

Decision No. _____

78162

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the status, safety,
maintenance, use and protection or
closing of the crossings at grade
of the lines of The Atchison,
Topeka and Santa Fe Railway Company
and the Southern Pacific Company
located in the City of Fresno.

Case No. 8779

Harold S. Lentz, for Southern Pacific Company,
respondent.

Robert B. Curtiss and R. D. Hayes, for The
Atchison, Topeka and Santa Fe Railway
Company, respondent.

Alan D. Davidson, for City of Fresno, respondent.

William E. Sherwood, Frank G. Waterhouse, Melvin
Dykman and Oscar Schelander, for State of
California Division of Highways, Department
of Public Works, respondent.

G. R. Mitchell, for Brotherhood of Locomotive
Engineers, interested party.

William C. Bricca, Counsel, and Richard Collins,
for the Commission staff.

SECOND INTERIM OPINION

This is an investigation instituted by the Commission on its own motion into the status, safety, maintenance, use and protection or closing of 100 crossings at grade in the City of Fresno. Respondents are: The City of Fresno (Fresno), State Department of Public Works (State), Southern Pacific Company (SP), and The Atchison, Topeka and Santa Fe Railway Company (ATSF). Public hearings were held before the late Examiner Power on August 27, 1968 and before Examiner Thompson in December 1968 and February 1969.

ATSF, joined by Fresno, moved that the Commission not undertake to order improvement in automatic protection that cannot be installed within one year from the issuance of the Commission's decision. SP, joined by Fresno, moved that consideration of crossings on a portion of its Clovis Branch be deferred because of plans for abandonment of that line. The Examiner denied the motions; however, he ruled that the investigation be divided into phases procedurally in order to avoid having the evidence relating to the individual characteristics and geometrics of all 100 crossings spread out through a large and cumbersome record, and that in the initial phase evidence would be taken respecting issues concerning general matters relating to the closing and protection of grade crossings and to matters regarding six crossings on ATSF main line at which the Commission staff recommends that the protection be upgraded, four crossings on ATSF which the staff recommends be closed, three crossings of ATSF which the staff recommends either be closed or improved, and two crossings on SP's Clovis Branch at which the staff recommends the protection be upgraded. Following the taking of evidence on these matters the investigation was taken under partial submission subject to briefs. Briefs were filed on June 23, 1969.

ATSF suggested findings and conclusions looking towards the closing of seven of its crossings and the improvement of six crossings by the installation of Standard No. 8 flashing lights augmented with automatic gates. SP suggested findings and conclusions looking towards the improvement of the only one of its crossings involved herein,^{1/} Van Ness Avenue, by augmenting the

^{1/} The SP crossing at Cedar & Illinois Streets was the subject of an interim opinion and order in Decision No. 75274, herein.

present protection with automatic gates as recommended by the staff. Fresno urges that the investigation be continued and asserts that for a proper decision in this case the following should be ordered:

"(a) The Public Utilities Commission staff, together with any other party hereto who desires, should immediately set upon and complete with dispatch, the development of a set of 'warrants,' based upon established engineering principles, and acceptable in the engineering community, designed to rate railroad crossings as to their potential hazards, including and in light of the possible remedies therefore.

"(b) The above engineering analysis shall be applied to all available public information upon the status of the crossings, including accidents on and near the railroad crossings and involving trains, vehicles, protection devices, persons and property. The application of warrants to facts should be present[ed] in a further hearing.

"(c) The benefits to be derived by the public and parties from the installation or continuance of any particular protective device, including the closing or widening of any railroad crossing, shall be estimated and presented to the Commission. The cost to the public and parties of such remedies shall also be presented to the Commission together with the opinion of any party as to whether or not the cost of any particular remedy exceeds the benefit thereof."

Fresno's recommendations are predicated upon certain contentions which it set forth in the form of suggested findings of fact:

"1. The following railroad crossings in the City of Fresno are sufficiently dangerous to the health, safety, and welfare of the public to merit the continuation of the investigation in this case:

(Here list the 29 crossings found on page 15 of Exhibit 1, 'Summary of Recommendations')

"2. To evaluate a railroad crossing to determine the condition of the crossing and sufficiency of the present protective devices to prevent or limit potential accidents, it is essential that all relevant factors involved be gathered, selected, and analyzed and evaluated in light of railroad crossing studies and warrants derived therefrom which are approved by a creditable portion of the engineering community.

"3. No agreement can be properly made by a public agency party or corporate party to this hearing that it can expend funds for railroad protection without knowing what benefits will be derived by the party and of what value the benefits will be to the respective citizens or stockholders. In like manner, the Commission cannot order such party or parties to expend funds without such knowledge.

"4. No sufficient engineering or economic analysis of the above-listed crossings has been presented in the hearing to the date of this finding."

We do not adopt the foregoing suggested findings and contentions as a basis for setting aside submission of this investigation. The type of study suggested by Fresno is beyond the present budgetary capabilities of the Commission. The evidence of record and the arguments of Fresno are not persuasive that a study of the type suggested is vital to a determination of whether public health, safety and welfare require relocation, widening, closing or other alteration of the crossings involved herein or require installation and maintenance of additional, different improved protective devices at said crossings.

