

ORIGINAL

Decision No. 86488

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of the City of Modesto for an order for the improvement of crossing protection facilities at five grade railroad crossings of the Tidewater Southern Railway Company in the City of Modesto, County of Stanislaus, State of California, in accordance with Section 1202 of the Public Utilities Code.

Application No. 55720
(Filed June 5, 1975;
amended February 9, 1976)

J. David Fitzsimons, Attorney at Law, for City
of Modesto, applicant.
Michael P. Hearney, Attorney at Law, for Tidewater
Southern Railway Company, interested party.
Tack S. Joe, for the Commission staff.

O P I N I O N

This proceeding was originally filed to seek upgrading of protection for three crossings in the city of Modesto - Bowen, Granger, and Roseburg Avenues. The principal protection at each location is a city-installed highway stop sign supplemented by Standard No. 1 crossing signs, pavement markings, and advance warning signs. The city sought additional protection of at least Standard No. 8 automatic flashing lights. It was alleged that it would be preferable to supplement the flashing lights with automatic gates (Standard No. 9).^{1/}

The city alleged that the Standard No. 9 installations would cost \$78,000 and that it had budgeted one-half of that sum to defray its share of the costs. It asserted that the Tidewater Southern Railway Company (Railway) was unwilling to pay any portion of the costs.

^{1/} All standard forms of crossing protection are specifically described in Commission General Order No. 75-C.

A hearing was held in Modesto before Examiner Gilman on November 24, 1975. Since it appeared that there was no significant legal or factual dispute between the parties, the matter was conducted as a settlement conference.

An oral stipulation was reached covering the following points:

1. That the city would amend the application by January 23, 1976 to include two additional crossings, Standiford and College Avenues.
2. That the Commission should order protection at all five crossings upgraded to Standard No. 9 signals (General Order No. 75-C) within two years.
3. That allocation of costs of maintenance and construction be determined by further agreement by the parties, with review by the Commission in case of a dispute.
4. That the city would undertake to obtain federal funding for the projects, in which event federal law would allocate the costs 90 percent to the federal government and 10 percent to the public agencies involved.
5. That the city and Stanislaus County were jointly responsible for any installation at Standiford Avenue and that the city would serve the amendment on the county and would attempt to persuade it to join in the stipulation.

It was expressly recognized that the oral stipulation could serve as the basis for a final Commission order.

An amendment seeking the same level of protection for two additional crossings, College and Standiford Avenues, was filed on February 9, 1976. However, there is nothing in the record to indicate that the city has taken any steps to obtain federal financing. The city has not, as agreed, obtained the consent of Stanislaus County for any order concerning Standiford Avenue. It did not file the amendment on time, nor was it served on the county as stipulated. It has been brought to our attention that the Standiford Avenue crossing now lies completely within Modesto and that Modesto has agreed to assume all public agency costs.

Findings

1. There is no dispute regarding need for Standard No. 9 signals at Bowen, Granger, Roseburg, Standiford, and College Avenues, all within the city of Modesto, Stanislaus County.
2. The issue concerning the liability of Stanislaus County is moot since the Standiford Avenue crossing now lies entirely within Modesto, and Modesto has agreed to assume all public agency costs.
3. The city has not indicated that it has applied for or obtained federal funding for the project.
4. It is not disputed that the installation and construction costs will be \$26,000 at each crossing or \$130,000. The city has budgeted \$59,000 toward its share of the costs.
5. None of the parties have indicated that they have been able to agree on allocation of construction and maintenance costs.
6. The public interest would be injured by further delay in installing crossing protection.
7. Railway should be ordered to commence planning and construction in ensure completion by November 24, 1977.
8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions

1. Unless there is an agreement to the contrary, and if no federal funding is available, the Commission regularly allocates both construction and maintenance costs of upgraded protection at an existing crossing one-half to the railroad and one-half to the public agencies involved.
2. It is just and reasonable to issue a final order herein requiring Modesto and Railway to each pay one-half the cost of installing signals at all five crossings, unless federal funding can be obtained.

O R D E R

IT IS ORDERED that:

1. Tidewater Southern Railway Company (Railway) shall install automatic protection consisting of not less than two Standard No. 9 Automatic Gate Type Signals (General Order 75-C) at the following crossings in the city of Modesto, Stanislaus County, on or before November 24, 1977:

<u>Crossing No.</u>	<u>Location</u>
75-25.5	Standiford Avenue
75-26.3	Bowen Avenue
75-27.0	Granger Avenue
75-27.5	Roseburg Avenue
75-28.4	College Avenue

2. Installation cost of the automatic protection shall be shared equally by Modesto and Railway unless federal funding can be obtained.


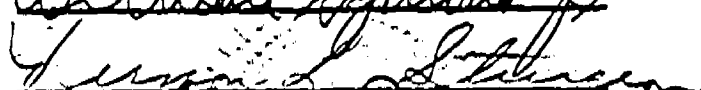

3. Should federal funding be obtained for payment of the installation cost for automatic protection at any or all of the above crossings, installation costs shall be apportioned in accordance with applicable federal regulations.

4. Maintenance costs of the automatic protection shall be shared equally between Modesto and Railway pursuant to Section 1202.2 of the Public Utilities Code.

5. Within thirty days after completion pursuant to this order Railway shall so advise the Commission in writing.

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

Dated at San Francisco, California, this 13th
day of OCTOBER, 1976.

 President
William J. Amos

Leonard Ross
 Commissioners