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Decision No. 82934

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN PACIFIC TRANSPORTATION COMPANY for an order authorizing the construction at grade of an industrial drill track and an industrial spur track in, upon and across DOOGAN AVENUE in the unincorporated territory of the County of Los Angeles, State of California.	Application No. 52982 (Filed November 9, 1971; amended April 19, 1972)
In the Matter of the Application of SOUTHERN PACIFIC TRANSPORTATION COMPANY for an order authorizing the construction and operation of an industrial spur track at grade in, upon and across BONNIE BEACH PLACE in the unincorporated territory of the County of Los Angeles, State of California.	Application No. 53279 (Filed April 21, 1972; amended July 17, 1972)
In the Matter of the Application of SOUTHERN PACIFIC TRANSPORTATION COMPANY for an order authorizing the operation of an industrial drill track at grade in, upon and across VIA BARON WAY in the unincorporated territory of the County of Los Angeles, State of California.	Application No. 53280 (Filed April 21, 1972)

William E. Still and Walt A. Steiger, Attorneys at Law, for Southern Pacific Transportation Company, applicant.
John D. Maharg, County Counsel, by Ronald L. Schneider, Deputy County Counsel, for County of Los Angeles, protestant.
Arthur Mazirow, Attorney at Law, for Boise Cascade Building Company; Leslie E. Corkill, for City of Los Angeles, Department of Public Utilities and Transportation; George W. Miley and Melvin Dykman, Attorneys at Law, for California Department of Public Works; Ralph J. Morgan, Attorney at Law, for Dunn Properties Corporation; and Roger Arnebergh, City Attorney, by Charles E. Mattson, Attorney at Law, for the City of Los Angeles; interested parties.
Robert T. Baer, Attorney at Law, for the Commission staff.

O P I N I O N

The three applications here under consideration were consolidated for hearing because of related questions of law and subject matter. Each application presents the question of the validity of attempts by the county of Los Angeles (County) to include in railroad franchise ordinances various conditions, including ones relating to the allocation of costs, which might be ordered by this Commission for automatic crossing protection at grade crossings covered by the franchise.

The Proposed Report of Examiner Donald B. Jarvis was filed in this matter on March 13, 1974. A copy of the Proposed Report is attached hereto as Attachment A. The Commission is of the opinion and finds that the material issues, facts, and chronology set forth in the Proposed Report are correct and need not be repeated.

County and the California Department of Transportation (DOT) filed joint exceptions to the Proposed Report. Southern Pacific Transportation Company and the Commission staff each filed a reply to the joint exceptions.

The gravamen of the exceptions is that the examiner failed to consider the constitutional implications of his findings, conclusions, and proposed order which, it is alleged, deprive County and DOT of property without due process of law contrary to the Federal and California Constitutions. Because we deem this contention to be without substance and erroneous, it is unnecessary to separately consider each of the exceptions.

The streets and roads of California belong to the people of the state, subject to legislative control. (Ex Parte Daniels (1920) 183 Cal 636, 639; Pacific Tel & Tel Co. v City & County of S.F. (1959) 51 C 2d 766, 775; Western Union Tel. Co. v Hopkins (1911) 160 Cal 106, 118; In re Smith (1914) 26 CA 116, 123; Cal. Const., Art. IV 36.) DOT is a department of state government. We are unable to perceive how any violation of due process occurs when the legislature

grants jurisdiction over grade crossings to another constitutionally established arm of state government. (Cal. Const. Art. XII, §§ 22, 23; Public Utilities Code §§ 1201, 1202.) County is a political subdivision of the state. The legislature may delegate to, or withhold from, political subdivisions powers in connection with streets and roads. (See authorities cited at page 12 of the Proposed Report.) Public Utilities Code Sections 1201 and 1202 are general statutes applicable to all political subdivisions in the state, enacted under the authority of Section 23 of Article XII of the Constitution. Again, we fail to see any violation of due process because the legislature has enacted a comprehensive statutory plan for the safety, convenience, and economic well being of the public which gives the Commission sole or primary jurisdiction over grade crossings. (Bay Cities Transit Co. v Los Angeles (1940) 16 C 2d 772, 795; Civic Center Assn. of L.A. v Railroad Commission (1917) 175 Cal 441, 450-53; City of San Bernardino v Railroad Commission (1923) 190 Cal 562; People v Moore (1964) 229 CA 2d 221, 225.)

The Proposed Report gives extensive consideration to the material issues presented in these proceedings. It is not necessary to enlarge upon it herein. The Commission adopts as its own all of the findings and conclusions made by the examiner in the Proposed Report.

O R D E R

IT IS ORDERED that the order recommended by the examiner in the Proposed Report is hereby made the order of the Commission.

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

Dated at San Francisco, California, this 29th day of MAY, 1974.

President

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of SOUTHERN PACIFIC TRANSPORTATION COMPANY for an order authorizing the operation of an industrial drill track at grade in, upon and across VIA BARON WAY in the unincorporated territory of the County of Los Angeles, State of California.	Application No. 53280 (Filed April 21, 1972)

William E. Still and Walt A. Steiger, Attorneys at Law, for Southern Pacific Transportation Company, applicant.
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Robert T. Baer, Attorney at Law, for the Commission staff.

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PROPOSED REPORT OF EXAMINER DONALD B. JARVIS

The three applications here under consideration were consolidated for hearing because of related questions of law and subject matter. Each application presents the question of the validity of attempts by the County of Los Angeles (County) to include in railroad franchise ordinances various conditions, including ones relating to the allocation of costs which might be ordered by this Commission for automatic crossing protection at grade crossings covered by the franchise.

A duly noticed public hearing was held before me in these consolidated matters in Los Angeles on October 3, 4, and 5, 1972. The matter was submitted subject to the filing of briefs which were received by March 26, 1973.

