

ORIGINAL

Decision No. 80613

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the State of California Department of Public Works for an order authorizing construction of two crossings at separated grades, whereby State Route 99 is carried over the tracks of the Tidewater Southern Railway and the Southern Pacific Transportation Company; the construction of a new crossing at grade; the alteration and improvement of an existing crossing at grade; the installation of automatic protection at grade and the abandonment of an existing crossing at grade in Stanislaus County.

Application No. 52448
(Filed February 16, 1971;
Amended February 26, 1971)

Investigation into the safety, maintenance, operation, use and protection or closing of the crossing at grade of Taylor Road with the tracks of the Southern Pacific Transportation Company, Crossing No. B-122.2, near the City of Turlock, in Stanislaus County.

Case No. 9329
(Filed February 15, 1971)

Harold S. Lentz, Attorney at Law, for Southern Pacific Transportation Company, respondent in Case No. 9329.

Joseph C. Easley, Attorney at Law, for the State of California, Department of Public Works, applicant in Application No. 52448 and respondent in Case No. 9329.

Richard G. Barbite, for Stanislaus County, respondent in Case No. 9329 and interested party in Application No. 52448.

R. G. Thayer, Attorney at Law, for the Commission staff.

O P I N I O N

The above matters were consolidated, and a public hearing was held in Turlock on April 26, 1972, before Examiner Fraser.

No evidence was introduced or issue raised with respect to the application, which was originally filed by the State Department of Public Works on February 16, 1971 and amended on February 26, 1971. An ex parte decision was issued on October 5, 1971 (Decision No. 79202) which authorized the Department of Public Works to construct five grade crossings in the vicinity of Turlock and to close the Washington Avenue crossing, which crosses the tracks just north of Taylor Road.

The Commission staff and the State Department of Public Works provided testimony on the Taylor Road crossing investigation. A single exhibit was placed in evidence by the Commission staff. The Southern Pacific Transportation Company presented no evidence, and all three parties filed concurrent opening and closing briefs.

A staff engineer estimated that 700 vehicles will use the Taylor crossing on a daily basis; the estimate includes 500 vehicles off Washington Street, which will not cross the tracks, 100 vehicles as the use factor from Taylor Road and an additional 100 vehicles from a freeway interchange off Highway 99 at Taylor Road. The staff exhibit (No. 1) reveals that the Taylor Road crossing has one main line track and has existed for over forty years. Protection consists of two Standard No. 1 railroad crossing signs. The road is approximately 24 feet wide with a 1 percent approach grade. The daily traffic along the track is 32 freight trains. The speed limit for the trains is set at 45 miles an hour. Visibility along the track is impeded in both directions from the crossing, and all parties present agreed that the crossing should be protected by flashing lights and automatic gates if it remains open.

The Southern Pacific Transportation Company requested a continuance to provide an opportunity to conduct time and motion studies in the vicinity of the Taylor crossing. The request was denied, and it was argued there is no evidence in the record to justify the Taylor Road crossing. Counsel for the railroad argued there are sufficient crossings in the area already and the Taylor and Washington crossings are not needed, especially since freeway construction will divert some traffic away from these streets. The estimated cost of installing automatic protection at the crossing was stipulated as \$22,000. The principal issue was how this cost should be apportioned. The staff and railroad recommended that construction and maintenance cost should be apportioned 50 percent to Southern Pacific Transportation Company, 25 percent to the Division of Highways of the State Department of Public Works and 25 percent to the County of Stanislaus. This recommendation was based on the argument that the State Division of Highways is an "affected public agency" under the provisions of Section 1202 of the Public Utilities Code.

Discussion

There is nothing in the record to justify closing the Taylor Road crossing. A county representative stated that residents in the area prefer to use the Taylor Road crossing rather than drive an extra mile to cross the tracks at Monte Vista. The Washington Street crossing, north of Taylor Road, has been closed due to freeway construction.

This Commission has jurisdiction to order the State Department of Public Works, Division of Highways, to contribute to the construction cost of a railroad crossing under the provisions of Section 1202 of the Public Utilities Code. Section 1202 grants the Commission "exclusive power" to allocate how the expense of "such

crossings...shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, city, or other political subdivision affected". The inclusion of the term "state" in the text of the statute indicates a legislative intent to authorize the Commission to determine whether other State agencies are affected parties in railroad crossings. (Under Section 1202 the Commission has authority to apportion costs of automatic protection at a crossing (Orange County Crossings, 66 Cal. P.U.C. 395).)

However, under the facts of this case the Division of Highways of the State Department of Public Works is not an affected public agency. The Division of Highways constructs freeways as its principal function. The freeways must have frequent access and egress to efficiently handle the traffic they are designed to transport. A determination that the mere proximity of a freeway affects a crossing under the provisions of Section 1202 of the Public Utilities Code is not justified and might curtail the Division's authority to determine where freeways should be located.

Findings

1. The Taylor Road crossing over the tracks of the Southern Pacific Transportation Company north of Turlock, in Stanislaus County, has been in use for over 40 years.
2. It crosses one main line track with a daily traffic of 32 freight trains.
3. Protection at the crossing consists of two standard railroad crossing signs.

4. Visibility from the crossing along the track is impeded in both directions, and protection at the crossing should be reinforced to include flashing lights and automatic gates.

5. There is no evidence in the record to justify closing the Taylor Road crossing.

6. The track crosses a county road and the railroad and the county should each contribute 50 percent to the cost of providing automatic protection at the crossing.

7. The minor alteration in the traffic pattern in this case where a county road crosses a single railroad track, due to the proximity of a freeway interchange, does not make the Division of Highways of the State Department of Public Works an affected party under the provisions of Section 1202 of the Public Utilities Code.

8. Public convenience and necessity, welfare, health and safety require that the Taylor Road crossing remain open and that flashing light signals and automatic gates be installed as provided in the order herein.

Conclusion

We conclude that the crossing protection specified in the order which follows should be installed and that Case No. 9329 should be discontinued. We further conclude that the Commission has jurisdiction to determine whether the Division of Highways, Department of Public Works, State of California, is an affected party under the provisions of Section 1202 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. The Southern Pacific Transportation Company shall protect the Taylor Road crossing (No. B-122.2) with two Standard No. 8 flashing light signals (General Order No. 75-B), supplemented with automatic crossing gates. The work of installation of the protection shall be done by the Southern Pacific Transportation Company.

The costs of the installation and the costs of the maintenance of the crossing protection shall be apportioned 50 percent to the County of Stanislaus and 50 percent to the Southern Pacific Transportation Company pursuant to Section 1202.2 of the Public Utilities Code.

2. The work required to be done shall be completed within twelve months of the effective date of this order. Within thirty days after completion of said work, the Southern Pacific Transportation Company shall notify the Commission in writing of its compliance with the conditions hereof.

3. The investigation in Case No. 9329 is hereby discontinued. The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 17th day of OCTOBER, 1972.

Vernon L. Stenger
President
William Sproule
John H. ...
...
Commissioners

Substant
J. H. ... Jr., Commissioner