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Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the safety,
maintenance, operation, use and
protection or closing of the
crossings at grade of Railroad
Avenue with tracks of Southern
Pacific Transportation Company,
Crossing No. B-48.9, and The
Atchison, Topeka and Santa Fe
Railway Company, Crossing
No. 2-1155.7, in the city of
Pittsburg.

Case No. 9199
(Filed March 9, 1971)

(Appearances are listed in Examiner's Proposed Report.)

INTERIM OPINION

This proceeding was originally instituted for the principal purpose of determining the need for, and the kind of, protection to be installed at the crossings in question and to allocate the costs between Pittsburg (City) and the railroads.

Decision No. 78877 ruled on a Southern Pacific motion to determine the respective jurisdiction of the Commission and the City to regulate train speed and crossing blocking times. The Commission held that such matters should be tried in the courts.

Decision No. 79857 ordered that automatic gates and flashing lights be installed. The new signals were to be controlled by devices to minimize signal overactivation in the face of slow trains. The required characteristics of the signal controls were modified in Decision No. 80018.

In Decision No. 82935 the Commission decided that the question of whether the Commission has exclusive jurisdiction to regulate train speed and crossing blocking should be settled by a Commission decision. We determined that the City has no jurisdiction to regulate either subject.

The remaining issues are: whether the railroads should be limited to five-minute crossing blocking time or whether the provisions of General Order No. 135 should be applied; whether train speed in Pittsburg should be limited to 25 mph; how the cost of the protection should be divided; and whether pedestrian warnings should be supplied at the crossings. General Order No. 135 became effective November 1, 1974. An Examiner's Proposed Report was issued dated May 19, 1975.

The City excepted to the proposed report as follows:

1. It proposed that proposed Finding 1 be modified to indicate that "...any blockage for more than five minutes substantially affects the health, welfare, and safety of Pittsburg's citizens." (Emphasis added.)
2. It claimed that proposed Finding 4 was not supported by adequate evidence and that the matter should be reopened to determine how many blockages occur and for how long. It requested an independent study of the matter.
3. It claimed that proposed Finding 5 should specify that Southern Pacific's yard facilities generate most of the blockages.
4. It asserted that Southern Pacific has alternatives to comply with a five-minute limit on blockages, such as:
 - a. Moving the siding.
 - b. Operating more frequent, shorter trains.
 - c. Arranging meets at Tracy or Martinez.
 - d. Instituting scheduling for through trains.

5. It argued that Southern Pacific can, either with or without using alternatives, keep all blockings within the five-minute rule.

6. It claimed that the benefits of crossing protection can be stated in dollars and cents and that all costs of crossing protection can be attributed solely to the railroads.

7. It claimed that, even with automatic protection installed, there will be adequate pedestrian protection at Railroad Avenue only if a 25-mph speed is retained.

It seeks permanent retention of the 25-mph speed limit, allocation of all costs of crossing protection to the railroads, and adoption of a variance from General Order No. 135 limiting the railroads to blocking Railroad Avenue for no more than five minutes.

Discussion - The City's Exceptions

On the question of blocking rules, the City has not come to grips with the basic problem. In order to justify a deviation from the general blocking rule, there must be a showing of a need for freer highway traffic flow. Unless it is also shown that the type of deviation sought is appropriate to the interests of both highway and rail users, it will not be adopted. As this record shows, it is very difficult to make such a showing where a simple reduction in blocking time is the type of deviation sought.

The City has not supported its claim that the Commission should allocate more than half the cost of crossing protection to the railroads. While apparently conceding that such an order would require special findings under the Richmond Belt rule ((1964) 63 CPUC 179), it has failed to demonstrate that there is record support for such findings.

Nor does the evidence support the City's contentions that the 25-mph speed limit should be retained for the protection of vehicles and pedestrians using Railroad Avenue. The automatic protection now does that. If there is any validity to the speed limit, it will be in the benefit to those pedestrians who are willing to take the risks of crossing at unprotected areas rather than detouring to a protected crossing.

The City's exceptions are rejected.

Staff's Exceptions

The staff takes exception to the finding and conclusion on the safety of trespassing pedestrians. We are concerned that there has been insufficient consideration of this problem area, and, as discussed below, have taken steps to provide for further consideration.

