific's ideas on that subject.

Southern Pacific points out that the estimated cost of a hypothetical structure will be partially attributable to the presence of the Army Base tracks and facilities; that ordinarily assignment of respective ratable shares could easily be done on a track basis but that such would not be equitable in the present case since the 14 Army tracks are not side by side and require an overhead structure of the same length as would be required by twice the number of the 28 Southern Pacific tracks involved. Consequently it is that railroad's position that to assign respective ratable shares on other than a right-of-way basis would be to require the two common carrier railroads to bear what would otherwise be a share of the cost properly assignable to the presence of Army railroad facilities.

Accordingly, the Santa Fe engineer had calculated percentage relationships of such shares on a right-of-way basis. The resulting figures were 51.05 percent to the Army, 47.28 percent to the Southern Pacific and 1.67 percent to the Santa Fe. These calculations excluded that portion of the Santa Fe right-of-way devoted to the presence of the two Wood Street tracks, since the railroads' hypothetical structure does not take into account the presence of those tracks. Applying the above-mentioned percentages to the Santa Fe's estimated cost of the railroads' hypothetical structure, the resulting ratable shares are \$1,250,674 to the Army, \$1,158,313 to Southern Pacific and \$39,668 to the Santa Fe. As hereinabove stated, Southern Pacific's position is that in the event of a finding that it should participate in the construction costs of the project, such participation should be limited to five percent of its ratable share, which, under the carrier's reasoning, would be \$57,916.

Relative to the costs attributable to the presence of the Army tracks and railroad facilities, it is Southern Pacific's view that Section 1202.5 does not contemplate that such costs should be borne by the common carrier railroads. Assertedly, to require the latter entities to bear any portion of the costs attributable to the presence of the Army facilities would deprive them of their property without due process of law, in violation of the Federal and State Constitutions. The possibility that the Commission does not have jurisdiction to impose a portion of the cost of the project against the federal government does not give the Commission authority to increase the cost to be apportioned to the railroads which are subject

to its jurisdiction. A "reasonable" percentage of the cost, as contemplated by subparagraph (e) of the Code, says Southern Pacific, cannot by any stretch of the imagination include costs attributable to the presence of the Army railroad facilities.

Position of Santa Fe

With respect to the Wood Street tracks, Santa Fe's position is that since no grade crossing is being eliminated, subparagraph (a) of Section 1202.5 of the Code is clearly applicable and no contribution is required of the railroad because of the presence of those tracks. The fact that the volume of traffic moving over them at grade has been greatly reduced by construction of the West Grand Avenue Overpass, says Santa Fe, does not change the fact that the grade crossing still exists. It is the railroad's position, also, that the Overpass is not a modification of an existing grade separation structure as contemplated in subparagraph (d), because there was no separation over the Wood Street tracks prior to construction of the Overpass.

Based on the foregoing, Santa Fe argues that, whether or not a hypothetical structure is used in determining the railroad contribution because of the existence of other tracks, the Wood Street tracks cannot be taken into account in computing such contribution. As hereinbefore indicated, the hypothetical structure presented by the Santa Fe witness reflects this position.

The grade crossing at Santa Fe Track 47, as previously mentioned, has been eliminated by the Overpass and might appear to come within the scope of subparagraph (b), above. However, Santa Fe argues, the crossing in question was not a public crossing, but was

part of a private road owned and controlled by the Federal Government, for the use of which the City of Oakland had a license revocable at will by said Government.<sup>10/</sup> It was not a dedicated public street. Therefore, subparagraph (b), which might require a contribution to the cost of the project by the Santa Fe, is not applicable.

If, however, some kind of theoretical structure is utilized in determining a cost allocation against Southern Pacific, Santa Fe is willing to pay its proportional share of the cost of such theoretical structure. The proximity of Track 47 to the Southern Pacific tracks and the logic of utilizing a single theoretical structure that crosses all these tracks dictates, for practical considerations, treating Track 47 and the Southern Pacific tracks in the same manner.

In the event that it is found that there is to be no Southern Pacific contribution, on the ground that the new overhead is not a modification of an existing one, but that Track 47 is in a different category and comes under subparagraph (b), it is Santa Fe's position that still no contribution would be required of it under that provision. Subparagraph (b) provides that the contribution of the railroad whose crossing is eliminated shall be the capitalized benefit from eliminating physical maintenance of the closed crossing (which in the case of Track 47 would be a nominal amount because the crossing protection consists only of crossbucks) plus ten percent of the cost attributable to the presence of the

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<sup>10/</sup> It is to be observed, of course, that the portion of the old West Grand Avenue grade extending easterly from Wood Street was unquestionably a public street. The Track 47 crossing was on the road connecting West Grand Avenue at Wood Street with the old 26th Street Overpass.

railroad facilities. Santa Fe points out that the overpass structure would be elevated over the location of Track 47 even if that track did not exist, and asserts, therefore, that the presence of the track contributes nothing to the cost of the project.

Should the Commission conclude, notwithstanding the foregoing argument, that Santa Fe should make some contribution on account of Track 47, and concludes also not to utilize a theoretical structure over Santa Fe and Southern Pacific tracks, Santa Fe suggests that its contribution should not exceed 10 percent of the cost of the horizontal portion of the structure across Track 47 from right-of-way line to right-of-way line. Based on area measurements and construction costs per square foot, Santa Fe accordingly calculates its maximum contribution for Track 47, under such circumstances, to be \$2,136.

