

Decision No. 91471 MAR 18 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the CITY OF ONTARIO)
 for an order authorizing construction)
 of a crossing at separated grades)
 between Euclid Avenue and the track)
 of the Union Pacific Railroad Company)
 sometimes referred to as the "Euclid)
 Avenue Underpass."

Application No. 58561
 (Filed December 29, 1978)

Samuel Crowe, City Attorney, for
 applicant.
Eugene C. Bomstetter, Attorney at Law,
 for State of California, Department
 of Transportation; Robert M. White,
 Attorney at Law, for Union Pacific
 Railroad Company; and Anthony P.
 Parrille, Attorney at Law, for
 Southern Pacific Transportation
 Company, interested parties.
Robert W. Stich, for the Commission staff.

O P I N I O N

Summary of Decision

The city of Ontario (Ontario) proposes to lower Euclid Avenue, State Highway Route 83, under the track of the Union Pacific Railroad Company (UP) and the tracks of the Southern Pacific Transportation Company (SP). Ontario filed A.58562 for authorization to construct a grade separation to carry SP's tracks over Euclid Avenue and the subject application to carry UP's tracks over Euclid Avenue. None of the parties dispute the need for a grade separation project.

Ontario, the State of California, Department of Transportation (Caltrans), and SP concur on the need for a two-track SP bridge over Euclid Avenue.

Ontario, supported by Caltrans, proposes to construct a single track UP bridge over Euclid Avenue to replace UP's existing single track grade crossing and off-track access to Euclid Avenue.

UP contends that: (1) in the next few years increased UP traffic will require construction of another track for its freight operations; (2) it may need another track to accommodate rail passenger traffic; (3) it requires space on the bridge for off-track vehicles needed for its operating and maintenance activities; (4) its portion of the Euclid Avenue project should be wide enough for a two-track railroad bridge and a maintenance road; but (5) if a vehicular bridge is built carrying State Street across the Euclid Avenue underpass, it would not require space for a maintenance road on its two-track railroad bridge.

SP and the Commission staff support UP's contention that a two-track bridge should be built. The staff states that since the Ontario city council authorized construction of the State Street bridge,^{1/} there is no need for a wider bridge to accommodate an off-track maintenance road.

^{1/} The State Street bridge was not adopted as a part of the project adopted by Caltrans and the California Transportation Commission (CTC) on December 20, 1979.

Public convenience and necessity require construction of a 35-foot wide two-track grade separation project at UP's San Bernardino County Grade Crossing No. 3-37.7, in Ontario.

Public convenience and necessity also require construction of the State Street bridge over Euclid Avenue in conjunction with the construction of the underpass.

Background

Euclid Avenue, the main north-south street in Ontario, crosses SP and UP transcontinental rail lines at the southerly limits of Ontario's central business district. Ontario has sought to separate the roadway from these rail-road tracks since the late 1940s.

After receiving an engineering study prepared by its consultants, De Lew Cather & Company and King & King, on the feasibility of consolidating the SP and UP tracks^{2/} and of eliminating grade crossings, the Ontario city council adopted a resolution calling for the separation of three arterial streets from the east-west rail lines. City voters passed a bond issue on April 9, 1968 to construct grade separations of the three streets (including Euclid Avenue). Grade separations have been constructed on the other streets.

The proposed Euclid Avenue underpass project, which is No. 2 on the 1979-1980 grade crossing priority list adopted in D.90399 in OII 32 dated June 5, 1979, would: (1) be approximately 1,500 feet long between Park Street and Transit Street; (2) provide for three 12-foot traffic lanes and an 8-foot shoulder in each direction; (3) eliminate the existing grade crossings; and (4) contain two 178 feet

2/ The consolidation was not deemed to be economically feasible.

long-cast-in-place prestressed box girder railroad bridges to carry the UP and SP tracks, which are approximately 450 feet apart.

Ontario estimates the daily vehicular traffic movements on Euclid Avenue for 1981 at 33,620, at a maximum speed of 35 mph.

Ontario states that in 1981 UP's average daily train traffic would (1) include 12 through traffic movements and four switching movements; (2) not include any passenger trains; (3) block traffic 136 minutes per day; and (4) move at speeds up to 65 mph.

