RE/VG *

Decision No. 85812

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Norwalk for Authority to Construct a Highway Underpass at the Crossing of the Southern Pacific Transportation Company Tracks at Imperial Highway in the City of Norwalk, California.	Application No. 54383 (Filed October 11, 1973)

Frederick A. Roos and Gary P. Dysart, for City of Norwalk, applicant.
William E. Still, Attorney at Law, for Southern Pacific Transportation Company, respondent.
O. J. Solander, Attorney at Law, for California Department of Transportation, interested party.
Albert A. Arellano, Jr., for the Commission staff.

O P I N I O N

This is an application by the city of Norwalk (City) for a grade separation of Imperial Highway under the Southern Pacific Transportation Company (SP) tracks at grade crossing No. BK-498.0 in the city of Norwalk. The existing grade crossing and flashing light signal will be eliminated upon completion of the underpass project. Imperial Highway is on the County Master Plan of major highways. A temporary shoo-fly track and detour road must be constructed during the building of the grade separation. It will be protected by flashing light signals during the estimated period of construction of one year. The project will comply with all Public Utilities Commission (PUC) requirements.

The purpose of the grade separation is to remove the existing safety hazard and alleviate vehicular delay. The tracks will be raised three feet over present grade and the roadway will be depressed 22 feet under grade. SP now has a 100-foot wide right-of-way. The proposed bridge is approximately 160 feet long and 28 feet wide. This includes a maintenance roadway width of about ten feet which was included at the request of SP, and which would not otherwise have been included. The City estimates the total project cost at about $2,200,000 of which $150,000 to $200,000 is to provide for the extra width for railroad maintenance purposes. (The witness for the California Department of Transportation (DOT) estimated the additional cost of the extra width at $230,000.) If the additional width for the maintenance roadway is not provided on the bridge, the City would be required to expend an undetermined sum for a permanent easement for a portion of an alternate maintenance access route for the railroad. The City cannot alone afford the entire cost of this additional width and agrees with DOT that this maintenance roadway is unnecessary to make the grade separation operable. Both DOT and City have suggested circuitous alternate access routes using city streets, including an unguarded crossing at heavily travelled Imperial Highway, for the SP's maintenance equipment. Presently this equipment need not traverse city streets, but if it were required to the railroad asserts it would create delay and safety hazards for its crews and possibly its trains, as well as additional expense. The City states that its project design is intended to take care of its future vehicular traffic needs and the future traffic and maintenance needs of SP.

DOT contends, and SP admits, that planking could be placed on tracks to allow off-track maintenance vehicles, as well as trains, to use the bridge without a maintenance roadway. DOT pulled a cost figure "out of the air" for this planking at $20,000 to $30,000. SP says this still requires use of city streets for access as well as mandated flagging procedures for its trains whenever the track would be obstructed by maintenance equipment. These procedures and their concomitant expenses could be avoided with the additional maintenance width.

DOT presented as a witness its Mr. Hiyama, bridge agreements engineer, who reviews the allocations of the state's grade separation fund. His testimony was singular and may be summarized as follows:

DOT has no written standards of its own for determining what is eligible for grade separation funds. Its criteria are that set forth in Section 2450[1/] of the Streets and Highways Code (S&H Code) of California. Although this statute does not distinguish between overpasses and underpasses, DOT does and clearly favors overpasses. The witness did not know why except that it had been policy for many years. Where overpasses are built, DOT policy is to provide for full

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1/ Section 2450, where pertinent, reads as follows: "For purposes of this chapter: (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....On any project where there is only one railroad track in existence, the project shall be built so as to provide for expansion to two 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: ...(2) The construction of new grade separations to eliminate existing or proposed grade crossings...."

use of the railroad's property including maintenance roadways. For underpasses, alternate access means must be considered. The practical effect of this distinction is that maintenance roadways are always provided in overpasses[2/] but rarely, if ever, in underpasses. This witness admitted that the same access problems exist for both over- and underpasses; that the right-of-way conditions are identical, except for the width; that some restriction on the railroad's movements occurs under either type of construction, and that the only basis for distinction is that the cost of providing the extra width is less on an overpass than on an underpass.