Southern Pacific's Exceptions

Southern Pacific excepts to the proposed report on the following grounds:

1. That Section 1202.2 of the Public Utilities Code is not self-executing but requires a positive order allocating maintenance costs of crossing protection.
2. That the retention of a 25-mph speed limit is unreasonable, unlawful, will establish an undesirable precedent, and wastes fuel.
3. That the examiner failed to balance the increased hazard of derailment caused by speed changes against pedestrian safety.
4. That the existing crossings provide a safe, convenient means for all pedestrians to cross the tracks.
5. That the discussion on moving train jurisdiction is not necessary since General Order No. 135 exempts only some moving trains.
6. That the examiner should have expressly set forth the Commission's policy on allocation of crossing costs.

In its reply to the staff's exception, Southern Pacific claims that the distinction between a 25-mph speed limit at one point and a 25-mph speed limit throughout the city limits is a significant one.

Southern Pacific also replied to the City's exceptions. It reiterated its contention that the Pittsburg situation is not dissimilar to virtually every urban crossing in the state insofar as blocking is concerned. It claimed that there is adequate evidence on the amount and length of blockages and that the City had ample opportunity to make its own studies. It claimed that the City's arguments on the blocking issue are based on a lack of understanding of the record concerning rail operations. It asserted that the asserted alternatives are not practical or capable of producing compliance with a five-minute blocking rule. It argued that the alternatives were proposed without concern for feasibility, practicability, or the public's need for efficient, inexpensive rail transportation. It claimed that the City miscited and misapplied the precedents concerning the allocation of costs of automatic protection. It criticized the City for failing to recognize that the examiner's proposal is intended to protect pedestrians crossing at areas remote from the protected crossing and not pedestrians using Railroad Avenue to cross the tracks, who are protected by the warning aspect of the devices installed.

Discussion - Southern Pacific's Exceptions

Southern Pacific's Exception 1 is directed at a typographical error in the ordering paragraphs of the examiner's report and will be accepted.

It appears that the examiner's discussion concerning moving train jurisdiction, to which Southern Pacific excepted, is no longer necessary to the resolution of this proceeding; the examiner's recommended Conclusion 1 is rejected.

The exception numbered 5 above actually conforms to the proposed report and will be adopted, except insofar as it argues that Richmond Belt, supra, has been overruled.

The report's solution to the speed-limit/trespassing-pedestrian problem is flawed. The record supports a finding that speed limits will increase the probability of a derailment as it is the change in speed, not merely high speed, which is a prime cause of derailment; it does not support a finding that speed limits would produce added safety for trespassing pedestrians. This deficiency alone renders the proposal to retain the 25-mph speed limit untenable.

Assuming that these pedestrians need special consideration, it is not at all clear that speed control is the appropriate mode of protection. The Commission has in the past uniformly rejected speed control as a method of protecting cross traffic and has instead selected alternative means of accomplishing the same end. The failure to consider alternative courses of action is a further material defect.

The record, on the other hand, will not satisfactorily support adoption of Southern Pacific's solution, which is essentially to increase speed without any form of safety measure for trespassing pedestrians. It would seem almost incontrovertible that an increase in speed would produce some measurable increase in hazard to trespassing pedestrians.^{1/} While there are other areas in this State where pedestrians encounter high speed trains, that fact alone cannot create a presumption that all such situations are not unduly hazardous.

^{1/} There is an obvious distinction between trespassing pedestrians and those who use the Railroad Avenue crossings. The latter can rely on audible and visible warnings controlled by a device which calculates appropriate lead time based on the speed of an oncoming train.

We have therefore decided to temporarily retain the 25-mph speed limit, which was observed prior to this proceeding, for one year. During that time our staff will be expected to cooperate fully with the City to furnish whatever nonconfidential material and expertise it has on the subject of pedestrian safety and on the countervailing considerations. The object of this cooperation is to evaluate various alternative courses of action by this Commission.^{2/}

The obvious alternatives are:

1. A speed limit precisely designed to protect trespassers (rather than Railroad Avenue traffic), or
2. An increase in speed:
 - (a) Without any form of protection, or
 - (b) With "closure" of the de facto crossings,^{3/} or
 - (c) With some form of automatic protection, or
 - (d) With a grade separation.

The City will be expected to provide the manpower to make on-site observations. The evidence we now have must be supplemented by traffic counts, involving both total numbers and a breakdown by location. Southern Pacific will be expected to provide additional information on fuel economy and costs.

