

dz

ORIGINAL

Decision No. 86966

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Livermore)
 for an order authorizing construction)
 of crossings at separated grades)
 between North "P" Street and North)
 Livermore Avenue and the tracks of)
 the Southern Pacific Transportation)
 Company and the Western Pacific)
 Railroad Company; for the elimination)
 of two railroad grade crossings; and)
 for the relocation or modification)
 of three railroad grade crossings.)

Application No. 53846
 (Order Granting Rehearing
 dated November 2, 1976)

OPINION AND ORDER

Decision No. 86233 dated August 10, 1976 ordered that access to Livermore Car Wash and California Water Service by vehicular traffic within the confines of Crossing D-47.47 (Southern Pacific Transportation Company) and Crossing 4-48.2 (The Western Pacific Railroad Company) in the city of Livermore shall be eliminated by physically closing the means of ingress or egress. That decision also ordered that the costs of erecting barriers or other necessary appurtenances shall be shared equally by the railroads and by the public agency having control over the highway within the crossing.

A petition for rehearing which did not stay the above order was filed by Southern Pacific Transportation Company (SP). That petition was granted by Decision No. 86601 dated November 2, 1976. The rehearing was limited to the question of what should be the apportionment of costs for erecting barriers or other necessary appurtenances for physically closing ingress and egress by vehicular traffic to Livermore Car Wash and California Water Service.

On December 3, 1976, The Western Pacific Railroad Company (WP) directed a letter to the Commission stating in part that WP is agreeable to the apportionment of costs provided in Decision No. 86233, and that WP has no objection to canceling the rehearing and abiding by Decision No. 86233.

By letter dated January 5, 1977, served on all parties, SP advised the Commission as follows:

"Southern Pacific has entered into an agreement covering apportionment of the cost of providing the additional barriers required by Decision No. 86233. Execution of such an additional agreement is consistent with the position Southern Pacific has taken in its application for rehearing. However, while execution of the additional agreement does not moot the legal questions raised by the petition for rehearing insofar as they involve Southern Pacific, there would seem to be no reason why the decision cannot now be modified by consent without a further hearing being required.

"In view of the fact that Western Pacific apparently has no quarrel with the order contained in Finding No. 7 in Decision No. 82374, as modified by Decision No. 86233, it is suggested that the sentence purporting to apportion costs of erecting barriers be further modified to exclude Southern Pacific and an additional order be entered requiring that Southern Pacific's share will be as provided by agreement with the city. Southern Pacific hereby consents to such modification."

In the circumstances the Commission finds that Decision No. 82374 in this proceeding as modified by Decision No. 86233 should be further modified to provide that SP's costs of constructing barriers as ordered in Decision No. 86233 should be apportioned in accordance with agreement with the city of Livermore, and upon such modification of Decision No. 86233, rehearing of that decision ordered by Decision No. 86601 is moot. The Commission concludes that the order in Decision No. 86233 should be modified as indicated above and that upon said modification the rehearing ordered in Decision No. 86601 is no longer necessary.

IT IS ORDERED that:

1. The order in Decision No. 86233 in this proceeding is modified to read as follows:

"IT IS ORDERED that Decision No. 82374 is further modified by the addition of Finding 7 which shall read as follows:

"7. Access to Livermore Car Wash and California Water Service Company by vehicular traffic within the confines of Crossings D-47.47 and 4-48.2 in the city of Livermore shall be eliminated by physically closing the means of ingress or egress. The Western Pacific Railroad Company's portion of the costs of erecting the barriers or other necessary appurtenances shall be shared equally with the city of Livermore. Southern Pacific Transportation Company's portion of costs of erecting the necessary barriers or appurtenances shall be in accordance with an agreement reached with the city of Livermore."

2. The rehearing of Decision No. 86233 ordered in Decision No. 86601 is no longer necessary and that order is rescinded.

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

Dated at San Francisco, California, this 15th day of FEBRUARY, 1977.

Robert B. ...
President
William ...
...
...
Commissioners

Commissioner Vernon L. Sturgeon, being
-3- necessarily absent, did not participate
in the disposition of this proceeding.