It is necessary to be mindful of some background in considering these consolidated applications. In Application of The County of Los Angeles for the widening of Carson Street (hereinafter referred to as the Carson Street case) the Commission entered an order which included the following conclusion of law:

> "3. The Commission has exclusive jurisdiction over apportionment of costs of protective devices at railroad crossings. Provisions in county ordinances requiring the railroad to pay all costs are of no force and affect. The matter is one of statewide concern. 1/

1/ Santa Maria Valley Railroad Crossing in Santa Maria Decision No. 75355 dated February 25, 1969. Review denied by Supreme Court July 16, 1969.
City of Los Angeles, Tuxford Street crossing Decision No. 74420, dated July 17, 1968." (Decision No. 77464 in Application No. 50922, p. 7.)

County's petition for a rehearing in the Carson Street case was denied (Decision No. 77616) and the California Supreme Court denied a petition for a writ of review on February 17, 1971.

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Rule 40 of the Commission's Rules of Practice and Procedure deals with applications to construct a railroad track across a public highway. The rule provides in part that:

> "(a) There shall be attached to the original application a certified copy of the franchise or permit, if any be requisite, from the authority having jurisdiction, which gives to the railroad the right to cross the highway involved, and a copy thereof shall be attached to each copy of the application. If such franchise or permit has already been filed, the application need only make specific reference to such filing."

With the foregoing in mind, I turn to the applications at bench.

Application No. 52982, Doogan Avenue

Southern Pacific Transportation Company (Southern Pacific) filed Application No. 52982 on November 9, 1971. It seeks an order authorizing the construction at grade of an industrial drill track and an industrial spur track in and across Doogan Avenue in unincorporated territory in the County. Attached to the application was a copy of County Ordinance No. 9949, enacted on January 20, 1970, which granted Southern Pacific a 25-year franchise to construct the crossing at grade over Doogan Avenue. Section 4 of Ordinance 9949 provided:

> "The grantee shall reimburse the County for any and all costs apportioned to County in connection with the installation of any and all automatic crossing protection as may be approved or ordered by the Public Utilities Commission."

Southern Pacific did not accept the franchise on the ground that it contained an illegal condition.[1/] On April 19, 1972, Southern Pacific filed a First Amendment to the application which alleged that

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1/ County's basic franchise Ordinance No. 7468 provides for the acceptance of a franchise in writing within 60 days after passage of the ordinance granting the franchise.

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the tracks had been constructed by the land developer whose development they were to serve and accepted and placed in service by Southern Pacific, which had the mistaken belief that all necessary authority for constructing the tracks had been obtained. On June 15, 1971 County enacted Ordinance No. 10,288 which was substantially similar to Ordinance No. 9949.[2/] Southern Pacific again refused to accept the franchise because of the alleged illegal conditions contained therein.

On June 7, 1972 County enacted Ordinance No. 10,528 which repealed Ordinances Nos. 10,288 and 9949 and declared that the tracks, which had been constructed, constituted an obstruction of Doogan Avenue. On June 9, 1972, the County Road Commissioner served notice on Southern Pacific to remove the tracks as an alleged encroachment on Doogan Avenue. On July 12, 1972 County filed an action in the Superior Court to abate the Doogan Avenue drill and spur track crossings as a nuisance, to enjoin the further operation and maintenance of the crossing, to require the removal of the crossing, and to secure damages.

Application No. 53280, Via Baron [3/]

In 1970, interested party Boise Cascade Building Company (Boise) constructed an industrial development in County known as the Dominguez West Industrial Center. On or about September 1970, Boise constructed Via Baron and the tracks across it as part of the development. On January 18, 1972 County adopted Ordinance No. 10,422

2/ Ordinance No. 10,288 referred to the County's basic franchise Ordinance No. 7468, as amended by Ordinances Nos. 9329 and 10,231, which has a provision similar to that of Section 4, Ordinance No. 9949.

3/ The record indicates that Via Baron is incorrectly designated in the application as Via Baron Way.

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which granted Southern Pacific a 25-year franchise to construct, operate, and maintain a drill track over Via Baron. Ordinance No. 10,422 incorporated therein the provisions of County's basic franchise Ordinance No. 7468, as amended. On February 11, 1972 Southern Pacific notified County in writing of its conditional acceptance of the franchise, except for those portions which it contends are illegal. On April 21, 1972 Southern Pacific filed the application at bench with the Commission. It recited the foregoing facts and sought authority to operate over the crossing at grade and drill track. On July 11, 1972 County enacted Ordinance No. 10,543, which repealed the franchise granted in Ordinance No. 10,422. On August 28, 1972 County filed an action in the Superior Court over Via Baron similar to the one filed in connection with Doogan Avenue.

Bonnie Beach Place

The proposed industrial spur track in and across Bonnie Beach Place has not yet been constructed. In 1970 Southern Pacific filed with County an application for a franchise to construct the spur track and crossing at grade. On January 11, 1972 County adopted Ordinance No. 10,417 which granted Southern Pacific a 25-year franchise to construct an industrial spur track over and across Bonnie Beach Place. Ordinance No. 10,417 incorporated therein the provisions of County's basic franchise Ordinance No. 7468, as amended. On March 1, 1972 Southern Pacific notified County in writing of its conditional acceptance of the franchise, except for those portions which it contends are illegal. On April 21, 1972 Southern Pacific filed the application at bench with the Commission. It recited the foregoing facts and sought authority to construct and operate the crossing and industrial spur track in and across Bonnie Beach Place. On June 13, 1972 County enacted Ordinance No. 10,531 which repealed the franchise granted in Ordinance No. 10,417.

