

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: THE CITY OF VINITA, OKLAHOMA)
)
RELIEF SOUGHT: AN ORDER OF THE CORPORATION)
COMMISSION AMENDING THE ORDER PREVIOUSLY)
ISSUED IN td-2006-0003 BY CANCELING THE)
PORTION CLOSING THE CROSSING AT DELAWARE)
AVENUE WITHIN THECITY OF VINITA, CRAIG)
COUNTY, OKLAHOMA)
)
)
FILING PARTY: CITY OF VINITA)

) Cause No.
) TD-2010-00012

REFEREE REPORT

On May 17, 2012, Acting Referee Ben Jackson heard a motion to supplement the evidentiary record, along with exceptions to the Report of the Administrative Law Judge. At the hearing on May 17, 2012, the following attorneys entered appearances: Larry R. Steidley, Jr., Attorney for the City of Vinita ("Vinita"), Craig County, Oklahoma; Robert D. Hart, Attorney for Union Pacific Railroad Company ("Union Pacific"); Norman Hill, General Counsel for the Oklahoma Department of Transportation ("ODOT"), an interested party; and OCC Assistant General Counsel Natasha Scott for the Transportation Division of the Oklahoma Corporation Commission:

Being fully advised of the premises, the Acting Appellate Administrative Law Judge ("AAALJ") finds:

PRELIMINARY MOTION

The Referee granted Union Pacific's motion to supplement the evidentiary record. All of the parties stipulated to entry

into evidence of the new evidence, marked as Exhibit No. 6. The exhibit shows the annual maintenance costs for a new crossing, estimated to be ten thousand dollars per year over an estimated forty-five year life of the track.

STATEMENT OF THE CASE

Vinita's application seeks to to reopen a highway-rail at-grade crossing at Delaware Avenue, a city street in Vinita. A highway-rail at-grade crossing, sometimes referred to as a railroad crossing or grade crossing, is a crossing on one level, or "at grade" - without recourse to a bridge or tunnel. The term is used to describe the crossing of a railway line by a road, path, or other railroad.

Order No. 527528, a final and unappealable order issued on July 18, 2006, closed the Delaware Avenue Crossing. The crossing closure was part of a federally funded corridor project to improve highway traffic safety by upgrading safety signals at three grade crossings and closing two grade crossings. Vinita selected the two crossings to be closed based on an engineering study, traffic control study, public meetings in Vinita, and a public vote by Vinita's City Council. Vinita now contends that the Delaware Avenue Crossing should be reopened because of adverse impacts on pedestrians and street traffic. Vinita has offered to pay construction costs for a new crossing at Delaware

Avenue. Union Pacific contested the application for several reasons--mainly that a new crossing is unnecessary and would compromise highway safety. ALJ Maribeth Snapp issued her report recommending: (1) Union Pacific should construct a new crossing at Delaware Avenue; Vinita and ODOT should pay for the construction costs; (2) Union Pacific should be responsible for maintaining the crossing and paying the annual maintenance costs; and (3) the Commission should have a separate hearing to determine the appropriate signalization and associated costs. Union Pacific timely excepted to the ALJ's report and moved to supplement the evidentiary record.

SUMMARY OF UNION'S PACIFIC POSITION

Union Pacific presented its position through written exceptions, oral argument, and a post-hearing brief with proposed findings. Union Pacific wants to enforce the corridor agreement to close the Delaware Avenue crossing, but if required to reopen the crossing, Union Pacific wants reimbursement of its costs. Union Pacific contends: the proposed crossing is unnecessary; Vinita has failed to show any significant change in conditions since either the traffic study done in 2005 or the subsequent closure of the crossing; Vinita's request to reopen the crossing conflicts with federal and state studies and policies designed to reduce injury and fatalities from collisions between trains and street vehicles and between trains

and pedestrians; safe crossings exist within a few city blocks of the former Delaware Avenue Crossing; if the Commission grants reopening of the Delaware Avenue crossing, it would need to upgrade the crossing to lights and gates, although a determination about what constitutes proper signalization would have to be done through a separate application and hearing; in any event, Vinita should bear the costs of the safety upgrades, and it is unreasonable to impose on Union Pacific fifty years of annual maintenance costs for an upgraded crossing, when there is insufficient evidence to justify the crossing.

SUMMARY OF VINITA'S POSITION

Vinita presented its position through a written response, a brief, and oral argument. Vinita asks the Commission to adopt the ALJ's recommendation to reopen the Delaware Avenue Crossing and to require Union Pacific to pay the maintenance costs. In support of the ALJ report, Vinita presented the following:

In 2005, Vinita held public hearings on a corridor project. After receiving public input, Vinita entered into a corridor project agreement with ODOT. Under the contract, Vinita agreed to close two (2) of its five (5) railroad crossings (Attucks Avenue and Delaware Avenue), in exchange for crossing improvements on the other three crossings. As a result of the closure of the Delaware Avenue crossing, residents without cars who live in the Southeast

part of the City must now walk much further to access a crossing in order to travel to City businesses, schools and health care providers. The increased distance, lack of sidewalks, and faster traffic on the new pedestrian routes have led the community to the realization that these are not good alternative routes and, indeed, that there are no good alternative routes. Some children have even continued to cross at the closed Delaware Avenue crossing despite warnings about the dangers of doing so. The citizens in the Southeast part of the City feel cut off from the rest of the City. Emergency vehicles from two (2) new health care facilities lack a direct route to portions of the City. Citizens trying to visit the ball parks and other facilities in the Southeast part of the City have had to search for alternate routes to those facilities. The unintended consequences from the crossing closure were brought to the attention of the City of Vinita, which subsequently sought to have the Delaware Avenue crossing re-opened for the safety, welfare and convenience of its citizens. The ALJ agreed that the Delaware Avenue crossing should be re-opened, with the costs of the re-opening to be borne by the City of Vinita and the cost of maintaining the crossing to be borne by Union Pacific.

The closing of the Delaware Avenue Crossing has disrupted the regular route of many citizens in Vinita. The most direct route to the ball parks for many citizens was the Delaware

Avenue crossing. Children walking to and from school at the Attucks Alternative Center must now travel down busier streets. In addition, many elderly citizens and single parents living in the Southeast part of the City do not own cars. In order to reach City businesses (such as grocery stores) and the Craig County Health Department, they must now walk several additional blocks, on roads with no sidewalks, and down roads where cars are traveling much faster. This has prompted some citizens and children to continue to cross the railroad tracks at the closed Delaware Avenue crossing.

It is not just citizens who must find new routes. Two new health facilities have opened in the City of Vinita- the Veteran's Administration Center and the Cherokee Nation Health facility. Emergency vehicles for these health care facilities do not have a direct route to parts of the City of Vinita because of the Delaware Avenue crossing closure.

Reopening the crossing will benefit Union Pacific, because Vinita will pay for the construction costs of a safe crossing. Re-opening the Delaware Avenue Crossing is not barred by the *Final Report of the Oklahoma Railroad Grade Crossing Safety Task Force* (May 21, 1998). In fact, the proposed crossing meets the 1998 Final Report's safety criteria for a new crossing.

OCC STAFF POSITION

The Transportation Division of the Commission did not take a position on the Union Pacific exceptions.

FINDINGS AND RECOMMENDATION

1. The Acting Referee recommends denial of the application.
2. The Commission has jurisdiction of the subject matter and persons. Notice was given as required by law and the Rules of the Commission.
3. Jurisdiction arises under the Oklahoma Constitution and Statutes: Ok. Const. Art. IX, §§ 2, 6, & 18; 17 O.S. §§ 81, 82, 84 and 86.
4. Under the above-described authority. the Commission can open a crossing upon on a finding of public convenience and necessity. The application requests a fourth grade crossing in Vinita. The evidence only justifies three grade crossings. Vinita should have a grade crossing at Delaware Avenue, only if Vinita closes another crossing. However, Vinita has refused to close another crossing.
5. Vinita has had as many as five grade crossings, but that does not justify four grade crossings today. The "Vinita Corridor Project" reduced the number of crossings for safety reasons. Under 69 O.S. 2011, Section 304, ODOT participates in programs federal programs to eliminate hazards at grade crossings in towns and cities. Closing of the Delaware

Avenue crossing was part of the Vinita Corridor Project funded in large part by reimbursement by the Federal Highway Administration ("FHWA"). Working with Union Pacific, City Officials, ODOT developed a plan to improve the safety of grade crossings within City Limits. Order No. 527528 showed that the project originally covered seven grade crossings, all with only passive traffic control devices (signage). The crossings at Euclid Avenue and Scrapper Street were later found to be outside City Limits. Order NO. 567806 amended Order No. 527528, by deleting Euclid Avenue. ODOT reduced the Vinita Corridor Project to the five remaining grade crossings. With respect to those crossings, the engineering and traffic studies showed the best way to improve traffic safety was to upgrade three crossings with active traffic controls and to eliminate two grade crossings. The plan did not require Vinita to pay anything. Vinita agreed to the proposal, and Vinita got to choose which grade crossings to close. Without financial investment, Vinita also had the power to change which crossings to close, until the work was completed. To make an informed decision, Vinita hired a traffic consultant and conducted public meetings on the crossing consolidation plan and which two crossing to close. At two different public meetings, the Vinita City Council voted to close the Delaware Avenue Crossing. Relying on the

City Council vote, Union Pacific closed the Delaware Avenue Crossing, and ODOT paid Union Pacific for ninety percent of the cost. Under 23 U.S.C. Section 130, FHWA reimbursed ODOT for the ninety percent paid by ODOT. Union Pacific paid the remaining ten percent.

