

Decision 93547 SEP 15 1981

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of the CITY OF SAN CLEMENTE to )  
abolish an existing pedestrian )  
underpass and, in place thereof, )  
to construct a pedestrian at-grade )  
crossing over the right-of-way of )  
the Atchison, Topeka, and Santa Fe )  
Railway Company. )

Application 55451  
(Petition for Modification  
filed October 27, 1980)

ORDER MODIFYING DECISIONS 91859 AND 92226

By Decision (D.) 91859 (1980), as modified by D.92226 (1980), the City of San Clemente (San Clemente) was authorized, among other things, to construct a protected public pedestrian and limited access vehicular at-grade crossing of the single track main line of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) about 245 feet northwesterly of the San Clemente pier.

On October 27, 1980 San Clemente filed a petition for modification of D.91859. It seeks to have the authorized at-grade crossing relocated from about 245 feet to about 100 feet northwesterly of the pier.

San Clemente explains that early in 1980 the city government went through a very substantial change and that no dialogue or transition discussions took place between the outgoing management staff and the new department heads. The new city manager was not briefed on this application or on a pending decision (D.91859).

An oceanfront park was completed on or about September 15, 1980 where the grade crossing authorized by D.91859 was to be located. At that point the contour of the ground in the new park was elevated about 18 feet above the railroad track. It now would be necessary for San Clemente to bisect the park with a substantial excavation cut to comply with D.91859. The proposed relocation point about 100 feet northwesterly of the pier would be where the contour of the park is almost level with the railroad track. San Clemente points out, among other things, that the proposed new location would afford about 145 feet additional visibility along the track to the northwest.

On November 10, 1980 Santa Fe filed a reply to San Clemente's petition for modification of D.91859. On July 10, 1981 Santa Fe filed a further reply. Santa Fe states that engineering plans for the new location have been reviewed and are acceptable to it. Santa Fe appended a substitute agreement executed by San Clemente containing terms and conditions, including plans, relative to the proposed crossing to replace the agreement appended to Exhibit 48. The new agreement provides, among other things, that San Clemente will pay Santa Fe in advance the entire cost of construction of the crossing estimated at \$148,900.

Santa Fe has no objection to modification of D.91859 and D.92226 authorizing construction of the combination public pedestrian and limited access vehicular at-grade crossing at the new location proposed by San Clemente, provided that the Commission makes the authorization subject to the terms and conditions imposed by those decisions.

Since San Clemente and Santa Fe are in agreement concerning construction of the protected public pedestrian and limited access vehicular at-grade crossing at the proposed new location, a public hearing is not necessary and the Order should be effective today.

Therefore, IT IS ORDERED that D.91859 and D.92226 are modified as follows:

1. Findings of Fact 34, 48, and 61 are modified to read:

34. Public convenience and necessity require that applicant be authorized to construct a protected public pedestrian and limited access vehicular at-grade crossing approximately 100 feet north-westerly of the City pier, in accordance with the Commission's general orders, substantially as proposed in the agreement attached to Santa Fe's further reply, filed July 10, 1981, to San Clemente's petition for modification of D.91859, filed October 27, 1980.

48. The only firm proposals on this record to change crossing facilities at or near the pier entrance and to permanently close the lifeguard crossing and the hole-in-the-fence at-grade crossing are the City's two alternative grade crossing proposals in Exhibits 3 and 4, as modified on the record, the overcrossing proposal in Exhibits 52, 53, 54, and 55, and the Santa Fe grade crossing proposal attached to Exhibit 48 (incorporating the Caltrans design), which was adopted by the City. The grade crossing proposal attached to Exhibit 48 was superseded by the agreement attached to Santa Fe's further reply, filed July 10, 1981, to San Clemente's petition for modification of D.91859, filed October 27, 1980.

61. Applicant stipulated with Santa Fe that the Commission may issue its order authorizing construction and maintenance of the described private crossing (which private crossing is an integral part of the combination at-grade crossing) only upon the expressed condition that before work may begin, applicant must first execute the agreement in the form attached to Santa Fe's further reply, filed July 10, 1981, to San Clemente's petition for modification of D.91859, filed October 27, 1980, with costs reestimated at the level prevailing at the time of execution; and further that any order authorizing construction and maintenance of the crossing be conditioned on execution of the agreement within 18 months following its issuance, otherwise the order to be of no further force and effect.
2. Ordering Paragraphs 1, 14, and 15 are modified to read:
  1. The City of San Clemente (San Clemente) is authorized to construct a combination public pedestrian and limited access vehicular at-grade crossing over the Santa Fe right-of-way approximately 100 feet northwest of the City pier in accordance with the Commission's general orders, substantially as shown by the plan attached to Santa Fe's reply, filed July 10, 1981, to San Clemente's petition for modification of D.91859, filed October 27, 1980, and subject to the conditions specified. The crossing is to be identified as 2-204.7.
  14. Before work may begin on the authorized combination at-grade crossing, San Clemente must first execute the private crossing agreement in the form attached to Santa Fe's reply, filed July 10, 1981, to San Clemente's petition for modification of D.91859, filed October 27, 1980, with costs reestimated at the level prevailing at the time of execution.

15. The authorization to construct a combination at-grade crossing is conditioned on execution by San Clemente of the private crossing agreement attached to Santa Fe's reply, filed July 10, 1981, to San Clemente's petition for modification of D.91859, filed October 27, 1980, within 18 months after the effective date of this order.

3. In all other respects D.91859 and D.92226 shall remain in full force and effect.

This order is effective today.

Dated SEP 15 1981, at San Francisco, California.

John E. Burton  
President  
Richard W. Broude  
James W. Smith  
Victor Cabry  
Prudence C. Myers  
Commissioners