NB

Decision No. 82398

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LOS ANGELES & SALT LAKE RAILROAD COMPANY and its lessee, UNION PACIFIC RAILROAD COMPANY, for an order apportioning the cost of upgrading signal protection at the existing crossings of the Union Pacific Railroad Nos. 3C-5.23 and 3C-5.3 at San Fernando Road in the City of Los Angeles.

Application No. 54132
(Filed June 26, 1973)

Robert M. White, Attorney at Law, for Los Angeles & Salt Lake Railroad Company and Union Pacific Railroad Company, applicants.
Burt Pines, City Attorney, by Charles W. Sullivan, Attorney at Law, for the City of Los Angeles, respondent.
Robert T. Baer, Attorney at Law, for the Commission staff.

O P I N I O N

Applicants request an order from this Commission determining the division of the costs and expenses of upgrading the automatic protection at Crossings Nos. 3C-5.23 and 3C-5.3 located on applicants' Glendale branch in the city of Los Angeles (City) between applicants and City.

Public hearing was held before Examiner Peeters on September 27, 1973 in Los Angeles, on which date the matter was submitted subject to the filing of Exhibit 10 due October 15, 1973. The exhibit was timely filed and the matter is ready for decision.

The upgraded automatic protection was recommended to applicants by the Commission staff in a letter dated July 6, 1973, File No. 183/19/3C-5.23, 3C-5.3.

Applicants amended Paragraph V of their application at the hearing. As originally filed, Paragraph V stated that the upgraded protection was completed. This was not the fact; therefore, applicants amended to show that they are willing to make changes in the automatic protection at Crossings Nos. 3C-5.23 and 3C-5.3.

Applicants and City stipulated during the hearing that the costs for upgrading protection at Crossing No. 3C-5.3 would be divided equally between them. We will, therefore, confine our discussion to Crossing No. 3C-5.23 at San Fernando Road near Edward Avenue.

Crossing No. 3C-5.23 is presently protected by two Standard No. 7 Wigwag signals. The upgraded protection will be accomplished by the installation of two 20-foot, rotable-type cantilever signals with No. 8 flashing lights. Stop signs controlling trains entering the crossing are to be installed..

The superintendant of the California Division of Union Pacific will issue a superintendent's bulletin instructing crewmen operating trains to wait 30 seconds while the crossing signals are in operation and after coming to a complete stop before entering the street area of San Fernando Road (Exhibit 10).

The application describes Crossing No. 3C-5.23 as consisting of two parcels of land. Parcel A is listed among the crossings subject to Franchise Ordinance No. 120729 granted by the City January 2, 1962 and accepted by applicants.[1] Parcel B is described in a quitclaim deed dated October 4, 1944 wherein applicants

---

1 "32. IN SAN FERNANDO ROAD
Beginning at a point on the westerly line 359.1 feet northerly thereon from Edward Avenue; thence northeasterly 145.8 feet along a straight line to a point 276.9 feet southwesterly, as measured on the continuation of aforesaid straight line, from a point on the easterly line of San Fernando Road 30.7 feet southerly thereon from Delay Drive." (Exhibit 7.)

conveyed an easement to City, with exceptions and reservations,[2] pursuant to an interlocutory order by stipulation in a condemnation proceeding in Superior Court of Los Angeles County, Case No.482835.

The parties narrowed the issues at the hearing so that only that portion of Crossing No. 3C-5.23 which is subject to the franchise provision requiring applicants to pay 100 percent of the costs of upgrading protection need be considered. The provision in controversy is as follows:

> "Section 3.7. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS. The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, or remove from any street any franchise property when required by the Board of Public Works by reason of traffic conditions, public safety, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; provided that the grantee shall have the privileges and be under the obligations as to the abandonment of franchise property in place which are provided in Section 3.4 hereof. Provided, however, that with respect to franchise property within a state freeway which was not a state highway at the time such franchise property was originally installed therein, the obligations of the Grantee shall be as provided by applicable law and by such agreements between the Grantee and the State as may be applicable thereto. This Section 3.7 shall have no application to any grade separation project as to which cost allocation provisions of any statute of the State of California might otherwise be applicable." (Exhibit 7.)

---

2 "EXCEPTING AND RESERVING unto the parties of the first part (the railroad), their successors or assigns, the right to maintain, repair, renew, use and operate an existing main line railroad track approximately at street grade across said above described parcel of land upon and along the following described center line: Beginning at a point on the easterly line of the easterly roadway of San Fernando Road distant thereon South 32° 38' 33" East 30.65 feet from the prolongation southwesterly of the southeasterly line of Delay Drive; thence South 22° 02' 25" West 73.49 feet to a point on the westerly line of said easterly roadway of San Fernando Road; thence along the right of way of the Glendale Branch of the Los Angeles & Salt Lake Railroad Company South 22° 02' 25" West 203.39 feet to a point on the easterly line of the westerly roadway of San Fernando Road distant thereon 457.84 feet measured from its intersection with the northwesterly line of Edward Avenue;"

Applicants argue that this matter should be decided in accordance with the Commission's decision in Re Osborne Street Grade Crossing (1967) 69 CPUC 737. City argues that the controlling case is Re Carson Street Grade Crossing (1970) 71 CPUC 292; rehearing denied (1970) 71 CPUC 378. The staff's position coincides with applicants'.

In both of the above decisions the issue concerned the apportionment of costs for the protection of railroad grade crossings. A Los Angeles County franchise was involved in Carson, whereas in Osborne no franchise was involved. In both matters, the applicants seeking approval of the widening of the street and upgrading protection were public entities, i. e., the city of Los Angeles in Osborne and the county of Los Angeles in Carson. In both cases the Commission apportioned the costs equally.