Mr. Hiyama also testified that DOT's policy was to pay for all costs necessary to eliminate the hazard of train-vehicle accidents and make the project operable, and that the design of the grade separation should take the railroad's access into consideration. He admitted that the railroad is inconvenienced on underpasses. He was unable to say how the provision for an extra track or maintenance road helps make an overhead grade separation operable but does not help make an underpass operable under Section 2450. Had City designed an overpass in the instant case, the access problem would be immaterial since DOT would allow the extra roadway width which has created the issue here. DOT gives no consideration to additional railroad expenses or problems created by any alternate access routes.

Upon further questioning, Mr. Hiyama testified that the environmental factor could be significant in the determination of

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2/ This applies to both maintenance roadways and extra track width when requested by the railroad.

whether to build an overpass or underpass. In rural and undeveloped urban areas (including Contra Costa County) DOT recommends overpasses since the extra land required for overpasses is generally less expensive than in intensively developed areas such as Los Angeles County. Overpasses, though not creating more noise, allow greater transmission of the noise of both trains and motor vehicles while underpasses have a tunneling effect which creates less noise impact on adjacent areas.[3/] An overpass is more visible though not necessarily aesthetically less desirable in residential areas. Mr. Hiyama did not know whether the environmental impact of an overpass is greater in an urban area than in a rural area though he did cite one example (South Davis grade separation) where DOT, because of sight and noise problems which caused objections to an overpass, relocated the separation.

All the parties conceded the necessity for the grade separation at the proposed site. DOT, objecting only to the scope of the project, introduced Exhibit F as its alternative grade separation proposal, and objected to the introduction of City's proposed separation, Exhibit A. Exhibit F was originally tendered by DOT as an amendment to City's proposal but City rejected it, and stands on its original proposal. Exhibit F does not include a maintenance roadway.

City filed its Final Environmental Impact Report (EIR) with the Commission on April 15, 1975. This EIR was approved by the

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3/ One large residential area exists directly south of the site here; another one exists just northeast; a mobile home park exists just west.

Norwalk Planning Commission. The EIR concluded that the project may have a significant environmental effect although the primarily short-term negative impacts may be substantially offset by the long-term benefits.

Hearings were held on October 29 and 30, 1975 before Examiner Phillip E. Blecher. The matter was submitted on the latter date subject to the filing of briefs by March 12, 1976.

Positions

The various positions taken by the parties may be summarized as follows:

City

Applicant is essentially interested in going forward with this grade separation project, with or without a maintenance roadway, to eliminate an undesirable and hazardous grade crossing. SP now has direct access to its right-of-way, and the reasonable needs of SP include a maintenance road. Since SP will suffer perpetual added costs if the existing direct access to its right-of-way is removed, the Commission would be justified in including the requested roadway in the project.

D.84088 dated February 11, 1975 and D.84414 dated May 13, 1975 (in applications of the county of Los Angeles for grade separations at Hacienda Boulevard and Hollywood Way, respectively), while holding that a proposal for an extra track width was within the scope of the "project", as that term is used in Section 2450 of the S&H Code, did not clearly decide the question here: Does the "project" include a maintenance roadway? Turning to Section 2450, it is more reasonable to conclude that the word "project" would include such a roadway since its purpose is to allow the maintenance of the tracks in operating condition. The roadway then would logically be included within the term "other construction required to make the grade separation operable" in Section 2450(b).

Section 1202.5(b) of the Public Utilities Code (PU Code)[4/] would therefore require an apportionment of 10 percent of the project cost to the railroad and the balance to the City. Under Section 2454[5/]

4/ Section 1202.5(b), (c), and (e) read as follows:

"(b) Where a grade separation project initiated by a public agency will directly result in the elimination of one or more existing grade crossings, located at or within a reasonable distance from the point of crossing of the grade separation, 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, located at or within a reasonable distance from the point of crossing of the grade separation, 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."

5/ Section 2454, as far as pertinent regarding allocations from the state grade separation fund, reads as follows:

"Basis for allocations: Computation.

Allocations made pursuant to Section 2403 [2453] shall be made on the basis of the following:

(a) An allocation of 80 percent of the estimated cost of the project shall be made; ..."

of the S&H Code, allocation by DOT should be made as follows: 80 percent from the state grade separation fund; 10 percent by SP; and 10 percent by City.

