

ORIGINAL

Decision No. 82652

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 Rail-)
road Company; for the elimination of)
two railroad grade crossings; and for)
the relocation or modification of)
three railroad grade crossings.)

Application No. 53846
(Filed Feb. 16, 1973)

ORDER MODIFYING PRIOR
ORDER AND DENYING REHEARING

The Southern Pacific Transportation Company (S.P.) on February 1, 1974, as supplemented on February 11, 1974, filed a petition for rehearing of Decision No. 82374, issued on January 22, 1974. In that decision we issued an order authorizing the construction of certain separated grade crossings in the City of Livermore (Livermore) as well as authorizing the construction and/or relocation of certain automatic grade-crossing protection associated with the project, which involved both S.P. and the Western Pacific Railroad Co. (W.P.). We apportioned the costs of the latter construction of the grade separation project in accordance with Section 1202.5(b) of the Public Utilities Code, or on a 90-10 basis between Livermore and the railroads, respectively, and ordered that each railroad pay 50% of the railroads' share of the total costs.

S.P. in its petition challenged both apportionments made by the Commission. S.P. also objected to Decision No. 82374 on the grounds that it improperly divided the costs of construction and/or relocation of automatic grade-crossing protection on a 50-50 basis between the city and the railroads.

Livermore, on February 11, 1974, filed a petition for issuance of an interim order as well as a petition for rehearing. Livermore requested that this Commission, pursuant to Section 1202.1 of the Code, issue an interim order authorizing the construction and reserving for later determination the issue of proper apportionment of the costs between the railroads. In its petition for rehearing Livermore requested that we order W.P. and S.P. to pay the capitalized value of the net direct and computable savings resulting from elimination of the cost of physical maintenance of the existing grade crossings at Livermore Avenue and North "P" Street.

W.P. filed responses in opposition to both petitions.

On March 22, 1974, S.P., W.P. and Livermore filed a joint petition which evidences agreement by these parties on all of the disputed cost issues of the case, and requests modification of Decision No. 82374 to reflect the agreement. These parties also request withdrawal of their other pleadings in this matter should the Commission accept the proposed modification.

Our review of the joint petition indicates that it represents a reasonable agreement amongst the parties as to the sharing of the costs of this project. Therefore, we shall accept the Proposed settlement and modify Decision No. 82374 accordingly. Furthermore, we shall permit the withdrawal of the prior filed pleadings as is requested by the parties.

Finally, on February 4, 1974, the American Taxpayers Union (ATU) filed a letter which we shall consider as a petition for rehearing. ATU alleges, as it did at the original hearing, that the rail route to be selected by Bay Area Rapid Transit District (BART) should be considered in connection with the grade-crossing project. ATU also alleges that the rail route selection was to be made by BART on February 22, 1974. However, as was noted in Decision No. 82374, (and as ATU points out in its petition) BART construction in Livermore could be as much as 10 years away. Furthermore, a review of ATU's petition indicates that, on the one hand,

should BART follow the W.P. right-of-way, which ATU considers most likely, the only necessary change would be the closing, rather than the gating, of two additional crossings. We therefore fail to see how our decision herein hinders the BART project. On the contrary, such closings, if required, would be facilitated by the grade separations authorized herein.

On the other hand, should BART not follow W.P.'s right-of-way, ATU requests that the grade separations not be approved. We have determined that this project is required by the public convenience and necessity and that it should go forward as expeditiously as possible to minimize the crossings' hazards within Livermore. Therefore, ATU's petition should be denied.

IT IS ORDERED that ATU's petition for rehearing of Decision No. 82374 is hereby denied.

IT IS FURTHER ORDERED that Decision No. 82374 is modified as follows:

1. The following two sentences on page 3 (mimeo) are deleted:

"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."

2. The following paragraph on page 5 (mimeo) is deleted:

"We do not, however, find any past experience that may be relied upon as a 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."

3. Finding No. 4 is amended to read as follows:

"4. The items shown on Table 2, below, shall have the costs shared as indicated:

TABLE 2

Western Pacific Railroad			
Location	PUC No.	Proposed Protection & Category	Share of Party
"L" Street	4-47.5	Gates	50% Railroad 50% City
Junction Avenue	4-48.8	Gates	50% Railroad 50% City
East First St.	4-48.2	Gates	See Note 1
Southern Pacific Transportation Company			
Location	PUC No.	Proposed Protection & Category	Share of Party
Murrieta Blvd.	D-46.00	Gates A	100% Project
"L" Street	D-46.92	Gates B	50% Railroad 50% City
Junction Avenue	D-47.36	Gates A	100% Project
East First St.	D-47.47	Gates A	See Note 1

Note 1: Crossing under State Highway jurisdiction; apportionment excluded from this Order.

"The elements of cost associated with the gates listed in the foregoing Table 2, with respect to Southern Pacific Transportation Company, shall be divided into two categories, as follows:

"Category A: Where existing automatic devices are shifted or replaced in kind, that is, No. 9 automatic gates in another location on the same railroad, or where a new grade crossing with respect to one railroad is to be created, the costs with respect to that railroad shall be a part of the basic project involving separation of grade and track relocation.

"Category B: Where existing grade crossings are already equipped with No. 8 flashing lights, and are to be replaced with No. 9 automatic gates on a revised location, the difference in costs between No. 8 and No. 9 warning devices shall be excluded from the cost of the basic underpass and track consolidation project."

4. Finding No. 5 is amended to read as follows:

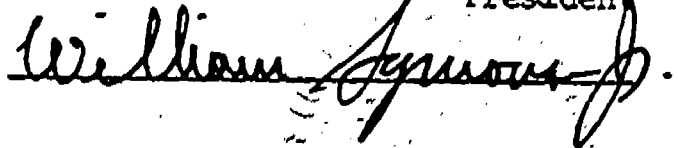
"The railroad contribution toward the two underpasses at North 'P' Street and North Livermore Avenue and for railroad relocation shall be divided as agreed between the parties."

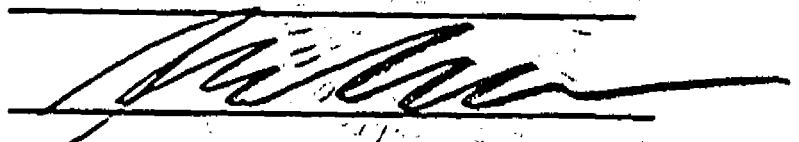
IT IS FURTHER ORDERED that the request of S.P., W.P., and Livermore that all pleadings on rehearing, other than the joint petition for modification, be withdrawn is hereby granted.


The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of MARCH, 1974.


President






Commissioners

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