Material Issues

The material issues presented in these consolidated proceedings are as follows: (1) Does the Commission have jurisdiction over the subject matter of the applications? (2) If jurisdiction over the subject matter exists, does the Commission have jurisdiction to consider the validity of provisions in County's franchise ordinances in the exercise of such jurisdiction? (3) If the Commission has jurisdiction to consider the provisions of County's franchise ordinances, should such jurisdiction be stayed pending the disposition of the actions filed by County in the Superior Court? (4) Do public safety, convenience, and necessity require the construction and operation of the various tracks and crossings at grade here involved?

Discussion

Section 23 of Article XII of the California Constitution provides in part that:

> "The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this State, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated

> or town, as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; and provided, further, that where any such city and county or incorporated city or town shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the Railroad Commission in the manner prescribed by the Legislature; and provided, further, that this section shall not affect the right of any city and county or incorporated city or town to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the Railroad Commission by any provision of this Constitution now existing or adopted concurrently herewith."

It has long been held that the regulation of railroads in California is a matter of statewide concern and not a municipal affair. (Civic Center Assn. of L.A. v Railroad Commission (1917) 175 Cal 441, 450-53; City of San Mateo v Railroad Commission (1937) 9 C_2 1, 7, 10; Union City v Southern Pacific Co. (1968) 261 CA_2 277, review denied, June 11, 1968.) Public Utilities Code Sections 1201 and 1202 [4] provide as follows:

> "1201. No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the

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4/ All code section references herein are to the Public Utilities Code unless otherwise stated.

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commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

"1202. The commission has the exclusive power:

(a) To determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa.

(b) To alter, relocate, or abolish by physical closing any such crossing heretofore or hereafter established.

(c) To require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, city, or other political subdivision affected."

It is abundantly clear from the foregoing authorities that the Commission has jurisdiction over the subject matter of these consolidated applications.

I next turn to the question of whether the Commission has jurisdiction to consider the provisions of County's franchise ordinances in the exercise of its jurisdiction over the applications at bench. The Commission has the power to determine "all questions of fact essential to the proper exercise of...[its] jurisdiction". (Limoneria Co. v Railroad Commission (1917) 174 Cal 232, 242;

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Palermo L. and W. Co. v Railroad Commission (1916) 173 Cal 380, 385; People v Western Air Lines (1954) 42 Cal 2d 621; Investigation of Golconda Utilities Co. (1968) 68 CPUC 296, 300-01.) The Commission also has the power and duty to apply applicable law to the facts of a proceeding before it. (People v Western Air Lines, Inc. (1954) 42 C 2d 621, 630-33; Northern California Power Agency v Public Utilities Com. (1971) 5 Cal 3d 370, In re Los Angeles Metropolitan Transit Authority (1962) 60 CPUC 125, affirmed, 59 C 2d 863.) In the circumstances, I hold that the Commission has the power to consider the provisions of County's franchise ordinances relating to grade crossings in the exercise of its jurisdiction.

County contends that the Commission should decline to exercise the jurisdiction it may have in these matters pending disposition of the actions in the Superior Court heretofore mentioned. There is no merit in this contention. Where the Commission's jurisdiction is inexorably entwined with the resolution of issues not cognate and germane to the regulation of public utilities, the Commission has declined to exercise its jurisdiction so that the nonregulatory matters could be adjudicated in an appropriate court. (Packard v PT&T (1970) 71 CPUC 469, 472-73.) However, where the issues in a matter are mainly within the ambit of the Commission's regulatory jurisdiction the Commission has primary jurisdiction to proceed with the determination of these issues. (Northwestern Pac. R.R. Co. v Superior Court (1949) 34 C_2 454, 458; Orange County Air Pollution Control Dist. v Public Utilities Com. (1971) 4 C 3d 945, 950-51; Miller v Railroad Commission (1937) 9 C_2 190, 197.) It is clear that the applications at bench, which involve grade crossings, are within the primary jurisdiction of the Commission and it should proceed to determine the issues presented regardless of the pendency of the actions filed in the Superior Court. (Northwestern Pac. R.R. Co. v Superior Court, supra; Civic Center Assn. of L.A. v Railroad Commission, supra; City of San Mateo v Railroad Commission, supra; Union City v Southern Pacific Co., supra.)

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As indicated, since the regulation of grade crossings is a matter of statewide concern, it is subject to general laws as distinguished from municipal enactments. County contends that its power to require and grant a franchise for a grade crossing, including the provisions disputed herein, stems from Section 26001 of the Government Code, and Section 7555 of the Public Utilities Code. Southern Pacific contends that no local government franchise is required because Section 7551 gives it a statewide franchise, which has occupied the legislative field over this subject matter. Southern Pacific also contends that even if County has the power to require and grant a franchise, the complained of provisions in the franchise ordinances are beyond its jurisdiction. The Commission staff takes the position that there is a conflict between the various code sections and that in resolving the conflict Sections 1201 and 1202 must prevail.

The following rules of construction are applicable to the contentions of the parties:

> "A special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject. Where a general statute includes the same matter as that covered by a special act, the special act will be considered an exception to and paramount to the general act, whether the special act was passed before or after the general act. But this rule has no application if the two statutes can be reconciled, or if it is manifest that the legislative intention is that the general act should be of universal application notwithstanding a prior special act." (45 Cal. Jur. 2d 629.)

> "Statutes on the same subject matter must be construed together in the light of each other, so as to harmonize them if possible, although they were passed at different times, and although one deals specifically and in greater detail with the subject than does the other. Even where in some particulars the provisions are apparently in conflict, the seeming inconsistency should be reconciled if possible. The fact, however, that a provision found in a statute on a given subject is omitted from another statute relating to a similar subject may be indicative of a different intention behind the other statute." (45 Cal. Jur. 2d 629-30.)

