

Decision No. 84414

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 HOLLYWOOD WAY
UNDER THE SOUTHERN PACIFIC TRANS-
PORTATION COMPANY TRACK, CROSSING
NO. B-469.4, IN THE CITY OF BURBANK.

Application No. 54341
(Filed September 19, 1973)

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; Leslie
E. Corkill, for the City of Los Angeles Department
of Public Utilities and Transportation; Burt Pines,
City Attorney, by Leonard Snaider, Deputy City
Attorney, for the City of Los Angeles; interested
parties.
Elinore C. Morgan, Attorney at Law, for the
Commission staff.

O P I N I O N

The county of Los Angeles (LA) is applying for a grade separation of Hollywood Way under the Southern Pacific Transportation Company (SP) track at crossing No. B-469.4 in the city of Burbank, county of Los Angeles. This project is No. 21 on the 1974-75 Grade Separation Priority List of the Public Utilities Commission.

This intersection is unusual in that the SP mainline track lies between a double roadway of San Fernando Boulevard, each roadway carrying two-way traffic. Hollywood Way is a major highway on the County Master Plan and is on the Select Systems of the cities of Burbank and Los Angeles. It provides access to the Golden State

and Ventura Freeways, and to the Hollywood Freeway through its connection with Olive Street. It provides access to the Hollywood-Burbank Airport and the Lockheed and other important industrial and commercial locations, which generate a high traffic volume. San Fernando Boulevard is also a County Master Plan highway. When train crossings occur during peak traffic periods there is an excessive amount of congestion and delay, with a long backup of traffic in all directions. The purpose of the separation is to eliminate the existing hazards at this crossing, (which are expected to worsen in the future), reduce delay and congestion, and reduce the accident rate at the intersection of the two roadways. When the grade separation is opened, the grade crossing will be physically eliminated.

The evidence shows that there are about 7,000^{1/} daily vehicular movements on Hollywood Way. There are about 12 daily freight train movements at this crossing, but there is no rail passenger traffic. The project to be built will undercross SP's right-of-way, which will remain at grade. All roadways involved will be widened and reconstructed with new curb, gutter, pavement, sidewalks, traffic controls, drainage facilities, and raised medians. Construction is expected to take 18 months.

SP has a 100 foot right-of-way with only one track at this crossing. LA and SP jointly propose a two-track structure, though only at the insistence of SP, and LA considers the second track a betterment to the railroad, with obvious economic benefits to it. SP essentially concurs, but also argues that future necessity requires the additional track, though its testimony indicated there

^{1/} The figure of 7,000 quoted by John McBride (Transcript page 13) appears to be in error. The nomination of this project for the 1974-75 Grade Separation Priority List stated a figure of 16,744 vehicular movements on January 19, 1970, with projections of increased future traffic.

is unused capacity of about 20 percent on the existing track. The gist of SP's testimony was that the long siding that could be created with the extra track at this crossing was dependent upon the construction of a separation at the Buena Vista Street crossing, about one mile south of the instant crossing. Without the Buena Vista separation, no siding would be built at Hollywood Way.

LA and SP have agreed that the separation is necessary, and propose that a two-track structure should be erected. Thus the only issue submitted by the parties for determination is the apportionment of costs for that portion of the project relating to the second track. (The parties have agreed that this additional cost is \$150,000.) LA also takes the position that even though the necessity for the second track is established, it only has the duty to replace that which exists, ie., one track with one track, etc., thus severing the concept of necessity. Is it the applicant's (public) necessity, or the railroad's necessity that controls? If the latter, LA believes the railroad should be assessed the major portion of the cost under Section 1202.5(c)^{2/} of the Public Utilities Code (Code), as the second track is a separate project, even though LA prepared the plans for a two-track structure, and has applied here for a two-track structure.

On September 4, 1974 the Director of Transportation of the State of California advised applicant by letter^{3/} that the proposed project is not now located on an existing major railroad passenger corridor; that it would be appropriate to provide for a single track facility; that studies were being initiated to determine existing and potential major railroad passenger corridors; and that the study recommendations will be included in the California Transportation Plan, scheduled for completion by January, 1976.

^{2/} The pertinent portions of the Code are set out later in the opinion.

^{3/} Exhibit No. 3.

At the hearing the staff supported the two-track structure agreed upon by the parties. After hearing, the staff indicated its support for a single track structure, while agreeing with the statement of the issue submitted as being the apportionment of costs for the second track. The Department of Transportation's position is that the railroad is liable for all the costs of the second track and because there has been no final determination under Section 2400(b) of the Streets and Highways Code,^{4/} grade separation funds shall not be allocated for the second track. SP takes the position that LA is proposing the entire project; that SP has established the necessity for the second track; that the only issue is as stated earlier; and that it is only responsible for 10 percent of the cost of the project under Section 1202.5(b).

This matter was heard before Examiner Phillip E. Blecher on November 25 and 26, 1974 and was submitted on the latter date, subject to the filing of letter briefs.

