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Decision S9 08 025 AUG 3 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the)
County of Orange and the City of San)
Clemente to construct an at-grade)
crossing across the railroad tracks)
of the Atchison, Topeka, and the)
Santa Fe Railway Company in the City)
of San Clemente, County of Orange.)

Application 87-04-032
(Filed April 17, 1987)

OPINION

Statement of Facts

The City of San Clemente (the City) straddles U.S. Highway 5 in the County of Orange (the County) just to the northwest of the San Diego County line. Bordered on the west by sandstone bluffs, it overlooks the Pacific Ocean. In the area of interest here, an approximate 200-foot wide strip of sandy beach extends along the shore below the sandstone bluffs.

The Atchison, Topeka, and Santa Fe Railroad Company (Santa Fe) owns a 100-foot wide right of way on the beach adjacent to the foot of the bluffs extending along all 6 miles of the City's shoreline. This right of way is elevated about 10 feet above the beach level and is protected by large stone rip rap on the beach side.

On the southeast side of the City there is a beach park bounded along the northwest side by Avenida Calafia, a road terminating at the beach area. The beach is very popular although access to it is limited physically, because of the steep sandstone bluffs to certain places.

In 1986 the County and City obtained authorization from the California Coastal Commission for development of a bluff top park adjacent to San Clemente State Park, and for construction of beachside parking at the end of Avenida Calafia as well as

concession buildings. As access to the beach from the parking area at Avenida Calafia requires crossing the Santa Fe right of way, this application was filed for authority to construct an at-grade crossing for pedestrians. The only pedestrian crossings within 2-1/3 miles of Avenida Calafia are an underpass serving the isolated Riviera neighborhood to the north and the State Park underpass to the south.

At present a single line of mainline track traverses this beach area. At the time of this application, 12 Amtrak passenger trains and 1 freight train operated daily on the tracks, with an additional 6 Amtrak passenger trains operating Saturdays, Sundays, and holidays. At present people entering or leaving this very popular beach area at the Avenida Calafia location merely stream across the track along some 500 feet of right of way as they wish. (See Appendix A for a view of the area.) Between 1964 and 1987 there have been 6 train accidents along the beach track involving 6 deaths. The applicant County and City, contending that separation of grade would not be practical at this location because of cost and other reasons, proposed, pursuant to provisions of Public Utility (PU) Code §§ 1201-1205, an at-grade crossing with two standard hydraulic gates and two flashing light signals with clangers and appropriate warning signs. They would also install barrier fencing on the bluff side to funnel people to the mechanized at-grade crossing.

Filed April 17, 1987, a copy of the application mailed to Santa Fe was not circulated internally at the railroad resulting in a late filed protest by the railroad. The Santa Fe protest noted the authorized 40 mph speed limit at the proposed location for a crossing and asserted that any additional pedestrians at a grade crossing would directly conflict with a broader public interest in fast on-time operation of trains as well as result in an especially dangerous situation. Santa Fe argued for an overpass.

Similarly, internal communications at the United Transportation Union (the Union) also resulted in a late filed protest by the Union. The Union's protest noted the planned increase in Amtrak traffic for that line, and dangers arising out of limited visibility on some of the trains which were to use a "push-pull" mode of operations.

Both Santa Fe and the Union filed motions to allow late filing of their protests. By rulings dated July 21, 1987 and August 25, 1987, respectively, the assigned Examiner granted the Santa Fe and Union motions. Meanwhile, by an Advice of Participation circulated to the parties in July 1988, the Commission's Railroad Safety Branch (now a part of the Commission's Safety Division) stated that while it is Commission policy to avoid at-grade crossings wherever practical, there may be exceptions. Noting the similarity of situation to that existing at the San Clemente Pier where in 1980 an at-grade crossing was authorized, staff agreed with County and City that separation structures would also be impractical at this location. Accordingly, Safety Division staff advised the parties that if final design plans met its standards staff would recommend granting the application.

The County, City, and Santa Fe thereupon began negotiations toward a possible agreement to serve as the basis for resolution of the matter. Hearing dates were set and successive requests for continuances were granted to permit finalization of language, and appropriate approvals by the public agencies governing boards to be obtained. In December of 1988 the County, City, and Santa Fe advised the Commission that they had reached an agreement for an at-grade crossing, attendant automatic warning devices, construction and maintenance, costs, and insurance, and requested ex parte processing of the application.