6. Vinita's application to reopen the Delaware Avenue Crossing amounts to an application for a new crossing. Union Pacific dismantled the Delaware Avenue Crossing, and so, reopening the crossing would require construction of a new crossing. Building a new crossing would involve safety upgrades. The original crossing had only passive traffic controls, i.e., crossbuck signs. A new crossing would need protective devices like the nearby, upgraded crossings at Excelsior Avenue and Canadian Avenue, which have passive and active traffic controls, i.e., signage, flashing lights, and automatic gates. Although the parties have not submitted a formal study on the signal requirements and costs, the estimated construction cost for the new crossing is three-hundred-fifty thousand dollars. The cost of active traffic controls represents about eighty percent of the total cost for construction.
7. Under 17 O.S. 2011, § 82, the railroad is responsible for constructing and maintaining signage and the road surface across the railroad right-of-way. Under 17 O.S. 2011, § 86,

the railroad is responsible, under a Commission order, for ten-to-twenty-five percent of the cost of installing active traffic controls, and it is responsible for one-hundred percent of the maintenance costs. Vinita has offered to pay all of the construction costs, and so, Union Pacific would bear only the maintenance costs.

8. Active traffic controls require monthly maintenance and periodic reliability testing. The annual maintenance cost for the new crossing is ten thousand dollars. The estimated useful life of the crossing is forty-five years. The total maintenance cost for Union Pacific would be four-hundred fifty thousand dollars, which means that Union Pacific would bear the majority of the total cost for the crossing.

9. In crossing safety management, it is axiomatic that adding a grade crossing compromises public safety, because the crossing adds a point where a collision with a train can occur. Public safety is best protected by installing active traffic controls where appropriate and limiting new crossings to instances of necessity.

10. Before adding another crossing, the Commission should consider the results of the federally funded corridor project. The Vinita Corridor Project involved a comprehensive study of crossing safety in Vinita, and it found that public safety would be improved by eliminating

two crossings, which means that it concluded that Vinita did not need another crossing.

11. At the full evidentiary hearing, Vinita did not present expert testimony, and so we do not have new engineering and traffic studies. Vinita presented lay witness testimony about adverse impacts from detours. Vinita's argument is not that the existing crossings are inadequate for the traffic load, but rather that another crossing is needed for pedestrian and motorist convenience and for traffic safety. Vinita contends that the detours caused by the closing Delaware Avenue adversely impacted pedestrians, bicyclists, motorists and emergency personnel, although Vinita did not have any evidence of a change in response time for emergency vehicles. In any event, Vinita contends that the only way to solve these problems is to construct another crossing at Delaware Avenue. In that regard, before crossing consolidation, four grade crossings served the area. The crossings were located at Excelsior Avenue, South Avenue-Attucks Avenue, Delaware Avenue, and Canadian Avenue. Under the crossing consolidation plan, Vinita selected for closure the crossings at Attucks Avenue and Delaware Avenue, which left access to Delaware Avenue through crossings at Excelsior Avenue and Canadian Avenue. In effect, Vinita traded four crossings without modern

traffic controls for two upgraded crossings in close proximity. The Canadian Avenue Crossing is located one city block North of the Delaware, i.e., approximately 450 feet. The Excelsior Avenue Crossing is located two city blocks South of Delaware Avenue. Review of the City Map does not show a significant detour to access Delaware Avenue. Adding a crossing at Delaware Avenue results in three high cost crossings within just three city blocks in a city which has a total area of only 4.4 square miles. The close proximity of the crossings creates redundancy. Redundant crossings create a safety hazard, because an unnecessary crossing creates an unnecessary place for a collision to occur. The Commission has to consider whether the minor hardship from the detour outweighs the safety risk. Most collisions with trains occur at grade crossings. Collisions occur for a number of reasons. A recurring problem is that a motorist or pedestrian, especially a child, ignores or misjudges the proximity and speed of an approaching train and is hit by a train, because he put himself in a position where the train did not have sufficient braking distance to avoid a collision. Serious injury or death can result from a collision. A one-hundred car train weighs about six thousand tons. An average automobile weighs about one ton. A collision between a one-hundred car train and an average

automobile is comparable to an automobile hitting a soda pop can. Active traffic controls improve safety but are not a complete deterrent. Current gate systems leave room for motorists and pedestrians to get around the barricades. Staying with three crossings necessary for the traffic flow reduces accidents by limiting where they can occur, and that should be the basis of the Commission's decision in this matter.

12. Working with the Federal Railroad Administration, ODOT, railroads, local officials and law enforcement, the Oklahoma Corporation Commission has shown a long term commitment to improving highway safety by eliminating unnecessary grade crossings. Adding an unnecessary crossing in Vinita would be contrary to past practice.

13. Vinita contends that pedestrians, especially children and the elderly, now suffer from aggressive street traffic. If the problem is aggressive traffic either from detouring traffic or from pedestrians traveling on busier streets, the fact remains that Vinita is in charge of street traffic management and has a traffic engineer on retainer. Traffic related problems can be addressed through ways such as sidewalks, traffic lights, and speed limits. Vinita's failure to address traffic issues does not justify a fourth grade crossing in Vinita.

14. Based on the foregoing findings, the application fails to support a finding of public convenience and necessity and should be denied.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "Ben Jackson", is written over a horizontal line.

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