Elimination of the grade crossings would (1) avoid street closing delays; (2) improve the response time of emergency police, fire, and ambulance vehicles; (3) eliminate wasteful motor vehicle fuel use and air pollution caused by grade crossing delays; (4) reduce accidents; (5) provide better northbound access to Ontario's central business district; (6) permit Ontario to attain its social, economic, and land-use goals; and (7) improve vehicular arterial traffic flow to other freeways and communities.

Construction of UP Bridge

The UP bridge would clear Euclid Avenue traffic by at least 16 feet. During construction, Ontario proposes to close Euclid Avenue, to detour road traffic on existing streets, and to construct a shoofly to detour UP's line around the bridge location.

Environmental Impact Report (EIR)

Caltrans prepared a draft EIR (Exhibit 16), held a public hearing, and issued a final EIR (Exhibit 17) for the project in compliance with the California Environmental Quality Act, the Public Resources Guidelines, and with Caltrans' environmental regulations.

On December 20, 1979 CTC considered proposed findings with supporting statements of facts for the Euclid Avenue railroad grade separation project, a proposed statement of overriding considerations for the project, and issued resolutions which adopted the proposed findings and approved the project for future funding.^{3/} CTC and Caltrans prepared a Notice of Determination in compliance with Section 21108 of the Public Resources Code.^{3/} The Notice of Determination, received by the Secretary of the Resources Agency of California on January 2, 1980, states:

"PROJECT DESCRIPTION

"Construct a railroad grade separation on Euclid Avenue between Sunkist Street and Holt Boulevard in the City of Ontario.

"This is to advise you that the California Department of Transportation and the California Transportation Commission have made the following determinations regarding the above-described project:

- "1. The project has been approved by the California Department of Transportation and the California Transportation Commission.
- "2. The project will have a significant effect on the environment.
- "3. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA and was certified by the Department

3/ This information is incorporated herein as Reference Item B.

and by the Commission as required by Section 15085(g) and Section 15085.5(f), respectively, of the State EIR Guidelines.

- "4. Mitigation measures adopted: relocation advisory assistance and payments for affected businesses; landscaped slopes and median areas; relocation of an historic fountain to a suitable site; local traffic will be allowed to use Euclid southerly of Park during construction; minor improvements to signed detour streets; no construction methods that would adversely affect historic buildings will be permitted."

Hearings

After notice, five days of hearings were held in the city of Los Angeles before Administrative Law Judge Levander between October 17, 1979 and November 9, 1979. The matter was submitted subject to the receipt of briefs which have been received. Reference Item B (see footnote 3) furnished by Caltrans has been incorporated in this record.

The testimony of Ontario's city engineer established the need for construction of a Euclid Avenue underpass. The primary issues raised at the hearings were:

1. Did UP fail to make a timely protest on the size of the bridge to carry its tracks over Euclid Avenue?
2. Would the UP bridge proposed by Ontario be operable?
3. Is UP's request for a 35-foot wide, two-track bridge (providing that the State Street bridge over Euclid Avenue will be constructed in conjunction with the construction of the new Euclid Avenue underpass) a separate project?
4. Are grade separation funds available for widening the UP bridge?
5. Who should pay for an expansion of the project beyond that proposed by Ontario?

Issue 1

A letter dated August 16, 1978 from Caltrans to UP (Exhibit 12) requested information, "at your earliest possible convenience," on UP's (1) future track, maintenance road and needed clearance widths, current train traffic, number of freight and passenger trains in each direction and their average speeds and number of switching movements; (2) a 1990 or 1995 estimate of train traffic; and (3) a separate cost estimate of work to be done by UP forces, including shoofly construction.

In a letter dated September 28, 1978 (Exhibit 10), Caltrans acknowledged UP's reply letter of September 13, 1978 and stated that its Office of Structures is preparing exhibits for the Commission "based on minimum widths necessary to carry the existing railroad facilities across Euclid Avenue."

A Caltrans letter of transmittal attached to the Draft EIR for the project requested written comments from the Commission by May 10, 1979 (Exhibit 16). A May 7, 1979 letter from Caltrans to UP (Exhibit 14) concerning the hearing on the Draft EIR states, in part:

"It is not intended that the issues regarding the cost split between the two railroads or the difference between the City's and the Union Pacific Company's desires regarding railroad facilities to be included in the project be aired at this hearing, other than as they might relate to alternative design features. More appropriately, these issues will be resolved between the project participants, possibly at a PUC hearing."