SP

SP asserts that Section 1202(c) of the PU Code[6/] grants the Commission full and complete authority over grade crossings and grade separations which cannot be abridged by subsequent action of other state agencies. Thus, DOT cannot issue rules for the design of these structures since such resolutions would interfere with the exclusive right of this Commission to determine the practicability and terms upon which such a structure will be authorized. City initiated this project and consulted with the railroad. Not until after filing of its application did the City become aware of DOT's position on allocation of funds for the maintenance roadway. It is City's needs which gave rise to this project. Without this project, SP will continue to use its right-of-way as before.

DOT's position here is basically unfair to SP claims. Since there is no rational distinction between the function, service, and use of overpasses and underpasses, there is no rational basis for DOT's distinction between them in allocating funds for maintenance roadways. There is no question that there would be loss of direct

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6/ Section 1202(c) reads as follows:

"The commission has the exclusive power:

* * *

"(c) To require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, city, or other political subdivision affected."

street access to, and operating width of, the right-of-way if DOT's position is accepted, and thus there is a possible basis for condemnation or inverse condemnation. Therefore, the project initiated by the City should be approved. Under either Section 1202.5(b) or (c) of the PU Code, this would cost SP 10 percent, which is the amount deemed adequate by the Legislature for the railroad's contribution. SP believes Section 1202.5(b) governs here, but in any event, its cost is limited to 10 percent which it is willing to pay. The balance of 90 percent should be apportioned to City.

DOT

DOT argues that the Hollywood Way and Hacienda Boulevard decisions, though establishing the applicable law for grade separation projects, pertained only to tracks, not additional roadway for maintenance purposes. The central issue, therefore, is to ascertain the Legislature's intent in Sections 2450(a) and (b) of the S& H Code regarding the inclusion of a maintenance roadway as part of a grade separation project. This answer depends on the meaning of the word "tracks" in Section 2450(a). Since this word does not mean right-of-way or roadway the project is limited to a bridge necessary to separate the tracks from the highway. This still leaves the concerned agencies in conflicting positions since this Commission may still provide for a maintenance road as part of the structure as a matter of practicability or fairness while the California Highway Commission (CHC) must (emphasis added) refuse to contribute toward its cost because the Legislature did not intend the grade separation fund to participate in such costs.[7/]

7/ However, DOT's witness testified that DOT routinely allocates such funds for maintenance roads in overpass projects (emphasis added).

Thus, since the definition in Section 2450(a) excludes the maintenance road as part of the project, this Commission has no jurisdiction to apportion its cost, and it has erred in admitting into evidence the City's proposal in Exhibit A. Exhibit F, DOT's alternate proposal, is the only one for which costs can be apportioned.

DOT also contends the fact that it previously has provided for an additional track or a maintenance roadway in an overpass is meaningless once it is determined that the legislative intent is to exclude maintenance roads from the grade separation fund. DOT concedes that its interpretation is neither final nor binding on this Commission. In any event, the rational basis for distinction between treatment of overpass and underpass is that the cost of providing the additional width is substantially greater for an underpass than for an overpass Further, the additional width is necessary to make an overpass grade separation operable because when it may be upgraded at a later date (emphasis added) the overpass must be completely closed, while the underpass is not significantly affected when the railroad structure is widened at a later date. It is then reasonable to provide for additional space for an overpass project when the railroad demonstrates that it will need the space in the immediate future. (This reasoning does not take into consideration the fact that in an overpass as well as an underpass, the railroad traffic will not be significantly affected during widening of the vehicular roadway.)

