

~~ORIGINAL~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE ATCHISON, TOPEKA)
AND SANTE FE RAILWAY COMPANY.)
LOS ANGELES & SALT LAKE RAILROAD)
COMPANY and its Lessee UNION PACIFIC)
RAILROAD COMPANY, SOUTHERN PACIFIC)
TRANSPORTATION COMPANY, and THE)
WESTERN PACIFIC RAILROAD COMPANY for)
a Determination of the Cost of)
Maintaining Automatic Grade Crossing)
Warning Devices.)

Application 82-05-05
(Filed May 4, 1982)

Leland E. Butler, Attorney at Law, for The
Atchison, Topeka, and Santa Fe Railway
Company, Union Pacific Railroad Company,
Southern Pacific Transportation Company, and
The Western Pacific Railroad Company;
Harold S. Lentz, Attorney at Law, for
Southern Pacific Transportation Company;
and Eugene J. Toler, Attorney at Law, for
The Western Pacific Railroad Company;
applicants.

Norman G. Preston, for the County of Fresno;
K. D. Walpert, for Donald R. Howery, Dept.
of Transportation, City of Los Angeles;
John K. Riess, Attorney at Law, for the City
of San Diego; Donald Royce, for the Los
Angeles County Road Dept.; and Eugene C.
Bonnstetter, Attorney at Law, for Dept. of
Transportation, State of California;
interested parties.

Patricia A. Bennett, Attorney at Law, and
William Schulte, for the Commission staff.

O P I N I O N

By this application, the major railroads (The Atchison,
Topeka, and Santa Fe Railway Company; Union Pacific Railroad Company;

Southern Pacific Transportation Company and The Western Pacific Railroad Company¹ operating in California propose a change in the method of determining maintenance costs of automatic grade-crossing warning devices.

Under Public Utilities (PU) Code § 1202.2, the Public Utilities Commission (Commission) divides the maintenance cost of automatic grade-crossing warning devices between the railroads and the public agencies in the same proportion as the apportionment of the cost of construction. Under PU Code § 1231.1, the public agencies' share of the maintenance cost of automatic grade-crossing warning devices is to be paid to the railroads from an annual allocation by the California Transportation Commission to the Commission which shall constitute the amount necessary for such maintenance.

In Decision (D.) 72225, Case 8249, 67 CPUC 49 (1967), the Commission adopted a signal unit system of reimbursement and ordered that a cost of \$30 per relative unit value be used by the railroads and the public agencies for determining the share of any public agency's annual cost of maintenance of automatic grade-crossing warning devices. The public agencies' share of maintenance costs of automatic grade-crossing warning devices is still being calculated under the unit value system established in D.72225.

"Notice of Proposal to Change the Method of Determining Maintenance Costs for Automatic Grade Crossing Protection" (Notice) dated January 28, 1983 was mailed to all known interested parties on February 4, 1983 by our staff. In addition to briefly describing the proposal set forth in the application it advised that:

"The Commission's staff has reviewed the study and concluded that the railroads' proposal is reasonable.

¹ The Western Pacific Railroad Company is now the Western District of Union Pacific Railroad Company.

"The Commission anticipates holding public hearings on the application. Should you desire to participate, please notify the Commission in writing on or before February 28, 1983, ..."

Ten parties advised the Commission of their desire to participate. Through inadvertence the Department of Transportation of the State of California (Caltrans) was not mailed a copy of the notice.

Prehearing conferences were held on March 22, 1983 in San Francisco and March 23, 1983 in Los Angeles before Administrative Law Judge (ALJ) O'Leary. Notices of the prehearing conferences were sent to the ten parties who advised the Commission of their desire to participate.