UP apparently restated its position verbally but did not file any written objections to the Draft or Final EIR on the project. However, in Exhibit 14 Caltrans transferred the forum for UP's protest on the size of the bridge to the Commission hearing.

Issue 2

"Operable" is not defined in the statutes. Caltrans states the Commission must adopt a dictionary definition of "possible to operate."

Mr. Frank Hiyama, the agreements engineer for Caltrans, testified that (1) he makes the final recommendations for determining the funding Caltrans will allocate towards grade separation projects; (2) the California Administrative Code provides:

"Participation of the grade separation fund is limited to only that portion of the project which, in the determination of the California Transportation Commission, is necessary to make the grade separation operable and to effect the separation of grades between the highway and the railroad tracks.

"Off-track maintenance roads shall be non-participating unless the existing access for maintenance purposes is severely impaired by the project.";

(3) construction of a one-track UP bridge over Euclid Avenue to replace the UP's original track would make the grade separation operable; and (4) UP's off-track vehicles could get from one side of Euclid Avenue to the other after completion of the project, although such vehicles, including emergency vehicles, would have to follow a circuitous path.

Mr. Hiyama further testified that (1) if Euclid Avenue was built over rather than under the railroad, the structural opening for the railroad would provide space for an off-track maintenance road and for a future track to enable UP to utilize its right of way even though this would require some small additional cost; (2) Caltrans has used federal guidelines^{4/} for participation in costs for additional tracks; (3) he distinguishes between additional main line track and an industrial spur track installed for the benefit of the railroad, which was the case in this instance; (4) Caltrans would provide 80 percent of the funding of a two-track bridge^{5/} if it were in place even though one of the tracks was a side track; and that (5) if UP had a definite plan to or was spending money to double track its main line through the entire Los Angeles area (from the city of Industry to the city of Riverside) within a reasonable period of time of three to five years, Caltrans would have considered funding a second track on the bridge.

4/ The Federal Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 1, paragraph 7 (Federal Share), Sub A(2), states:

"At grade separations, Federal funds are eligible to participate in costs to provide space for more tracks than are in place when the railroad establishes to the satisfaction of the State Highway Agency and FHWA that it has a definite demand and plans for installation of the additional tracks within a reasonable time."

5/ The maximum participation of Caltrans on any project would be \$5,000,000.

Mr. R. E. Irion, UP's South Central District general manager, testified that: (1) his duties included supervision of approximately 3,000 people in charge of supervising all train movements, all yard movements, yard handling, and all station personnel operating approximately 1,435 miles of track; (2) based upon his experience, the proposed Euclid Avenue bridge would not be operable soon after the anticipated 1983 completion date of the project because increased through traffic and increased local switching would interfere with UP's ability to meet its schedules and carry out necessary operations; (3) if UP could not meet its schedules, it would lose potential traffic to trucks, which have four times the fuel requirement of trains per ton-mile of freight; (4) in 1978, UP drafted plans^{6/} (Exhibit 21) to extend an at-grade spur track across Euclid Avenue to meet increased local demands; (5) UP decided not to force this construction over the congested highway and over a portion of the shoofly routing for the subject project; (6) it appeared that the second track would be included in the subject grade separation project; (7) UP's freight traffic at Euclid Avenue increased from 13 trains per day in 1975 to 20 trains per day in 1979; (8) freight traffic would increase to 29 trains per day in 1985 and to 32 trains per day in 1988 at Euclid Avenue based upon a "firm" projection at a 5.5 percent per year compound growth rate through 1988, principally from increased

6/ These plans were not discussed with Ontario or Caltrans.

trailer traffic and increased bulk commodity movement trains such as soda, ash, potash, and coal; and that (9) freight growth in the first nine months of 1979 was at an 8.6 percent rate which, if continued, would result in 33 trains per day in 1985 and 42 trains per day in 1988. These projections were developed from internal marketing information.

In addition, Mr. Irion estimates potential freight growth from the following sources:

(1) Trailer traffic caused by the diversion of container traffic from the Panama Canal of up to 18 trains per day by 1990. He testified that (a) the federal government presently subsidizes canal traffic; (b) the government of Panama, which is assuming increasing control of canal operations, would not subsidize canal traffic; (c) Panama would increase tolls substantially to make the canal traffic self-sustaining; and that (d) increased canal tolls would cause shippers to increase their rail shipments.

