

ORIGINAL

Decision No. 80797

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety, maintenance, operations, use and protection or closing of the crossings at grade of Grand, Elm and Tamarack Avenues and The Atchison, Topeka and Santa Fe Railway Company, Crossing Nos. 2-229.2, 2-229.3 and 230.1, in the City of Carlsbad, San Diego County.

Case No. 9328

(Filed February 15, 1972)

Neal W. McCrory, Attorney at Law, for
The Atchison, Topeka and Santa Fe
Railway Co., respondent.

David M. Dunne and Hunter T. Cook, for
the City of Carlsbad, respondent.

Melvin R. Dykman, Attorney at Law, for
the State of California, Department
of Public Works, Division of Highways,
interested party.

James J. Cherry, Attorney at Law, and
John P. Ukleja, for the Commission
staff.

O P I N I O N

This investigation was instituted on February 15, 1972, by the Commission on its own motion into the safety, maintenance, operation, use, and protection of the crossings at grade of the railroad tracks of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) with Grand, Elm and Tamarack Avenues (public roads or highways in the city of Carlsbad in San Diego County). These crossings are also designated as Crossings Nos. 2-229.2, 2-229.3, and 2-230.1.

Purposes of the investigation are to determine:

1. Whether public health and safety require reconstruction, relocation, or alteration of the crossings, or require the installation of additional protective devices, or the alteration of existing protective devices at the crossings, or any combination of the above, all pursuant to Section 1202 of the Public Utilities Code.

2. Whether public health and safety require abolition of the crossings or any of them, pursuant to Section 1202 of the Public Utilities Code.

3. The terms upon which any such reconstruction, relocation, alteration, abolition, or installation shall be accomplished, including apportionment of costs among all respondents, or any of them, as appears just and reasonable, pursuant to Section 1202 of the Public Utilities Code.

4. The terms upon which any costs of maintenance shall be apportioned pursuant to Section 1202.2 of the Public Utilities Code.

5. Whether any other order or orders shall be issued by the Commission in the lawful exercise of its jurisdiction.

Public hearing on the matters involved was held before Examiner C. S. Abernathy at Carlsbad on September 14, 1972. Evidence was presented by a Commission transportation engineer, and by the city of Carlsbad through its mayor and through its director of public works. Also, all of the parties who entered appearances otherwise participated in the development of the record.

The Commission engineer presented various data concerning the three crossings as follows:

	<u>Crossing</u>		
	<u>Elm</u>	<u>Grand</u>	<u>Tamarack</u>
No. of tracks	1	2	1
Existing protection	2 Wigwags*	2 Wigwags*	2 Wigwags*
Date(s) protection installed	December, 1942	December, 1942	May, 1929 and March, 1949
Crossing width	40 feet	64 feet	24 feet
Approach width, east	60 feet	68 feet	24 feet
Approach width, west	60 feet	62 feet	24 feet
Daily motor vehicular traffic volume	10,000 cars	2,000 cars	3,000 cars
Daily train volume			
Passenger trains	6	6	6
Freight trains	8	8	8
Accident record (1/1/65 to 3/1/72)			
No. accidents	2	2	0
No. killed	1	0	0
No. injured	0	0	0

*Standard No. 3 wigwag, with bell and flashing light.

In other respects the engineer presented evidence to the effect that:

1. Carlsbad is a beach city lying along the Pacific Ocean.
2. The beach area is separated from much of the other parts of the City by the tracks of the Santa Fe.
3. The Grand, Elm, and Tamarack Avenue crossings are the only crossings of the Santa Fe's tracks that provide access to the beach area from that portion of Carlsbad which lies east of the tracks.
4. The population of the City of Carlsbad is increasing substantially.
5. With the increases in population the public's utilization of the three crossings will increase.
6. The present usage of each of the three crossings is sufficient to justify protection of the crossings by automatic gates in addition to flashing light signals. With an increase in usage of the crossings the need for automatic gate protection will be further increased.
7. With the exception of the Grand, Elm, and Tamarack crossings in Carlsbad, all public grade crossings of the Santa Fe's tracks southward from Orange County to and including the City of San Diego are either protected by crossing gates or such protection has been programmed for completion within the near future.