In December 1988 ALJ Pilling retired, and the matter was transferred to ALJ Turkish, and thence on January 27, 1989 to ALJ Weiss.

On March 20, 1989, the County and City filed an amendment to their initial application, clarifying the protection devices to be provided, and seeking exemption from General Order 72-B to allow installation of rubber crossing surface material at the crossing. By the amendment the applicants and Santa Fe, with indicated concurrence of the Safety Division staff, agreed that the two standard hydraulic gates and two flashing light signals posited in the application would not be possible because of restricted space between the tracks and the rip rap on the seaward side of the right of way. The amendment would substitute a single CPUC Standard No. 8 (General Order 75-C) flashing light signal with bell, modified with an extra pair of lights and extra crossing warning sign to provide a warning aspect in both directions. Also submitted and referenced in the amendment was a copy of a March 8, 1989 "License for Private Pedestrian Crossing" agreement from Santa Fe to County and City. This latter 30-year license issued October 24, 1988, inter alia provides for Santa Fe construction (at County's cost) and maintenance (at City's cost) of the proposed crossing improvements at Calafia Avenue; that County and City indemnify, hold harmless and defend Santa Fe from liability from the crossing (other than negligence of the railroad and its employees); and requires the County and City (with some provision for the latter self insuring) to carry and keep in force public liability, property damage, and contractual liability insurance.

Having been reminded by the ALJ that the Union was also a party protestant to the proceeding, on March 15, 1989 the County informed the Union of the amended application and license agreement, both acceptable to Safety Division staff, and asked the Union to join in the agreement and to withdraw its protest. There was no response. On April 17, 1989 Santa Fe withdrew its protest to the application as amended.

In June, 1989, Safety Division staff asked the Union for its position on the matter. On June 22, 1989 the Union wrote the

ALJ stating its fundamental belief that pedestrian at-grade crossings over railroad tracks are unsafe under any conditions, and that no safety measures or mechanisms can change that fact. It asserted that separated crossings are the only way to eliminate the hazard.

On June 28, 1989 the ALJ intervened directly with a telephone call to James Jones, State Legislative Director of the Union, to ascertain whether the Union's letter of June 22, 1989 set forth the union's position in full in this matter, thus obviating a need to go to hearing, or whether the Union wanted to proceed to hearing with intention of further development of its position either through presentation of testimony, evidence or cross examination at such a hearing. The ALJ indicated that at this point it appeared that the amended application could provide the basis for a decision. Director Jones forthrightly stated his awareness of other pedestrian at-grade crossing authorizations having been granted under like circumstances by the Commission, and that since the parties to the proceeding who would bear the liability had reached agreement with Safety Division staff's concurrence there would be no point to the Union further burdening the Commission by insisting on a hearing. However, he did ask that the Union's concerns be duly noted.

In view of the apparent fact that no further evidence would be presented or developed by going to hearing, the ALJ determined to proceed ex parte and submitted the matter for decision.

Discussion

Chapter 6 (Railroad Crossings) of the PU Code is concerned with requirements associated with crossings over, under, and at-grade of the track of any railroad corporation. Section 1201 of that chapter requires prior Commission authorization before construction of any at-grade crossing. Other sections of the

chapter provide for other aspects related to crossings and are not at issue here.

A proposed regulated at-grade pedestrian crossing with train activated warning protection devices and rubber crossing surface material at the crossing is necessary to provide safe public access to this popular San Clemente beach. The only other regulated pedestrian accesses are too distant to be reasonably accessible from this regional beach park and parking area.

Separation of the grades is infeasible both for cost and practical reasons. An underpass is estimated to cost \$750,000. The relatively low elevation above the tide line would subject the tunnel to inundation and siltation and would pose engineering problems which could render the project infeasible. An underpass also would form a congregation point for undesirable elements who commit law violations unseen due to obstructed visibility. The social problems with an underpass could be even greater than the engineering problems. An overpass is estimated to cost a minimum of \$250,000, and would be very inconvenient for pedestrians. Per railroad standards, the overpass would require a 24-foot clearance above the rails. Persons making a round trip over the overpass would face a combined climb equivalent to 96 vertical feet. An overpass would constitute an absolute physical barrier to persons in wheelchairs, and a substantially imposing barrier to the young, elderly, feeble, physically handicapped, or those who desire to carry infants, strollers, beach umbrellas, barbecue equipment, surfboards, fishing equipment, coolers or other large or unwieldy items. We further consider that overpass separations have not always been effective, particularly where the local populace finds it more convenient to avoid them. An example is the 9th Street pedestrian overpass across the Southern Pacific Coast Line tracks in the City of Guadalupe in Santa Barbara County. Holes are repeatedly cut in the barrier chain link fencing adjacent to that overpass to provide at-grade access across the tracks rather than

make use of the ramp type overpass. San Clemente's own adverse experience during the mid-1970 period led to replacements and closing of separated grade crossings involving this same mainline track near the municipal pier area (see D.91859 and D.87757 in A.55451).