The so-called "benefits theory" contemplates assigning a dollar value to accidents involving fatalities, injuries and property damage so that one can estimate in dollars the results of accidents that might be prevented from improving crossing conditions. The approach is then to measure those dollars against the cost of the improvement in protection. The obvious problem with the theory is the assignment of dollar values to accidents, including travel delay cost, to individual crossings. While a statistical analysis of accidents at all crossings in California might indicate the dollar costs of deaths, injuries and property damages of all accidents in the past, and that might be projected to an average cost per accident in the State, it is doubtful that this would be a meaningful index for application to conditions at an individual crossing. Furthermore, the "benefits theory" contemplates the determination of a hazard index which can be applied to the crossing so as to be able to predict the number of accidents that may be prevented by

reason of the improvement in grade crossing conditions. Such type of index involves the same problems as would the determination of "warrants". We should also point out that Fresno does not subscribe to any of the formulae for the establishing of "warrants" set forth in the studies mentioned at the hearings in this proceeding.

We have not been made aware of any acceptable procedures for measuring accident costs and travel delay costs that may appropriately be assigned to individual crossings or of acceptable procedures for assigning values or points for various elements of hazard because of the variability and interdependence of the elements of hazards at crossings. Fresno objects to the Commission's utilizing accident reports which were withheld from it, and to the Commission's considering the conclusions of the staff witness who made use of such reports. The reports filed with the Commission concerning accidents at the crossings under investigation are not part of the record. Fresno made a timely request in writing for authority to examine the accident reports. Said request was never acted upon by the Commission. The record shows that the conclusions of the staff witness were substantially influenced by the accident reports.

General Order No. 22-B requires that all accidents occurring on railroads in this State be reported to the Commission. Section 315 of the Public Utilities Code provides that no accident report filed with the Commission shall be admitted as evidence in any action for damages based on or arising out of loss of life or injury to person or property. General Order No. 66-B provides that accident reports are not documents open to public inspection and states,

"The Commission is of the opinion that the public interest requires that all such accident reports, and documents underlying them or associated therewith, be withheld from the public in order to encourage public utilities to make a full disclosure to the Commission of all relevant circumstances surrounding accidents of the kind described in said section 315, for the purpose of assisting the Commission in the exercise of its jurisdiction pursuant to said section."

The principal purpose of the investigations and reports of accidents at crossings required by Section 315 and General Order No. 22-B is to inform the Commission of hazardous conditions at crossings so that it may take the remedial action necessary to eliminate or reduce such hazards. If the causes of accidents that have occurred are known and understood the ability to reduce the number of accidents resulting from similar causes should be enhanced.

This proceeding is an investigation in which some of the principal issues are: whether certain crossings in the City of Fresno are hazardous; whether the existing crossing protection, if any, is adequate; and what additional protective devices, if any, are required to remove or alleviate the particular hazard or hazards at said crossings. The Commission should be able to utilize the data in the reports and investigations which will assist it in determining said issues. In making its determinations, however, the Commission must consider the facts in the record made at the public hearings herein.

If the details of an accident show that the accident might not have occurred had the crossing been protected by automatic gates, or if the crossing had been improved in some other way, such data should be included in the record. On the other hand, if the report indicates that the improvements would not have had any effect upon the accident, there is no reason to mention the accident at all because it would not be material to any of the issues in this proceeding.

Where the staff relies upon the data contained in accident reports to support a conclusion that the accidents might have been prevented and accidents in the future may be reduced or avoided by an alteration or improvement in protection at a crossing, we find that the data relied upon for said conclusion should be made part of the record and conclude that the proceeding should be reopened in order that any such material data may be received. We further find that the presiding officer has sufficient authority under General Order No. 66-B to permit the disclosure of information in said accident reports as may be relevant and material to the issues in this proceeding and to refuse the disclosure of data that is not material.

There are additional reasons for setting aside submission of this proceeding. The record shows that Fresno employed a consultant to make a study of the railroad crossings in the city. It indicated that it would desire to consider such study in connection with its representations in this proceeding. The record also shows that ATSF desired to reexamine the problems of installing various types of protective devices at a number of its crossings. In

Decision No. 75274, dated February 4, 1969, herein, we stated that consideration of whether automatic crossing protection devices for SP Crossing No. BS-209.0 (Cedar and Illinois) are necessary to promote and safeguard the health and safety of trainmen and the public should be deferred for one year.

Under the circumstances, respondents and the staff should be permitted to present further evidence regarding the crossings under consideration, including SP Crossing No. BS-209.0.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Partial submission of this proceeding is hereby set aside and the investigation is reopened for further hearing, to be scheduled at a time and place to be set, to receive evidence concerning the following crossings:

Southern Pacific Transportation Company

BS-206.55, Van Ness Avenue

BS-209.0, Cedar Avenue and Illinois Street

The Atchison, Topeka and Santa Fe Railway Company

2-998.3, Fresno Street

2-998.5, Divisadero Street

2-998.9, Grant Avenue

2-999.0, Belmont Avenue

2-999.05-D, Alley

2-999.10, White Avenue

2-999.13-D, Alley

2-999.20-D, Alley

2-999.25, Harvey Avenue

2-999.28-D, Alley

2-999.5, Webster Street & Olive Avenue


2-1000.7, Clinton Avenue

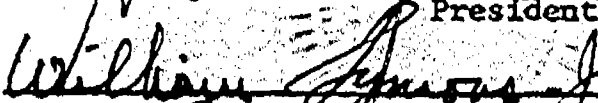

2-1001.3, Shields Avenue

2. The request of Fresno that it be permitted to examine all reports of accidents at crossings in the City of Fresno is denied; however, the presiding officer may authorize disclosure of material and relevant data contained in said reports.

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

Dated at San Francisco, California, this 13th day of JANUARY, 1971.



President



Commissioners

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