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> "Although the courts are not at liberty to impute a particular intention to the legislature when nothing in the language of the statute implies such an intention, where the main purpose of a statute is expressed, the courts will construe it so as to effectuate that purpose by reading into it what is necessary or incident to the accomplishment of the objectives sought." (45 Cal. Jur. 2d 638-39.)

As indicated, Section 23 of Article XII of the Constitution provides that "this section shall not affect the right of any city and county or incorporated city or town to grant franchises for public utilities upon the terms and in the manner prescribed by law." Thus, the Constitution authorizes the Legislature to enact legislation permitting local governments to grant public utility franchises. (Pacific Rock and Gravel Co. v City of Upland (1967) 67 C 2d 666, 670.) It is necessary to consider the permissible scope of such franchises. Before considering this question, one point requires discussion.

Southern Pacific contends that since Section 23 of Article XII does not mention counties, the Legislature has no authority to authorize counties to grant public utility franchises.[5/] Southern Pacific argues that Government Code Section 26001, which authorizes counties to grant franchises along and over public roads and highways, may not constitutionally be applied to public utilities. Government Code Section 26001 provides that:

> "The board may grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions, and restrictions as in its judgment are necessary and proper, and in such manner as to present the least possible obstruction and inconvenience to the traveling public.
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> "Any general law applicable to the granting of franchises by municipal corporations and counties throughout the State for purposes involving the furnishing of any

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5/ This argument is, of course, inapplicable to interested party city of Los Angeles.

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> service or commodity to the public or any portion thereof shall be complied with in the granting of any franchises by the board of supervisors."

It is not necessary to pass upon the constitutional question attempted to be raised by Southern Pacific. In the light of the authorities hereinafter discussed, it appears that, if it be assumed that counties have the power to enact franchises affecting public utilities, County has no power to require the franchise provisions here under dispute. However, if it were necessary to pass upon the constitutional issue, I am of the opinion that the contention of Southern Pacific is without merit. Counties are legal subdivisions of the State. (Cal. Const., Art. XI, Sec. 1; Gvt. Code § 23002.) A county is a branch of state government established to aid the Legislature in providing for the wants and welfare of the public within the territory for which it is organized. (Wilkinson v Lund (1929) 102 CA 767, 772; City of Santa Monica v Los Angeles County (1911) 15 CA 710, 713.) Subject to specific limitations or prohibitions in the Constitution, the Legislature may delegate (and change or withdraw) its powers to counties. (Bolton v Terra Bella Irr. Dist. (1930) 106 CA 313, 328.) While Section 23 of Article XII does not expressly mention counties, there is nothing in that section which prohibits the Legislature, under the authorities heretofore set forth, from delegating to counties powers to grant franchises.

Sections 6001, et seq. provide for the manner in which public utility franchises may be granted by local governments. However, these sections do not apply to a railroad doing an interstate business such as Southern Pacific. (Pub. Util. Code § 6001.) Section 7551 grants railroad corporations a right-of-way over public lands not within the corporate limits of cities or within three miles thereof. Section 7551 provides that:

> "Every railroad corporation is granted the right of way for the location, construction, and maintenance of its necessary works, and for every necessary adjunct thereto, over any swamp, overflowed, or other public

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> lands of the State not otherwise disposed of or in use, not in any case exceeding .in length or width that which is necessary for the construction of such works and adjuncts, or for the protection thereof, and in no case to exceed 200 feet in width.
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> "These grants do not apply to public lands of the State within the corporate limits of cities, or within three miles thereof."

However, the Legislature has delegated to municipal governments the power to determine whether a railroad corporation may utilize or cross particular roads or streets within its corporate limits. Section 7555 provides that:

> "No railroad corporation may use any street, alley, or highway, or any of the land, whether covered by water or otherwise, owned by the municipality within any city, unless the right to do so is granted by a two-thirds vote of the governing body of the city. If any railroad corporation operating within a city applies to the governing body of the city for a franchise or permit to cross any such street, alley, or highway, with main, branch, side, switching, or spur trackage, the governing body of the city, within a reasonable time, shall hold a public hearing upon the application after reasonable notice to the applicant and to the public and shall thereafter grant the franchise or permit applied for upon reasonable terms and conditions unless such governing body reasonably finds that the grant of the franchise or permit would be detrimental to the public interest of the city. Nothing in this section imposes any duty upon or limits the authority of, any city organized and existing pursuant to a freeholder's charter, or any officer thereof."

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Section 7555 is consonant with Section 7551. The State itself has provided for the veto of a selected railroad route by the State Lands Commission.[6/] Where regulation of a public utility is a matter of statewide concern, a local franchise is a limited property right for the use of the streets of a municipality. (So. Cal. Edison (1943) 44 CRC 733, 735-36; see also, Western Motor Transport Co. (1921) 20 CRC 1038, 1040; Oakland v San Francisco - Oakland Terminal Rys. (1923) 23 CRC 936, 940; Greyhound Lines, Inc. v Public Utilities Com. (1968) 68 C 2d 406, 412 fn. 3; Oro Electric Corp. v Railroad Com. (1915) 169 Cal 466; Pacific Tel. & Tel. v City of Los Angeles (1955) 49 Cal 2d 272; Pacific Tel. & Tel. v City & County of San Francisco (1961) 197 CA 2d 133; Los Angeles Ry. Co. v Los Angeles (1907) 152 Cal 242.) I have already held that Section 7555 is made applicable

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6/ Section 5553 provides that:

> "When any selection of a right of way, or land for an adjunct to the works of a railroad corporation, is made by any corporation, the secretary thereof shall transmit to the State Lands Commission, the State Controller, and the recorder of the county in which the selected lands are situated, a plat of the lands so selected, giving the extent thereof and uses for which the lands are claimed or desired, duly verified to be correct. If approved, the State Lands Commission shall so endorse the plat, and issue to the corporation a permit to use the lands, unless, on petition properly presented to the court, a review is had and such use prohibited."