(2) Development of the Kaiparowits Plateau coal resources in Utah could result in an export market requiring 10 additional coal trains or empty return movements per day.

(3) Substantial local traffic increases from existing industries, from a new industrial park, and from other prospective industrial firms, together with related switching activities.

Mr. Irion testified that (1) UP deliveries to one of its largest local customers, O. H. Kruse Grain and Milling Company (Kruse), located a few blocks west of Euclid Avenue, increased from 802 cars in 1976 to 1,800 cars in 1979, and he estimates a level of at least 2,650 cars in 1983; (2) Kruse takes deliveries in 25 and 50 car trains to obtain better

rates; (3) UP has to break up trains for Kruse, push the train from west to east against a grade^{7/} to avoid disrupting traffic on Euclid Avenue; and that (4) this movement results in double handling of these cars, since the grain is shipped from the east, and delays through trains.

Mr. Irion described how the capacity of a single-track railroad is gradually expanded to meet increasing demands. In that evolution sidings are established where trains can be placed for passing, then the sidings are lengthened to accommodate longer trains and more frequent movements, then the longer sidings are connected to a centralized traffic control system in Salt Lake City, Utah, to provide more efficient controls, and then by double tracking. He believes that it is necessary to establish priorities for elimination of congestion at various track sections and to avoid expending capital^{8/} to double track a single-track railroad all at one time for the purpose of handling gradually increasing traffic. He testified that (1) UP is experiencing sharper increases in delay time on both sides of Euclid Avenue than on any other portion of its line between Los Angeles and Riverside because of increases in through traffic and in local switching and because of UP's need to decrease train speed from 60 mph to 45 mph at a railroad grade crossing east of Euclid Avenue; (2) to alleviate this problem, UP will increase its double tracking

^{7/} An alternate operation suggested by Caltrans would require operation of a switching engine to unload the grain cars.

^{8/} Mr. Wengert, UP's California division engineer, estimated the cost of such double tracking at more than a million dollars per mile.

near to the project to improve local switching; (3) UP would connect a 9.4-mile segment of UP's line to its centralized traffic control system by 1985 between its Montclair siding, one mile west of Euclid Avenue, and easterly to its Mira Loma siding, less than three years after the expected project completion date; and that (4) in his opinion, a two-track bridge was necessary to make the project operable.

Mr. Wengert testified that: (1) a two-track structure is safer in normal operation and in emergencies than a one-track structure; (2) it is more likely that a derailment will be contained on and will not fall from a two-track bridge compared to a one-track bridge; (3) a crane can function on a two-track structure to rerail trains whereas the operation is extremely difficult on a one-track structure; (4) under normal operations, reballasting, tie changing, and other operations that can be performed by machine on a two-track bridge become hand work on a one-track bridge; (5) because of train frequencies, only two hours per day are available for maintenance operations on this and some other segments of track; (6) the time available for maintenance would be increased by the construction of a two-track bridge; and that (7) a two-track bridge was necessary to make the project operable from both an emergency and normal maintenance-of-way point of view whether or not the State Street bridge is completed.

Caltrans presented evidence demonstrating that UP operated many narrow single-track crossings on its system from Los Angeles to Riverside to demonstrate that a one-track bridge would suffice at Euclid Avenue. This material was not related to through or local movements and delays at points of congestion.

If Caltrans utilized the criteria it proposes for UP, it would eliminate a localized freeway bottleneck between two or three freeway ramps by adding a lane or lanes the full length of the freeway. That is not a reasonable or practical solution for Caltrans nor are its criteria reasonable or practical for UP.

Caltrans' narrow interpretation of "operable" does not give reasonable consideration to the near-term operational, maintenance, and emergency needs of UP on and adjacent to the project area, even when based upon UP's most conservative projection of freight growth. UP requires a second track over Euclid Avenue to make the project operable. UP also requires either a maintenance road on its bridge or the use of the State Street bridge to avoid unreasonable delay and expense in moving its off-track equipment across Euclid Avenue due to the severing of its direct access to Euclid Avenue from its maintenance road now paralleling UP's tracks.

Should UP's track in the project area be designated as a passenger corridor, a two-track UP bridge structure would be required in the project area. Mr. Irion testified that there were ongoing discussions^{9/} with federal and state authorities on this subject.

^{9/} Caltrans states that such discussions have been held with other major railroads.

