

ORIGINAL

Decision No. 78657

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Hesperia Chamber of Commerce,

Complainant,

vs.

Atchison, Topeka and Santa Fe
Railroad, a corporation, and
San Bernardino County Board of
Supervisors,

Defendants.

Case No. 9148

(Filed November 12, 1970)

James Pipla, for Hesperia Chamber
of Commerce, complainant.

Eugene Holder, Attorney at Law,
for County of San Bernardino,
and Neal W. McCrory, Attorney
at Law, for The Atchison, Topeka
and Santa Fe Railway Company,
defendants.

Allen L. Ringler, for Hesperia Fire
District; J. O. E. Emmons, for
Hesperia Leisure League; Howard A.
Carmichael, for Hesperia School
District; Allen W. Noble and
Jeffrey T. McCormick, in propriae
personae, interested parties.

Fred P. Hughes, for the Commission
staff.

INTERIM OPINION

The complainant requests an order of the Commission that the defendants be required to install a separation of grades at the crossing of Main Street by The Atchison, Topeka and Santa Fe Railway Company (hereinafter railway) in the unincorporated community of Hesperia in San Bernardino County (Crossing No. 2-45.3).

After due notice, a public hearing on the complaint was held before Examiner Rogers in Hesperia on February 17, 1971, and the matter was argued and submitted.

The nearest crossings to the one herein considered are the Bear Valley Cutoff 3.7 miles north (Crossing No. 2-41.6) and State Highway No. 138 (Wrightwood Road) 15.6 miles south (Crossing No. 2-60.9). The Main Street crossing is diagrammed on Appendix A attached hereto.

The railway filed a document entitled "Statement of Jurisdictional and Other Defects" and its counsel argued the points therein raised during the hearing. The thrust of the railway's argument is that the complaint should not be considered by the Commission for the reason that it does not allege a violation of law, or rule of the Commission citing Section 1702 of the Public Utilities Code, which, insofar as pertinent, provides:

"Complaint may be made by any ... Chamber of Commerce ..., by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility ..., in violation of or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

The railway cites cases holding that the Commission may dismiss a complaint which does not set forth a specific act or omission constituting violation of law (e.g., Blincoe v. Pacific

Tel. & Tel. Co. (1963) 50 PUC 432; Nisson v. Pacific Gas & Elec. Co. (1963) 60 PUC 663; California Interstate Tel. Co. v. Western Union Tel. Co. (1963) 61 PUC 127. Nevertheless, since this is a matter involving the health, safety and welfare of the general public, we will treat it under our general authority contained in Section 701 of the Public Utilities Code, which provides:

"This Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Insofar as authority to order improved railway crossings is concerned, Section 768 of said Code provides:

"The Commission may, after a hearing, ... require every public utility to construct, maintain, and operate its ... system, equipment, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public and may prescribe, ... the installation, use, maintenance, and operation of appropriate safety or other devices or appliances ..., and require the performance of any other act which the health and safety of its employees, passengers, customers, or the public demand ..."

Insofar as our authority to order a separation of grades is concerned, Section 1202 of said Code provides:

"The Commission has the exclusive power:

(a) . . .

(b) . . .

(c) To require, where in its judgment it would be practicable, a separation of grades at any . . . crossing . . . and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction . . . shall be divided . . ."

Decision No. 78134, dated December 22, 1970, in Case No. 9095 (investigation for the purpose of establishing a list for the year 1971 of railroad grade crossings of city streets or county roads most urgently in need of separation . . .) places the crossing forty-second on the grade separation priority list. The decision (on page 4 thereof) said:

"Considerable public support was given to the Main Street crossing in the County of San Bernardino, which was placed in nomination by the Commission staff. This crossing was necessarily placed low on the 1971 list because the County of San Bernardino failed to support the staff's nomination."

Page 70 (Exhibit No. 2 herein) of the staff's study in Case No. 9095, supra, contains the following information concerning the crossing for the period between January 1, 1960,

and prior to October 21, 1970:

24-hour vehicle count	7,620
24-hour train count	10 passenger 38 freight <u>10</u> switch
Total	58

Present protection: Automatic gates installed
4/30/58.

Vehicle-train accidents since 1/1/60 (Ex. 5):

Killed - 1 Injured - 1

Gate accidents since 1/1/60 - 5

On Tuesday, January 19, 1971, two men were
killed in a collision between a train and
an automobile (Exhibit No. 1).