Its predecessor, Civil Code Section 478, had vested similar power in the Surveyor General.

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to counties by virture of Government Code Section 26001.7/ This delegation of legislative power to municipal governments has been sustained by the Supreme Court. (Pacific Rock and Gravel Co. v City of Upland, supra; Southern Pacific Company v City & County of San Francisco (1964) 62 Cal 2d 50, 58.)

Section 7555 provides that "the governing body of the city, within a reasonable time, shall hold a public hearing upon the application after reasonable notice to the applicant and to the public and shall thereafter grant the franchise or permit applied for upon reasonable terms and conditions unless such governing body reasonably finds that the grant of the franchise or permit would be detrimental to the public interest of the city." In determining whether a franchise would be detrimental to a municipality or the reasonable terms and conditions thereof, the governing body cannot consider or intrude into matters which are of statewide concern and beyond its jurisdiction. (Hempy v Public Utilities Com. (1961) 56 Cal 2d 214; Agnew v City of Los Angeles (1958) 51 Cal 2d 1, 10; City of Madera v Black (1919) 181 Cal 306, 313-14; Verner, Hilby & Dunn v City of Monte Sereno (1966) 245 CA 2d 29, 33; Lynch v City of Los Angeles (1952) 114 CA 2d 115; People v Willert (1939) 37 CA_2 (Supp.) 729, 733-34.) It is clear under the authorities heretofore set forth that matters involving railroad operations and safety are matters of statewide concern and solely within the regulatory jurisdiction of the Commission. Questions involving the installation,

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7/ This conclusion is fortified by Section 7533, which deals with the construction of additional tracks and provides in part that:

> "Nothing herein supersedes or repeals any law relating to the regulation of railroad corporations by the commission, or any law requiring railroads to obtain franchises from the cities or counties through which the additional tracks may pass." (Emphasis added.)

operation, maintenance, and protection of grade crossings and the allocation of costs therefor are solely within the ambit of the Commission's jurisdiction, and those involving the need for and location of grade crossings are within the primary jurisdiction of the Commission. (Pub. Util. Code §§ 1201, 1202, 701, 761, 762, 768, 768.5; Streets & Highways Code §§ 189, 190; City of San Bernardino v Railroad Commission (1923) 190 Cal 562; City of San Mateo v Railroad Commission, supra; Northwestern Pac. R.R. Co. v Railroad Commission, supra; Civic Center Assn. of L.A. v Railroad Commission, supra; Union City v Southern Pacific Co., supra.)

Section 4 of County's Ordinance No. 9949, which related to Doogan Avenue, provided:

> "The grantee shall reimburse the County for any and all costs apportioned to County in connection with the installation of any and all automatic crossing protection as may be approved or ordered by the Public Utilities Commission."

This provision was in excess of the County's powers in connection with franchises and illegal under the authorities heretofore cited. Ordinance No. 10,288, which related to Doogan Avenue, Ordinance No. 10,422, which related to Via Baron, and Ordinance No. 10,417, which related to Bonnie Beach Place all incorporated by reference the terms of County's basic franchise Ordinance No. 7468, as amended. Sections 139, 140, 142, 143, 144, 203, 204, 209, and 212, of the basic franchise ordinance, are set forth in Appendix A. None of these sections can be applied to a public utility whose operations are a matter of statewide concern and whose regulation has been delegeted to the Commission.[8/] Southern Pacific falls in this category. (Pub. Util. Code §§ 211, 216(a), 229, 230.) Furthermore,

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8/ In addition to the statutory authority heretofore set forth, the Commission, pursuant to Sections 701, 702, 761, 762, and 768, has adopted General Orders Nos. 22B, 26D, 33B, 36B, 72A, 75B, 88, 108, 110, 118. See also Southern Pacific (1970) 71 CPUC 181.

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after the Supreme Court denied County's petition for a writ of review in the Carson Street case, County enacted Ordinance No. 10,231, which added Section 218 to the basic franchise ordinance. That section provides in part that:

> "Should any provision of this Article which is incorporated by reference in any ordinance granting a franchise be found and determined, either by the Public Utilities Commission of the State of California, or by judicial adjudication, to be void and of no force and effect in such ordinance granting a franchise, then such ordinance shall be void, of no force or effect except as to a provision incorporating, by reference, this section,and such ordinance grants no franchise.
>
> Thirty (30) days after the effective date of an order of the Public Utilities Commission based on such findings and determination, or thirty (30) days after the effective date of any such judicial adjudication, grantee, upon receipt of written notice to do so from the Board, and at no cost to the County, shall immediately remove all spur, drill and team tracks and appurtenances, including any crossing protection heretofore constructed, operated and maintained by grantee upon, on, along, or across the County highway pursuant to the terms of the ordinance granting the franchise."

Section 218 of the basic franchise ordinance is an attempt to bootstrap County's position with respect to the challenged portions of the ordinance and to intimidate franchisers from contesting the validity thereof. Section 218 of the basic franchise ordinance is invalid insofar as it attempts to revoke a franchise of a public utility, whose operations are a matter of statewide concern and whose regulation has been delegated to the Commission, when this Commission or a court of competent jurisdiction invalidates any other portion of the basic franchise ordinance. Section 218 of the basic franchise ordinance is in excess of County's jurisdiction and powers and is void. (Hempy v Public Utilities Com., supra; Agnew v City of Los Angeles, supra; City of Madera v Black, supra; Verner, Hilby & Dunn v City of Monte Sereno, supra; Lynch v City of Los Angeles, supra; People v Willert, supra.)