8. Studies which the Commission has made of the effectiveness of automatic crossing gate protection show decreases of 61 percent in accidents, 89 percent in deaths and 85 percent in injuries where such protection has been installed.
9. Upon application to the Commission the City of Carlsbad can obtain reimbursement of up to 50 percent of the costs which the City incurs in installing automatic gate protection at the three crossings involved herein.

The engineer recommended that:

1. Elm Avenue (Crossing No. 2-229.3) be widened and improved to a width of 60 feet, and two Standard No. 8 flashing light signals supplemented with automatic crossing gates be installed. Trees in the northeast quadrant should be trimmed so that motorists' view of the signals will not be impaired.
2. Two Standard No. 8 flashing light signals supplemented with automatic crossing gates be installed at the Grand Avenue crossing (Crossing No. 2-229.2) and also at the Tamarack Avenue crossing (Crossing No. 2-230.1).
3. The cost apportionment of widening the crossing of Elm Avenue be by agreement between the railway and the city.
4. The costs of the installation and maintenance of the automatic crossing protection be divided equally between the railway and the city pursuant to the provisions of Section 1202.2 of the Public Utilities Code.
5. The recommended work be completed within 18 months of the effective date of a Commission order in this matter.

The City of Carlsbad opposed the Commission engineer's recommendations primarily to the extent that they would require completion of the recommended crossing protection within a period of 18 months. The Mayor and the Director of Public Works of Carlsbad both declared that such a time requirement is unnecessarily short and would impose an undue financial burden upon the city. The Mayor also stated that unless other necessary projects of the City are deferred, the city's finances are not sufficient to fund its share of constructing the recommended crossing protection within 18 months. He said, however, that the city could meet its share of costs if the construction period were extended to three years. As an alternative remedy toward lessening present hazards at the three crossings, he proposed that the Commission require a reduction in the allowable speeds of trains passing through the city. He estimated that in some instances the present operating speeds of trains through Carlsbad are in excess of sixty miles an hour.^{1/}

^{1/} The representative for the Santa Fe opposed the Mayor's proposal that the train speeds be reduced. He asserted that the speeds of the trains are not in issue in this matter, and that, moreover, the Commission lacks jurisdiction with respect thereto, because AMTRAK (the National Railroad Passenger Corporation), which operates the passenger train service through Carlsbad, is not a named respondent to this proceeding. The Commission's staff agreed with the Santa Fe's representative. The staff's attorney stated that if the city objects to the present train speeds, it should bring its objections before the Commission by the filing of a complaint, so that pertinent considerations could be developed in an appropriate proceeding. Responding to these objections, the Examiner agreed that the speeds of the trains per se are not in issue. However, he pointed out that the train speeds have a bearing upon the need for the recommended crossing protection in that the need might be quite different if the trains were operated at slow speeds.

The Mayor also advocated, as another alternative to proceeding in accordance with the engineer's recommendations, that the city conduct a survey both of its most dangerous, or potentially most dangerous, traffic intersections and grade crossings, and that the Commission and the city then work cooperatively, within the limits of available funds, to give priority to the alleviation of those hazards where the dangers are greatest. As grounds for this recommendation he testified that during the past five years no accidents have occurred at the Grand Avenue crossing; one vehicle accident has occurred at the Elm Avenue crossing, and one pedestrian accident has occurred at the Tamarack Avenue crossing. He said that in contrast there have been 25 accidents during the past four years at one street intersection in Carlsbad, 22 accidents at another, and a high number of accidents at various other street intersections.

Supporting the Mayor's recommendation concerning the establishment of priorities, the city's public works director declared that it is not logical to spend money for the crossing protection recommended by the engineer if the money can be used demonstrably better elsewhere to save lives and avoid property damage.

In a statement of position the representative of the Santa Fe said that the Santa Fe has no objection to either the recommendations of the Commission engineer or to those of the city's representatives (other than the Mayor's recommendations concerning limitation of train speeds).

The representative of the State Division of Highways stated that the Division's interest in this proceeding lies in the allocation of the costs of improving the protection of the three crossings. He urged that the engineer's recommendations in this respect be followed, so that there would be no departure from the principles of the Osborne Street decision (Decision No. 73521, 67 CPUC 737).