Issue 3

Ontario proposes to construct a single UP track. Ontario and Caltrans would have UP file an application and bear the additional costs for constructing a wider bridge or of constructing its own separate bridge.

In A.54341 the county of Los Angeles (LA) sought authority to construct a grade separation of Hollywood Way under SP's track in the city of Burbank. LA and SP jointly proposed to construct a two-track SP bridge at SP's insistence, to replace SP's existing single track. LA considered the second track to be a betterment to the railroad. The Department of Transportation contended that SP should bear the full cost of the second track. D.84414 dated May 13, 1975 states, in part:

"The parties agreed that the structure to be built would provide for two tracks and that the Commission is being called upon only to decide the portion each will pay for the cost of the structure attributable to the second track. Since a 'project' is defined in Section 2400(b), supra, as the grade separation and the approaches, ramps, etc., and since the grade separation is defined as the actual structure which separates the roadway from the railroad tracks, it is not reasonable to take the position that the second track portion of the structure is a separate project. The second track does not actually separate the roadway from the railroad tracks and is not therefore a grade separation; if it is not a grade separation it obviously cannot be a grade separation project. If it is not a grade separation project then it cannot be considered for separate treatment under Section 1202.5 since the structure itself would be built regardless of the provision of the number of tracks. It is the structure

"and not its width or number of tracks which is the grade separation and which is the basis for the project and thus, the basis for the apportionment of cost under Section 1202.5. Therefore, this entire structure must be considered as one project. . . ."

The projected growth of traffic on this stretch of track is greater than was projected for the Hollywood Way project. We have determined that a two-track bridge was required for the project to be operable. That two-track bridge would separate UP from Euclid Avenue. It would be one bridge and one project. Ontario is the applicant. This Commission has enlarged the scope of Ontario's project to make it operable under our exclusive power under Sections 1202 and 1219 of the Public Utilities Code.

Issue 4

In D.85812 dated May 11, 1976 in A.85812, we concluded that:

"10. CHC's authority to allocate grade separation funds is essentially ministerial pursuant to Section 2453 et seq. of the S & H Code, and such allocation must be made pursuant to the apportionment ordered by this Commission."

Shortly after the issuance of D.85812, on May 12, 1976, the Honorable Alfred E. Alquist, Senator for the Thirteenth District, requested the opinion of the Attorney General as to the authority of the Public Utilities Commission in determining the allocation of grade separation funds. In response thereto, the Attorney General's office prepared and issued Opinion of Attorney General Evelle J. Younger, dated June 2, 1976, No. CB 76/31.

The opinion concluded that:

- "1. The California Highway Commission must allocate state highway funds for grade separation projects in accordance with Streets and Highways Code sections 2450 et seq. which may or may not result in an allocation of grade separation funds in complete accordance with the scope of the project in the Public Utilities Commission order.
- "2. The California Highway Commission must independently review the application to determine whether the items are eligible for allocation from the state highway fund and in case of conflict between the Public Utilities Commission order and Streets and Highways Code section 2450 et seq., the statutes prevail."

On February 9, 1977, the Department of Transportation filed new Subchapter 13, Grade Separation Projects, to Title 21 of the California Administrative Code to be effective the thirteenth day thereafter. Said subchapter is still in effect and includes the following section:

"1555. Project Limitation. Participation of the grade separation fund is limited to only that portion of the project which, in the determination of the California Highway Commission is necessary to make the separation operable... In any dispute as to scope of the project or qualification of an item, the decision of the California Highway Commission shall be conclusive." (Emphasis added.)

The Public Utilities Commission has authority to determine the overall scope of a grade separation project. We concur with the staff argument that this Commission does not have jurisdiction over the allocation of State Grade Separation Funds. The basis for allocation of State Grade Separation Funds and the basis for the determination of the scope of a grade separation project are mutually exclusive.

Mr. Hiyama testified that (1) Caltrans would not allocate grade separation funds for a second track or maintenance road on UP's bridge; (2) Caltrans' 80 percent contribution to the grade separation project would probably be limited by a \$5,000,000 statutory limitation since the estimated cost of the project requested by Ontario was \$6,750,000 to \$7,000,000; and that (3) if Ontario applied for inclusion of the State Street bridge in the project, he would consider including it as part of the project.

We will not challenge Caltrans' grade separation fund allocations.