Santa Fe is in accord with Southern Pacific in the view that the new structure is not an "alteration or reconstruction of an existing grade separation" within the meaning of subparagraph (d) of Section 1202.5, that should some contribution, nevertheless, be required of the railroads it would be determined under subparagraph (e) and that the use of the modified hypothetical structure introduced by its engineer is proper for that purpose. Santa Fe agrees also that the construction costs of such structure, as adjusted by its witness, and which have been hereinabove mentioned in connection with Southern Pacific, are reasonable. For the reasons advanced by Southern Pacific, Santa Fe asserts that the railroads would be generous if they contributed 5 percent of the cost attributable to the presence of their facilities. Based on the calculations hereinabove shown in connection with Southern Pacific, the portion of the estimated cost of the modified hypothetical (east end) structure

attributable to the presence of the Santa Fe tracks would be \$39,668; 5 percent of this figure is \$1,983. This, of course, disregards the presence of the two Wood Street tracks, for reasons hereinbefore stated.

The Baldwin Lead track of the Santa Fe is located in the area of the westerly portion of the West Grand Avenue Overpass and just beyond the Army's Baldwin Yard tracks. The Lead passes under the reconstructed Port of Oakland Overhead (the "OS" line), which carries the eastbound traffic of the new Overpass, the new westbound structure (the "J" line), which carries traffic toward the Bay Bridge, and the new structure (the "A" line) connecting westbound Overpass and Army Base traffic with the lanes leading from the Bay Bridge toward Berkeley and the McArthur Freeway. The Department and Santa Fe are agreed that no contribution can be required as to this "A" line, which is a new structure accommodating entirely new traffic and does not involve the closure of an existing grade crossing.

As to the "OS" line, Santa Fe's position is that the reconstruction of the old Overhead has nothing to do with the presence of the Baldwin Lead track and does not, of itself, increase the structure's capacity for highway purposes. It is only the addition of the "J" line, the railroad asserts, which increases such capacity and can be treated as an alteration which falls within subparagraph (d) of Section 1202.5.

As to the "J" line, it is Santa Fe's position that the construction of that portion of the West Grand Avenue Overpass has not been affected in the slightest degree by the existence of the Baldwin Lead track. The new two-lane, one-way structure is at the same

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location, the same elevation, and in all respects is identical with what it would have been had the Santa Fe track been absent. To the west the elevation is dictated by the separation over the eastshore freeways for the approach to the Bay Bridge. To the east the structure is dictated by the existence of Army facilities and the Port of Oakland, which require an elevated structure. Moreover, just east of the Santa Fe track is an Army track which necessitates keeping the Overpass structure in the air to a distance somewhat to the east of the Baldwin Lead. Because of these several circumstances, argues Santa Fe, it is clear that no part of the modification of the Port of Oakland Overhead (if the project is considered such a modification) is necessitated by, or many ways attributable to the existence of the Santa Fe track.

In the light of the foregoing, and based upon the construction placed by both railroads on subparagraph (e) coupled with subparagraph (b), Santa Fe concludes that there should be no railroad contribution to the structure over the Baldwin Lead. Assuming, however, that the Commission should take a different view, it is Santa Fe's position that the theoretical (west end) structure advanced by the Department's engineer as a basis for apportionment has no relationship whatever to a cost attributable to the presence of the Santa Fe track. The criticism here follows, in general, that expressed by Santa Fe relative to the Department's hypothetical (east end) structure. The railroad submits that, as a maximum, Santa Fe's contribution due to the presence of the Baldwin Lead should be predicated upon the horizontal cost over the Santa Fe right-of-way alone of the new "J" line structure.

The Santa Fe engineer had developed such cost estimates on two bases. The first was predicated on the estimated cost per lineal foot of the Department's hypothetical (west end) structure, expanded to 70 feet, the scaled length over the portion of said structure over the Baldwin Lead right-of-way. This produced a total cost for said portion of \$40,481. The second estimate was predicated on an average cost per square foot for California bridges having steel span lengths of 100 feet. This cost was \$16.69 per square foot, <sup>11/</sup> which gave a cost for that portion of the hypothetical above the Baldwin Lead right-of-way of \$37,385. Ten percent of each of these estimates is \$4,048 and \$3,738, respectively. Santa Fe considers either of these figures to constitute a reasonable maximum contribution from that railroad for the presence of the Baldwin Lead track and right-of-way.

Santa Fe draws attention to a precedent for using only the horizontal cost over the railroad right-of-way, as above and as mentioned hereinbefore in connection with Santa Fe's Track 47. Application No. 37029 (Decision No. 51789 dated August 9, 1955) involved a grade separation of Santa Fe tracks and Highland Avenue in San Bernardino. The overpass structure carries Highland Avenue over Interstate Route 15, the Santa Fe tracks and Cajon Boulevard, successively. In this situation there is a highway on each side of the railroad. Apportionment of costs was made by agreement of the parties. The Santa Fe contribution to the cost of the overhead

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<sup>11/</sup> The figure was taken from an article in Engineering News Record Magazine, dated June 15, 1967.



structure was 10 percent of the cost of that portion of said structure which was actually over the Santa Fe right-of-way. The railroad argues that, whether or not the Highland Avenue project involved federal aid, it represents a reasonable apportionment of costs which the Commission in its discretion could apply to a non-federal project such as the present one.