In 1962, the average daily traffic at the crossing was
3,367 vehicles. By 1970, the average daily traffic had increased
to 7,620 vehicles (Exhibit No. 4).

The past president of the Hesperia Chamber of Commerce
testified that the unincorporated community of Hesperia contains
40 square miles, 25,000 lots and 8,000 to 9,000 people; the
railway splits the community in two portions; the nearest railway
crossing is four miles north (Bear Valley Cutoff, supra); there
are 50 trains daily over the Main Street crossing; some regular
trains take three to five minutes to cross the street; there are
two to ten or more switching movements per day over the crossing;
on some switching movements the gates are down 10 to 15 minutes;
on one occasion he saw 50 vehicles held up; and during the week
before the hearing he observed the road blocked for 20 minutes
at which time 150 vehicles were held up.

The witness further testified that the gates are frequently broken; the gates frequently malfunction as for example, the gates are down with no trains; within the past week the gates came down after the train entered the crossing; many school buses cross the track daily; frequently emergency vehicles are held up; ambulances destined from Hesperia to Victorville have been delayed 15 to 20 minutes; the delays result in many illegal crossings; a separation of grades is necessary; and widening the crossing would help the situation.

The president of the Chamber of Commerce stated that the crossing has long been a nuisance, an inconvenience and a hazard to Hesperians and tourists; the Chamber has made mention of these facts numerous times to the agencies who have responsibilities for the hazard, but up until now nothing has been done; the crossing is controlled by inadequate gates which do not always move up and down when a train approaches; at 12:15 P.M. on February 15, 1971, a series of engines went through the crossing without the gates coming down; an employee of the railway was on the cowcatcher with his hands out to hold up traffic; broken gates are piled up on both sides of the crossing; many drivers go around the gates and take chances; the increased traffic of both trains and vehicles has caused backups of at least three blocks on numerous occasions; there are two lanes approaching the crossing, reducing to one lane over the tracks, and this fact, with Hesperia Avenue and Santa Fe Avenue parallel to and very near the tracks, results in a potential traffic hazard even without a train; with a train switching, traffic is backed up on every access and numerous

accidents have occurred as a result thereof; there have been several deaths at the crossing, the last two being on January 19, 1971; these could have been prevented if there had been a separation of grades; trains have broken down across Main Street; the Chamber receives complaints daily; and we need a separation of grades as soon as possible.

The superintendent of the Hesperia School District testified that Hesperia is divided into four sections: by the railway (east and west) and by Main Street (north and south) (see Exhibit No. 3); it contains 89 square miles; youngsters come to various schools in Hesperia from the entire area (Exhibit No. 3); there are approximately 32 loaded school bus movements across the railway via Main Street each school day; on one occasion a loaded bus was hit by a descending gate; the safety factor is bad; and the grade crossing causes much inconvenience.

The Hesperia fire chief testified that there are two fire stations in Hesperia with different types of emergency equipment; these stations are on different sides of the railway (Exhibit No. 3); responses for emergency calls (fire and/or first aid) have been delayed many times due to the trains; on February 12, 1971, response to an emergency call due to a car rolling over was held up two minutes; other holdups due to trains were three minutes on February 3, 1971, 13 minutes on March 9, 1969, and 13 minutes on June 12, 1970; where there is an injury, time is important; he has observed the gates blown down by the wind and the lights blinking and no train traffic;

on December 23, 1968, a motorist hit a railway gate standard with resulting severe injuries; there have been near misses of the second track type of collisions; on January 19, 1970, there was a fatality and fire personnel were required to crawl under the train to help; between December 20, 1968, and July 3, 1971, there were five collisions on Main Street at the railway crossing; between 1968 and 1971 there were four fires where response was delayed due to the railway; and on February 13, 1969, response to a fire was delayed six minutes by a train and a \$30,500 loss to a chicken ranch resulted. The chief stated there were additional delays due to trains.

A captain in the California Division of Forestry, with offices in Hesperia, recited similar instances of delays due to trains and resulting loss of property. This witness also stated that the Division's fire station is on Main Street east of the tracks and on three occasions in 1970 traffic on Main Street was backed up so far due to trains that the Division's equipment could not get out of the driveway on to Main Street.

A Hesperia fire captain testified that fire equipment has been held up many times by trains; and the gates have malfunctioned on many occasions and stay up or down with no trains in the area.

