

ORIGINAL

Decision No. 79810

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the County of San Joaquin)
for an order authorizing the reconstruction of an existing grade separation structure where Canal Boulevard crosses under the tracks of the Southern Pacific Transportation Company northeast of the City of Tracy, in San Joaquin County, Crossing No. D-75.6-B.

Application No. 52533
(Filed April 5, 1971)

Clement A. Plecarpo, Deputy Director of Public Works, Richard W. Dickenson, County Counsel, and Michael N. Garrigan, Deputy County Counsel, for San Joaquin County, applicant.
Harold S. Lentz, Attorney at Law, for Southern Pacific Transportation Company, respondent.
Edward P. Thurban, for the Commission staff.

O P I N I O N

Prior to 1970 the Southern Pacific Transportation Company (railroad) crossed Tom Paine Slough, northeast of Tracy, in San Joaquin County (county), on a 240-foot trestle constructed in 1911. In 1969 the railroad informed the county that the trestle was deteriorating due to age and that it would be filled with dirt as the most efficient way to strengthen it. It was requested that the county advise whether the section of the trestle over the Canal Boulevard underpass should be filled or spanned by a concrete trestle on steel pilings to be installed by the railroad and paid for by the county. The latter requested that the railroad pay at least 10 percent of the cost to qualify the county for a grant of public funds under Section 190 of the Streets and Highways Code. After a lengthy correspondence, this application was filed by the county, wherein it is stated that the county and the railroad are not in agreement as to how costs should be assessed.

A public hearing was scheduled and held in Tracy, on August 25, 1971, before Examiner Fraser. A Petition for a Proposed Report was filed by the railroad one day prior to the hearing. Evidence was presented by the county and the railroad. The staff representative assisted in developing the record. It was submitted on concurrent opening and closing briefs, which have been received.

The county originally applied to extend Canal Boulevard under the tracks on November 12, 1931. Commission Decision No. 24630, dated March 28, 1932, in Application No. 17779, ordered that the crossing be constructed and that the "entire expense of constructing and thereafter maintaining the crossing" shall be borne according to the terms of an agreement to be executed by the parties and filed with the Commission for approval before the start of construction. Section 6 of the agreement executed by the Southern Pacific Company and the County of San Joaquin, on August 23, 1932, reads as follows:

"6. County agrees that if the Railroad Commission of the State of California or Railroad shall at any time in the future require the removal of the said center pier, herein referred to, it will assume the entire cost of removing said center pier and reconstructing the portion of the present trestle over the said highway."

The Deputy Director of Public Works for San Joaquin County testified that the county has budgeted the sum of \$40,000 to improve the crossing, although the estimated cost of the modifications recommended is \$80,000. He further testified that residents in the area prefer to use the crossing as a direct route to town or to Highway 50. He noted that the Canal Boulevard-Highway 50 intersection will be eliminated prior to 1972 when Canal Boulevard will be closed at a point next to the highway. The witness advised the county is of the opinion that the railroad should contribute at least 10 percent of the cost of improving the crossing. The county would then qualify to have up to 50 percent of its share of the expense paid by a grant of public funds.

Testimony presented by the railroad developed the following facts: The 240-foot trestle was built in 1911 to carry the tracks over Tom Paine Slough, a creek bed-dry most of the year. Canal Boulevard was extended under the eastern end of the trestle in 1932. No costs were involved other than the installation of wooden guard rails on each side of the road under the trestle. During 1969 it became apparent that the trestle would have to be replaced or sufficiently reinforced to eliminate vibration. The trestle was filled in about October of 1970 except for Canal Boulevard, which requires a 60-foot opening. The trestle is divided into 16 panels (each 15-feet wide). Panels 1 through 9 and 14 through 16 are filled, along with a portion of 10 and 13, where the bank slopes from the tracks down to the road. Panels 11 and 12 form Canal Boulevard. Tom Paine Slough passes under the filled-in trestle through a 96-inch metal pipe. The trestle over Canal Boulevard is now the only part left to be repaired. It must either be filled with earth or the trestle portion on which the tracks are located should be replaced with a modern concrete bridge supported on steel piling. If the necessary work is not completed in the near future it will be necessary for trains to approach and proceed over the trestle at greatly reduced speeds.

Canal Boulevard will soon become a dead-end street between the railroad and the freeway. All homes and farms north of the railroad have convenient access to Grant Line Road which passes under the railroad and freeway a mile south of Canal Boulevard. There are three homes located south of the railroad between the tracks and the freeway. Berry Street extends northeasterly from Grant Line Road parallel to and between the railroad and freeway, to Canal Boulevard. The railroad would prefer to fill the panels presently providing access to Canal Boulevard. A solid dirt bank provides a better support for tracks than a trestle and is easier and less expensive to construct and maintain. Exhibit No. 2 was placed in evidence

which indicated that a mechanical (axle) counter showed 231 vehicles used the crossing during a 24-hour period on Wednesday, August 10, 1971. It was noted that some of the traffic using Canal Boulevard was coming from or proceeding to Highway 50 and that the number of vehicles using the crossing would decrease as soon as Canal Boulevard was terminated at the freeway.

The railroad argued that the Canal Boulevard crossing is not used enough to justify the cost of keeping it open. If the Commission order decides the crossing is necessary, then the county should pay all costs under the terms of the 1932 agreement and the Commission decision based thereon.

The county argued as follows:

1. There was no consideration for the 1932 agreement and it should therefore be rescinded.

2. By replacing 75 percent of the trestle the railroad has already contributed more than the 10 percent required to qualify the county for a grant of public funds under Section 190 of the Streets and Highways Code.