Hydraulic gates will not be provided as the restricted space between the track and the rip-rap embankment on the seaward side makes them not feasible. In addition, pedestrians could easily go around or under them thereby making little significant contribution to protection were they to be used.

As relevant here, General Order 72-B provides that public crossings constructed after June 21, 1973 be not less than 24 feet wide with filling material to be either asphaltic concrete, equally suitable paving material, or wood planking. Here it is proposed to have the pedestrian crossing be 12 feet wide with a rubber crossing surface material. Six-foot chain link barrier fencing extending to either side, up and down the beachfront to encompass the entire parking frontage to the beach, and terminating at the sandstone bluffs will funnel pedestrians to the crossing from the Avenida Calafia parking area. The sandstone bluffs extending up and down the beach to either side of this parking area tower some 80 feet above the track right of way, so that using the fenced approach to the crossing will be the easiest and most feasible access to the beach. The narrow 12-foot fence entry to the crossing will face a flashing light signal with bell, activated by approaching trains, and the signal's flashing lights facing both the entry and the beach will give warning of an approaching train. The rubber footing material will protect bare feet and provide good footing in the crossing. (See Appendix B for a drawing showing the proposed installation covered by the amended application.)

An environmental assessment and preparation of environmental documentation is unnecessary for the project. The Secretary for Resources has determined, pursuant to the Guidelines

for Implementation of the California Environmental Quality Act (CEQA), that projects which do not have a significant effect on the environment are categorically exempt from the requirements for preparation of environmental documentation (Calif. CEQA Guidelines Section 15000). The proposed crossing which is the project in this application consists of a minor alteration to land in the form of creation of a defined pedestrian crossing lane on the railroads existing right of way, very similar to creation of a bicycle lane on existing rights of way (See Categorical Exemptions, Class 4, Calif. CEQA Guidelines Section 15304(h)). The associated proposed funneling of pedestrians to use this specific pedestrian lane (rather than follow the present unrestricted streaming across at any point) to reach or leave the beach in this specific area, and thereby be alerted by the signal device to approaching trains, will have no significant effect on the environment, but will serve to make crossing the track safer.

Under the private pedestrian crossing license agreement (attached to and referenced in the amendment to Application 87-04-032) Santa Fe will construct the crossing and improvements and the County will pay the costs of construction. Santa Fe will also repair and maintain the crossing and improvements with the City paying the costs. Santa Fe will also be insulated from responsibility for personal injury and/or property damage because the County and the City are assuming that responsibility.

We are appreciative of the Union's belief, as expressed by its Legislative Director, that only separations can adequately provide fully for pedestrian safety. But where separations are not physically practical, and experience has shown the public's will and ability to avoid them when it wishes, we believe at-grade crossings must be considered, particularly where, as here, reasonably safe alternatives can be provided. Local authorities, represented here by both the County and the City, not only accept

but seek the alternative set forth herein. Accordingly, we will grant the application as amended.

Findings of Fact

1. San Clemente enjoys being bordered by an ocean beach along all 6 miles of its western boundary.
2. Santa Fe's mainline railroad track traverses the 6 mile length of beach and is located between the population and the beach, which is a very popular recreation area.
3. Numerous Amtrak and Santa Fe freight trains daily operate on this beachfront track through San Clemente. Maximum train speed is 40 mph.
4. There are numerous unprotected open areas along the 6 miles of track where people can and do access and cross the track on foot to reach the beach.
5. Along the southern coast sandstone bluffs limit and tend to channel access to fewer points.
6. The parking area at the western terminus of Avenida Calafia provides a very popular and readily accessible crossing to the beach.
7. Unrestricted crossing of the track provides a constant safety hazard to the people crossing near Avenida Calafia.
8. The County and City have authorization from the Coastal Commission to develop a bluff top park and to construct additional beach access parking at Avenida Calafia, and seek to provide a safer pedestrian crossing to the beach at this point.
9. Natural terrain conditions, elevation differences, proximity of the railroad to the shoreline, hydraulic problems, unacceptable social experience in the past with underpasses, and cost considerations indicate that it would not be feasible to construct either an overpass or an underpass for pedestrian use in the vicinity of the Avenida Calafia parking area.
10. The proposed at-grade crossing would benefit a large number of pedestrians using the Avenida Calafia parking area by

funneling them into a specific crossing space where reasonable notice of approaching trains would be provided through train activated signals, making crossing the track much safer.