Section 1202(c) of the PU Code indicates that the test of "practicability" applies only to the question of whether a grade separation should be constructed.[8/]

DOT also raises an important policy question: Weighing the need of SP for the maintenance road against the state's interest in the expenditure of the taxpayer's money. It concludes that the state's 80 percent share of the maximum estimated additional cost ($184,000) of the extra width could be better spent on projects which actually eliminate vehicle-train hazards. If a one-track project were approved and the railroad spent an estimated $20,000 to $30,000 for planking, but lost the existing direct continuous access to a portion of its property (actually lost 82 feet of property for a distance of about 160 feet) all of which creates inconvenience and additional cost for the railroad, this project would still not substantially interfere with the existing railroad facilities or the use of its property. DOT recognizes that City would have to create an access road to the railroad's property along the north side of Imperial Highway to allow access along the alternate street route proposed by DOT. To accomplish this, some privately owned land for this route would have to be condemned. (No cost estimates were made in this respect.) Thus, since the project will not destroy any access to railroad property that had been enjoyed prior to the construction of this project and since the extra width cannot be considered a cost to cure a legal damage suffered by the railroad (presumably as compensation for partial condemnation) for which the railroad would be entitled to only nominal compensation, if

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8/ This contention ignores additional language of Section 1202(c) as follows: "...and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of construction...shall be divided...."

any, for the reduction of a part of its right-of-way, it would be illegal, unnecessary, and unfair for the Commission to authorize the maintenance road and apportion costs for its construction.

The Staff

The staff fully supports both the construction of grade separations to eliminate at-grade crossings and the City's instant application, and desires the Commission to resolve the cost apportionment question.

Discussion

It is apparent from the various positions and prior actions of this Commission that the statements and positions of DOT are neither persuasive nor reasonable under the instant facts and circumstances. One major contention of DOT is that the plan (Exhibit A) submitted by City for this project (which includes the maintenance road) was admitted in error. This contention is without merit. For the reasons stated below we hold that City's plan conforms to law.

Because the only justification for DOT's position here is the cost factor, its position then becomes both unfair and unjustifiable. The treatment by DOT of allowing additional tracks and widths on overpasses and not for underpasses is without any logical foundation since functionally there is no difference in terms of the railroad's operation. As there is no question that the railroad's needs have to be considered with the needs of the public and the agency initiating the project, there is no rational basis for treating the railroad differently in one type of project when its needs are identical under both circumstances. This is particularly true where the statutes make no distinction whatsoever between overpasses and underpasses since they only refer to grade separation projects. Further, we find specifically that under Section 1202(c) this Commission has the exclusive jurisdiction to determine the terms upon which any grade

separation project shall go forth. This provision is conclusive as to the determination of what the project shall include. Because the "project" is determined by referring to the definitions contained in Section 2450(a) and (b) (see D.84414 and D.84088, supra), it would include a portion of roadway necessary for either an additional track or the maintenance needs of the railroad since the railroad's needs must be determined in the analysis of whether the grade separation is operable or not. The fact that an overpass separation requires additional width because it may be updated at a later date is immaterial for two reasons: (1) there is no distinction in the law between overpasses and underpasses; (2) the statute does not refer to making grade separations operable at a later date but operable at the time that they are constructed, which is the only reasonable and legal interpretation of Section 2450(b). To follow DOT's position in this matter would require the railroad to expend additional monies, lose existing direct access to its property, lose existing property rights (as well as a small portion of property), and create perpetual inconvenience and additional cost for the railroad, all of which was admitted by DOT. Still, DOT reasons that this inconvenience would not substantially interfere with the existing railroad facilities or the use of its existing property and that, in a condemnation proceeding, the railroad would be entitled to only nominal compensation. This is not only illogical but is not in accordance with the existing law in our state which holds that a partial loss of access is compensable where property is taken for a right-of-way (People ex rel DPW v Ramos (1969) 1 C 3d 261); that a deprivation of access is compensable, and if it is compensable, then the amount of damages to be awarded is that which can be proved by the injured party. (People v Symons (1960) 54 C 2d 855.)

We believe that the injury to SP under DOT's proposal may amount to a substantial or undue interference with the use of its property and its facilities and may entitle SP to more than nominal damages. (City of Long Beach v Pacific Electric Ry. Co. (1955) 44 C 2d 599; City of Oakland v Schenck (1925) 197 C 456.) In any event, if there is undue interference with the railroad's use of its property, the extent of such interference and the value of that which was lost are questions of fact to be determined in fixing the compensation for the railroad right-of-way. (See City of Oakland v Schenck, supra.) Further, DOT does not take into consideration the amount of money City needs for condemnation purposes for the completion of the alternate access route it proposes. Since we are approving City's proposal, the matter of condemnation damages need not be considered.