Discussion

The issues which are here presented are: :

(a) Whether public safety requires the construction of the crossing protection which the Commission engineer recommended for each of the three crossings, and

(b) How long should be the time allowed for the installation of the crossing protection.

As to the need for the crossing protection, it appears that the circumstances at Carlsbad with respect to the train movements through that city are the same, or virtually the same, as those in the city of Oceanside, immediately to the north, and in the cities and communities to the south. It is significant that in all of the other cities and communities the hazards at the street crossings of the Santa Fe's tracks have been determined to be sufficient to warrant the level of crossing protection which the Commission engineer has here recommended for Carlsbad. Moreover, it appears that all of the parties were in general agreement that the protection of automatic crossing gates is needed for the Carlsbad crossings. In the circumstances we are of the opinion that the need for the gates is sufficient to justify their installation.

The proposals of the city that the construction of the crossing protection be spread out over a period of at least three years admittedly stem from fiscal considerations. We can understand the city's concern regarding the fiscal problems with which it must deal. Notwithstanding this fact we must hold that the construction delays which the city requested are not warranted. It should be noted that the city's share of the costs involved, assuming that the city seeks reimbursement, and is reimbursed, for half of its outlays for such costs, will be only one-fourth

of the total. It does not appear that the resulting costs to the city will constitute an undue expenditure for the protection of the lives and property of its citizens.

We cannot agree to the system of priorities which the Mayor advocated. The protection of traffic at street intersections within a city is a matter of local or municipal concern. In contrast, the protection of traffic at street or highway crossings of railroad tracks is a matter of State concern over which the State Legislature exercises control through the Commission. Acquiescence to the system of priorities which the Mayor advocated would result in a subordination of the State's processes to those which are primarily local or municipal in nature and a thwarting of the State's legislative purposes.

Two other matters that have a bearing on our decision are crossing accidents which occurred at the Elm Street crossing on October 26 and November 22, 1972, and which resulted in three fatalities. Were there any doubts either as to the need for the recommended protection or as to when the protection should be installed, such doubts have been thus tragically resolved. Clearly, public safety requires that existing protection at each of these three crossings be upgraded and that the necessary construction be completed with a minimum delay in order that existing hazards at the crossings be reduced as promptly as possible.

Furthermore, we are of the opinion that in order to lessen present hazards at the crossings the speeds of the trains through Carlsbad should be reduced until the additional crossing protection is installed and is put into operation. We disagree that the train speeds are not an issue in this matter. Our conclusions herein, and those of the Commission engineer, have been reached in the light of existing circumstances. Having determined

that in such circumstances the hazards at the three crossings require the installation of additional protective devices, we cannot be oblivious to the fact that unless other preventive actions are taken in the meanwhile, the hazards will continue to prevail at their present level until the additional protection is operational. Therefore, as an interim measure to lower the level of the hazards for the period indicated, we shall require a reduction of the speeds of the trains through Carlsbad to 30 miles per hour.

Costs of the installation of the protective devices hereinafter specified shall be divided equally between the Santa Fe and the city of Carlsbad. Maintenance costs of such devices shall likewise be divided equally, pursuant to provisions of Section 1202.2 of the Public Utilities Code.

Included among the Commission engineer's recommendations is a recommendation that Elm Avenue be widened at its crossing of the Santa Fe's tracks. Elm Avenue is a principal street in the city of Carlsbad. It appears that the widening of Elm Avenue is planned by the city as a convenience for the traffic moving along Elm Avenue. In order that the widening may be accomplished concurrently with the installation of the additional protection at the Elm Avenue crossing, our order will also provide for such widening.

Findings

1. The tracks of the Santa Fe through the city of Carlsbad are crossed by Elm, Grand, and Tamarack Avenues.
2. Daily train traffic through Carlsbad along the Santa Fe's tracks is fourteen trains.
3. Speeds of some of the trains through Carlsbad are in excess of 60 miles per hour.