11. Public convenience and necessity require that the applicants be authorized to construct a protected private pedestrian at-grade crossing at Avenida Calafia, in accordance with the plan attached hereto as Appendix B.

12. Construction, repair, and maintenance of the pedestrian at-grade crossing, associated fencing, and automatic warning devices exclusively for pedestrians at the crossing should be the responsibility of Santa Fe.

13. The cost of constructing the pedestrian at-grade crossing, associated fencing, and the cost of furnishing and installing the automatic warning devices at the crossing should be borne by the County.

14. The cost of repairing and maintaining the pedestrian at-grade crossing, associated fencing, and the automatic warning devices at the crossing should be borne by the City.

15. It should be the responsibility of the County and the City, as set forth in the October 28, 1988 License attached to and referenced in the amendment to the application, to at all times indemnify, hold harmless and defend Santa Fe against personal injury and/or property claims resulting from the crossing.

16. It should be the responsibility of the County and the City to maintain the approaches and such portions of the at-grade pedestrian crossing not included in Santa Fe's responsibility specified in Finding 12.

17. The proposed crossing is a categorically exempt project from the requirements for preparation of environmental documentation under the CEQA Guidelines.

18. This application was protested by Santa Fe and by the Union.

19. After the application was amended, Santa Fe withdrew its protest.

20. Although the Union declines to withdraw its protest, it advises that it has no further evidence it wishes to enter beyond that stated in its protest, which forms part of the record considered in reaching this decision. Accordingly, there is no need for a hearing, and the matter may be resolved ex parte.

Conclusions of Law

1. No hearing is required.
2. The applicants should be authorized to construct an at-grade pedestrian crossing across the railroad tracks of the Santa Fe in San Clemente in accordance with the ensuing order and the terms and conditions thereof.

ORDER

IT IS ORDERED that:

1. The County of Orange (the County) and the City of San Clemente (the City) are authorized to construct a private pedestrian at-grade crossing over the Atchison, Topeka, and Santa Fe Railroad Company (Santa Fe) right of way approximately 219 feet southeast of railroad milepost 206 in accordance with the Commission's General Orders, substantially as shown by the plan attached hereto as Appendix B, subject to the conditions specified below. The crossing is to be identified as 2-206.0-D.
2. Train activated automatic protection equipment for the the authorized at-grade pedestrian crossing shall be as specified in Appendix B.
3. The surface material at the 12-foot wide crossing shall be a rubber crossing surface as specified in Appendix B.
4. The authorized at-grade pedestrian crossing shall not be completed until rigid steel chain link fencing is installed substantially as proposed in Appendix B.

5. The authorized at-grade pedestrian crossing, the automatic crossing protection, and the fencing shall be constructed, provided, and installed by Santa Fe at the County's entire expense.

6. The authorized at-grade pedestrian crossing, the automatic crossing protection, and the fencing, after installation, shall be repaired and maintained by Santa Fe at the City's entire expense.

7. Within 30 days after completion of the authorized at-grade pedestrian crossing with automatic crossing protection and fencing, County and City shall notify this Commission in writing of that fact and of compliance with the conditions herein.

8. It shall be the responsibility of the County and the City, as set forth in the October 28, 1988 License attached to and referenced in the amendment to the application, to at all times indemnify, hold harmless and defend Santa Fe against personal injury and/or property claims resulting from the crossing.

9. This authorization shall expire within 3 years after today if not exercised within that time, unless time be extended, or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.


This order is effective today.

Dated AUG 3 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did not
participate.

