

ORIGINAL

Decision No. 86709

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Placentia,  
for determination of Atchison, Topeka  
and Santa Fe Railway Company  
responsibility to bear costs in  
relocating and upgrading grade  
crossing and warning systems on  
Melrose Street A.T.S.F. Spur  
Crossing 2-168.2-C.

Application No. 56364  
(Filed March 29, 1976)

Charles J. Post III, Attorney at Law, for City of  
Placentia, applicant.

Thomas A. Lance, Attorney at Law, for The Atchison,  
Topeka and Santa Fe Railway Company, protestant.

Albert A. Arellano, Jr., for the Commission staff.

O P I N I O N

By its application the city of Placentia (Placentia) requests this Commission to order The Atchison, Topeka and Santa Fe Railway Company (Railway) to bear all costs in relocating and upgrading the grade crossing and warning system on the Railway's Melrose Street spur track Crossing No. 2-168.2-C in Placentia.

Public hearing on the application was held before Examiner Cline in Placentia on June 11, 1976. The matter was taken under submission on the filing of the last brief on July 19, 1976.

Issue

Should Railway be required to bear all of the costs of relocating and upgrading the grade crossing and warning system on Railway's Melrose Street spur track Crossing No. 2-168.2-C in Placentia necessitated by the Melrose Street Improvement Project?

Discussion

On October 17, 1972, the City Council of Placentia passed Resolution No. 72-R-224 granting Railway the right to construct, maintain, and operate a standard gauge railroad spur track at grade on Melrose Street in Placentia, said crossing being No. 2-168.2-C.

The permit was granted upon the following conditions among others:

- "4. The Atchison, Topeka and Santa Fe Railway Company shall remove and relocate without expense to the City any facilities installed, used and maintained under the franchise if and when made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place, including the construction of any subway or elevated transfer facilities, or by construction or improvement of any public property or facility, or if the public health, comfort, welfare, convenience or safety so demands.
- "5. The Atchison, Topeka and Santa Fe Railway Company shall pay all costs and expense of constructing the drill track herein referred to and all safety and protective devices installed, whether voluntarily or by order of the City of Placentia or the Public Utilities Commission of the State of California.
- "6. The Atchison, Topeka and Santa Fe Railway Company shall pay all costs and expense of maintaining any safety and protective devices constructed and installed on the property herein described."

Witness Buchner, Director of Industrial and Commercial Resources of Placentia, testified that these conditions were never questioned or objected to and were agreed to by Mr. Hauptli, Manager of Railway, orally. Exhibit No. 3 which is a letter from R. W. Hauptli to Mr. Buchner, dated October 11, 1972 states:

"We are now in agreement that the franchise would be satisfactory for our purpose and ask that you prepare the matter for City Council action."

Exhibit No. 4 which is a letter from Mr. Buchner to Mr. Hauptli, dated October 12, 1972, states:

"This is to confirm our conversation of October 1, 1972. You stated The Atchison, Topeka and Santa Fe Railway Company had reviewed a copy of the attached proposed resolution/franchise and have agreed to all conditions as specified."

In October of 1972, Melrose Street was some 40-odd feet wide, but the master plan showed the street would be 80 feet wide. The protective devices installed at the crossing are a control box, drop gate arms, and signal lights.

The Melrose Street Improvement Project provides for the widening of the crossing and the relocation of existing crossing protection devices. The Railway has refused to pay the full relocation costs of the protection devices in accordance with the quoted conditions 4, 5, and 6 of Resolution No. 72-R-224 of Placentia.

Placentia acknowledges that the Commission has exclusive jurisdiction to prescribe the terms of any crossing and to apportion the cost thereof. (City of Downey v So. Pacific Co. (1965) 64 PUC 678.) However, Placentia contends that the principles of equity, fairness, and reasonableness when related to the factual circumstances in this proceeding require the Railway to pay 100 percent of such costs.

Placentia contends that the following facts justify the payment of 100 percent of the costs by Railway:

1. Railway by agreeing to conditions 4, 5, and 6 of Resolution 72-R-224 of Placentia agreed to pay such costs.
2. Railway agreed to conditions 4, 5, and 6 of Resolution 72-R-224 with full knowledge of City of Los Angeles Osborne Street Crossing (1967) 67 PUC 737, in which this Commission stated:

"When the Commission finds that grade crossings must be widened and additional protection installed to meet local transportation needs and further safety and convenience made necessary by the rapid growth of the community, the cost of such improvements may be allocated all to the railroad."

3. Railway was fully aware of the impending widening of Melrose Street at the time it originally placed the crossing safety devices; therefore, Railway should incur 100 percent of the costs of moving these devices to the location where they should have been placed originally.

4. The spur track was installed for the purpose of serving a single, privately-owned warehouse and the warehouse developer paid for a portion of the track. There is no public interest involved in this particular spur track's use.

5. As the spur track passes through some 24 acres of Railway's property, the Railway's property has taken on a higher property value with this access.