Issue 5

The staff brief contends that no provision for a maintenance road on the UP bridge is needed since Ontario committed itself to construct the State Street bridge^{10/} and the circuitous route to cross Euclid Avenue to be followed by off-track UP's equipment is shorter than the distance SP's off-track equipment would traverse even without the construction of the State Street bridge; and while there would be some loss of time and increase in expense to UP, it appears that the effects would be minimal.

However, SP did not make a showing of its need for a maintenance road. UP did. Since Ontario requires the State Street bridge to maintain its local traffic circulation pattern, the bridge is needed to make the project operable. Since the bridge is needed to make the project operable, it should be made part of the project. Since UP contends that

^{10/} Ontario is committed to fund the State Street bridge construction absent outside public funding (see Exhibit 18) because it is needed to maintain its traffic circulation.

the State Street bridge would meet its maintenance road needs, UP should participate in the funding of that bridge. Since the route of SP off-track equipment would be longer over the State Street bridge than over existing roads, it would not benefit from construction of the State Street bridge and should not be required to contribute to its construction.

Sections 1202.5(b) and (f) of the Public Utilities Code, as follows, govern the cost apportionments for this project.

"(b) Where a grade separation project initiated by a public agency will directly result in the elimination of one or more existing grade crossings, located at or within a reasonable distance from the point of crossing of the grade separation, the commission shall apportion against the railroad 10 percent of the cost of the project. The remainder of such costs shall be apportioned against the public agency or agencies affected by such grade separation."

* * *

"(f) In the event the commission finds that the respective shares of any apportionment should be divided between two or more railroads or two or more public agencies, the commission, to the extent that it has jurisdiction to do so in a particular proceeding before it, shall divide the shares between the railroads or the public agencies, or both, on any reasonable basis, to be decided by the commission, but in so doing shall follow the standards hereinabove prescribed for apportionment between railroads and public agencies, respectively."

Based on the foregoing discussion, the following allocations should be made:

- (a) Ten percent of the cost of constructing the State Street bridge across Euclid Avenue should be apportioned to UP. The balance of the cost should be apportioned to Ontario.
- (b) Ten percent of the costs related to the construction of their respective two-track bridges across Euclid Avenue and of their respective temporary facilities needed to permit construction of the project should be separately apportioned to SP and UP. SP and UP should equally share a 10 percent portion of the project costs, not specifically described above, with the remaining 90 percent of the cost of those items described above apportioned to Ontario.

Further Discussion

UP suggests that a steel bridge capable of being added to accommodate future expansion be constructed. A Caltrans witness indicates that the agency is wedded to a concrete bridge without expansion capability and suggests that UP could construct a separate parallel bridge at a later time. The latter procedure would increase bridge construction costs. A second bridge could not be accommodated within UP's 50-foot right-of-way on the west side of Euclid Avenue. A Caltrans witness estimates the construction cost differential between a one-track and a two-track bridge at

\$175,000 plus incremental inflationary costs for delaying the entire 6-3/4 to 7-million dollar project pending redesign of the UP bridge from one track to two tracks. He maintains that even though Caltrans designed parallel two-track bridges for both railroads, it must prepare separate designs for both bridges which would delay the entire project. The two bridges would be approximately 450 feet apart and would have nearly identical column heights. The SP bridge would carry a pipeline loading.

Caltrans should reevaluate whether separate bridge designs are necessary. Caltrans should consider the possibility of requesting alternate bids for steel and concrete railroad bridges. If it does so and the bids for the steel bridge are lower than for the concrete bridges, it could accept the lower bid. If the concrete bridge bids are lower, SP and/or UP could offer to pay the cost differential to lessen their future costs of adding a potential third track.

Since any delay associated with redesigning UP's bridge was caused by Ontario's failure to propose an operable project, any inflationary increase in construction costs should be charged to the project as a whole. Such costs should not be assigned to UP's bridge.

Findings of Fact

1. Public convenience and necessity require a grade separation project at UP's San Bernardino County Grade Crossing No. 3-37.7 in the city of Ontario (Euclid Avenue under the track of UP). A companion order in A.58562 will deal with the SP grade separation.

2. Applicant, Ontario, proposes to eliminate the grade crossing of Euclid Avenue and UP by reconstructing the roadway under a one-track UP bridge.

3. UP's objections to the scope of the project were properly raised in this proceeding.

4. Caltrans prepared a draft EIR, held a public hearing, and issued a final EIR for the project in compliance with the California Environmental Quality Act, the Public Resources Guidelines, and with Caltrans' environmental regulations.

