

**ATCHISON, T. & S.F. RY. V. STATE CORP. COMM'N, 1982-NMSC-017, 97 N.M. 424,  
640 P.2d 924 (S. Ct. 1982)**

**IN THE MATTER OF THE CLOSING OF THE STATE STREET RAILROAD  
GRADE CROSSING, ELIDA, NEW MEXICO. ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, Appellant,  
vs.  
STATE CORPORATION COMMISSION, Appellee.**

No. 13825

SUPREME COURT OF NEW MEXICO

1982-NMSC-017, 97 N.M. 424, 640 P.2d 924

February 15, 1982

DIRECT REMOVAL FROM CORPORATION COMMISSION

**COUNSEL**

Johnson & Lanphere, Nicholas R. Gentry, Albuquerque, New Mexico, Attorney for Appellant.

Jay T. Morgan, Portales, New Mexico, Attorney for Town of Elida.

Jeff Bingaman, Attorney General, David Romero, Jr., Asst. Attorney General, Santa Fe, New Mexico, Attorneys for Commission.

**JUDGES**

Easley, C.J., wrote the opinion. WE CONCUR: DAN SOSA, JR., Senior Justice, WILLIAM R. FEDERICI, Justice

**AUTHOR: EASLEY**

**OPINION**

EASLEY, Chief Justice.

{1} The State Corporation Commission (Commission) held a public hearing to determine whether a railroad crossing should be reopened by Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The Commission ordered Santa Fe to reopen the crossing. Santa Fe filed for removal to this Court. We reverse.

{2} The question presented to us is whether the public convenience and necessity, considering the interests and rights of both the public and the railroad, warrant the reopening of the railroad crossing.

{3} The Town of Elida, primarily a farming and ranching community, is located south of Portales on U.S. Highway 70. Highway 70 bisects the town into essentially a northern and southern half. With the exception of three businesses, all are located on the north side of Highway 70. Santa Fe's railroad tracks run approximately in a northeasterly to southwesterly direction as they pass through Elida. One set of railroad tracks crosses Highway 70 at a forty-five degree angle at the western side of town. This crossing is protected by flashing lights and gates. Approximately 375 to 400 feet to the northeast of Highway 70 crossing is what was formerly known as the State Street crossing, which has remained closed by the Commission's order since October 1980. There are two sets of railroad tracks at the State Street crossing. State Street curves as it crosses these tracks. A third railroad crossing is approximately 1,200 feet to the northeast of the State Street crossing. This third railroad crossing is protected by crossbucks. A fourth railroad crossing is located at Highway 330, which is about one-half mile from the State Street crossing and is protected by flashing lights. Excluding the State Street crossing, all railroad crossings are within three-fourths of a mile along the tracks.

{4} At the public hearing, forty-nine townspeople testified that they wanted the State Street crossing reopened. The reasons for reopening were: it had certain sentimental value; it had been used for a long time; it is a shortcut; closing the crossing is inconvenient to school buses, farm and ranch vehicles and other transportation coming into town; and, the Highway 70 crossing, the closest crossing, is dangerous.

{5} Also testifying at the hearing was Mr. Steven Spencer, Supervisor of School Bus Safety for the State Department of Education, {425} and Dr. Robert Bleyl, a licensed engineer and expert in accident reconstruction and transportation engineering. Mr. Spencer developed several feasible alternatives for transporting school children, some of which were safer than the State Street crossing that was previously used. Dr. Bleyl testified that the State Street crossing is very dangerous and recommended that it not be reopened, unless the crossing had flashers, lights and gates. The cost of reopening the crossing and making it safe would be approximately \$138,254.00 and would cost about \$2,500.00 a year to maintain. Keeping the crossing closed, on the other hand, incurs a one-time expense of \$505.75.

{6} Our Constitution sets forth the standard for reviewing the Commission's order. We review the evidence, deciding the case on the merits. N.M. Const., Art. XI, § 7. "[I]t is our duty to take the order made by the commission and test its reasonableness and lawfulness by the evidence adduced upon [sic] [at] the hearing. This court [sic] forms its own independent judgment, as to each requirement of the order, upon the evidence. \* \* \*" **Seward v. D. & R.G. Co.**, 17 N.M. 557, 583, 131 P. 980, 988 (1913). Accordingly, the substantial evidence rule does not apply to this case. In reviewing the evidence adduced at the public hearing, we balance the interests and rights of the public with that

of the railroad. **In Re Protest Against The Closing of Crossing, Etc.**, 37 N.M. 226, 20 P.2d 1029 (1933).

{7} In thoroughly checking the record and balancing the respective interests and rights of the parties, we conclude that a clear preponderance of the evidence favors Santa Fe. To enforce the Commission's orders would result in economic waste without a corresponding benefit to the public. **Southern Pacific Co. v. State Corporation Com'n**, 76 N.M. 257, 414 P.2d 489 (1966).

{8} Therefore, we reverse the Commission and order that the State Street crossing remain closed.

{9} IT IS SO ORDERED.

WE CONCUR: SOSA, Senior Justice, and FEDERICI, Justice.