The Commission held in Osborne that when a grade crossing is widened and additional protective devices are installed, and there are no special conditions which require a different result, the cost of relocating existing protective devices and installing new protective devices shall be apportioned equally between the applicants and the public entity (67 CPUC 737, 743). In Carson the Commission found that the county ordinance (franchise) requiring the railroad to pay all costs was of no force and effect since the matter is one of statewide concern over which the Commission has exclusive jurisdiction and such ordinance does not constitute a special condition requiring a particular apportionment as contemplated by Osborne.

City participated in the hearing only to the extent of cross-examining applicants' witnesses. It offered no affirmative evidence of any special circumstances that would compel an allocation of costs different from the Osborne and Carson decisions. In its argument, City stated that there are special considerations, in addition to the franchise problem, but neglected to point them out.

The staff argued that insofar as a franchise required a different apportionment than 50 percent, it was void because the Commission had exclusive jurisdiction of the question of the apportionment and that the parties could not, by their contracts, usurp the Commission's exclusive jurisdiction to decide these questions.

We agree with applicants and the staff in this matter. The sole issue is whether the City, through its franchise can impose conditions on applicants in an area that has been exclusively occupied by the State.

It can no longer be questioned that local ordinances and regulations are invalid if they attempt to impose requirements in a field that has been preempted by general law (In re Lane (1962) 58 Cal 2d 99, 102). The Lane case also establishes that in determining whether the State intended to occupy the field to the exclusion of local regulation, it is necessary to look to the whole purpose and scope of the legislative scheme and it is not necessary to find such an intent solely in the language used by the legislature. (In re Lane, supra, at pp. 102,103.)

That the legislature enacted a comprehensive plan of regulation of railroad crossings intended to occupy the field fully to the exclusion of local regulation is evidenced in Sections 1201 to 1220 of the Public Utilities Code. (See also Sections 701 and 768.) With specific regard to grade crossings, Section 1202 grants the Commission exclusive power over grade crossings. Section 1219 sets forth the legislative intent by declaring:

> "1219. The Legislature declares that Sections 1201 to 1205, inclusive, are enacted as germane and cognate parts of and as aids to the jurisdiction vested in the commission for the supervision, regulation, and control of railroad and street railroad corporations in this State, and the Legislature further declares that the authority and jurisdiction thus vested in the commission involve matters of state-wide importance and concern and have been enacted in aid of the health, safety, and welfare of the people of this State."

The Commission, over a long period of years, has consistently exercised the power to allocate or apportion both the installation and maintenance costs of crossings, whether at grade or separated, and of protection devices thereat. (Western Pacific Railroad (1964) 62 CPUC 215, 216; County of Orange (1966) 66 CPUC 395, 396.)

Notwithstanding a city ordinance to the contrary, the Commission authorized increased train speeds through a city. (Southern Pacific Transportation Co. (1970) 71 CPUC 181; City of Brentwood (1949) 49 CPUC 47; Southern Pacific Company (1964) 62 CPUC 524; SF No. 21934, Petition for Writ of Review denied June 16, 1965; rehearing denied.)

This Commission has the exclusive power to apportion the costs of the protective devices at railroad crossings. Provisions in municipal franchises attempting to require the railroad to pay all costs are of no force or effect. The matter is one of statewide concern. (Santa Maria Valley Railroad (1969) 69 CPUC 333; SF No. 22665, Petition for Writ of Review denied July 16, 1969.)

The showing in this matter does not disclose any special conditions that would justify deviating from the policy enunciated in the Osborne decision.

Findings

1. City of Los Angeles Franchise Ordinance No. 120729 is not a special condition within the meaning of the Osborne case requiring a particular apportionment of costs.

2. There are no special conditions in this record which require a different result than apportionment of costs, 50 percent to applicants and 50 percent to City.

3. The Commission's jurisdiction over grade crossings and the apportionment of costs and maintenance thereof is exclusive.

4. Applicants and City have agreed to an equal apportionment of the costs for upgraded automatic protection of Crossing No. 3C-5.3.

5. The cost of installing the upgraded automatic protection at Crossing No. 3C-5.23 should be apportioned 50 percent to applicants and 50 percent to City.

6. Applicants, City, and the staff have reached agreement as to the type of protection to be installed at Crossing No. 3C-5.23 (Exhibit 10).

The Commission concludes that the costs and maintenance for upgraded automatic protection of Crossings Nos. 3C-5.23 and 3C-5.3 should be apportioned as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The cost of installing the automatic grade crossing protection at Crossing No. 3C-5.23 and Crossing No. 3C-5.3 should be apportioned 50 percent to the city of Los Angeles and 50 percent to the applicants and, pursuant to Section 1202.2 of the Public Utilities Code, maintenance thereof shall be apportioned equally.

2. At Crossing No. 3C-5.23 Union Pacific Railroad Company shall install two 20-foot, rotable-type cantilever signals with No. 8 flashing lights. Stop signs controlling trains entering Crossing No. 3C-5.23 shall be installed. The superintendent of the California Division of Union Pacific Railroad Company shall issue a superintendent's bulletin instructing crewmen operating trains to wait thirty seconds while the crossing signals are in operation and after coming to a complete stop before entering the street area, in accordance with the parties' agreement in Exhibit 10. Said bulletin shall not be altered, amended, or rescinded without prior Commission approval.

3. At Crossing No. 3C-5.3 Union Pacific Railroad Company shall install two Standard No. 8 flashing light signals.

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

Dated at San Francisco, California, this 29th day of JANUARY, 1974.

President

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.