

Decision No. 85892

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the CITY OF PITTSBURG }
 for an Order apportioning the cost }
 of certain work relating to the }
 elimination of ten railroad grade }
 crossings of the Sacramento Northern }
 Railway, construction of certain }
 track changes and other work on and }
 along The Atchison, Topeka Railway, }
 all in the City of Pittsburg. }

Application No. 55578
 (Filed March 20, 1975)

Alfred A. Affinito, Attorney at Law, and
Robert M. Barton, for City of Pittsburg,
 applicant.

The Western Pacific Railroad Company, by Walter G.
Treanor and Eugene J. Toler, Attorneys at
 Law, for Sacramento Northern Railway; and
Melvin R. Dykman, Attorney at Law, for
 State of California Department of
 Transportation; interested parties.
Robert W. Stich, for the Commission staff.

INTERIM OPINION

The City of Pittsburg (Pittsburg) has applied to eliminate
 10 Sacramento Northern Railway (Sacramento Northern) crossings
 within the city limits, by removing 5,600 feet of track from 8th
 Street, and by connecting Sacramento Northern to The Atchison, Topeka
 and Santa Fe Railway Company (Santa Fe) west of town. The Sacramento
 Northern trains would then bypass Pittsburg by moving on the Santa Fe
 line. The crossings to be eliminated are:

Crossings Nos.

Streets

8N-1.85	Montezuma Street
8N-1.9	West Street
8N-2.0	Cutter Street
8N-2.05	York Street
8N-2.1	Black Diamond Street
8N-2.2	Railroad Avenue
8N-2.3	Cumberland Street
8N-2.4	Los Mendanos Street
8N-2.45	East Street
8N-2.6	Harbor Street

Four days of hearing were devoted to determining whether the cost of moving the old station and constructing a storage track for the Santa Fe, among other lesser items, should be included in the project. On the last day of hearing it was stipulated that the Commission should initially determine by interim order whether Sacramento Northern should contribute to the project,^{1/} and if so, to what extent.

Sacramento Northern argued that permission to remove the tracks in Pittsburg was granted as a courtesy on the understanding that all costs would be paid by the city. The railway position is simply that it does not benefit from the track removal and that the present rail line should be retained, if it appears that the railway may have to participate in the cost of its removal. It advised, however, that it will credit the cost of its present operations, maintenance, and facilities against the cost of conducting operations over the Santa Fe and will also assume the expense of processing the required applications before the Interstate Commerce Commission.

^{1/} The scope of the project has not yet been determined and has been left for further hearing.

The brief filed by the city attorney notes that Pittsburg is divided by three railroads (the Southern Pacific, Santa Fe, and Sacramento Northern), which run east and west. The brief further notes that Southern Pacific and Santa Fe refused to consolidate their operations over a single right-of-way, but Sacramento Northern is willing to operate with Santa Fe over the latter's tracks, which will justify the removal of 5,600 feet of Sacramento Northern track within the city limits and eliminate the ten railroad crossings. Pittsburg approved the plan, but the California Department of Transportation (Department) insisted that Sacramento Northern contribute to the cost and that the applicable statutes be altered to authorize the use of public funds to pay for the removal of track. Sections 189, 190, and 190.01 of the Streets and Highways Code (S&H Code) were amended by the Legislature in 1971 and Section 2404.2 was added to the S&H Code on September 26, 1974. It is quoted in its entirety as follows: (It was later numbered as Section 2454.2).

"2404.2 (2454.2) The planned removal of trackage of the Sacramento Northern Railway, the construction of substitute tracks and track connections, the elimination of 10 existing grade crossings, the acquisition of necessary rights-of-way, and all necessary associated work and appurtenances, to enable Sacramento Northern Railway trains to operate via existing trackage of The Atchison, Topeka and Santa Fe Railway, in and adjacent to the City of Pittsburg, shall be eligible for an allocation under Section 2403. The Public Utilities Commission shall determine to what extent, if any, the railroad shall contribute to the project. Such eligibility shall not be contingent on whether the railroad agrees to contribute, and the California Highway Commission shall not deny an allocation on such grounds.

"The Legislature hereby finds and declares that it is necessary to enact this special law regarding the Pittsburg track removal and grade crossing elimination project because of the existence of following special facts and circumstances:

"The predominant traffic carried by the Sacramento Northern Railway consists of high explosives, bombs, shells, and ammunition destined for the United States Navy ammunition depot at Port Chicago. Such trains traverse residential areas, cross 10 streets at grade, and constitute a grave hazard to the life and safety of the residents of Pittsburg. Sacramento Northern Railway is willing to remove its tracks and operate its trains via the tracks of The Atchison, Topeka & Santa Fe Railway, which is already partially grade separated and which offers a safer route. However, Sacramento Northern Railway will sacrifice certain of its own facilities, will receive no benefits, and therefore is unwilling to contribute any portion of the cost incidental to the removal of its trackage or for the construction of substitute track connections and appurtenances or for the acquisition of rights-of-way.

"Based on the foregoing, the Legislature therefore finds and declares that it is necessary that the Sacramento Northern track removal and relocation project in and adjacent to the City of Pittsburg shall be eligible for a grade separation allocation, and that subdivision (d) of Section 2404, relating to a contribution by the railroad, shall not apply for purposes of qualifying for an allocation under Section 2403.