Discussion, Proposed Findings and Proposed Conclusions

At the outset it should be stated that the foregoing recital of the arguments of the parties does not include all of the points made or lines of reasoning followed in the development of their respective interpretations of the pertinent statutory provisions. To have included all of these would have unduly lengthened this report. Careful consideration, however, has been given to all that is set forth in each of the briefs filed in this proceeding.

As pointed out by applicant in its opening brief, this proceeding is unusually significant since it involves the first major application by the Commission of Section 1202.5 of the Public Utilities Code since the enactment of that Section in 1957. The application concerns a grade separation project involving a mile-long elevated structure which, together with approaches, cost over ten million dollars. The Department, on the one hand, and the railroads, on the other, are wide apart in their estimates, predicated on their respective interpretations of Section 1202.5, of what the railroads' contribution to the construction costs should be.

The Department contends that, strictly speaking, the railroads should together contribute 10 percent of the total cost of the project, or \$1,003,799. For reasons hereinbefore stated,

however, the Department would be agreeable to a total railroad apportionment of \$429,039, which is ten percent of the estimated cost of two hypothetical structures. Southern Pacific believes that no expense is chargeable to it because no grade crossing of its tracks is eliminated. It is agreeable, nevertheless, if the Commission should reject that argument, to a contribution of \$57,916, which is five percent of a designated proportion of the estimated cost of a hypothetical structure conceived by the Santa Fe witness. The Santa Fe contends that no contribution is required because of the Wood Street tracks since no grade crossing there is eliminated; that while a crossing over Track 47 is eliminated the crossing was not made by a public street, and no contribution can be required; that, likewise, no contribution is chargeable to the Baldwin Lead track; that if the Commission rejects these conclusions the very maximum contributions of the Santa Fe, after specifying alternate bases, are: \$2,136 for Track 47 and \$4,048 for the Baldwin Lead, or a total of \$6,184.

The West Grand Avenue Overpass, coupled with the elimination of the old 26th Street Overpass and the rebuilding of the old Port of Oakland Overhead, constituted, apart from its magnitude, a project of considerable complexity in its structure and in its relationships to other existing facilities. The purposes for which it was built also are plural. Because of these circumstances, as applied to the various situations involved, several subparagraphs of Section 1202.5 of the Public Utilities Code are brought into play. And the purposes of justice will not be served if a seemingly pertinent provision is applied to a particular situation as if the rest of the project relationships did not exist.

Thus subparagraph (a) is apparently applicable because no grade crossing of Southern Pacific is eliminated nor are the grade crossings of the Santa Fe in Wood Street eliminated, but subparagraph (b) is apparently applicable because the Track 47 crossing of Santa Fe is eliminated by the project. This is so even if the crossing was not that of a public street, as the railroads contend. The record is abundantly clear that the road over Track No. 47 had been a publicly used road from the time the Army gave the City of Oakland permission in 1944 to use the 26th Street Overpass until the latter was closed with the opening of the West Grand Avenue Overpass to traffic.<sup>12/</sup> Section 1202.5 obviously applies to grade crossings by publicly used roads as well as by dedicated streets or roads. Section 1202 specifically gives the Commission jurisdiction over publicly used crossings and Section 1202.5 specifically relates back to Section 1202.

Then subparagraph (d) of Section 1202.5, also, is apparently applicable to the West Grand Avenue Overpass. The project is in the nature both of a new structure and the alteration or reconstruction of an existing grade separation. Unquestionably it is a new structure insofar as the above-mentioned "A" line is concerned; that is the portion of the project at the west end which connects with the Bay Bridge approach in the direction of Berkeley and the MacArthur Freeway. This makes provision for a class of traffic which could not move via the old structures. The

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<sup>12/</sup> Not only were the 26th Street Overhead and its connecting roads used indiscriminately by operators of private automobiles and of trucks; they were also regularly used during that long period by public, local and transbay buses.

reconstruction of the old Port of Oakland Overhead, including the portion comprising the new "J" line structure, however, constitutes an alteration and reconstruction of an existing grade separation, namely, that over the Santa Fe Baldwin Lead.

It is reasonable to conclude also that the elimination of the 26th Street Overpass as an avenue of traffic between Oakland, on the one hand, and the Army Base and the Bay Bridge, on the other, and the building of the new overpass at West Grand Avenue for these same classes of traffic is, in effect, an alteration and reconstruction of an existing grade separation, namely, that over the Southern Pacific tracks. This reconstruction involved the relocation of the overpass to an alignment which reflected a reasonably direct route between West Grand Avenue, an arterial, and the Bay Bridge Plaza. Also, in construing subparagraph (d), the position of the Department is reasonable to the effect that a difference in ownership or control of the old structure versus the rebuilt structure does not bar the application of the provision in question. The "public agency" affected, in this case, is the State of California, Department of Public Works, which has control over the Overpass as now constructed.

The application of subparagraph (d) also hinges upon the alteration or reconstruction being "for the purpose of increasing the capacity of the structure for highway purposes". The record is clear that the project was intended to increase the capacity of the existing overpass and at-grade highway facilities. The old structures were two-lane, the one over the Southern Pacific tracks having not even been built originally for road traffic; the new construction is of a four-lane divided overpass. Obviously, the

"alteration" and "reconstruction" were for other purposes, also, such as to provide a more direct route to and from the Bay Bridge, to eliminate street intersections at grade and to provide a route for entirely new traffic which could not move via the old route.