And another major consideration must be discussed here. This is the relationship of this Commission with DOT and the CHC in the administration and determination of those projects which are entitled to grade separation funds, the apportionment of those funds, and the subsequent allocation of those funds. For this Commission to enter an order for which the Legislature granted it exclusive jurisdiction, under Sections 1202 and 1202.5 of the PU Code, and then to have CHC determine whether it will allocate the funds as ordered by this Commission seems to be an exercise in futility. It attributes to the Legislature the creation of an unworkable plan for the accomplishment of the public policy of this state. Senate Bill 456, which amended, among other things, Section 1202.5 of the PU Code reads in part as follows:

"Section 1. 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 the people of this state.

"(b) Previous programs designed to accomplish the removal of hazardous grade crossings in this state have proven to be inadequate for the following reasons:

(1) A disproportionate amount of the total funds made available for such projects has been used by the larger local governmental agencies, while smaller local agencies have not been able to accumulate the local matching funds required to take advantage of the program.

* * *

"(3) Preexisting law required the imposition of cumbersome administrative procedures which discouraged many of the state's smaller local agencies from taking advantage of the program. (Emphasis added.)

"(c) The prior methods used to develop the construction priority list for these projects too often fail to identify the most hazardous crossing locations because inordinate emphasis is given to those projects which can be readily funded by the local agency."

It appears clear that the Legislature in voicing the public policy of this state is attempting to simplify the procedure and expedite construction of grade separation projects to eliminate dangerous crossings. We agree with these goals and sympathize with

the public policy voiced therein. Further, we have complied with the duties imposed upon this Commission by the Legislature in this area. DOT has conceded that this Commission has the exclusive jurisdiction to determine the scope of grade separation projects and terms under which they shall be authorized, and to apportion the cost in accordance with those sections of the PU Code heretofore cited. Section 2453 of the S&H Code is entitled "Allocations for projects". The pertinent portion of this section reads as follows:

> "From the funds set aside pursuant to Section 190, ...the California Highway Commission shall make allocations for projects contained in the latest priority list established pursuant to Section 2452.9/ Such allocation shall be made for preconstruction costs and construction costs; ..."

Reading these pertinent portions of the PU Code and S&H Code together, it appears indisputable that the Legislature evolved a simple and practicable plan to accomplish its enunciated goals and public policy so that this Commission, and the CHC which is in charge of the grade separation funds, should together work toward these ends. This Commission is to establish the criteria for a priority list of most urgently needed projects, establish a priority list of the most urgently needed projects, exclusively authorize grade separations where practicable, prescribe the terms upon which they shall be made, and prescribe the proportions in which the expenses of such separation shall be divided between the affected railroad and political body. The expenses shall be apportioned in accordance with the standards

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9/ Section 2452 requires this Commission to establish a priority list for projects which it determines to be most urgently in need of separation or alteration. It also gives this Commission the duty to establish the criteria for this determination.

established in Section 1202.5 of the PU Code. CHC shall then make allocations for projects contained in the latest priority list in accordance with the bases set forth in Section 2454 of the S&H Code (fn 5, supra), which pertains only to percentage costs. Nowhere does it appear that the Legislature intended CHC to sit in judgment as an appellate forum upon this Commission's determination of those matters which it has the exclusive power to determine. The California Supreme Court is the only instrumentality of government which has the right to review the decisions of this Commission.[10/] CHC does not have that authority nor does Section 2453 give it that authority. A reading of the statutory language indicates that CHC shall make allocations for projects in the latest priority list for both preconstruction and construction costs. This is a ministerial act furthering the Legislature's public policy statement since the CHC, or any of its related agencies, does not have any authority to review the orders of this Commission.

Findings

1. Public interest and necessity require a grade separation project at crossing No. BK-498.0 in the city of Norwalk, county of Los Angeles (Imperial Highway under Southern Pacific Transportation Company track), as proposed in the instant application of City.

2. The grade separation project initiated by City, identified as Exhibit A, proposes a structure sufficient to accommodate one track and a maintenance roadway width of approximately 10 feet.

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

4. DOT proposed an alternate grade separation project providing for one track only.

5. DOT's alternate proposal was rejected by City.

10/ Section 1756 of the PU Code.