Under the ALJ's directive, Mr. Leland Butler, counsel for applicants, transmitted one copy of each exhibit applicants would offer at a public hearing to each of the ten parties who advised the Commission of their desire to participate. The letter of transmittal contained the following language:

"Please review the enclosed exhibits. If you intend to appear at a public hearing on this application to cross-examine witnesses of applicants and/or to submit direct testimony and exhibits, you should notify Commission Staff Counsel no later than May 16, 1983, ..."

By letter dated May 31, 1983 Staff Counsel advised the ALJ that no written comments from interested parties had been received.

By letter dated July 14, 1983, counsel for applicants transmitted to ALJ the verified statement of Philip D. Robers and copies of the five exhibits, previously distributed to the parties, for inclusion in the record of this proceeding. The verified statement of Mr. Robers discloses that he is a principal with Ernst and Whinney and that the five exhibits were prepared by him or under his supervision and control.

The verified statement of Philip D. Robers and the exhibits distributed to the interested parties are received in evidence as follows:

<u>Exhibit No.</u>	<u>Description</u>
1	Verified Statement of Philip D. Robers
2	Study of Costs to Maintain Automatic Grade Crossing Warning Devices
3	Responses to: CPUC Data Request/ Questions
4	California Railroad Companies-- Breakdown of Signal Warning Device Maintenance Costs
5	California Railroad Companies-- Computation of Labor Additive Rates
6	Estimated Annual Cost to Maintain Crossings--1982 Price Levels

Exhibit 2 concluded that the average annual costs of maintaining automatic warnings devices in 1982 were as follows:

<u>Category</u>	<u>Maintenance Cost Per Crossing</u>
Mainline	\$2,643
Branch Line With Gates	2,203
Branch Line No Gates	1,067
Other Line With Gates	1,368
Other Line No Gates	814

The overall average maintenance cost per crossing under the proposed system is \$2,303, as compared to \$830 under the system adopted in 1967. Based upon 1982 data, today's maintenance billings by the railroads will be \$1,300,000 using the present relative unit value system. Based upon that same data, the maintenance billings would be \$3,100,000 using the applicants' proposal.

Caltrans became aware of the application in early 1984, at which time it requested time to review the application and exhibits.

As a result of that review Caltrans submitted a report dated June 4, 1984 prepared by Ronald J. Holte, audit manager, Caltrans audit office, which is received in evidence as Exhibit 7.

By letter dated June 11, 1984 Caltrans' attorney advised:

"Based on my discussion with Mr. Leland Butler, counsel for Santa Fe Railroad, upon receipt of the report, he shall furnish you, the department, and the PUC staff with the response and letter brief and at that time request that the department respond to the report to your honor within a reasonable time. Upon receipt of the department's response, it is the parties' present intent to allow the commission, after consideration of both parties' responses, to determine and issue the appropriate order without the need of a formal hearing."

On June 27, 1984 applicants submitted their response which is received in evidence as Exhibit 8. On July 24, 1984 Caltrans submitted its position brief together with the verified statement of Darrel Camden, which documents are received in evidence as Exhibit 9.

The position of Caltrans can be summarized as follows:

The category "maintenance method of costs" set forth in the Ernst & Whinney Study of Costs to Maintain Automatic Grade Crossing Warning Devices, dated 1980, should be used for determining the cost of maintaining automatic grade-crossing protection pursuant to PU Code § 1231.1, with the following exceptions:

1. The Railroads should immediately institute a new study in order to verify the methodology and the conclusions reached in the 1980 study, taking into consideration the input of Caltrans.
2. The Railroads should conduct a new study every three years from the date of completion of the previous study.
3. The Railroads should give notice to Caltrans so that Caltrans will have an opportunity to provide any relevant input to the study.
4. The allocation of cost for training should not be considered as a compensable cost under the 1980 study, thus reducing by \$40,015 the

amount requested in the 1980 study for this maintenance cost item. Said costs may be reinstated in subsequent studies if said costs are properly verified in subsequent studies.