Subparagraph (e) of Section 1202.5 is invoked in the event that the Commission finds that "a particular project does not clearly fall within any one of the above categories". The reference is to the categories set forth in subparagraphs (a) to (d), inclusive.<sup>13/</sup> It having been shown in the preceding paragraphs that subparagraphs (a), (b) and (d) all are involved in some aspects of the project, we necessarily turn to subparagraph (e) for the answer to the question at issue. After setting forth certain preliminary requirements the provision in question says:

"...and in addition shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection (b), dependent on the findings of the commission with respect to the relation of the project to each category." (Emphasis supplied.)

The underscored portion of the above-quoted Code provision is vague and ambiguous; it certainly gives the Commission wide discretion, subject of course to the specific requirements stated in the earlier portions of the subparagraph, in apportioning the construction costs of those grade operations which come within the scope of said subparagraph. Thus, it appears proper in attempting to make a reasonable apportionment of the costs of the

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<sup>13/</sup> Subparagraph (c) and the portion of subparagraph (d) not hereinbefore reproduced have no bearing on the question at issue.

West Grand Avenue Overpass to employ the device of a hypothetical overpass structure or structures.

The use of two hypothetical structures, as proposed by the Department, appears reasonable, the easterly one going over the Santa Fe, Southern Pacific and Army tracks and the westerly one being the equivalent of the "J" line of the actual construction passing over an Army track, the Santa Fe Baldwin Lead and the Bay Bridge approach lanes. It is reasonable that the railroads should not be expected to share in the cost of that portion of the actual structure which is elevated over the Wake Avenue-Maritime Street intersection in the Army Base when the actual construction could have conveniently been brought to grade through that area.<sup>14/</sup>

As hereinbefore mentioned, the easterly hypothetical structure as modified by the Santa Fe witness ignores the presence of the two Santa Fe tracks in Wood Street and is, therefore, 210 feet shorter than the hypothetical designed by the Department's engineer. Unquestionably, the presence of those tracks requires the elevation of the Overpass structure sufficiently above grade to clear passing trains. In other words, the elevation of the structure, as built, at such height as has necessitated its present length to grade east of Wood Street is clearly attributable to the presence of those tracks. The argument that the presence of the Wood Street tracks should be ignored in the design of a hypothetical structure simply because the construction of the Overpass has not

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<sup>14/</sup> The scaled distance between the inner ends of the two hypothetical structures is about 800 feet.

resulted in the elimination of the grade crossings in Wood Street is not sound. The easterly hypothetical structure as designed by the Department's engineer is a proper vehicle for the determination of Santa Fe and Southern Pacific cost apportionments due to the presence of the involved tracks.

With respect to the question as to whether the railroads' portion of the construction costs shall be a certain percentage of the total cost of the project (whether as actually constructed or by the use of hypotheticals), as contended for by the Department, or be predicated strictly on those portions of the project which are attributable to the presence of the railroad facilities, the latter interpretation of the pertinent Code provisions, which is that of the railroads, is sound. Sub-paragraph (e), in the words "and in addition shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection (b)," does not specifically include, after "cost", the words "attributable to the presence of the railroad facilities" as does subparagraph (b). However, it is reasonable to conclude that the reference to the percentage provision in the latter subparagraph is intended to embrace all the words which are a part of the percentage expression.

The reasonableness of the railroads' interpretation of the wording of subparagraph (e) under consideration is supported, moreover, by the situation with respect to the Army tracks. None of the expense of the West Grand Avenue Overpass will be borne by the Federal government. On the other hand, it would be manifestly unfair to burden the railroads with the construction costs attributable to the presence of the Army facilities.

The evidence indicates that the cost of construction of the elevated structure, when measured on a linear foot basis along its length, is fairly uniform. Moreover, the record is persuasive that a reasonable basis for determining those portions of the costs which are attributable to the presence of the facilities of the railroads is by obtaining the product of the construction costs per lineal foot and the width of the railroad right-of-way, since the highway structure passes over the railroad properties substantially at right angles to their tracks. The above statement is qualified with respect to the Santa Fe, since the Wood Street tracks are in a public street. For the purpose under consideration the Santa Fe right-of-way width should be considered the distance from the easterly boundary of Wood Street to the Santa Fe property line westerly of Track 47. This distance appears to be 210 feet.

Thus, using the easterly hypothetical structure proposed by the Department, the following proportions are found:

Army	610 feet	44.04 percent
Southern Pacific	565 "	40.79 "
Santa Fe	210 "	15.17 "

It has been pointed out that the Santa Fe witness correctly eliminated those costs of work done in connection with the project which would have been incurred if the West Grand Avenue extension had been built at grade and which were not attributable to the railroad facilities. Adjustments are required in some of the Santa Fe figures because of the lengthening of the project limits some 210 feet by reason of adoption of the Department's hypothetical



15/  
structure. The categories involved are: Roadway on grade, certain items in "miscellaneous work", and right-of-way costs. The estimate for engineering costs (11 percent of the combined cost of bridge structure, roadway on grade and miscellaneous work) is necessarily adjusted also. The total estimated cost attributable to the presence of the railroad facilities, including those of the Army, is thus revised to \$2,693,300. In the following table the cost estimates of the Department, the Santa Fe and the examiner are compared.