A traffic engineer for the County of San Bernardino (County) testified that the average daily traffic on Main Street at the crossing has increased from 3,367 in 1962 to 7,620 in 1970; the traffic department is conducting a feasibility study relative to a separation of grades; the situation is complicated

due to the proximity of Hesperia Road 150 feet west and Santa Fe Avenue, 150 feet east of the railway and both parallel thereto; the feasibility study will be completed in the 1970-1971 fiscal year; designing will be completed in the 1971-1972 fiscal year; and if funds are available the structure will be commenced in the 1972-1973 fiscal year.

The witness further testified that he opposes any further improvement of the crossing at present for the reason that if the separation is constructed there will be a duplication of certain costs.

The hazards at this crossing are pronounced due to the number of trains, the two-track situation, the two switch points adjacent to the highway and frequent shuttle movements across Main Street, the distance of alternate railway crossings from Main Street crossing, the frequent winds which prevent the gates from being in the proper positions, the crossing being narrower than the street approaches, and the length of time the gates remain down before or after a train movement due to lack of adequate circuits to prevent over activation. Separation of highway and railway traffic is the only adequate solution of this matter. The railway and county should take all necessary steps to see that funds are made available and that the studies and plans necessary are completed to the end that the separation may be accomplished at the earliest feasible date. Meanwhile, the crossing protection should immediately be substantially upgraded.

Findings

1. Main Street in San Bernardino County where it passes through the unincorporated community of Hesperia crosses railway's double line of track at Crossing No. 2-45.3. The nearest public crossings are the Bear Valley Cutoff 3.7 miles north (Crossing No. 2-41.6) and Wrightwood Road 15.6 miles south (Crossing No. 2-60.9).

2. At the crossing site there are only two lanes of traffic. On each side of the railway right-of-way there are four lanes of traffic. The loss of one lane in each direction on each side of the crossing is dangerous to the public and causes frequent accidents. The crossing is protected by two Standard No. 8 flashing light signals, supplemented with automatic gates.

3. There are strong winds in the vicinity of the crossing. These winds frequently cause the gates to remain up when trains are approaching the crossing or to remain down after trains have cleared the crossing.

4. There are 10 scheduled passenger trains, 38 freight trains, and two to 10 switching movements over or near the crossing each day.

5. There are no control circuits at present to prevent over activation of the gate arms. As a result of the frequency of gate operation and length of time the gates are open, there are near misses of two-train type accidents; motorists are required to wait as

much as 13 minutes to cross the tracks causing traffic to back up for several blocks on each side of the crossing; motorists drive around the gates to cross the tracks exposing themselves and other motorists to danger of collision and collision with trains.

6. The railway splits the community; some emergency services are on one side of the track and some on the other; the situation has contributed to property damage, possible death, delay in responding to emergency calls, and loss of time to the general public.

7. A grade separation at or near the existing crossing site would enable both highway and railway traffic to cross in safety and without interfering with each other.

8. Public convenience and safety require that the crossing be widened and control circuits be installed to eliminate the gate over activation at the earliest physically possible time. Public safety and welfare require that the plans for a separation be carried forward without delay and that the railway and county file a status report with the Commission as to the progress.

Conclusion

We conclude that the existing protection should be modified by the addition of improved circuits and that the crossing be widened to 70 feet forthwith and that the county and railway file a progress report as to the construction of a grade separation within one year of the effective date of this order.

INTERIM ORDER

IT IS ORDERED that:

1. The Atchison, Topeka and Santa Fe Railway Company shall install at the crossing of Main Street in the community of Hesperia in the County of San Bernardino, Crossing No. 2-45.3, equipment and facilities to prevent the overactivation of the automatic crossing gates and flashing light signals so that the protection is not activated for a period of time longer than thirty seconds in advance of any approaching train or engine entering the crossing. The equipment shall cause the protection to provide a minimum advance warning of twenty seconds. In addition, the protection shall not operate while trains or engines are stopped in the approach circuits. Such equipment shall be installed and placed in full operation within six months of the effective date of this order. Installation costs of the automatic protection shall be borne equally between the county and the railway. Maintenance cost shall be borne equally between the parties pursuant to the provisions of Section 1202.2 of the Public Utilities Code.

2. The County of San Bernardino shall widen the Main Street crossing to a width of 70 feet. Protection shall be by four Standard No. 8 flashing light signals (General Order No. 75-B) augmented with gate arms, two of which to be on median islands.