Pursuant to the requisite provisions, an approved final Environmental Impact Report^{5/} was filed by LA with the Commission on July 15, 1974. This report indicates that the project may have a significant effect on the environment, primarily temporary in nature (during the construction period). There will be some displacement of occupants of commercial buildings to be razed; an increase in noise level in those structures adjacent to widened traffic lanes, and the loss of the low traffic volume on Avon and Cohasset Streets which will become connector roads between Hollywood Way and the north roadway of San Fernando Boulevard. The report concludes that the need for the project to alleviate existing and projected traffic hazards surpasses any possible adverse effects, and the separation should, therefore, be constructed.

4/ This section is quoted later in the decision.

5/ Exhibit No. 5.

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. Such grade separation project may include provision for separation of non-motorized traffic from the vehicular roadway and the railroad tracks. On any project where there is only one set of railroad tracks in existence, the project shall be built so as to provide for expansion to two sets of tracks when the Director of Transportation determines that the project is on an existing or potential major railroad passenger corridor. Such project may consist of:
 - (1) The alteration or reconstruction of existing grade separations.
 - (2) The construction of new grade separations to eliminate existing or proposed grade crossings.
 - (3) The removal or relocation of highways or railroad tracks to eliminate existing grade crossings."

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:

- "a. 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."

LA's application indicates that one track is being applied for, but Exhibit A attached to its application (part of which was introduced as Exhibit 2) clearly provides for a two-track structure, though the second track provision would not have been included without the railroad's insistence.

The parties agreed that the structure to be built would provide for two tracks and that the Commission is being called upon only to decide the portion each will pay for the cost of the structure attributable to the second 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 second track portion of the structure is a separate project. The second 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 cannot 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 of 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 LA clearly initiated the grade separation project (whether for one or two tracks), and since we have already determined that there is only one project involved here, the project must have been initiated by LA 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. We are not determining the question of whether the second track is necessary or not because necessity is not contained in Section 1202.5 as a standard to be followed in the apportionment of costs. The size of the structure to be erected was stipulated by LA 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 LA and SP were unable to agree. The same reasoning applies to 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. There is no such standard in the language of Section 1202.5, and we are not determining this matter here, since it is not material to the sole issue being decided. One other matter must be considered here. Exhibit 3, the letter of the Director of Transportation, makes a partial determination of those matters referred to in Section 2400(b), supra. Since there has not been a determination of whether the project is on a potential major railroad passenger corridor, and since Exhibit 3 implies that the determination contained therein may be altered upon completion of the Department's master plan, the recommendation contained therein is neither conclusive nor determinative of the sole issue submitted herein, the exclusive determination of which is provided for in Section 1202, et al. We are not determining the conclusiveness of the final determination of the Director of Transportation, which is expected at some future date.

Findings

1. Public interest and necessity require a grade separation project at crossing No. B-469.4 in the city of Burbank, as proposed in the instant application of LA.
2. The grade separation project proposed by LA, attached to its application as Exhibit A, calls for a structure sufficient to accommodate two sets of tracks.

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

4. LA has maintained throughout these proceedings that it should be viewed as the initiator of a single track project with costs apportioned in accordance with Section 1202.5(b) of the Public Utilities Code, but that the railroad should be viewed as the initiator and bear the cost of the second track portion of the project. Under the definition contained in Section 2400 of the Streets and Highways Code the entire two track structure proposed, must, however, be viewed as one project. In view of the substantial disagreement between the parties herein as to the extent of the project proposed by LA, it is not clear that the entire project can properly be viewed as having been initiated by LA. Inasmuch as the elimination of an existing grade crossing is involved, and it is clear that the railroad cannot properly be viewed as initiator of the project with respect to the initial track, this project does not clearly fall within any of the categories set forth in Sections 1202.5(a) through (d) of the Public Utilities Code. Apportionment of costs should therefore be made in accordance with Section 1202.5(e). ✓

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. This apportionment of costs is in accordance with the provisions of Section 1202.5(e). ✓

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

7. 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. ✓

8. LA is the lead agency for this project pursuant to the California Environmental Quality Act of 1970, as amended, and on June 18, 1974 approved its final Environmental Impact Report (EIR) which has been filed with the Commission. The Commission has considered the final EIR in rendering its decision on this project and finds that: ✓

- a. The environmental impact of the proposed project may be significant.
- b. The possible environmental effect of the project is primarily temporary in nature.
- c. The continuing need for the project in the interests of public safety and convenience to alleviate existing and potential traffic problems surpasses any possible environmental effects of the project.
- d. The planned construction is the most feasible that will minimize or avoid any possible significant environmental impact.

Conclusions

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 Hollywood Way and the Southern Pacific Transportation Company railroad crossing No. B-469.4 in the city of Burbank, county of Los Angeles, substantially as proposed in Exhibit A of the application herein.

2. The cost of the authorized project 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. During the period of construction, the existing at grade crossing, and any temporary detour crossings, shall continue to be provided with automatic gate crossing protection coordinated with adjacent vehicular traffic signals.

4. The completed project shall meet the minimum clearances as provided for in General Order No. 26-D. Walkways shall conform to General Order No. 118.

5. The cost of all maintenance and operation of the grade separation structure above the bridge seats shall be borne by the Southern Pacific Transportation Company.

6. Upon completion of the project, the existing at grade crossing (No. B-469.4) and any temporary detour crossings shall be effectively closed.

7. 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.

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8. 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 shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th
day of MAY, 1975.

Vernon L. Stinson
President
William J. Brown
John J. Brown
John J. Brown
Commissioners