

ORIGINAL

Decision No. 82374

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Livermore for an order authorizing construction of crossings at separated grades between North P Street and North Livermore Avenue and the tracks of the Southern Pacific Transportation Company and The Western Pacific Railroad Company; for the elimination of two railroad grade crossings; and for the relocation or modification of three railroad grade crossings.

Application No. 53846
(Filed February 16, 1973)

Hugh D. Wharton, III, Attorney at Law, and
Robert M. Barton, for the City of Livermore,
applicant.

Harold S. Lentz, Attorney at Law, for Southern
Pacific Transportation Company, respondent.

Richard W. Bridges, Attorney at Law, for The
Western Pacific Railroad Co.; Melvin R. Dykman
and O. J. Solander, Attorneys at Law, for
State of California, Department of Transpor-
tation; and Robert S. Allen, for himself and
Local #115, American Taxpayers Union;
interested parties.

Tack S. Joe, for the Commission staff.

O P I N I O N

The city of Livermore filed Application No. 53846 which seeks authority to construct a crossing at separated grades between North P Street and North Livermore Avenue and the tracks of the Southern Pacific Transportation Company (SP) and The Western Pacific Railroad Company (Western Pacific), for the elimination of two railroad grade crossings, and for the relocation or modification of three railroad grade crossings.

Public hearing was held before Examiner Porter at Livermore on July 23 and 24, 1973, and the matter was submitted.

The project as proposed was supported by both railroads and the city of Livermore.

The protest to the construction was by a group identified as the American Taxpayers Union. Their concern in the main was the future construction of the Bay Area Rapid Transit District (BART) commute lines into the Livermore area. BART is now selecting a future rail route into and within the valley and one choice is through Livermore following SP's and WP's railroad tracks. A delay in aligning the railroad tracks until BART selects its route could result in a saving of money if BART should choose to consolidate their tracks with those of the railroads. A delay is unwarranted as the evidence shows that a decision on BART's route is months away, with construction many years in the future.

The railroads could not reach agreement as to the apportionment of costs of the grade separation portion of project, namely, the 10 percent which must be shared by the two railroads collectively in accordance with Section 1202.5(b) of the Public Utilities Code.

Applicant proposed a formula (Exhibit 4) whereby the 10 percent should be apportioned by the Commission between the two railroads, giving due consideration to the number of grade crossings of each railroad to be eliminated or added, the number of tracks in each grade crossing, the relative importance of such tracks (i.e., whether main line or auxiliary), and the relative importance of the public streets. Use of the formula results in Western Pacific's share amounting to 7.9 percent and SP's share 2.1 percent.

The word "Project" as defined (Exhibit 4) includes, among other things, costs for necessary relocation and/or installation of automatic protection at existing or relocated grade crossings.

The allocation between railroads of the combined 10 percent railroad contribution to railroad street crossing projects is usually determined by mutual agreement between the railroads. The combined contribution amount is dependent upon two factors, the total cost of the project and the maintenance savings to the railroads (Public Utilities Code, Section 1202.5(b)). It does not include costs for relocation and/or installation of automatic protection at existing or relocated grade crossings. The method proposed in these hearings to allocate the contribution between the railroads does not consider these factors on a direct basis.

The following table, Table 1, shows the grade crossings involved and the applicant's proposed construction:

TABLE 1

Location	Western Pacific Railroad			Southern Pacific Transp. Co.		
	PUC No.	Existing Protection	Proposal	PUC No.	Existing Protection	Proposal
Murrieta Blvd.	4-46.7	2-#8 2-#9	Remain the same	D-46.00	2-#8 2-#9	Gates
"P" Street	4-47.2	2-#8 2-#9	Underpass	D-46.63	4-#8	Underpass
"I" Street	4-47.5	2-#8	Gates	D-46.92	2-#8	Gates
"K" Street	4-47.6	1-#1 1-#3	Close			
Livermore Avenue	4-47.7	2-#8	Underpass	D-47.07	2-#9	Underpass
"I" Street	4-47.8	1-#1 1-#3	Close			
Junction Avenue	4-48.8	2-#8	Gates	D-47.36		New Xing Gates
East First Street	4-48.2	2-#8	Gates	D-47.47	2-#9	Remain the same
Standard Oil Co.	Pvt. Xing	1-#1				

