

IS

ORIGINAL

Decision No. 83509

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety, )  
maintenance, operation, use and )  
protection or closing of the )  
publicly used crossing at grade )  
of Blanchard Road with the Coast ) Case No. 9286  
Route Main Line tracks of the )  
Southern Pacific Transportation )  
Company, approximately at milepost )  
63 in the City of San Jose, County )  
of Santa Clara. )

ORDER GRANTING LIMITED REHEARING  
AND MODIFYING DECISION NO. 82933

Petitions seeking rehearing of Decision No. 82933 have been filed by the State Department of Transportation (DOT), the County of Santa Clara (SC) and the Southern Pacific Transportation Company (SP). After having considered each and every allegation in said petitions, we are of the opinion that limited rehearing should be granted for the purposes hereinafter set forth. We are of the further opinion that in all other respects not specifically covered herein rehearing should be denied.

SP argues that Section 1202.3 of the Public Utilities Code was erroneously found unconstitutional. Upon further review we hereby reaffirm our prior holding. We do wish, however, to discuss briefly an additional reason for our prior determination that the last paragraph of Section 1202.3 is not severable from the rest of that section.

Looking at the whole of Section 1202.3, it is evident that an attempt was made by the Legislature to relieve cities and other political subdivisions from the expense of improving publicly-used crossings. The manner by which the Legislature chose to accomplish this end was to, in effect, mandate the elimination of all publicly-used crossings formally brought before the Commission.

Viewing Section 1202.3 in this light, it becomes obvious that the last paragraph has no practical meaning when it is considered in conjunction with the first two paragraphs. Thus, if publicly-used crossings must either be converted into public crossings (Section 1202.3, 1st para.), or closed (Section 1202.3, 2nd para.), there would be no instance when the Commission would have the opportunity to apportion costs for the improvement of publicly-used crossings. The factual situation needed to trigger the last paragraph of Section 1202.3 would, therefore, never arise.

Consequently, Section 1202.3 must be held to be invalid in its entirety. If the last paragraph has no substantive meaning when viewed with the entire section, it should not be given a new and independent life by allowing its existence to continue in the absence of the first two paragraphs. To do so would be contrary to the Legislature's intent in the enactment of Section 1202.3.

SP further claims that we erred in finding Blanchard Road crossing to be publicly used. While we reject SP's arguments concerning the legal issues involved, we do find that further discussion of "public use" is necessary.

In Decision No. 82933, at pages 11 and 12, we discussed the evidence tending to show the attitudes of various persons with respect to Blanchard Road. At page 8 of the subject decision we discussed the use of said road and the involved crossing. We believe that these facts, taken together, fully support our conclusion that the use of Blanchard Road is public in nature.

It is to be noted that we are not here concerned with a road serving one residence and situated on one piece of property. Rather, Blanchard Road provides access to and is located on the lands of thirteen property owners. Thus, we are faced with the factual situation whereby many persons must, and do, travel over portions of Blanchard Road that are not situated on the property of the user. In addition, and as established in the record, Blanchard Road is

used by other families during fruit-picking season and is further used for bringing in supplies and trucking out fruit. (See Decision No. 82933, Finding No. 2.)

Because of these facts and because of a total absence of evidence that cross-agreements exist between the involved property owners regarding the use of Blanchard Road, we are unable to reasonably conclude that the use of Blanchard Road is permissively based. To the contrary, the evidence in this record compels the conclusion that the use of Blanchard Road is made without regard to the "rights" of adjoining property owners. For the foregoing reasons SP's arguments regarding the use of Blanchard Road must be rejected.

DOT and SC object to their being characterized as "affected" public agencies with respect to the Blanchard Road crossing. Based on our decisions in Inv. City of Mendota (60 C.P.U.C. 353), Inv. County of Stanislaus (69 C.P.U.C. 595) and Inv. Taylor Road Crossing (Decision No. 80613 in Case No. 9329) we will grant rehearing to determine whether DOT has sufficient nexus to the crossing to be deemed "affected." Since Blanchard Road is, in part, within the boundaries of the county and not within the boundaries of any city, SC is an "affected" public agency.

DOT and SC further object to our orders which may require work to be done outside the railroad's right-of-way. We have in the past required road improvement on approaches to crossings (Inv. County Line Road, Decision No. 82500 in Case No. 9415; Application of Larkspur, 27 R.R.C. 801; and Application of Alhambra, 2 R.R.C. 361). Notwithstanding, because rehearing is to be granted for other reasons, we believe it reasonable to reevaluate this issue. In this regard we will desire evidence and/or argument on (1) the width of SP's right-of-way at the crossing of Blanchard Road and (2) the issue of whether improvement of the approach roadway, limited to SP's right-of-way is reasonable and proper.

Therefore, IT IS ORDERED that:

Rehearing of Decision No. 82933 is hereby granted for the following purposes:

a. To determine whether the State Department of Transportation is properly deemed "affected" with respect to the crossing at Blanchard Road;

b. To determine the width of Southern Pacific Transportation Company's right-of-way at the crossing of Blanchard Road; and

c. To determine whether improvement to the approach roadway to the Blanchard Road crossing can and should be reasonably and properly limited to improvement within Southern Pacific Transportation Company's right-of-way.

The limited rehearing granted herein shall be heard before such Commissioner or Examiner and at such time and place as may hereafter be designated.

In all other respects rehearing of Decision No. 82933 is hereby denied.

The Secretary is directed to cause appropriate notice of rehearing to be mailed at least ten (10) days before such rehearing.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 1st day of OCTOBER, 1974.

*Vernon L. Stenger*  
President

*William J. Lyons*

*[Signature]*

*[Signature]*  
Commissioners

*Lobstani*

*[Signature]*  
Commissioner  
4.