Railway introduced evidence through its witness Gordon S. Cutler, Senior Industrial Representative, to show that after many months of negotiating with Placentia over the terms of the resolution Railway was finally forced to accede to Placentia's demands because of extreme pressure to provide rail service to an industry and because Placentia's demands were, after all, "the only game in town". Mr. Cutler also testified that at the time the resolution was adopted Railway was of the opinion that conditions 4, 5, and 6 of Resolution No. 72-R-224 were unenforceable and that they had been inserted in the resolution because Placentia was contemplating widening Melrose Street even prior to 1972. This witness further testified neither Railway nor the industry served by the spur track will benefit by the widening of Melrose Street but that the sole benefit of such project will go to the members of the general public who use Melrose Street. The nature, condition, and suitability of the grade crossing, from Railway's point of view, will remain unchanged.

Railway also relies on City of Los Angeles Osborne Street Crossing (1967) 67 PUC 737, previously referred to by Placentia in its arguments. In this decision the Commission found and concluded as follows:

- "6. The cost of relocating the existing grade crossing protection and installing the additional grade crossing protection shall be apportioned equally between the City of Los Angeles and the Southern Pacific Company.
- "7. In addition to the foregoing findings of fact, the Commission finds and concludes that it shall be the policy of the Commission, when a grade crossing is widened and additional protective devices are installed, and there are no special conditions which require a different result, to apportion the cost of relocating existing protective devices and installing new protective devices equally between the railroad and the public entity."

Railway's witness testified that at the time the signaling devices were installed they could not be placed anywhere except where they were placed because there had been no dedication of the widened street at that time. The Overmeyer Company paid for the installation of the track on its property and Railway paid for the work in the street. The spur track passes through 24 acres of improved property owned by Railway on the easterly side of Crowther and Placentia Avenues.

Railway requests that the Commission disregard the provisions of Placentia's Resolution No. 72-R-224 and allocate costs equally between Placentia and Railway pursuant to the Osborne Street decision previously discussed.

Findings

1. Because of extreme pressure to provide rail service to an industry, Railway reluctantly agreed to the provisions of Placentia's Resolution No. 72-R-224 which would require Railway to bear all costs in relocating and upgrading the grade crossing and warning system on Railway's Melrose Street spur track Crossing No. 2-168.2-C in Placentia.

2. Insofar as Placentia's Resolution No. 72-R-224 would apportion costs to Railway, said ordinance has no force nor effect, inasmuch as the matters involved are of state concern, subject to the jurisdiction of the Commission, and do not come within the field of municipal affairs. ✓

3. The spur track was installed for the purpose of serving an industry, Overmeyer Company, and passes through 24 acres of improved property owned by Railway.

4. Railway was fully aware of the impending widening of Melrose Street at the time it originally placed the crossing safety devices.

5. The crossing safety devices were properly placed originally but must be moved because of the widening of Melrose Street.

6. The Commission reaffirms its policy stated in the Osborne Street Crossing, Decision No. 73821 (1967) 67 PUC 737 at 746, that when a grade crossing is widened and additional protective devices are installed, and there are no special conditions which require a different result, to apportion the cost of relocating existing protective devices and installing new protective devices equally between the railroad and the public entity.

7. The Commission also reaffirms its statement in the Osborne Street Crossing, Decision No. 73821 (1967) 67 PUC 737 at 744, that when the Commission finds that a grade crossing must be widened and additional protection installed to meet local transportation needs, ✓

safety, and convenience made necessary by the rapid growth of the community, the cost of such improvements may be allocated all to the railroad.

8. The following special conditions require that the cost of relocating the existing grade crossing protection and installing additional grade crossing protection required by reason of the widening of Melrose Street should be allocated to and borne entirely by Railway:

- (a) By agreeing to conditions 4, 5, and 6 of Resolution No. 72-R-224 of Placentia, Railway agreed to pay such costs.
- (b) Railway was fully aware of the impending widening of Melrose Street which would require the relocation of the crossing safety devices.
- (c) The spur track was installed for the purpose of serving a privately owned warehouse.
- (d) As the spur track passes through some 24 acres of Railway's property, Railway's property has taken on a higher value.

9. The cost of maintaining the additional grade crossing protection should be borne entirely by Railway.

Conclusion

The Commission concludes that the application should be granted and the cost of relocating the existing grade crossing protection and the cost of installing and maintaining additional grade crossing protection required by reason of the widening of Melrose Street should be borne entirely by Railway.

O R D E R

IT IS ORDERED that:

1. The application of the city of Placentia is granted as provided herein.

2. The cost of relocating the existing grade crossing protection and installing additional grade crossing protection at The Atchison, Topeka and Santa Fe Railway Company's (Railway) spur track Crossing No. 2-168.2-C in the city of Placentia required by reason of the widening of Melrose Street shall be borne entirely by Railway.

3. The cost of maintaining the relocated and the additional grade crossing protection at Railway's spur track Crossing No. 2-168.2-C in the city of Placentia shall be borne entirely by Railway pursuant to the provisions of Section 1202.2 of the Public Utilities Code.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of DECEMBER, 1976.

I dissent:  
*William Aguon, Jr.*  
Commissioner

I dissent  
*Vernon L. Sturgeon*  
Commissioner

*[Signature]*  
President

*[Signature]*  
Commissioners