TABLE

Comparison of Estimated Costs of the  
Easterly Hypothetical Structure Attributable  
to the Presence of Railroad Facilities

<u>Item</u>	<u>Department</u>	<u>Santa Fe</u>	<u>Examiner's Proposed Report</u>
Bridge Structure	\$2,135,600	\$1,963,100	\$2,135,600
Roadway On Grade	62,600	13,500	18,000
Miscellaneous Work	163,400	26,200	30,300
Utility Relocation	41,900	12,500	14,500
Southern Pacific Co.	93,100	93,100	93,100
Right of Way Costs	242,400	121,200	161,600
Engineering	259,800	220,300	240,200
Total	\$2,998,800	\$2,449,900	\$2,693,300

15/ This modification extends the easterly project limit from a point about halfway between Willow and Campbell Streets (the limit under the Santa Fe proposal) to Campbell Street. It is clear that the improvements on West Grand Avenue between Campbell Street and Cypress Street, including the traffic signals at the latter intersection, are not attributable to the presence of the railroad facilities.

Evidence introduced by the Department through its witnesses from the City of Los Angeles and the County of Los Angeles was designed to show that apportionments in other instances have included, in the railroad's share, part of the cost of alteration or construction of facilities in the vicinity of, but not an integral part of the separation structure involved. The record is persuasive, however, that the general practice has been to exclude from the rail lines share of the costs any expense incurred beyond the point at which the separation structure returns to grade.<sup>16/</sup>

By application of the percentages hereinbefore developed by the examiner to the total cost of \$2,693,300 shown in the last column of the table, above, ratable shares due to the presence of the respective rail facilities are found to be as follows:

Army	\$1,186,129
Southern Pacific	1,098,597
Santa Fe	408,574
Total	<u>\$2,693,300</u>

Ten percent of the amounts thus developed as the costs of the easterly hypothetical overpass structure attributable to the presence of the facilities of the respondent railroads is \$109,860 for Southern Pacific and \$40,857 for the Santa Fe. Ten percent is the maximum percentage under subparagraph (e) of Section 1202.5 in connection with the construction cost attributable to the presence of the railroad facilities. Both railroads propose five

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<sup>16/</sup> As previously mentioned, the railroads herein have conceded, in their apportionment proposals, that they should participate in the cost of a portion of the road at grade at the easterly end of the structure sufficient to provide for connection with the access roads from and to Wood Street.

percent in applying the provisions in question. It appears, however that ten percent, in the light of all the circumstances surrounding the West Grand Avenue Overpass project, will result in a reasonable apportionment to the railroads involved.

The foregoing breakdown of apportionment between Southern Pacific and Santa Fe is broadly on a per-foot right-of-way basis. Subparagraph (f) of Section 1202.5 reads as follows:

"In the event the commission finds that the respective shares of any apportionment should be divided between two or more railroads or two or more public agencies, the commission, to the extent that it has jurisdiction to do so in a particular proceeding before it, shall divide said shares between said railroads or said public agencies, or both on any reasonable basis, to be decided by the commission, but in so doing shall follow the standards hereinabove prescribed for apportionment between railroads and public agencies, respectively."

The division of cost apportionment as between Southern Pacific and Santa Fe (exclusive of the Santa Fe's apportionment due to the presence of the Baldwin Lead track, to be hereinafter considered) set forth above meets the statutory requirements and is fair and reasonable.

Santa Fe's argument directed to the position that it should not be required, by reason of the presence of its Baldwin Lead track, to participate in the construction costs of the "OS" and "J" line structures is persuasive. With reference to the "J" line structure, Santa Fe's position that no contribution should be required of it since the Bay Bridge approach lanes to the west, and an Army track and other facilities to the east of the track in question require an elevated structure is not sound. As a matter of fact, all of these facilities taken together, including the Baldwin Lead, require an elevated structure.

In the circumstances, some contribution of the Santa Fe toward the construction cost of the "J" line is in order. As hereinbefore indicated, Santa Fe has advanced two alternative bases of cost allocation in the event that the Commission concludes that some contribution is required. That which was predicated on an average cost per square foot of \$16.69, being a figure taken from an article in an engineering periodical, is not acceptable. The record is devoid of a foundation adequate to establish the propriety of using the cost figure of \$16.69 in the case of the particular structure, actual or hypothetical, which is under consideration in the instant proceeding.

The development, however, of the estimated cost of that portion of the westerly hypothetical passing over the Santa Fe right-of-way containing the Baldwin Lead track, which is based on the cost per linear foot of said hypothetical, is consistent with the method used in developing the cost apportionments of Santa Fe and Southern Pacific in connection with the easterly hypothetical structure. It is a reasonable basis and should be adopted. As previously stated Santa Fe's estimate of the cost of the "J" structure over its right of way (70 feet) is \$40,481; an allocation of 10 percent of this amount, \$4,048, to the Santa Fe, as proposed by it, is reasonable and should be adopted.

At this point attention should be directed to subparagraph (h) of Section 1202.5 of the Public Utilities Code.<sup>17/</sup> It reads as follows:

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<sup>17/</sup> Since federal funds are not involved in the financing of the West Grand Avenue Overpass, subparagraph (g) of Section 1202.5 has no bearing on the questions here at issue.