"Approved and filed Sept. 26, 1974."

Pittsburg and Sacramento Northern argue that the Legislature has indicated the railroad is to pay no costs, since the statute provides that the project qualifies for a grade separation allocation even if the railroad does not contribute. They argue that if the allocation and project were not acceptable to the Legislature the statute would not be as positive in text.

The staff brief asserts that Sacramento Northern should pay 10 percent of the cost as if Section 1202.5 of the Public Utilities Code applied. The staff does not accept the legislative position that the railroad will sacrifice some facilities and receive no benefits. Its brief emphasizes the liability inherent to transportation of explosives through populated areas and the fact that this responsibility will be relieved if the track is removed. The staff argues that this Commission has the authority to determine who should pay for the project and what portion of the cost each should contribute; also that Section 2404.2 (2454.2) acknowledges this by including the provision that "The Public Utilities Commission shall determine to what extent, if any, the railroad shall contribute to the project"; and finally that the purpose of Section 2404.2 (2454.2) is to qualify the track removal project to receive funds normally allocated for grade separations, not to exempt the railroad from contributing to the cost of removing the track and facilities. The Department favors the staff's interpretation of Section 2404.2 (2454.2) and recommends disregarding Sacramento Northern's position that the railroad will not move unless all costs are paid by the city.

The Department has a paramount interest in this project since under present law the State of California will pay 90 percent of the cost of the project less whatever amount the railroad is required to pay. Pittsburg will pay 10 percent of the cost, whatever the railroad pays.

Discussion

Section 2404.2 was enacted as a special bill to provide that the Sacramento Northern track removal and relocation project in and adjacent to Pittsburg shall be eligible for a grade separation allocation despite the fact that no grade separation is being constructed, and regardless of whether the railroad contributes to the removal and relocation. The statute goes on to state that the Public Utilities Commission shall determine to what extent, if any, the railroad shall contribute to the project. Finally, the Legislature in the statute found that the railroad "will sacrifice certain of its own facilities, will receive no benefits, and therefore is unwilling to contribute...".

The statute is apparently ambiguous in that there is, on the one hand, a legislative finding that the railroad is willing to remove its tracks, but, as it will receive no benefits it is unwilling to contribute; and, on the other hand, that this Commission is empowered by the same statute to determine whether the railroad should contribute to the project. The railroad argues that the legislative finding of "no benefits" compels the Commission to determine that there should be no contribution. In our opinion, the railroad's interpretation is wrong. The grant of power to determine contribution by the railroad is clear and is not negated by the legislative finding of "no benefits".

The "benefits" the Legislature was referring to can only be the benefit of substitute facilities, as Sacramento Northern is not getting substitute facilities in exchange for its removed tracks. Sacramento Northern certainly will obtain other forms of benefits by this removal. First, Sacramento Northern will benefit by not having to upgrade the protection at 10 grade crossings, for which they could be assigned 100 percent of the costs; second, Sacramento Northern will no longer have to maintain the grade crossing protection; and third, Sacramento Northern escapes potential liability for accidents that might occur on the track.

We have discussed the "benefits" theory because it was mentioned in the statute and was advanced by the railroad. We are not resurrecting a theory that was laid to rest in City of Los Angeles (Osborne Street) (1967) 67 CPUC 737, 743-44.

Turning to the question of whether the railroad should be required to contribute to the project, we hold that it should, in the amount of 10 percent. Because the Legislature has made the project eligible for grade separation funds, both the staff and the Department urge the Commission to consider the project as one analogous to a grade separation project. We agree. As such, under Public Utilities Code Section 1202.5(b)^{2/} the railroad is required to pay 10 percent of the cost of the project. Contrasted with our usual apportionment of 50 percent of grade crossing improvement costs allocated against a railroad (whether it is a willing participant or not), we find a 10 percent allocation to be quite reasonable. And the allocation has a side benefit - it brings the railroad's expertise into the picture to assure that the plans and expenses of the proposed project do not become exorbitant.

Findings of Fact

1. Sacramento Northern will eliminate 10 grade crossings within the city limits of Pittsburg, California, by removing 5,600 feet of track and thereafter operating its trains over the track of the Santa Fe.

^{2/} "1202.5(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."

2. Because the Legislature has made the project described in Finding 1 eligible for grade separation funds, the project is analogous to a grade separation project pursuant to Section 1202.5(b) of the Public Utilities Code.

3. Under Section 1202.5(b) the railroad is required to contribute 10 percent of the cost of the project.

4. It is reasonable that Sacramento Northern contribute 10 percent of the cost of the project which is the subject of this application.

Conclusion of Law

Section 2404.2 (2454.2) of the Streets and Highways Code does not prohibit this Commission from determining that Sacramento Northern shall contribute to the project which is the subject of this application.

INTERIM ORDER

IT IS ORDERED that the Sacramento Northern Railway contribute 10 percent of the cost of the project which is the subject of this application.

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

Dated at San Francisco, California, this 2nd day of JUNE, 1976.

[Signature] President
William S. [Signature]
[Signature]
[Signature]
[Signature] Commissioners