Based on Table 1, applicant proposes that Western Pacific's "L" Street, Junction Avenue, and East First Street grade crossings be upgraded in automatic protection and that SP's Murrieta Boulevard and "L" Street also be upgraded in protection. Applicant's proposal will also necessitate a new crossing be established because SP's tracks will cross Junction Avenue. Further, SP's East First Street crossing will be relocated. Underpasses are proposed for "P" Street and Livermore Street which will allow "K" and "I" Streets to be closed to vehicular traffic. Past Commission decisions involving grade crossing protection show certain consistency in the apportionment of crossing protection which has been relocated and/or improved. In the Osborne Street decision (City of Los Angeles (1967) 67 CPUC 140-148) the Commission discusses and cites several decisions dealing with the apportionment of cost between the public agency and the railroad where grade crossing relocation or improvements are necessitated by the widening of streets, change in traffic, etc., and concludes that a 50/50 apportionment of costs is equitable.

In City of Glendale (1952) 51 CPUC 788, we stated:

"While the railroad contended that the costs should be assessed according to the so-called 'benefits' theory, we affirm our holding in Decision No. 47344, dated June 24, 1952, on Application No. 29396, wherein it was held that (1) the authority of this Commission to allocate costs stems primarily from Section 1202 of the Public Utilities Code and is an exercise of the police power on the part of the State of California through the medium of its agency, the Public Utilities Commission. Therefore, we are not bound to follow the so-called 'benefits' theory, although it is appropriate to observe that the proposed grade separation will obviously be of benefit to the railroad. . . ." (51 CPUC at 795.)

We do not, however, find any past experience that may be relied upon as precedent for a situation involving grade separations. We recognize, however, that the Commission has the power to apportion the costs on any reasonable basis. We do not accept applicant's formula for apportionment, since there is neither evidence in the record nor in the exhibit to support the theory of the formula and the weighting assigned to the various crossings. Therefore, we conclude that a 50/50 apportionment of the 10 percent railroad contribution to the grade separation is reasonable.

Applicant is the lead agency for this project pursuant to the California Environmental Quality Act of 1970, as amended, and the city council approved the Environmental Impact Report. The Commission has considered the report in rendering its decision on this project.

Findings

1. The Commission adopts the applicant's Environmental Impact Report and finds that:

- (a) The environmental impact of the proposed action is insignificant.
- (b) The planned construction is the most feasible and economical that will avoid significant environmental impact.
- (c) There are no known irreversible environmental changes involved in this project.

2. Public convenience and necessity require that the project involved in this application go forward at this time and not wait for a determination of possible BART construction in the Livermore area.

3. The city of Livermore should be authorized to construct the crossings at separated grades between North P Street and North Livermore Avenue over the tracks of SP and Western Pacific.

4. The items as shown on Table 2, below, shall have the costs shared equally or as noted by the parties indicated:

TABLE 2

Western Pacific Railroad				Southern Pacific Transp. Co.			
: Proposed :				: Proposed :			
Location	PUC No.	Protection	Share of Party	PUC No.	Protection	Share of Party	
Murrieta Blvd.				D-46.00	Gates	50% Railroad 50% City	
"L" Street	4-47.5	Gates	50% Railroad 50% City	D-46.92	Gates	50% Railroad 50% City	
Junction Avenue	4-48.8	Gates	50% Railroad 50% City	D-47.36	Gates	100% City	
East First St.	4-48.2	Gates	50% Railroad 50% City	D-47.47	Gates	100% City	

5. The 10 percent railroad contribution toward the underpass (i.e., "P" Street and Livermore Avenue) shall be apportioned on a 50/50 basis between the railroads.

6. Because certain benefits will accrue to Western Pacific due to the closure of "K" and "I" Streets, Western Pacific shall also contribute to the city the capitalized value of the direct and computable savings resulting from the elimination of the cost of physical maintenance of the existing grade crossings and crossing protection thereat.

The Commission concludes that the application should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The application is granted conditioned on the findings set forth above.

A. 53846 ek

2. Within thirty days after completion, pursuant to this order, applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within three years unless time be extended or if above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

3. The Secretary of the Commission shall file a Notice of Determination with the Secretary for Resources and with the planning agencies of any city, county, or city and county, which will be affected by the project.

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

Dated at San Francisco, California, this 22nd
day of JANUARY, 1974.

Vernon L. Stevenson
President
William J. ...
...
...
Commissioners