

Decision No. 84088

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION OF THE COUNTY OF LOS ANGELES
FOR THE CONSTRUCTION OF A GRADE SEPARATION
OF HACIENDA BOULEVARD UNDER THE SOUTHERN
PACIFIC TRANSPORTATION COMPANY TRACKS,
CROSSING NO. B-500.5 IN THE CITY OF
INDUSTRY, COUNTY OF LOS ANGELES.

Application No. 55223
(Filed October 1, 1974)

Ronald L. Schneider, Attorney at Law,
for County of Los Angeles, applicant.
William E. Still, Attorney at Law,
for Southern Pacific Transportation
Company, respondent.
O.J. Solander, Attorney at Law,
for State of California Department
of Transportation; Simmons, Ritchie
and Segal, by David Rottenberg,
Attorney at Law, for City of
Industry, interested parties.
Elinore C. Morgan, Attorney at Law,
for the Commission staff.

O P I N I O N

This application concerns the Hacienda Boulevard grade separation project which is listed as Project No. 6 on the 1974-75 grade separation priority list of the Public Utilities Commission (Commission). Upon completion of this project the existing grade crossing at the Southern Pacific Transportation Company's (SP) tracks will be eliminated. SP has one main line and one drill track at this location on a 100 foot right-of-way. The proposed separation will be created by an underpass raising the railroad's right-of-way approximately 11 feet over grade and depressing the roadway 11 feet below grade. The county of Los Angeles (County) in its

application represents that the proposed improvement is in accord with the planned development of the County Master Plan major highway which extends approximately 10 miles from the San Bernardino Freeway in West Covina to Whittier Boulevard in the city of LaHabra, Orange County. County also represents that the construction of the proposed grade separation will eliminate the traffic congestion and delay resulting from train movements, and will also eliminate traffic congestion on nearby Valley Boulevard. There is a lack of effective alternate traffic routes, particularly for emergency vehicles, thus also enhancing the urgency of the project. The County's position is that its replacement obligation is a two track structure for which it is willing to pay its proportionate share pursuant to the provisions of Section 1202.5 of the Public Utilities Code (Code). The SP's position is that a three track structure is required and that the County should be required to pay its proportionate share for the entire structure under the said section of the Code. The County has agreed to construct a three track structure at the SP's behest. The parties have agreed that the issue here is the apportionment of cost for the third track portion of the project. This matter was heard on December 2, 1974 before Examiner Phillip E. Blecher and was submitted on that date, subject to the filing of letter briefs.

The Evidence

There is no dispute about the evidence, which may be summarized as follows: The segment of Hacienda Boulevard involved is about four-tenths of a mile long in the city of Industry extending from approximately 600 feet north of Abbey Street to Valley Boulevard. The change in the existing track elevation will occur over a distance of about 1.15 miles. The new roadway will be about 92 feet wide between curbs with a clearance of 15 feet 6 inches and will contain six lanes with a curbed median, with eight feet wide

sidewalks on each side of the roadway. The abutment, piers, and retaining walls for the structure will be built on piles, and the approach fills will be built for three tracks and a service road, with the bridge structure wide enough for three tracks only. This structure will consist of a two span reinforced concrete bridge, concrete pavement, curb and gutters, new sidewalks, wheelchair ramps, and a pumping station to handle underpass drainage. A temporary track will be built south of the existing main tracks to detour railroad traffic during construction. The present vehicular traffic at this intersection is approximately 31,000 vehicles daily with a 1992 projected daily volume of 45,000 vehicles. The train movement at this crossing is about 30 to 35 freight and two passenger movements daily, which, if projected growth rates materialize, would be five to eight additional daily movements by 1980. The grade crossing now exists in a right-of-way 100 feet wide with access from all existing streets. There has been a 29 percent increase in tonnage in this area from 1968 to 1973, but there was no evidence adduced as to any increase in the volume of train movements. The cost of the three track structure and all necessary appurtenances is projected at \$1,140,000. The cost of a comparable two track structure is projected at \$905,000; therefore the difference in cost attributable to the additional track being built at the sole request of the railroad is \$235,000. The apportionment of that differential is the sole issue in this proceeding. The County's expert witness stated that it is the County's position that its only obligation is to replace that which the railroad presently has on the ground, though conceded that it would be appropriate to take care of the future needs of the railroad as well as of the vehicular traffic in a project of this magnitude. The purpose of this project is to eliminate the traffic delays and train-vehicle conflicts and to safely and conveniently handle the existing and future traffic

volumes of this important Master Plan major highway. Additional benefits will be the correction of structural and drainage deficiencies of the existing roadway, increasing the four lane divided highway to six lanes, correcting the existing curbed horizontal alignment of this segment of Hacienda Boulevard (which is not up to modern highway standards), and lessening of the concentration of emissions in the immediate area because of the elimination of the interruption in traffic flow. SP stated that its projections indicated a compounded annual growth rate of three percent in rail ton-miles during the decade 1970 to 1980. Its witnesses also testified to the need for a third track, which was projected for construction within the next five to ten years, because of the growth of its traffic volume, the growth of industry in the service area, and the present and projected congestion of trackage in the subject area. The SP is also able to utilize CTC (Centralized Traffic Control) track to move trains expeditiously and make one track frequently do the work of more than one track. Part of the track ending just east of the crossing in question is CTC track. It is the railroad's intention to increase that type of trackage when funds are available as it is extremely useful and practical though very expensive.