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Since County's refusal to grant Southern Pacific franchises for the three grade crossings here involved rests upon improper or illegal conditions, the provisions of Rule 40 should be waived. Southern Pacific should be authorized to construct or operate the crossings if the record otherwise so indicates.

Public Safety, Convenience, and Necessity

The need for the three grade crossings here under consideration is not seriously challenged. The fact that County granted franchises for their construction and operation and revoked the franchises solely on the grounds heretofore discussed is corroborative of such need. Therefore, it is unnecessary to enlarge the text of this Proposed Report by discussing the evidence relating to public safety, convenience, and necessity. Appropriate specific findings will hereinafter be made in connection therewith.

In the light of the findings and conclusions reached herein, Southern Pacific should be authorized to construct, operate, and maintain the crossings here involved. However, Southern Pacific should be required to accept and comply with any franchise ordinance hereinafter enacted by County which is not in excess of its jurisdiction. California courts have been mindful of the jurisdiction of the Commission. (Eg., R. E. Tharp, Inc. v Miller Hay Co. (1968) 261 CA. 2d 81; Pratt v Coast Trucking, Inc. (1964) 228 CA 2d 139.) It is, therefore, unnecessary at this time to enter an order dealing with the actions which County has filed in the Superior Court. (See, Miller v Railroad Commission (1937) 9 Cal 2d 190, 195, 197-98; Pratt v Coast Trucking, Inc., supra; Ventura Co. Water Dist. No. 12 v Susana Knowls Mul. Wtr. Co. (1970) 7 CA 3d 674.)

No other points require discussion. I make the following findings and conclusions.

Findings of Fact

1. Southern Pacific is a railroad corporation as defined in Section 230, a common carrier as defined in Section 211, and a public utility as defined in Section 216.

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2. Doogan Avenue, which is located in County, lies between the Wilmington Branch Line of Southern Pacific and an industrial development of 24 acres containing 15 buildings. The plans for the industrial development included reservations of rights-of-way for rail service. Buildings were constructed so that loading dock heights would accommodate rail service. The industrial development is in an area zoned for and devoted to industrial use.

3. The portion of Doogan Avenue here under construction was not physically existent until the construction of the aforesaid industrial development.

4. The developer of the industrial development consulted with Southern Pacific about the placement of rail tracks within the industrial development.

5. Various documents filed by the developer with County to secure authority to construct the industrial development indicated that it was intended to provide rail service to the development over the crossing here under consideration. The developer believed that since County granted authority to construct the industrial development, the franchise necessary for the rail service would be granted as a perfunctory matter. The developer caused the tracks to be constructed in good faith as part of the construction of the industrial development.

6. Southern Pacific filed Application No. 52982 on November 9, 1971. It seeks an order authorizing the construction at grade of an industrial drill track and an industrial spur track in and across Doogan Avenue in unincorporated territory in the County. Attached to the application was a copy of County Ordinance No. 9949, enacted on January 20, 1970, which granted Southern Pacific a 25-year franchise to construct the crossing at grade over Doogan Avenue. Section 4 of Ordinance 9949 provided:

> "The grantee shall reimburse the County for any and all costs apportioned to County in connection with the installation of any and all automatic crossing protection as may be approved or ordered by the Public Utilities Commission."

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County's basic franchise Ordinance No. 7468, provides for the acceptance of a franchise in writing within 60 days after passage of the ordinance granting the franchise. Southern Pacific did not accept the franchise on the ground that it contained an illegal condition. On April 19, 1972 Southern Pacific filed a First Amendment to the application which alleged that the tracks had been constructed by the land developer whose development they were to serve and accepted and placed in service by Southern Pacific, which had the mistaken belief that all necessary authority for constructing the tracks had been obtained. On June 15, 1971 County enacted Ordinance No. 10,288 which was substantially similar to Ordinance No. 9949. Ordinance No. 10,288 referred to the County basic franchise Ordinance No. 7468, as amended by Ordinances Nos. 9329 and 10,231, which has a provision similar to that of Section 4, Ordinance No. 9949. Southern Pacific again refused to accept the franchise because of the alleged illegal condition contained therein.

On June 7, 1972 County enacted Ordinance No. 10,528 which repealed Ordinances Nos. 10,288 and 9949 and declared that the tracks which had been constructed constituted an obstruction of Doogan Avenue. On June 9, 1972 the County Road Commissioner served notice on Southern Pacific to remove the tracks as an alleged encroachment on Doogan Avenue. On July 12, 1972 County filed an action in the Superior Court to abate the Doogan Avenue drill and spur track crossings as a nuisance, to enjoin the further operation and maintenance of the crossing, to require the removal of the crossing, and to secure damages.

7. There is located to the north of the Doogan Avenue crossing state property operated by the Department of Public Works, Division of Highways, which is used as a borrow site for earth to be utilized in the construction of freeways. Doogan Avenue provides a means of access to the state property.

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8. Cal Western Packaging Corporation engages in the packaging of shortening and salad oil. It leased its building in the industrial development under the assumption that it would have rail service. Between April 1971 and the time of hearing herein, it handled 300 railroad cars at its leased building in connection with its business. If Cal Western is deprived of rail service it would be at a competitive disadvantage with other firms in its industry because its shipping costs would be higher.