5. The allocation of electric power should be considered as an operating cost and not a maintenance cost, thus reducing by \$325,126 the amount requested in the 1980 study for this cost item.
6. The allocation of cost for replacement of electronic components should not be considered as a compensable cost under the 1980 study, thus reducing by \$639,622 the amount requested in the 1980 study for this maintenance cost item. Said costs may be reinstated in subsequent studies if said costs are properly developed in subsequent studies.
7. The Railroads should be ordered to keep actual cost figures regarding special maintenance call-out costs, and compensation for said special maintenance call-out costs should be based solely on the annual actual cost records of each Railroad.
8. The annual amount available to the Railroads to maintain at-grade crossing protection safety devices shall be pursuant to the provisions of PU Code § 1231.1.

A further prehearing conference was held on August 17, 1984 which was attended by applicants, Caltrans, and the Commission staff. It was agreed by the parties that a public hearing was not necessary at this time and that an interim order based on the record to date could be entered. The purpose of the interim order is to assure Caltrans that the matter remains open and Caltrans can have its input to the new study. This will not be an interim order; however, the interests of Caltrans are protected with the procedure set forth in Appendix B.

With respect to the eight exceptions set forth by Caltrans there is no dispute with respect to Exceptions 1, 2, 3, and 8. With respect to Exceptions 4, 6, and 7, Caltrans disputes the methodology used in arriving at the costs. It does not dispute that the inclusion of the cost categories of training, replacement of electronic components or special maintenance call-out is proper but

rather disputes the methodology used in arriving at such costs. The applicants used an average cost. Caltrans contends that actual costs should be required for these expenses. Concerning Exception 5, Caltrans is of the opinion that cost of electric power is an operating cost and not a maintenance cost and therefore should not be included.

We are not convinced that actual costs should be used as is advocated by Caltrans. To do so would require recordkeeping by the railroads concerning replacement of electronic components and special call-outs for each individual crossing. It would also result in billings of different amounts for each crossing and the maintenance of records to be provided to auditors to verify the costs. The additional cost of recordkeeping by the Railroads would probably be included in future billings as a legitimate expense. Furthermore, the cost to the state for auditors is not warranted. We believe a requirement that a new study be conducted every three years is an adequate safeguard that the estimated costs will remain at a reasonable level.

The possible error caused by using budgeted education costs with respect to training is de minimis.

The position that the cost of electric power is an operating cost and not a maintenance cost was argued at length by Caltrans (then Department of Public Works) in Case (C.) 8249 which culminated in Decision (D.) 72225, supra. The position was not mentioned in the decision. However, based upon the signal unit system of reimbursement adopted in that decision it can be seen that the position of Caltrans was rejected in 1967. There has been nothing submitted in this proceeding which convinces us to change this system now.

Findings of Fact

1. In D.72225, C.8249, 67 CPUC 49 (1967) the Commission adopted a signal unit system of reimbursement and ordered that a cost of \$30.00 per relative unit value be used by railroads and public agencies for determining the share of any public agency's

annual cost of maintenance of automatic grade-crossing warning devices.

2. The method of determining the public agencies' annual cost of maintenance of automatic grade-crossing warning devices has not been changed since the issuance of D.72225 in 1967.

3. This application seeks a change in the method of determining the cost of maintenance of automatic grade-crossing warning devices.

4. On February 4, 1983 a "Notice of Proposal to Change the Method of Determining Maintenance Costs for Automatic Grade Crossing Protection" was mailed to all interested parties except Caltrans.

5. The notice provided that: "The Commission anticipates holding public hearings on the application. Should you desire to participate please notify the Commission in writing on or before February 18, 1983."

6. Ten parties advised the Commission of their desire to participate.

7. The ten parties described in Finding 6 were given notice of the prehearing conferences which were held on March 22, 1983 at San Francisco and March 23, 1983 at Los Angeles.

8. The ten parties described in Finding 6 were furnished a copy of Exhibits 2 to 6, inclusive, by counsel for applicants. The letter transmitting the exhibits dated April 7, 1983 requested the parties notify staff counsel no later than May 16, 1983 should they desire to appear at a public hearing.