"No provision of this section or of the Public Utilities Code shall be construed as in any way limiting the right of public agencies or railroads to negotiate agreements apportioning costs of grade separations, and the validity of any and all such agreements is hereby recognized for all purposes regardless whether the method of apportionment prescribed therein conforms to the standards hereinabove prescribed."

It is recommended that findings of fact be made as follows:

1. The West Grand Avenue Overpass<sup>18/</sup> is not a federal aid project.
2. The Overpass project is 1.3 miles in length extending from the intersection of West Grand Avenue and Cypress Street, on the east, to the Bay Bridge Toll Plaza on the west.
3. The actual Overpass structure leaves grade one and one-half blocks west of Cypress Street and returns to grade, at the farthest point, west of the westbound lanes of the Bay Bridge approach road.
4. The Overpass is a four lane divided reinforced concrete structure with on-and-off ramps for the Oakland Army Base.
5. The Overpass is a direct route between West Grand Avenue, the Army Base and the Bay Bridge.
6. Traffic between West Grand Avenue, on the one hand, and the Army Base and the Bay Bridge formerly moved via the 26th Street Overpass, a rather circuitous route in both cases.
7. Traffic from and to the Bay Bridge also had to traverse the old Port of Oakland Overhead. These two structures were two-lane timber structures.

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<sup>18/</sup> Hereinafter the West Grand Avenue Overpass will be designated on the "Overpass" or the "Project".

8. The Overpass also provides a route for traffic between West Grand Avenue and points in the direction of Berkeley and the MacArthur Freeway via the Bay Bridge approach, which the old 26th Street Overpass-Port of Oakland Overhead route did not.

9. The Overpass was built to replace the 26th Street Overpass to increase its capacity for highway purposes and to provide a new route.

10. The Overpass involved, as part of its structure, a rebuilding of the Port of Oakland Overhead.

11. Said Overhead passed over an Army track, the Santa Fe Baldwin Lead track and the approach lanes of the Bay Bridge.

12. The 26th Street Overpass crossed one track of the Army and 14 tracks of Southern Pacific.

13. The Overpass passes over 4 Santa Fe tracks, 28 Southern Pacific tracks and 16 Army tracks, as well as street intersections and other non-track parts of the Army Base.

14. The Overpass does not eliminate any grade crossing of Southern Pacific, and there were no grade crossings of Southern Pacific on the old 26th Street Overpass route.

15. The Overpass eliminates one Santa Fe grade crossing, that of its Track No. 47.

16. Traffic formerly going via the 26th Street Overpass route crossed the two Santa Fe tracks in Wood Street, while such traffic now goes over the tracks above grade on the new Overpass.

17. The Wood Street grade crossing was not eliminated, since local Wood Street traffic still moves over the tracks, reaching them via access roads from and to West Grand Avenue.

18. The 26th Street Overpass was constructed as a railroad-over-railroad structure with authorization of the Commission.

19. The 26th Street Overpass was converted to a vehicular crossing by the Army without authorization from the Commission.

20. The City of Oakland was given a license by the Army to use the 26th Street Overpass; this license was revocable at will by the Army, which retained control of the structure.

21. The City did not apply for or obtain authority from the Commission to utilize the license from the Army or to open the structure as a public crossing (of the railroad).

22. The 26th Street Overhead was a publicly used crossing from the time the City of Oakland obtained said license in 1944 until the structure was closed to traffic on the opening of the new Overpass in 1968.

23. The Department had no ownership, jurisdiction or control of the 26th Street Overpass.

24. The agreement between Department and the City required that the 26th Street Overpass be closed on the opening of the new Overpass.

25. Neither the Army nor the City of Oakland were, under the agreement with the Department, to bear any portion of the cost of construction of the Overpass.

It is recommended that conclusions of law be reached, as follows:

1. This is a proceeding under Sections 1202 and 1202.5 of the Public Utilities Code.

2. The Overpass project involves the "reconstruction of an existing grade separation" as that expression is used in subparagraph (d) of Section 1202.5.

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3. One of the purposes of the project is to increase the highway capacity of the existing structure within the meaning of subparagraph (d) of Section 1202.5.

4. There is nothing in subparagraph (d) of Section 1202.5 which requires that the party seeking the reconstruction have an interest in the "existing grade separation."

5. In its various aspects the project relates to subparagraphs (a), (b) and (d) of Section 1202.5.

6. It follows from No. 5, above, that the project comes within the scope of subparagraph (e), by the terms of the latter.

7. In the expression in subparagraph (e) reading: "... and in addition, shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection (b)" the underscored words are to be construed as relating not just to the figure of ten percent set forth in subparagraph (b), but to the entire expression, viz: "ten percent (10%) of the cost attributable to the presence of the railroad facilities."

8. Subparagraph (e) is sufficiently broad to permit the use of a hypothetical or theoretical structure for the purpose of apportioning costs in this proceeding.

9. Any items or costs which are not attributable to the presence of railroad facilities, or which would have been incurred without being subject to apportionment if the realignment of the crossing had been at grade, are properly excluded from the hypothetical structure.



10. A hypothetical structure, such as that presented by Santa Fe in Exhibit No. 22, which ignores the presence of the Santa Fe tracks in Wood Street, does not provide a reasonable basis for determining the railroads' share of the project costs attributable to the presence of the Southern Pacific tracks and the Santa Fe Wood Street tracks and Track 47.