9. In 1969 Boise Cascade Development Building Company purchased 68 acres of raw land from the State of California in County for the purpose of constructing an industrial center. Thereafter, Boise became one of the principals in developing an industrial center known as Dominguez West Industrial Center. Plans for the center, which were approved by County, indicated that two drill tracks would be utilized to serve the center. Dominguez Center was constructed to provide that rail spur service could be brought to each individual building therein. The loading docks in the buildings were designed to accommodate rail service. Via Baron is a new street created in connection with the development of Dominguez Center and is located entirely within the center. In order to provide rail service to the Center, it is necessary for the track to cross Via Baron. Boise constructed the drill tracks and the crossing at grade across Via Baron in 1970 during the construction of the Dominguez Center. The construction was done in good faith because Boise believed that County would grant it appropriate franchises since it had approved the plans for the development of Dominguez Center. Boise represented to tenants of the Center that rail service would be available. Boise conveyed 4.5 acres of land within Dominguez Center, with a value of $430,000, for railroad rights-of-way. If rail service is discontinued or not permitted, Boise will be subject to lawsuits by its tenants.

On January 18, 1972 County adopted Ordinance No. 10,422 which granted Southern Pacific a 25-year franchise to construct, operate, and maintain a drill track over Via Baron. Ordinance No. 10,422 incorporated therein to provisions of County's basic

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franchise Ordinance No. 7468, as amended. On February 11, 1972 Southern Pacific notified County in writing of its conditional acceptance of the franchise, except for those portions which it contends are illegal. On April 21, 1972 Southern Pacific filed Application No. 53280 with the Commission. It recited the foregoing facts and sought authority to operate over the crossing at grade and drill track. On July 11, 1972 County enacted Ordinance No. 10,543 which repealed the franchise granted in Ordinance No. 10,422. On August 28, 1972 County filed an action in the Superior Court over Via Baron similar to the one filed in connection with Doogan Avenue.

10. The proposed industrial spur track in and across Bonnie Beach Place has not yet been constructed. The purpose of the spur track and crossing at grade is to serve an industrial building on a parcel of approximately 37,000 square feet of land owned by Wellman Properties. The parcel is in an area where there is heavy and light manufacturing. In 1970 Wellman Properties was negotiating with a prospective tenant for the installation of the building on the property. It lost the prospective tenant because of the uncertainty of whether rail service will be available to the building. Wellman Properties has experienced difficulties in dealing with other prospective tenants because of the uncertainty of whether rail service will be available to the building.

11. In 1970 Southern Pacific filed with County an application for a franchise to construct the spur track and crossing at grade in and across Bonnie Beach Place. On January 11, 1972 County adopted Ordinance No. 10,417 which granted Southern Pacific a 25-year franchise to construct an industrial spur track over and across Bonnie Beach Place. Ordinance No. 10,417 incorporated therein the provisions of County's basic franchise Ordinance No. 7468, as amended. On March 1, 1972 Southern Pacific notified County in writing of its conditional acceptance of the franchise, except for those portions which it contends are illegal. On April 21, 1972 Southern Pacific

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filed Application No. 53279 with the Commission. It recited the foregoing facts and sought authority to construct and operate the crossing and industrial spur track in and across Bonnie Beach Place. On June 13, 1972 County enacted Ordinance No. 10,531 which repealed the franchise granted in Ordinance No. 10,417.

12. County has enacted basic franchise Ordinance No. 7468 which was amended by Ordinances Nos. 9329 and 10,231. Sections 139, 140, 142, 143, 144, 203, 204, 209, and 212 of the basic franchise ordinance, as amended, are set forth in Appendix A attached hereto and by this reference made a part hereof.

13. Regulation of railroads in California is a matter of statewide concern and not a municipal affair.

14. Questions involving the need for, location, installation, operation, maintenance, and protection of grade crossings and the allocation of costs therefor are matters of statewide concern and are solely or primarily within the jurisdiction of the Commission.

15. Pursuant to the authority of Sections 701, 702, 761, 762, and 768, the Commission has adopted the following General Orders which deal with the operations of railroad corporations and encompass crossings at grade: General Orders Nos. 22B, 26D, 27B, 28, 31, 33B, 36B, 72A, 75B, 79, 88, 106, 108, 110, 114, 118, and 119.

16. In Application of The County of Los Angeles for the widening of Carson Street, the Commission entered an order which included the following conclusion of law:

> "3. The Commission has exclusive jurisdiction over apportionment of costs of protective devices at railroad crossings. Provisions in county ordinances requiring the railroad to pay all costs are of no force and affect. The matter is one of statewide concern. 1/

1/ Santa Maria Valley Railroad Crossing in Santa Maria Decision No. 75355 dated February 25, 1969. Review denied by Supreme Court July 16, 1969.
City of Los Angeles, Tuxford Street crossing Decision No. 74420, dated July 17, 1968." (Decision No. 77464 in Application No. 50922, p. 7.)

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County's petition for a rehearing in the Carson Street case was denied (Decision No. 77616) and the California Supreme Court denied a petition for a writ of review on February 17, 1971.

17. After the Supreme Court denied County's petition for a write of review in the Carson Street case, County enacted Ordinance No. 10,231 which added Section 218 to the basic franchise ordinance. That section provides in part that:

> "Should any provisions of this Article which is incorporated by reference in any ordinance granting a franchise be found and determined, either by the Public Utilities Commission of the State of California, or by judicial adjudication, to be void and of no force and effect in such ordinance granting a franchise, then such ordinance shall be void, of no force or effect except as to a provision incorporating, by reference, this section, and such ordinance grants no franchise.
>
> "Thirty (30) days after the effective date of an order of the Public Utilities Commission based on such findings and determination, or thirty (30) days after the effective date of any such judicial adjudication, grantee, upon receipt of written notice to do so from the Board, and at no cost to the County, shall immediately remove all spur, drill and team tracks and appurtenances, including any crossing protection heretofore constructed, operated and maintained by grantee upon, on, along, or across the County highway pursuant to the terms of the ordinance granting the franchise."

18. In the light of the actions of County with respect to issuing franchises for the three grade crossings here under consideration, the provisions of Rule 40(a) should be waived. However, Southern Pacific should be ordered to accept and comply with any franchise which County may enact which is not in excess of its jurisdiction.