6. DOT's alternate proposal eliminated SP's direct access to its right-of-way since it requires off-track maintenance equipment to use City streets (and an easement to be acquired by City), to proceed across Imperial Highway from one side of its right-of-way to the other. This would result in SP's loss of use of its property, loss of a small portion of right-of-way, inconvenience, additional cost, and loss of time.

7. Alternatively, DOT proposed a planking of SP's track across Imperial Highway which would still eliminate direct access and still not cure the other defects mentioned in Finding 6, and would require SP to spend an estimated $20,000 to $30,000 for the planking.

8. Either of DOT's proposals may substantially impair or interfere with SP's property, its use and its access, and may result in more than nominal damages for inverse condemnation.

9. It is fair, reasonable, and practicable to allow SP a maintenance roadway width of approximately 10 feet where it has a 100-foot right-of-way width for a length of about 160 feet and where otherwise its access would be substantially impaired and a permanent bottleneck and increase in expenses and time loss would occur.

10. Since there is no statutory distinction between overpasses and underpasses, there is no basis for using cost as a distinction in allocating funds from the state grade separation fund for such projects.

11. The cost of this project is apportioned as follows: 90 percent of the cost of the project to be borne by the city of Norwalk and 10 percent of the project borne by the Southern Pacific Transportation Company. This apportionment applies under either Sections 1202.5(b) or 1202.5(e) of the PU Code.

12. The apportionment of costs set forth above is fair, just, and reasonable.

13. The railroad will benefit from the construction of this project and should be responsible for full maintenance of the structure above the bridge seats.

14. Underpass grade separations are more environmentally desirable than overpass grade separations.

15. City is the lead agency for this project pursuant to the California Environmental Quality Act of 1970 as amended, and on April 2, 1975 approved its Final EIR which has been filed with this Commission. We have considered the Final EIR in rendering a decision on this project and find that:

a. The environmental impact of the proposed action is primarily temporary and thus insignificant.

b. The planned construction is the most feasible that will minimize or avoid any possible environmental impact.

Conclusions

1. This Commission has the exclusive power to require grade separations and to prescribe the terms upon which such separations shall be made and the proportions in which the construction expense shall be divided between the affected parties (Section 1202(c) of the PU Code).

2. In prescribing the proportions in which the construction expense shall be divided in proceedings under Section 1202, this Commission shall be governed by the standards set out in Section 1202.5(a) through (e) of the PU Code.

3. This Commission shall annually establish a priority list of the projects most urgently in need of separation on the basis of criteria it establishes (Section 2452 of the S&H Code).

4. Section 2450 of the S&H Code defines "grade separation" and "project", among other things, and does not distinguish between overpass and underpass separations.

5. Section 190 of the S&H Code creates the grade separation project fund.

6. CHC shall make allocations for preconstruction and construction costs from the grade separation fund for projects in the latest priority list (Section 2453 of S&H Code).

7. Allocations made pursuant to Section 2453 are made on the bases set forth in Section 2454 of the S&H Code. In the instant case, Section 2454(a) provides that an allocation of 80 percent of the estimated cost of the project shall be made.

8. The right to review decisions of this Commission is limited to the California Supreme Court (Section 1756 of the PU Code).

9. Neither CHC nor DOT has the right to review this Commission's order made pursuant to Sections 1202 and 1202.5 of the PU Code and Section 2450 and 2452 of the S&H Code.

10. CHC's authority to allocate grade separation funds is essentially ministerial pursuant to Section 2453 et. seq. of the S&H Code, and such allocations must be made pursuant to the apportionment ordered by this Commission.

11. The application of City should be granted in accordance with the ensuing order.

O R D E R

IT IS ORDERED that:

1. The city of Norwalk is authorized to construct a grade separation project at the intersection of Imperial Highway and the Southern Pacific Transportation Company railroad to be identified as Crossing No. BK-498.0-B, in the city of Norwalk, county of Los Angeles, substantially as proposed in Exhibit A of the application.

2. The cost of the authorized project shall be apportioned as follows: 90 percent of the cost to be borne by the city of Norwalk 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 protected by Standard No. 8 (General Order No. 75-C) flashing light signals 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. BK-498.0) 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.

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 11th day of MAY, 1976.

President

Commissioners