The staff did not present any testimony or exhibits. On November 26, 1974 the Board of Supervisors of the County approved its Exemption Declaration, (which is equivalent to a Negative Declaration under the provisions of CEQA), which concluded that the project as proposed would not have a significant effect on the environment. This Negative Declaration was filed on December 2, 1974 with the Commission. The contentions of the parties may be summarized as follows: The County contends that it is the initiator of a two track structure and should pay the statutory portion of the

cost for two tracks only, and was acting as agent of the railroad in initiating the third track and the SP should pay the statutory portion, or 90 percent, of the cost of the third track. The State Department of Transportation takes the position that Section 1202.5(a) is applicable to the third track and thus the railroad should pay the entire cost of the third track, since the SP is in fact the third track applicant and the third track is a separate project in which no grade crossing will be eliminated because the grade crossing will be eliminated in the original project proposed by the County. The staff position is that only two tracks need be constructed and the cost thereof be apportioned pursuant to Section 1202.5(b) as the two track structure clearly was initiated by the County. It is the railroad's contention that the whole project was initiated by the County and that since the third track provides for future use of the railroad which, to be fair, should be considered in the same light as the future traffic needs of the County in determining the type of structure and the apportionment of costs to be made, Section 1202.5(b) would apply, requiring an apportionment of 10 percent to the railroad and 90 percent to the County of the entire cost of the three track structure.

Discussion

Grade separation projects are not defined in the Code but are defined in Section 2400(a) and (b) of the Streets and Highways Code as follows:

- "a. 'Grade separation' means the structure which actually separates the vehicular roadway from the railroad tracks.
- "b. 'Project' means the grade separation and all approaches, ramps, connections, drainage, and other construction required to make the grade separation operable and to effect the separation of grades..."

These definitions shall be applied in the determination of the issue in this case. Section 1202 of the Code gives the Commission the exclusive power to determine and prescribe the manner of establishing grade separations. The standards to be applied in determining the proportions in which the expense of the construction of the grade separation shall be divided between the railroad and the public agency as required by Section 1202(c) are set forth in Section 1202.5 of the Code. The only pertinent provisions of Section 1202.5 are subparagraphs a, b, c, and e set forth, in part, as follows:

- "(e) Where a grade separation project, whether initiated by a public agency or a railroad, will not result in the elimination of an existing grade crossing,...the commission shall require the public agency or railroad applying for authorization to construct such grade separation to pay the entire cost.
- "(b) Where a grade separation project initiated by a public agency will directly result in the elimination of one or more existing grade crossings,...the commission shall apportion against the railroad 10 percent of the cost of the project. The remainder of such costs shall be apportioned against the public agency or agencies affected by such grade separation.
- "(c) Where a grade separation project initiated by a railroad will directly result in the elimination of an existing grade crossing,...the commission shall apportion 10 percent of the cost, attributable to the presence of the highway facilities, against the public agency or agencies affected by the project, and the remainder thereof to the railroad or railroads applying for authorization to construct such grade separation.

* * *

"(e) In the event the commission finds that a particular project does not clearly fall within the provisions of any one of the above categories, the commission shall make a specific finding of fact on the relation of the project to each of the categories, and in apportioning the cost, it shall assess against the railroad a reasonable percentage, if any, of the cost not exceeding the percentage specified in subsection(b), dependent on the findings of the commission with respect to the relation of the project to each category. The remainder of such cost shall be apportioned against the public agency or agencies affected by the project."

The parties have taken somewhat inconsistent positions in regard to the categorization of the project involved. The County's application states that it is for two tracks, but Exhibit B attached to its application (part of which was introduced as Exhibit 3 at the hearing) clearly indicates that it is providing a three track structure, the third track being included at the insistence of the railroad and which would not have been included otherwise. The parties agreed that the structure to be built would provide for three tracks and that the Commission is being called upon only to decide who will pay what for the cost of the structure attributable to the third track. Since a "project" is defined in Section 2400(b), supra, as the grade separation and the approaches, ramps, etc., and since the grade separation is defined as the actual structure which separates the roadway from the railroad tracks, it is not reasonable to take the position that the third track portion of the structure is a separate project. The third track does not actually separate the roadway from the railroad tracks and is not therefore a grade separation; if it is not a grade separation it obviously can not be a grade separation project. If it is not a grade separation project then it cannot be considered for separate treatment under Section 1202.5 since the structure itself would be built regardless

of the provision for the number of tracks. It is the structure and not its width or number of tracks which is the grade separation and which is the basis for the project and thus, the basis for the apportionment of cost under Section 1202.5. Therefore, this entire structure must be considered as one project. This project is clearly in the public interest and necessity, particularly in view of the Legislature's statement of policy contained in Senate Bill 456, which amended, inter alia, Section 1202.5 of the Code effective July 1, 1974, and which states, in part:

"The Legislature hereby finds and declares that:
(a) Concern for public safety and convenience makes it desirable that an expanded program be undertaken that places the highest priority on eliminating the most hazardous railroad-highway grade crossings that continue to take the lives of people of this state...."