4. Average daily crossings of the Santa Fe's tracks by motor vehicles are as follows:

At Elm Avenue crossing	10,000 vehicles
At Grand Avenue crossing	2,000 vehicles
At Tamarack Avenue crossing	3,000 vehicles

5. Projected vehicular usages of the three crossings for the future are greater than those at present.

6. Each of the three crossings is protected by two Standard No. 3 wigwags (wigwags with bells and flashing lights).

7. The volume of the train traffic through Carlsbad, the speeds at which the trains are operated, and the volume of motor vehicular traffic across the Santa Fe's tracks at Elm, Grand, and Tamarack Avenues, require a higher level of crossing protection than that provided by the protective devices now in operation.

8. The required level of protection is that provided by Standard No. 8 flashing light signals supplemented with automatic crossing gates.

9. Until the protective devices hereinafter ordered are installed and are operational, present hazards at the Elm, Grand, and Tamarack Avenue crossings require a reduction of the train speeds through Carlsbad.

10. Elm Avenue should be widened, as planned by the city of Carlsbad, concurrently with the installation of the additional protection for the Elm Avenue crossing which is hereinafter ordered.

11. Costs of the installation and maintenance of the crossing protection hereinafter ordered shall be divided equally between the city of Carlsbad and the Santa Fe.

Conclusions

1. Crossing protection at the Elm, Grand, and Tamarack Avenue crossings of the Santa Fe's tracks in the city of Carlsbad, as specified in the following order, should be installed in lieu of the protection currently in operation at such crossings.
2. Until the crossing protection hereinafter ordered is installed and is operational, the speeds of trains across the grade crossings herein involved should be limited to 50 miles per hour.
3. Widening of the Elm Avenue crossing which is planned by the city of Carlsbad should be accomplished concurrently with installation of the improved protection at that crossing.
4. Costs of the installation and maintenance of the crossing protection specified in the following order should be divided equally between the city of Carlsbad and the Santa Fe.
5. Costs of the widening of the Elm Avenue crossing should be divided by agreement between the city of Carlsbad and the Santa Fe.

O R D E R

IT IS ORDERED that:

1. Automatic crossing protection consisting of two Standard No. 8 flashing light signals (General Order No. 75-B), supplemented with automatic crossing gates, shall be installed at Grand Avenue (Crossing No. 2-229.2), Elm Avenue (Crossing No. 2-229.3), and Tamarack Avenue (Crossing No. 2-230.1) in the city of Carlsbad in lieu of the crossing protection currently in operation at those crossings. No obstructions shall be placed, or be permitted to remain, near the crossings which will impair the motorists' view of the signals.

2. The installation costs of the automatic crossing protection shall be apportioned 50 percent to the city of Carlsbad and 50 percent to The Atchison, Topeka and Santa Fe Railway Company. The maintenance costs of the automatic crossing protection shall be apportioned in the same manner as the installation costs pursuant to the provisions of Section 1202.2 of the Public Utilities Code.

3. The crossing at Elm Avenue (Crossing No. 2-229.3) shall be widened and improved to a width of 60 feet. Construction shall be equal or superior to Standard No. 2 of General Order No. 72-A.

The cost apportionment of widening the Elm Avenue crossing shall be by agreement between The Atchison, Topeka and Santa Fe Railway Company and the city of Carlsbad. The City of Carlsbad shall bear the maintenance costs of the crossing outside of lines two feet outside of rails. The Atchison, Topeka and Santa Fe Railway Company shall bear the maintenance costs of the crossing between such lines.

Clearances, including any curbs, shall conform to General Order No. 26-D. Walkways shall conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway shall provide a reasonable regular surface with gradual slope not to exceed one inch vertical to 8 inch horizontal in all directions of approach.

4. Until the crossing protection which is specified in Paragraph 1 of this Order has been installed and placed in operation, The Atchison, Topeka and Santa Fe Railway Company shall not operate any of its trains, nor shall it permit the operation of any other trains, across the grade crossings herein involved at speeds in excess of 50 miles per hour.

5. The work which is specified in Paragraph 1 of this Order shall be completed within 6 months after the effective date hereof.

The city of Carlsbad and The Atchison, Topeka and Santa Fe Railway Company each shall inform the Commission by letter of the completion of the work performed pursuant to this Order. Such letters shall be sent to the Commission within thirty days after completion of said work.

The effective date of this order is the date hereof.

Dated at San Francisco, California,
this 5th day of DECEMBER, 1972.

Vernon L. Sturgeon
President

J. P. Hering

William Symons, Jr.
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.