

ORIGINAL

Decision No. 82500

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the status, safety, maintenance, use and protection of a grade crossing over a track of Southern Pacific Transportation Company at County Line Road, partly in the County of Kern and partly in the County of Tulare.

Case No. 9415
(Filed August 1, 1972)

Harold S. Lentz, Attorney at Law, for Southern Pacific Transportation Company; Ronald L. Shumaker, Deputy County Counsel of Kern, for County of Kern; and William R. Carr, Public Works Department Traffic Engineer, for County of Tulare; respondents.

Harold Roland, Manager, Delano Growers Cooperative Winery, for Delano Growers Cooperative Winery, interested party.

William H. Kessenick, Attorney at Law, and William L. Oliver, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the status, safety, maintenance, use, and protection of the crossing at grade of the Southern Pacific Transportation Company's (SP) track over County Line Road near Delano (Crossing No. BCB-300.1-C) for the purpose of determining whether changes or alterations in the crossing and protection are required, and if it is determined that revisions are required, the terms under which they should be made and the allocation of the cost thereof.

Public hearing in this proceeding was held before Examiner Mooney in Delano on October 3, 1972. The matter was submitted subject to the receipt of briefs, which have been received. At the request of the county of Kern (Kern) and SP, Interim Decision No. 80904 dated January 3, 1973 was issued authorizing alterations to alleviate a dangerous condition at the crossing pending the final order in this matter.

Background

The following undisputed facts are established by the record and we find them to be such.

1. The crossing in issue is a spur track at grade crossing County Line Road, the centerline of which approximates the boundary line between Kern and the county of Tulare (Tulare), at approximately 90 degrees. It serves a winery to the south of the crossing and connects with a branch line of SP approximately 400 feet north thereof.

2. By its resolution passed January 29, 1963, the Board of Supervisors of Kern granted to SP a permit and right to construct, reconstruct, maintain, and operate tracks across County Line Road and across Bassett Avenue, a separate crossing not involved herein, at SP's sole cost and expense and at no cost whatsoever to Kern. Paragraph (b)(1) of Section 2 of the resolution provided for the installation, at no expense to Kern, of Standard No. 8 flashing light signals at County Line Road, and if future conditions require it, the installation of the same type of signals at the Bassett Avenue crossing at no expense to Kern. There are no other specific provisions in the resolution regarding responsibility for, or the allocation of costs for the future moving, changing, or improvement of any of the grade crossing protection.

3. By Decision No. 65593 dated June 18, 1963 in Application No. 45269, the Commission authorized the construction of the two crossings. The decision ordered the installation of two Standard No. 8 crossing signals at the County Line Road crossing and Standard No. 1 crossing signs at the Bassett Avenue crossing and provided that SP shall bear the entire construction and maintenance cost. The decision did not pass upon an issue raised by SP regarding the validity of the clause in the Kern resolution regarding the responsibility of SP for all costs for the future installation of Standard No. 8 flashing light signals at the Bassett Avenue crossing if conditions

should require. It is SP's position that such matters are in the exclusive jurisdiction of the Commission pursuant to Sections 1202(a) and 1219 of the Public Utilities Code and that the clause is void.

4. Encroachment Permit No. 1436-631 issued September 17, 1963 to SP by the Office of Road Commissioner of Kern for the County Line Road crossing, pursuant to the resolution, is a standard form with 30 printed general provisions and instructions on the back thereof. Provision 13 relates to future movements of the installation and states that upon request of the grantor, permittee will immediately remove the encroachment at its sole risk, cost, and expense.

5. The crossing was constructed and the protection was installed in 1963 after the issuance of the encroachment permit. At the time, County Line Road was two lanes, one in each direction.

6. In 1969, Kern, operating under an agreement with Tulare, reconstructed, aligned, and widened the two lanes of County Line Road to 24 feet plus 8 feet unpaved shoulders on each side from Delano, which is not far to the west of the crossing, to a point at a distance east of the crossing. For a distance of approximately 100 feet on either side of the County Line Road crossing, 10 feet wide turnout lanes were added making the total pavement width 44 feet and four traffic lanes at this location. The crossing itself has not been widened and no application for such construction has been filed. It is, therefore, not possible to cross over the tracks within the turnout lanes on either side. Also, the Standard No. 8 flashing light signals were in the turnout lanes at the edge of the two traveled traffic lanes. Their presence at this location and the necessity of buses, trucks, and other vehicles to pull out of the turnout lanes before crossing the tracks created a hazard at this location.