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


Victor Weisser, Executive Director
/s/

THE NEXT 1

DOCUMENTS ARE

POOR ORIGINALS

MICROFILMING SERVICES

will not assume responsibility

for the image quality

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Ave CALIFIA

7-9-88

A.89-04-032
APPENDIX A



EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
AND
County of Orange

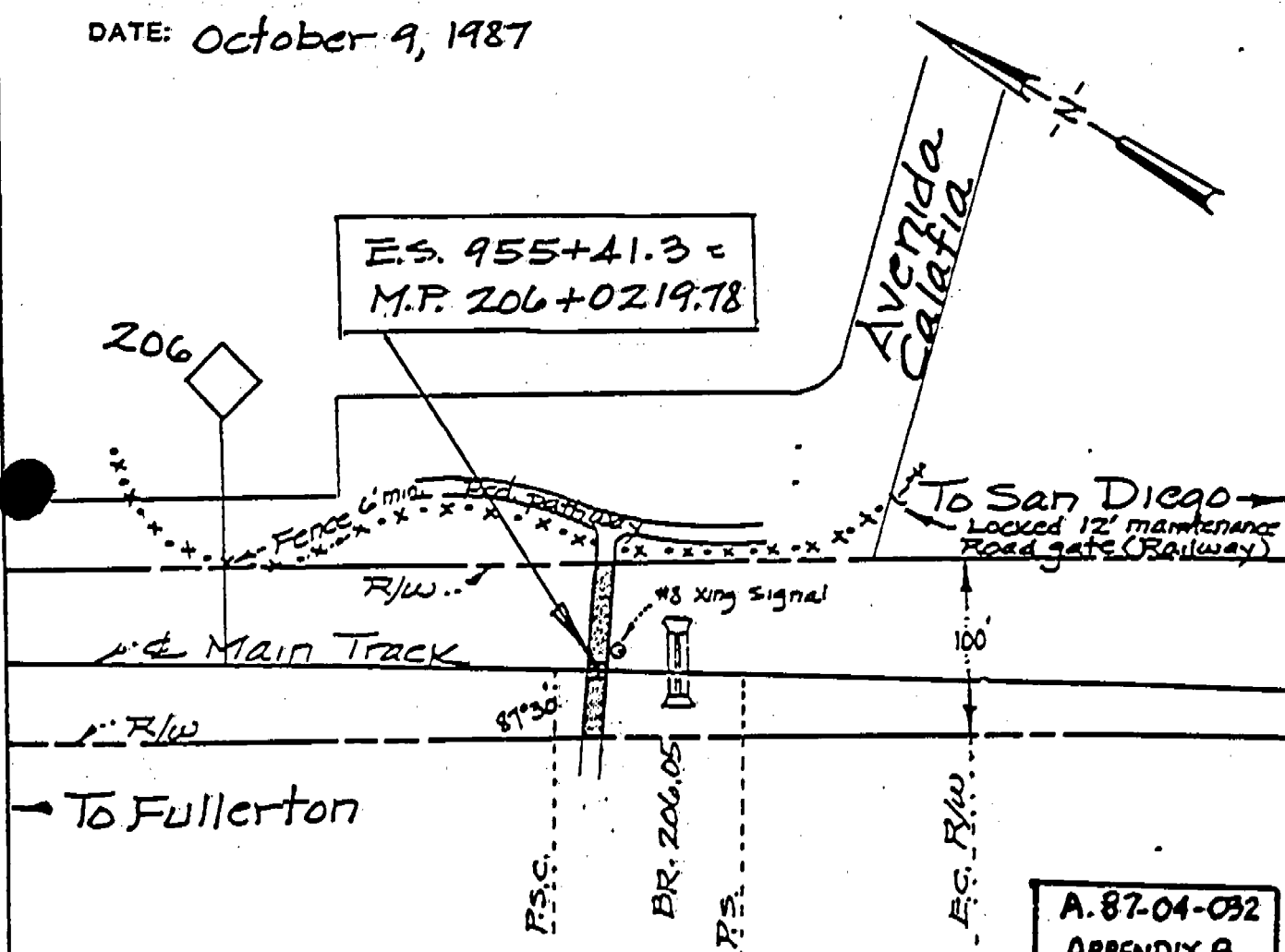
CHICAGO, ILLINOIS
SCALE: 1 IN. TO 100 FT.
Los Angeles DIV.
Fourth SUBDIV.

H.G. Webb
CHIEF ENGINEER
DESCRIPTION APPROVED

DATE: October 9, 1987

MAP REF. 5h 14 of 35

R/w



Description:

A 12' Private Pedestrian crossing shown shaded.

- Notes:
- 1-#8 flashing light signal with back lamps.
 - 12' rubber crossing surface
 - 6'(minimum) chain link fence from bluff to bluff (security fence) with a 12' Railway Company locked maintenance road gate.

Near San Clemente, Orange
County, California

C.E. DRAWING NO. 1-07912