5. There are significant environmental effects associated with the project.

6. There are overriding considerations requiring construction of the project contingent on adoption of the mitigating measures adopted by CTC and Caltrans described herein.

7. The CTC and Caltrans prepared a Notice of Determination in compliance with Section 21108 of the Public Resources Code.

8. It can be readily seen that the modifications to the scope of the project contained in this decision would have no significant impact on the environment.

9. Caltrans is the lead agency for this project.

10. The Commission has considered the Final EIR on this project and concurs with the assessment of CTC and Caltrans as set forth in Reference Item B, except as to the scope of the project.

11. Caltrans' narrow interpretation of "operable" does not give reasonable consideration to the near-term operational, maintenance, and emergency needs of UP on and adjacent to the project area, even when based upon UP's most conservative projection of freight growth.

12. UP requires a second track over Euclid Avenue to make the project operable. UP also requires either a maintenance road on its bridge or the use of the State Street bridge to avoid unreasonable delay and expense in moving its off-track equipment across Euclid Avenue due to the severing of its direct access to Euclid Avenue from its maintenance road which parallels its tracks.

13. The two-track bridge required to separate UP from Euclid Avenue is a grade separation. The two-track bridge is one bridge and one project.

14. The Public Utilities Commission has authority to determine the overall scope of a grade separation project.

15. The Commission does not have jurisdiction over the allocation of State Grade Separation Funds.

16. The basis for allocation of State Grade Separation Funds and the basis for the determination of the scope of a grade separation project are mutually exclusive.

17. The State Street bridge over Euclid Avenue should be part of the project because it is needed to make the project operable.

18. The apportionment of costs for the project under Sections 1202.5(b) and (f) of the Public Utilities Code is described on page 20 herein.

19. The apportionment of costs set forth in Finding 18 is just and reasonable.

Conclusions of Law

1. The Commission has considered the Final EIR on this project and concurs with the assessment of CTC and Caltrans as set forth in Reference Item B, except as to the scope of the project.

2. Caltrans' narrow interpretation of "operable" does not give reasonable consideration to the near-term operational, maintenance, and emergency needs of UP on and adjacent to the project area.

3. UP requires a second track over Euclid Avenue to make the project operable. UP also requires either a maintenance road on its bridge or the use of the State Street bridge to avoid unreasonable delay and expense in moving its off-track equipment across Euclid Avenue due to the severing of its direct access to Euclid Avenue from its maintenance road which parallels its tracks.

4. The two-track bridge required to separate UP from Euclid Avenue is a grade separation. The two-track bridge is one bridge and one project.

5. The Public Utilities Commission has authority to determine the overall scope of a grade separation project. The scope of Ontario's project should be modified to include a two-track UP bridge and a State Street bridge over Euclid Avenue.

6. The Commission does not have jurisdiction over the allocation of State Grade Separation Funds.

7. The basis for allocation of State Grade Separation Funds and the basis for the determination of the scope of a grade separation project are mutually exclusive.

8. The apportionment of costs set forth in Finding 18 is just and reasonable.

9. The order herein should be effective on the date hereof to permit Caltrans to allocate grade separation funds for the project for 1980-1981.

O R D E R

IT IS ORDERED that:

1. Applicant, the City of Ontario, is authorized to construct a grade separation project at the intersection of Euclid Avenue and the Union Pacific Railroad Company, to be identified as Crossing No. 3-37.7-B, based upon the following modifications to the scope of the project requested by applicant:

(a) enlarge the Union Pacific Railroad Company bridge from a one-track bridge to a two-track bridge and (b) include the State Street highway bridge over Euclid Avenue in the project.

2. The cost of the authorized project shall be apportioned as set forth in Finding 18 herein.

3. During the period of construction Euclid Avenue shall be closed to vehicular traffic within the project limits.

4. Clearances shall be in accordance with General Order No. 26-D. Walkways shall be in accordance with General Order No. 118.

5. Within thirty days after completion of the project the applicant shall notify this Commission in writing of that fact and of compliance with the conditions herein.

6. The authorization herein granted shall expire within three years after the date hereof 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.

The effective date of this order is the date hereof.

Dated MAR 18 1980 , at San Francisco, California.

John E. Byrne President
William L. ...
Charles D. ...
Lawrence ... Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.