11. The hypothetical structure presented by the Department in Exhibit 17 will be reasonable for the purpose indicated in Conclusion 10 above.

12. The estimated cost of the Department's hypothetical bridge structure (Exhibit 17) as set forth by the Department in the first line of Exhibit 18, viz. \$2,135,600, is reasonable for the purpose indicated in Conclusion 10.

13. The amounts shown in the last column, under the heading "Examiner's Proposed Report" in the "Table" hereinbefore set forth, for the items other than "Bridge Structure" are reasonable for the purposes indicated in Conclusion 10, and the total figure of \$2,693,300 in that column is reasonable for those purposes.

14. The use of the "lineal foot, right-of-way" method, as hereinbefore explained, in ascertaining the portions of the revised estimated costs of said hypothetical attributable to the presence of the facilities of the respective railroads is reasonable.

15. The method of calculating the Santa Fe's "ratable share" of the cost of said hypothetical determined by the distance from the westerly boundary line of the Track 47 right-of-way to the easterly line of Wood Street, which results in distances and percentages as follows:

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Army	610 feet	44.04 percent
Southern Pacific	565 feet	40.79 "
Santa Fe	210 feet	15.17 "

is reasonable.

16. It would be unreasonable to apportion to either Southern Pacific or Santa Fe any of the project cost attributable to the presence of the Army tracks or other Army facilities.

17. The maximum amount of 10 percent of the cost attributable to the presence of the railroad facilities, permitted by subparagraph (e) of Section 1202.5, will be reasonable in apportioning costs to Southern Pacific and, insofar as the Wood Street tracks and Track 47 are involved, to the Santa Fe. Predicated on the percentages stated in Conclusion 15, as applied to the revised hypothetical structure cost of \$2,693,300, these apportionments will be 10 percent of \$1,098,597 (i.e., \$109,860) to Southern Pacific and 10 percent of \$408,574 (i.e., \$40,857) to Santa Fe.

18. Santa Fe should not be required to assume any portion of the cost of the "A" and "OS" lines because of the presence of its Baldwin Lead track under those portions of the Overpass structure.

19. The Department's westerly hypothetical structure, as shown in Exhibit 19, and the estimated cost of said structure, as set forth in Exhibit 20, are reasonable for the purpose of apportioning costs to the Santa Fe due to the presence of the Baldwin Lead under the "J" line of the Overpass.

20. The right-of-way to right-of-way basis used by the Santa Fe, in which the estimated cost per linear foot of the westerly hypothetical is used to produce a cost of \$40,481 for that portion of the structure attributable to the presence of the Baldwin Lead track, is reasonable.

21. The amount of \$4,048 (10 percent of the figure in Conclusion 20) will be a reasonable apportionment of the cost of the Overpass as it relates to the Baldwin Lead track.

22. As required by subparagraph (e) of Section 1202.5, Santa Fe should also be apportioned an amount computed by capitalizing at five percent per annum the direct and computable savings to the railroad resulting from the elimination of the cost of physical maintenance, and from the elimination of the cost of maintaining crossing protection at the former Track 47 grade crossing.

23. All of the foregoing conclusions, beginning with No. 9, which do not refer to a specific provision of the Public Utilities Code are to be construed as being responsive to the requirements of subparagraph (e) of Section 1202.5 of the Code.

24. Costs of construction of the West Grand Avenue Overpass should be apportioned against Southern Pacific and Santa Fe, respectively, in consonance with the foregoing conclusions.

25. The remainder of such cost should be apportioned against the State of California, Department of Public Works.

It is recommended that the following order be adopted:

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O R D E R

IT IS ORDERED that:

1. Costs of construction of the West Grand Avenue Overpass, construction of which was authorized by Decision No. 70764 in this proceeding, shall be apportioned against Southern Pacific Transportation Company and The Atchison, Topeka and Santa Fe Railway Company, respectively, in conformity with the findings and conclusions hereinabove set forth.