7. To immediately alleviate the dangerous condition at the crossing in issue, interim Decision No. 80904, supra, ordered SP to relocate the signals not less than five feet from the outside edge of each existing traveled way and ordered Tulare and Kern to

barricade the turnout lanes. The decision provided that the costs involved would be allocated by further order of the Commission and required that the work be completed by March 2, 1973.

8. There are approximately 400 train movements over the County Line Road crossing per year. Usually there are no movements on week-ends or holidays, and there may be other days on which there are no movements. Approximately 950 motor vehicles cross the track each day, and the vehicle speed limit at this location is 65 miles per hour. (We take official notice that the speed limit is now 55 mph.)

Position of Parties

A. Commission Staff

It is the position of the Commission staff that the County Line Road crossing should be widened to include the new approach widths of the turnout lanes; that the protection should be relocated to positions outside the turnout lanes; and that the protection should be improved to two Standard No. 8 flashing light signals supplemented with automatic gate arms and additional flashing light signals on cantilever arms.

An engineer of the Commission's Transportation Division, in addition to presenting information regarding the background of the County Line Road crossing, testified as follows regarding his observation of the crossing: He was at the crossing several times from one to two hours on each occasion; there were no train movements over the crossing during his visits; County Line Road is apparently a main artery for people who live east of Delano; there is a house and trees in the southwest quadrant of the crossing; for a mile on either side of it, there are vineyards; although the surrounding land is generally flat and the road is relatively straight for this distance, the vineyards, house, and trees would restrict a motorist's view of an approaching train until he was within approximately 150 feet of the crossing; if the present signals were moved to the outside edges of the turnout lanes, they would be too far away from the

traveled lanes and could not be readily seen by an approaching motorist beyond the area of the turnout lanes; the cantilever arms would avoid this difficulty by placing signals over the traveled lanes and within the view of such an approaching motorist; the average speed of motor vehicles at the crossing is approximately 50 miles per hour; the addition of gates to flashing signals substantially increases the effectiveness of crossing protection.

The staff recommended that the installation and maintenance costs of the improved protection suggested by it be allocated one-half to SP and one-half to Kern and Tulare; that SP be required to pay 100 percent of the cost of preparing tracks within the widened areas and any paving work within lines two feet outside of outside rails in the existing crossing area; and that the counties be required to pay all other costs of widening the crossing and the approaches.

B. SP

SP concurred in the staff's position and recommendations. The Public Projects Engineer in its Signal Department testified that the cost of installing the staff recommended protection would be approximately \$23,600, and he estimated that the annual maintenance cost based on an estimate of approximately 24 signal units for the installation would be \$720. He stated that the cost of the staff recommended protection without gates would be approximately \$18,600, a difference of about \$5,000. He estimated the cost of relocating the present signals to the outside of the turnout lanes to be \$1,500 and that the cost of moving them several feet from their present locations, so as not to be too close to the widened traveled lanes, would not be much.

The witness testified that he had visited the County Line Road crossing briefly on two occasions; that in his opinion, if the present protection were moved to the outside of the turnout lanes, buses and trucks in these lanes would block a motorists' visibility of the signals from the traveled lanes; and that while the cantilever

system would give more protection than the mere moving of the present signals, the addition of gates, which have florescent red panels, would substantially add to the protection.

C. Kern

It is the position of Kern that it is not responsible for any costs involved in moving, changing, or improving the present signal protection at the County Line Road crossing, and that it has the right to revoke the encroachment permit issued to SP for the crossing.

The County Road Commissioner for Kern testified as follows: He is familiar with the crossing in issue; when the request was initially made for a crossing at this location, he recommended to the Board of Supervisors that it be granted with the stipulation that the railroad would pay all costs; he had in mind future costs of any changes, as well as original construction and installation costs when he made the recommendation, and is of the opinion that both the resolution and encroachment permit require this; all encroachments on county roads are under his authority; it is his intent to require removal of the crossing if any costs for moving, changing, or improving the protection is allocated to Kern by the Commission; the turnout lanes at the crossing are merely a part of the County Line Road improvement project; it is his recollection that there is a similar crossing south of Mojave in Kern where there are two traveled lanes and truck pull out lanes, and the only signal devices are Standard No. 8 flashing light signals.

D. Interested Parties

Tulare was represented at the hearing. It did not participate or take a position in the proceeding.