Since the grade separation project will result in the elimination of an existing grade crossing there is no question that Section 1202.5(a) is clearly inapposite. Since the County clearly initiated the grade separation project (whether for two or three tracks), and since we have already determined that there is only one project involved here, the project must have been initiated by the County and therefore Section 1202.5(c) is not applicable. That leaves us with the determination of whether subsection (b) or (e) is applicable to the instant proceedings. Since the railroad will benefit by the construction of the grade separation project (the elimination of the cost of maintenance of the existing grade crossing protective devices; better traffic flow) we would not deem it fair or reasonable to assess less than 10 percent of the cost of the entire project to the railroad. It is not, therefore, of any significance which of the two subsections are applied. Under 1202.5(b) the commission shall apportion against the railroad 10 percent of the cost of the project and under 1202.5(e) the commission shall apportion a cost not exceeding 10 percent of the

cost of the project against the railroad. In either event we believe that the railroad should bear 10 percent of the cost of the entire project. Whether the third track is needed is not a question that should detain us as the size of the structure to be erected was stipulated to by the County and SP at the outset of the hearing, and the only issue submitted was the apportionment of cost for that portion of the structure upon which the parties were unable to agree. Our review of the record leads us to conclude that a three-track structure is needed at this grade separation. The benefit and betterment theory, i.e., that since the railroad is being benefited and will have one more track than it presently has, it shall bear the costs of the betterment, is not applicable. There is no such standard in the language of Section 1202.5.

Findings

1. Public interest and necessity require a grade separation project at Hacienda Boulevard under the Southern Pacific Transportation Company's tracks, Crossing No. B-500.5 in the city of Industry, county of Los Angeles, as heretofore proposed in the application filed by the county of Los Angeles.

2. The grade separation project proposed by the county of Los Angeles in its plans, attached to its application as Exhibit C, calls for a structure sufficient to accommodate three sets of railroad tracks. A three-track structure is needed. ✓

3. Upon completion of the grade separation project, as proposed, the existing grade crossing will be physically eliminated.

4. The County initiated the instant grade separation project.

5. The cost for the project should be apportioned as follows: 90 percent of the cost of the project borne by the county of Los Angeles and 10 percent of the cost of the project borne by the Southern Pacific Transportation Company.

6. The apportionment of costs set forth above is just and reasonable.

7. The apportionment of costs under Section 1202.5 is the sole issue submitted.

8. The railroad will benefit from the construction of this grade separation project and should be responsible for full maintenance of the structure above the bridge seats, including all maintenance work on the approach fills, the embankments, the new road bed, and any concomitant slides, settlement, and erosion that result therefrom.

9. County is the lead agency for this project pursuant to the California Environmental Quality Act of 1970, as amended, and on November 26, 1974 approved its Negative Declaration which has been filed with the Commission. The Commission has considered the Negative Declaration in rendering its decision on this project and finds that:

- a. The environmental impact of the proposed action is insignificant.
- b. The planned construction is the most feasible that will avoid any possible environmental impact.

Conclusion

The application should be granted in accordance with the ensuing order and the terms and conditions thereof.

O R D E R

IT IS ORDERED that:

1. The county of Los Angeles is authorized to construct a grade separation project at the intersection of Hacienda Boulevard and the Southern Pacific Transportation Company railroad tracks to be identified as Crossing No. B-500.5-B, in the city of Industry, county of Los Angeles, substantially in accord with the plans attached to the application as Exhibit C.
2. The cost of the authorized structure shall be apportioned as follows: 90 percent of the cost to be borne by the county of Los Angeles and 10 percent of the cost to be borne by the Southern Pacific Transportation Company.
3. The completed structure shall meet the minimum clearances as provided for in General Order No. 26-D. Walkways shall conform to General Order No. 118.
4. Within thirty days after completion of the project the applicant shall notify this Commission in writing of that fact and of compliance with the conditions herein.
5. The cost of all maintenance and operation of the grade separation structure above the bridge seats and including the embankment, approach fills, road bed, and any concomitant erosion, settlement, or slides thereof shall be borne by the Southern Pacific Transportation Company.
6. Upon completion of the project, the existing at grade crossing (No. B-500.5) and any temporary detour crossings shall be effectively closed.

7. The authorization herein granted shall expire within three years after the date hereof if not exercised within that time unless this Commission alters, modifies, or extends the time for exercise of this authorization.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 11th
day of FEBRUARY, 1975.

Verano L. Stevenson
President
William Sproule
Donald Rose
Commissioners