2. The remainder of said costs shall be apportioned against the State of California, Department of Public Works.

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

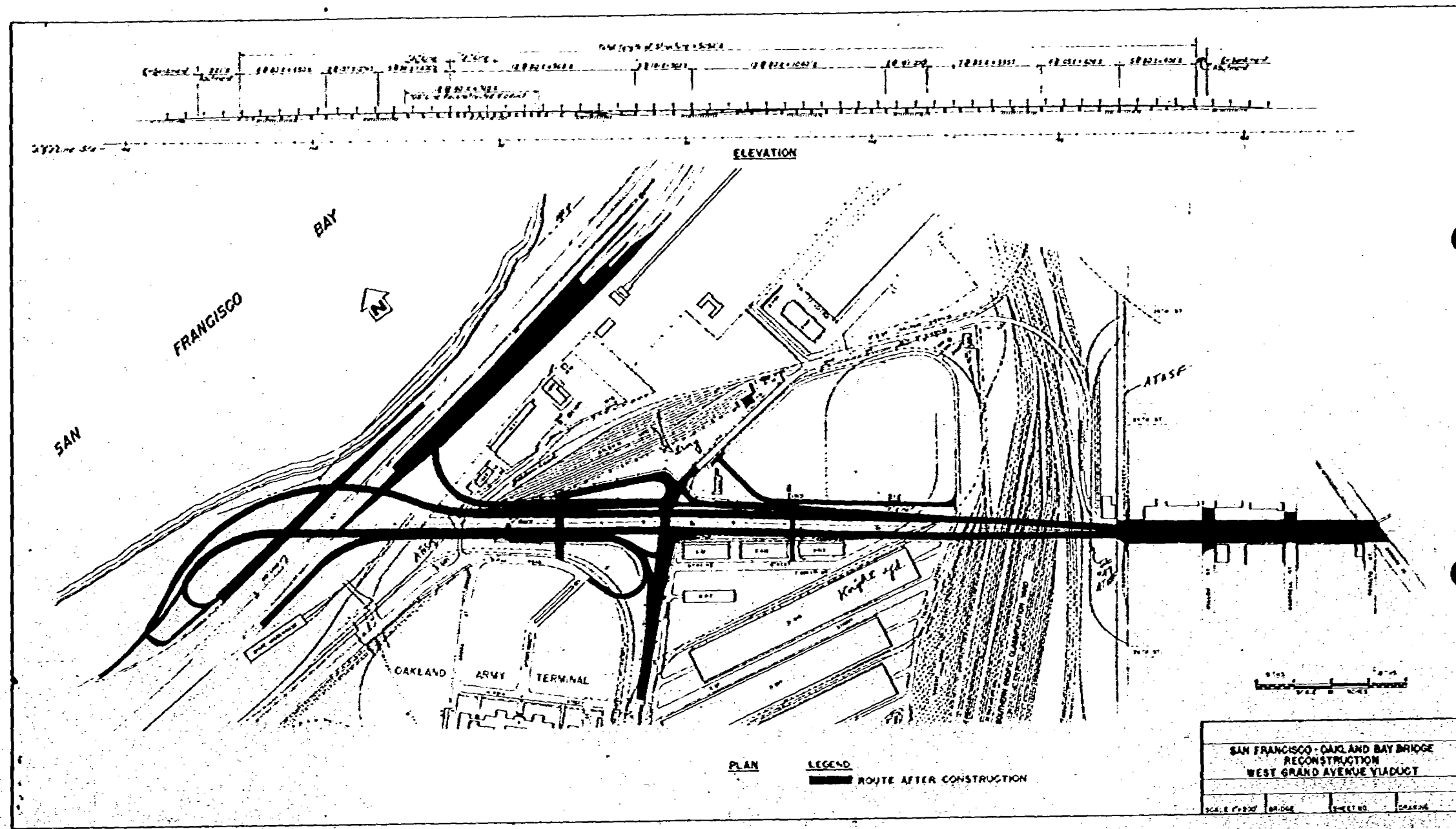
/s/ Carter R. Bishop  
CARTER R. BISHOP, Examiner

San Francisco, California  
May 8, 1970

APPENDIX B

CORRECTIONS TO EXAMINER'S PROPOSED  
REPORT (APPENDIX A)

1. Page 17. 11th line.  
Change "\$39,668" to read "\$40,913".
2. Page 20. 18th line.  
After "Section 1202.5" insert "and".
3. Page 21. 1st line.  
Change "\$39,668" to read \$40,913".
4. Page 22. 12th line.  
Change "many ways" to read "in any way".
5. Page 28. Bottom paragraph. 5th line.  
Change "operations" to read "separations".
6. Page 23. 8th line.  
Change "lines" to "line's".
7. Page 34. 7th line up from bottom of page.  
Change the first "J" appearing in the line to read "A".
8. Page 36. Finding No. 6. 2nd line.  
After "Bridge" insert ", on the other hand,".
9. Page 37. Finding No. 11.  
Change finding to read:  
"Said Overhead passed over the Santa Fe Baldwin  
Lead track and the approach lanes of the Bay  
Bridge."
10. Page 37. Finding No. 13.  
Change finding to read:  
"The West Grand Avenue Overpass passes over 4 Santa  
Fe tracks, 28 Southern Pacific tracks and 16 Army  
tracks (including a connecting track from the  
Baldwin Yard), as well as street intersections and  
other non-track parts of the Army Base."
11. Page 38. Finding No. 24.  
Change "City" to read "Army".



SAN FRANCISCO-OAKLAND BAY BRIDGE  
RECONSTRUCTION  
WEST GRAND AVENUE VIADUCT

SCALE: 1"=100' BRIDGE SHEET NO. 1 DRAWING

COMMISSIONER J. P. VUKASIN, JR., DISSENTING

I dissent.

The purpose of the overpass and related structures is to establish a new access route westbound to the Nimitz, MacArthur, and Eastshore Freeways. Under the Public Utilities Code clearly there is a serious question whether the railroads should be required to participate in the cost of the West Grand Avenue project inasmuch as any benefits accruing to them are incidental.

The decision authorizes the maximum amount of 10% of the cost attributable to the presence of railroad facilities in allocating costs to the railroad. However, the record shows that the overpass does not eliminate any grade crossings of the Southern Pacific. Indeed the grade crossing at Santa Fe Track No. 47 which has been eliminated is a private road owned and controlled by the Federal government. As prescribed in Section 1202.5(e), the Commission should allocate a more reasonable percentage to the railroads, if any at all, which is less than the maximum amount.

  
J. P. Vukasin, Jr., Commissioner

San Francisco, California

November 5, 1970