The general manager of the Delano Cooperative Winery testified that his company is the only industry served by the rail spur. He recommended that effective warning devices be installed but stated that he did not feel gates were required.

Discussion

We agree with the staff that the County Line Road crossing should be widened to include the widths of the turnout lanes, that the protection should be relocated to positions outside the new approach widths, and that the protection should be improved to two Standard No. 8 flashing light signals supplemented with automatic gate arms and additional flashing light signals on cantilever arms.

Unless the crossing is widened to include the width of the turnout lanes, their usefulness and effectiveness is minimized, and they would be a hazard because of the necessity for vehicles in them to pull back onto the traveled lanes before proceeding over the crossing. Obviously, with the widening of the crossing, it is essential that any signal protection be moved to the outside of these lanes.

The various conditions that would exist at the crossing when it is widened and the present protection moved would certainly warrant improvements in the protection. The vineyards, house, and trees along the road would severely hamper the ability of an approaching motorist to see an oncoming train or a signal at the edge of the turnout lanes. The addition of the cantilever arms would place signals over the traveled lanes in the line of view of the approaching motorist and help remedy this. Furthermore, the number of vehicles over the crossing daily, almost 1,000, and their average speed of 50 miles per hour, together with the other factors, are sufficient justification for the requirement that gates be added. It is recognized that the total number of trains over the crossing is about 400 per year and that there are no trains two days a week or on holidays. Nonetheless, there is sufficient usage to warrant adequate and effective protection at the crossing.

There would be no controversy regarding the widening and protection improvement if SP were to pay the entire cost. SP is willing to pay one-half and no more. Kern is of the opinion that

it is not responsible for any of the cost and bases its assertion on the resolution and encroachment permit.

As pointed out by the staff, when a grade crossing is widened and additional protective devices are installed, it is the policy of the Commission, in the absence of special conditions which require a different result, to apportion the cost of relocating existing protective devices and installing new protective devices equally between the railroad and the public entity. (City of Los Angeles - Osborne Street (1967) 67 CPUC 737.) This rule applies also to industrial spur tracks. (County of Los Angeles - Carson Street, Decision No. 77464 dated July 7, 1970 in Application No. 50922, unreported, Writ of Review denied by California Supreme Court on February 17, 1971 in Case S.F. 22772.) Neither the resolution nor the encroachment permit come within the special conditions exception to the aforementioned general rule. The resolution refers to the future improvement of protection at the Bassett Avenue crossing. It is silent regarding any future improvements of the County Line Road crossing or protection. The only reference to any future change in the encroachment permit is the printed Provision 13 on the back thereof, and it refers to removal of the encroachment only and makes no reference to other changes or improvements. Furthermore, had there been provisions in either or both documents relating to the allocation of costs of future changes or improvements, such provisions would have no force or effect because they would be in direct conflict with the Commission's exclusive power to determine such apportionment under Section 1202 of the Public Utilities Code. (Carson Street, supra; Santa Maria Valley Railroad Co. - Broadway, Decision No. 75355 dated February 25, 1969 in Case No. 8857, unreported, Writ of Review denied by California Supreme Court on February 25, 1969 in Case S.F. 22665; City of Los Angeles - Tuxford Street, Decision No. 74420 dated July 17, 1968 in Application No. 49338.) The issue of cost apportionment is a matter of state concern subject to the jurisdiction of the Commission and does not come within the field of county affairs.

No special circumstances have been shown which would justify the apportionment of the costs of the widening and improvement of the protection at County Line Road other than on an equal basis between SP, on the one hand, and the two counties, on the other hand. The policy enunciated in the Osborne Street decision should be followed here. As provided in Section 1202.2 of the Public Utilities Code, maintenance costs for the improvements shall be allocated in the same manner as construction costs.

SP in its opening and reply briefs took strong exception to the assertion by Kern at the hearing that it has the power to close the County Line Road crossing if any costs are apportioned to it. As pointed out by the staff in its reply brief, the power to close and abolish the crossing is vested in the Commission under the provisions of Section 1202(b) of the Public Utilities Code; Section 1219 thereof recognizes that such matters are of statewide importance and concern; and Sections 22 and 23 of Article XII of the California Constitution declare that the authority of the Legislature to confer such power upon the Commission is plenary and unlimited by any provision of the Constitution. Kern, in explaining its position on this matter in its reply brief, acknowledged that it is without authority to independently close the crossing but did contend that it does have the right to revoke the encroachment permit at will and by so doing cause SP to pay just compensation for the right to cross its property. This latter question is not a relevant issue in this proceeding and need not be considered herein.