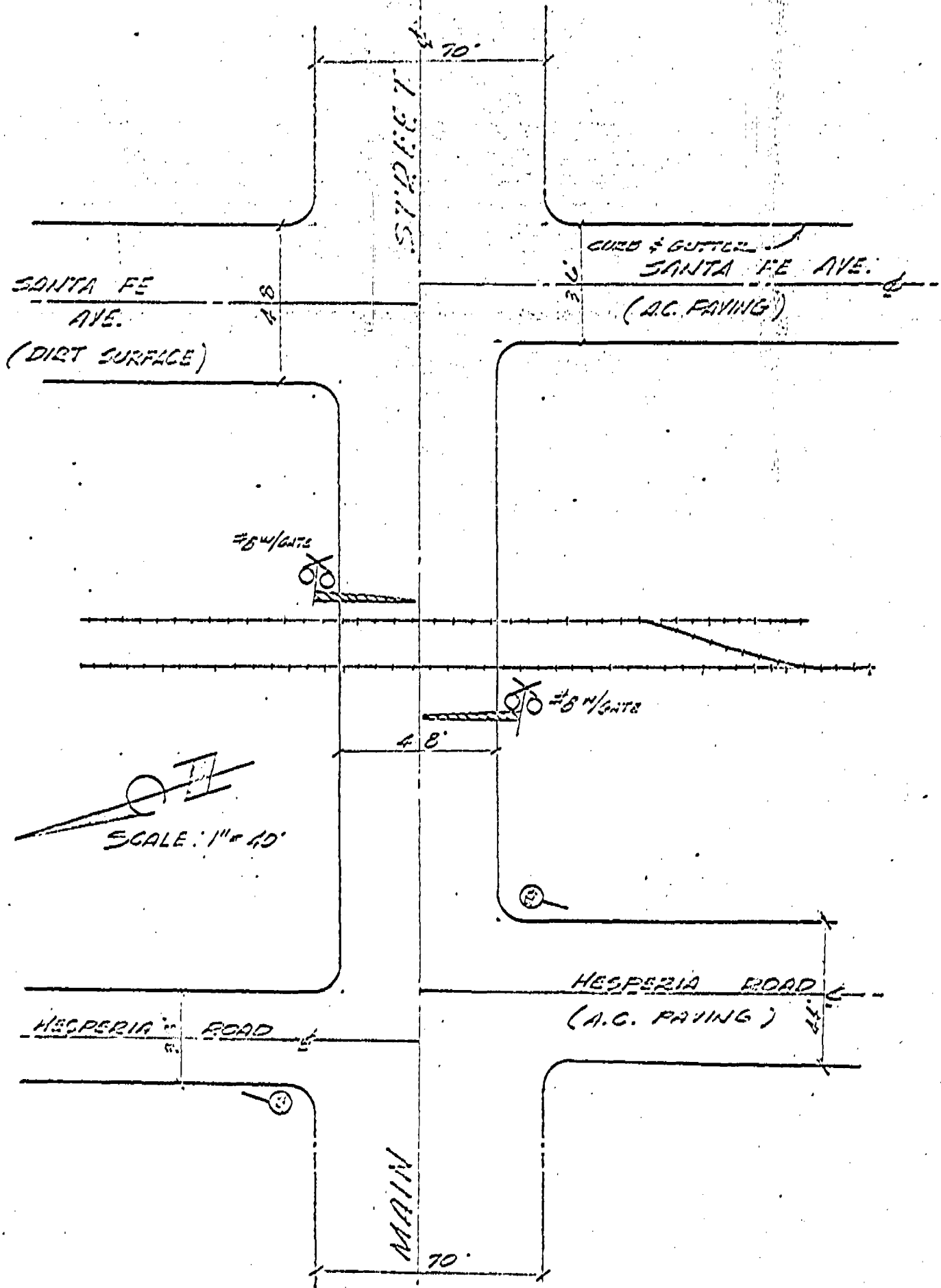
3. The County of San Bernardino and The Atchison, Topeka and Santa Fe Railway Company shall file a progress report as to the construction of a grade separation at the Main Street crossing one year from the effective date of this order. If sufficient progress is not shown, this matter will be reopened for further consideration.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each of the defendants. The effective date of this order shall be twenty days after the completion of such service as to each defendant.

Dated at San Francisco, California, this 11th day of MAY, 1971.

J. P. Adams
Chairman
William Lyons - J.
Thomas L. Stinger
Ed D. Dole
Commissioners

Appendix A



Appendix A