The staff will be expected, in addition to its other functions, to determine whether there is a significant body of expert opinion which would dissent from the view that changes in train speed are a primary cause of derailments and that higher speeds do not produce more, or more severe derailments. It is contemplated that the

^{2/} We do not mean to suggest that the staff will prepare evidence for the City or become witnesses for the City. Staff is an independent participant in this proceeding and must remain free to take any position which it feels best represents the total public interest.

^{3/} True closure may be infeasible; this alternative will probably involve various means of deterring trespassing and encouraging use of the protected or the separated crossing.

study will indicate a clear preference for one of the options and that it would be possible to adopt this without further hearing. If there are disputes, however, any party may move to reopen for the taking of further evidence. We anticipate that the procedure adopted will permit us to develop solutions applicable to both Santa Fe and Southern Pacific.

Findings

Proposed Finding 11 is rejected. Proposed Finding 12 is rejected and the following is adopted in its stead:

12. The evidence thus far indicates that:

- (a) Requiring trains entering Pittsburg to decelerate and, leaving, to accelerate will cause a significant increase in the potentiality of a derailment.
- (b) A train moving at 25 mph is no less likely to experience a derailment than one moving at higher speeds.
- (c) The severity of derailment injury to persons or property outside of the railroad right-of-way is not materially affected by train speed.
- (d) Derailments are hazardous to railroad employees; we cannot find on this record that a derailment in or near Pittsburg will not be significantly hazardous to bystanders.
- (e) Derailments cause damage to property belonging to the shipping public and property dedicated to a public use. We cannot find that a derailment in Pittsburg is not hazardous to nearby private property.
- (f) Slowing railroad movements in Pittsburg will significantly increase the cost and decrease the usefulness of rail carriage for the public.
- (g) It has not been shown that increasing train speed will significantly increase the hazard to pedestrians who cross at other than established public crossings in Pittsburg.

- (h) The city of Pittsburg does not have the resources or expertise to demonstrate whether there will be a significant increase in hazard to trespassing pedestrians, or to select and support any appropriate means to protect them.

The following additional findings are adopted:

16. There is no showing of the cost of relocating the siding used for train passing.

17. There is insufficient evidence to determine how frequently trains meet at Pittsburg, or the amount of blocking occasioned thereby.

Conclusions

The examiner's proposed Conclusions 2 through 5 are adopted. Substitute Conclusions 1 and 6 are adopted:

1. It is not necessary to determine the scope of this Commission's jurisdiction over the operations of moving trains.

6. The Commission allocates crossing costs equally between public agency and railroads unless the conditions set forth in Richmond Belt, supra, are found to exist.

Additional Conclusions 7 and 8 are adopted:

7. The Commission should not permit train speeds to be increased without giving further opportunity for the consideration of whether the increase in train speeds will produce a significant added hazard to trespassing pedestrians and whether there are alternative means to deal with any increased hazard.

8. Southern Pacific should not be assigned the burden of proving whether an increase in train speeds in an urban area will pose a significant additional hazard to trespassing pedestrians.

INTERIM ORDER

IT IS ORDERED that:

1. The costs of installation and maintenance of crossing protection at Crossing No. B-48.9 are allocated equally between the Southern Pacific Transportation Company (Southern Pacific) and the city of Pittsburg.


2. The costs of installation and maintenance of crossing protection at Crossing No. 2-1155.7 are allocated equally between The Atchison, Topeka and Santa Fe Railway Company and the city of Pittsburg.

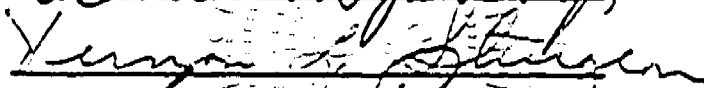
3. Until one year from the effective date of this order Southern Pacific shall not operate any railroad equipment through Crossing No. B-48.9 at any speed greater than 25 mph. On or after that date Southern Pacific may increase train speed for all points within the city of Pittsburg to the highest speed prevailing at any other point on its main line in its Western Division.


4. This proceeding shall remain open until further Commission order disposing of speed limit problems after receipt of studies. In all other respects this order shall be final.


The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 27th day of APRIL, 1976.



President






Commissioners