While there is no application for widening the crossing and moving and improving the protection as required by General Order No. 88 in instances where the parties are not in agreement as to the public necessity for the alteration and/or the apportionment of the cost of such change, this investigation is a sufficient basis on which to consider these issues.

One final matter requiring comment is the allocation of the costs of the changes ordered by interim Decision No. 80904. They will be allocated in the same manner as the changes ordered herein.

Findings

In addition to the above 8 findings, the Commission further finds as follows:

9. The speed of motor vehicles at the crossing is approximately 50 miles per hour.

10. The ability of a motorist approaching the crossing from either direction to see an oncoming train or a signal at the outside of a turnout lane would be severely restricted by vineyards and other view obstructions along the sides of the road until he was within approximately 150 feet of the crossing.

11. Public convenience and safety require that the County Line Road crossing be widened to include the width of the turnout lanes and that the two Standard No. 8 flashing signals be moved to the outside of the turnout lanes and be supplemented with additional light signals on cantilever arms and automatic gate arms.

12. The cost of widening the crossing should be apportioned between SP, Kern, and Tulare in the manner set out in the order which follows.

13. The resolution issued by the Board of Supervisors of Kern on January 29, 1963 and Encroachment Permit No. 1436-631 are not "special conditions" exceptions to the general rule in the Osborne Street decision, supra, regarding apportionment of the cost for moving and improving protection at a widened crossing. Likewise, there are no other special conditions in this record which warrant a different result. The general rule should be followed here.

14. The cost of relocating and improving the grade crossing protection at the County Line Road crossing should be apportioned 50 percent to SP and 25 percent each to Kern and Tulare, and the maintenance cost in connection therewith should be apportioned on the same basis.

15. The cost of the temporary improvements ordered by interim Decision No. 80904 should be apportioned on the same basis set forth in Finding 14.

16. While there is no application for widening the County Line Road crossing or changing and improving the protection thereat before the Commission, all pertinent issues that would be raised by such an application are included in the instant proceeding.

Conclusions

The Commission concludes that the County Line Road crossing should be widened and the protection should be moved and upgraded and the cost thereof should be apportioned as provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. The counties of Kern and Tulare shall widen County Line Road across the tracks of the Southern Pacific Transportation Company (Crossing No. BCB-300.1-C) to 44 feet for a distance of at least 100 feet on each approach to the crossing.

2. The Southern Pacific Transportation Company shall bear 100 percent of the cost of preparing track within the limits of the widened crossing and any paving work within lines two feet outside of outside rails in the existing crossing.

3. The counties of Kern and Tulare shall each bear 50 percent of all other costs of widening the crossing and approaches.

4. The Southern Pacific Transportation Company shall bear the cost of maintenance of the widened crossing within lines two feet outside of outside rails, and the counties of Kern and Tulare shall bear the maintenance costs of the crossing and approaches outside of said lines.

5. The Southern Pacific Transportation Company shall remove the two existing Standard No. 8 flashing light signals and shall install two Standard No. 8 flashing light signals, each supplemented with automatic gates and flashing light signals on cantilever arms, at appropriate locations at the widened County Line Road crossing.

6. The cost of removing the existing grade crossing protection and installing the improved grade crossing protection shall be apportioned 50 percent to the Southern Pacific Transportation Company and 25 percent each to the counties of Kern and Tulare.

7. The maintenance cost for the automatic protective devices shall be divided in the same proportion as the cost of construction has been apportioned, pursuant to Section 1202.2 of the Public Utilities Code.

8. The cost of the temporary improvements ordered by interim Decision No. 80904 shall be apportioned on the same basis set forth in Ordering Paragraph 6.

9. Within thirty days after completion of the work herein ordered, the Southern Pacific Transportation Company and the counties of Kern and Tulare shall each notify the Commission in writing of its compliance with the conditions hereof.

10. The improvements and changes specified herein shall be completed within six months after the effective date of this order unless time is extended.

The effective date of this order as to each respondent shall be twenty days after service, either personally or by certified or registered mail, on such respondent or its attorney.

Dated at San Francisco, California, this 20th day of FEBRUARY, 1974.

Verma L. Stinson
President
William J. Sanders Jr.
William J. Sanders Jr.
William J. Sanders Jr.
William J. Sanders Jr.
Commissioners