3. Section 1202.5(h) of the Public Utilities Code which recognizes the validity of all agreements between public agencies and railroads apportioning the costs of grade separations is not applicable here because Section 1202.5(h) was enacted in 1957 and cannot be applied to legalize a contract executed in 1932.

Discussion

1. The 1932 agreement and the decision based thereon are valid and binding. The railroad authorized the county to extend a road under its trestle and across its right-of-way without charge. The county promised to pay the entire cost of rebuilding the trestle over Canal Boulevard if it was ever required in the future. The parties and the Commission were satisfied with the agreement when it was executed. The trestle is now obsolete and it is time for the parties to satisfy the obligation they willingly assumed in 1932.

2. Canal Boulevard was extended under the tracks 21 years after the trestle was constructed. If Canal Boulevard were eliminated, the trestle would still be required to carry the tracks over the valley and creek bed. The need for the trestle does not depend on the crossing, and the cost of reconstructing portions of the trestle that do not pass over the road can not be considered as part of the cost of reconstructing the crossing. If the cost of the work already accomplished by the railroad was considered as a part of the cost of reconstructing the Canal Boulevard crossing, it is likely that the railroad would demand a proportionate contribution from the county on all costs incurred in reconstructing the entire right-of-way over the trestle.

3. The 1932 agreement is valid and it is not necessary to discuss the application of Section 1202.5(h) to a contract executed many years before the statute was adopted. The statute does indicate the intent of the Legislature to encourage and support efforts by public agencies and railroads to apportion the costs of railroad crossings and grade separations by agreement.

The Canal Boulevard Underpass is substandard and if it is to remain as a public roadway where it passes under the Southern Pacific tracks it should be reconstructed.

Findings

1. Canal Boulevard passes under the 240-foot Southern Pacific railroad trestle over Tom Paine Slough, in San Joaquin County, northeast of Tracy.

2. The trestle was built by the railroad in 1911.

3. San Joaquin County extended Canal Boulevard under the trestle in 1932 by authority of Commission Decision No. 24630, dated March 28, 1932.

4. Decision No. 24630 ordered that the expense incurred by any necessary modification of the portion of the trestle passing over Canal Boulevard would be borne according to the terms of an agreement to be executed by the parties and filed with the Commission.

5. Said agreement provided that the county would pay all future costs for the necessary modifications described.

6. The entire trestle, except for the portion required to permit continuance of the roadway, was filled in 1970.

7. The trestle has deteriorated to the extent that the remaining portion must be either replaced or filled within two years.

8. The railroad would prefer to fill the remainder of the trestle rather than have a grade separation.

9. The county prefers to retain the underpass as part of its road system and to reconstruct it to higher standards.

10. Providing a new trestle to permit a continued use of the crossing will cost at least \$80,000.

11. Canal Boulevard will become a cul-de-sac between the railroad and the freeway (Interstate Route 50) in the near future. Alternate access is available on Berry Road between Canal Boulevard and the freeway.

12. The petition for a proposed report should be denied.

The Commission concludes that:

1. The 1932 agreement is still valid and is a part of Commission Decision No. 24630.

2. Crossing No. D-75.6-B, County of San Joaquin, may be reconstructed as proposed.

O R D E R

IT IS ORDERED that:

1. The County of San Joaquin is authorized to reconstruct the grade separation where Canal Boulevard (D-75.6-B) crosses under the tracks of the Southern Pacific Transportation Company northeast of

the City of Tracy, in San Joaquin County, at the location and substantially as shown by plans attached to the application provided that reconstruction is completed within two years. The County of San Joaquin shall bear the entire cost of reconstructing the crossing.

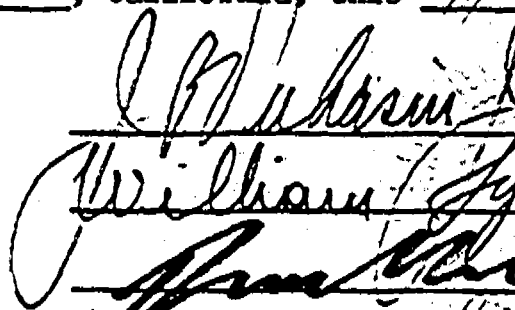
2. Clearances shall be in accordance with General Order No. 26-D. Walkway areas adjacent to the railroad tracks shall be maintained free of obstructions and shall promptly be restored to their original condition in the event of damage during construction.

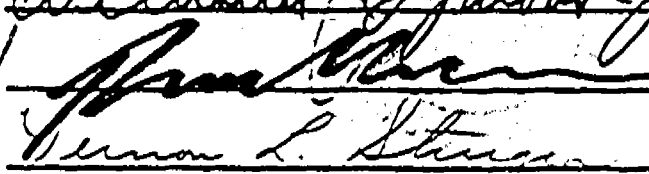
3. The applicant will inform the Commission within sixty days of the effective date of this order if it wishes to exercise the authority granted herein. Should the applicant inform the Commission that it does not wish to reconstruct the crossing, the Commission Secretary will then advise the Southern Pacific Transportation Company which thereupon will be authorized to close the crossing to all vehicular traffic by filling the space under the tracks with dirt or other suitable material at railroad expense within ninety days after receipt of the aforesaid notice. Authorization may be revoked or modified if public convenience, necessity or safety so require.


4. The petition for a proposed report is denied.

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

Dated at San Francisco, California, this 14th day
of MARCH, 1972.



Chairman


Vernon L. Stinger


Commissioners