9. On May 31, 1983 staff counsel advised that no requests for hearing were received.

10. Early in 1984 Caltrans became aware of the application and was given an opportunity to review the application and Exhibits 1 through 6.

11. As a result of the review by Caltrans Exhibits 7, 8, and 9 were filed.

12. The Commission staff has reviewed the study and the position of Caltrans and has concluded that the proposal by applicants is reasonable.

13. New studies using the methodology used in Exhibit 2 should be conducted at least every three years.

14. A public hearing is not necessary.

Conclusion of Law

The application should be granted as set forth in the ensuing order. That order should be effective today because there is an immediate need for the sought relief.

O R D E R

IT IS ORDERED that:

1. The category maintenance method of costs set forth in Appendix A (attached) shall be used for determining the cost of maintaining automatic grade-crossing protection for administering Public Utilities (PU) Code § 1231.1.
2. This decision supersedes D.72225 as modified by D.73559.
3. Applications to revise the costs set forth in Appendix A shall conform to the procedure set forth in Appendix B.
4. Billing for the share of the cost of maintenance of automatic grade-crossing protection shall be submitted by the railroad to the Commission staff on a calendar-year basis. Bills shall be submitted in duplicate to the Commission staff by the railroad.
5. Upon receipt of the bill and claim as provided for in paragraph 4, this Commission shall transmit Claim Schedule Form 218-B along with Commission staff verification to the Department of Transportation for submission to and payment by the Controller of the State of California.

6. Payment for the public agency's share of the cost of maintaining automatic grade-crossing protection shall be made directly to the billing railroad.

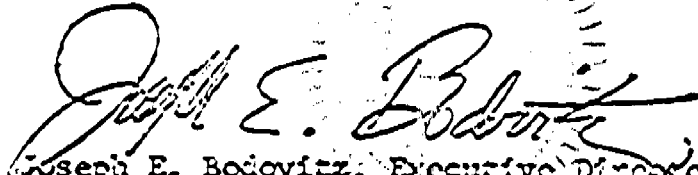
This order is effective today.

Dated SEP 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

APPENDIX A

<u>Crossing Category</u>	1982 <u>Maintenance Cost Per Crossing</u>
Mainline	\$2,643
Branch Line With Gates	2,203
Branch Line No Gates	1,067
Other Line With Gates	1,368
Other Line No Gates	814

(End of Appendix A)

APPENDIX B

Requests to update maintenance costs shall be furnished to the Commission staff with the following information in verified form no later than January 15th of each year. The information shall be prepared and developed to include the Annual Maintenance Cost for each calendar year as required. Base data through 1985 shall be the 1982 costs set forth in Appendix A. Commencing in 1986 a new study using the methodology used in Exhibit 2 shall be conducted at least every three years. Thereafter the base data set forth in the new study shall be used in lieu of the costs set forth in Appendix A.

The request shall contain appropriate computations for each crossing category and should comply with the following methodology:

Association of American Railroads (A.A.R.) indices shall be used to update sample period crossing costs to current cost levels, as follows:

1. Compute the ratio of average cost levels in the current year to average 1979 cost levels. This computation is performed separately for wages and materials and supplies categories.
2. Weight the wage and materials and supplies ratios derived in step one by the percentage of each category to total annual average crossing costs (e.g., 51% labor, 49% material and supplies).
3. Apply the weighted average ratio to each category of crossing, arriving at updated average annual costs.

The third quarter index will be used to compute the average annual index for the current year.

After applicant Railroads furnish the verified information to the Commission staff and Caltrans for review and if agreement is reached, staff will prepare a Resolution to be presented to the Commission for approval. If staff, Caltrans, and applicant Railroads cannot reach agreement, staff will recommend the matter be set for public hearing.

(End of Appendix B)