19. The public safety, convenience, and necessity require that Southern Pacific be authorized to construct, operate, and maintain crossings at grade over Doogan Avenue, Via Baron, and Bonnie Beach Place as hereinafter indicated.

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20. Southern Pacific should be authorized to construct, operate, and maintain a drill track and a spur track at grade across Doogan Avenue in the County of Los Angeles at the location and substantially as shown by plan attached to Application No. 52982, to be identified as Crossing No. BBM-497.54-C, in accordance with the following terms and conditions:

a. The width of the crossing should be not less than 84 feet and grades of approach not greater than two percent as shown on plan attached to the application. Construction should be equal or superior to Standard No. 2 of General Order No. 72-A. Protection should be by two Standard No. 8 flashing light signals (General Order No. 75-B) supplemented with additional flashing lights on cantilever arms. Applicant should install stop signs for rail traffic on each side of Doogan Avenue.

b. Applicant should replace the existing self-guarded frog with a rail-bound frog.

c. Applicant should pave the crossing area between lines two feet outside of rails.

d. Applicant should bear the entire construction expense, including the requisite automatic protection, stop signs, and maintenance cost of the crossing between lines two feet outside of rails. The County of Los Angeles should bear the maintenance cost of the crossing outside such lines.

e. Clearances, including any curbs, should conform to General Order No. 26-D. Walkways should conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway should provide a reasonable regular surface with gradual slope not to exceed 1-inch vertical to 8-inches horizontal in all directions of approach.

21. Southern Pacific should be authorized to construct, operate, and maintain a drill track at grade across Via Baron in the County of Los Angeles at the location and substantially as shown by plan attached to Application No. 53280, to be identified as Crossing No. BBM-499.29-C, in accordance with the following terms and conditions:

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a. The width of the crossing should be not less than 84 feet and grades of approach not greater than two percent as shown on plan attached to the application. Construction should be equal or superior to Standard No. 2 of General Order No. 72-A. Protection should be by two Standard No. 8 flashing light signals (General Order No. 75-B) supplemented with additional flashing lights on cantilever arms. Applicant should install stop signs for rail traffic on each side of Via Baron.

b. Applicant should bear the entire construction expense, including the requisite automatic protection, stop signs, and maintenance cost of the crossing between lines two feet outside of rails. The County of Los Angeles should bear the maintenance cost of the crossing outside such lines.

c. Clearances, including any curbs, should conform to General Order No. 26-D. Walkways should conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway should provide a reasonable regular surface with gradual slope not to exceed 1-inch vertical to 8-inches horizontal in all directions of approach.

22. Southern Pacific should be authorized to construct, operate, and maintain a spur track at grade across Bonnie Beach Place in the County of Los Angeles at the location and substantially as shown by plan attached to Application No. 53279, to be identified as Crossing No. B-485.1-C, in accordance with the following terms and conditions:

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a. The width of the crossing should be not less than 60 feet and grades of approach not greater than two percent as shown on plan attached to the application. Construction should be equal or superior to Standard No. 2 of General Order No. 72-A. Protection should be by one Standard No. 1 crossing sign (General Order No. 75-B), reflectorized with reflex-reflective sheet material, in the southeast quadrant of the crossing, and by one Standard No. 2 crossing sign, reflectorized with reflex-reflective sheet material, in the northwest quadrant of the crossing.

b. Applicant should bear the entire construction expense, including the requisite automatic protection, and maintenance cost of the crossing between lines two feet outside of rails. The County of Los Angeles should bear the maintenance cost of the crossing outside such lines.

c. Clearances, including any curbs, should conform to General Order No. 26-D. Walkways should conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway should provide a reasonable regular surface with gradual slope not to exceed 1-inch vertical to 8-inches horizontal in all directions of approach.

23. There is reasonable certainty that the construction, operation, and maintenance of the tracks, crossings at grade, and crossing protection hereinafter provided for in these consolidated proceedings will not have a significant effect on the environment.

Conclusions of Law

1. Regulation of railroads in California is a matter of statewide concern and not a municipal affair.

2. Questions involving the need for, location, installation, operation, maintenance, and protection of grade crossings and the allocation of costs therefor are matters of statewide concern and are solely or primarily within the jurisdiction of the Commission.

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3. The Commission has jurisdiction to apply applicable law to the facts in a proceeding properly before it and in doing so may consider and pass upon municipal ordinances.

4. The provisions of County's franchise ordinances challenged herein involve matters cognate and germane to the regulation of public utilities, a subject over which the Commission has been given jurisdiction.

5. The Commission has exclusive or primary jurisdiction to determine the issues raised herein.

6. Section 7551 grants railroad corporations a right-of-way or franchise over unused public lands not located within the corporate limit of cities or three miles thereof. Section 7551 is qualified by Section 7553.

7. Section 7555 provides that no railroad corporation may use the streets of a municipality or any municipal land therein without the authorization granted by a two-thirds vote of the governing body of the city. Section 7555 also provides that a franchise or permit should be granted on reasonable terms and conditions unless the governing body finds that granting the franchise or permit would be detrimental to the public interest of the city.

8. Franchise conditions which are beyond the jurisdiction of a municipality and which deal with matters whose regulation has been placed solely within the jurisdiction of the Commission are not reasonable terms within the meaning of Section 7555. In determining whether granting a franchise would be detrimental to the public interest of a city, the governing body cannot consider matters outside its jurisdiction.

9. Section 7555 is made applicable to counties by Government Code Section 26001.

10. Section 4 of Ordinance No. 9949 and Sections 139, 140, 142, 143, 144, 203, 204, 209, 212, and 218 of County's basic franchise Ordinance No. 7468, as amended by Ordinances Nos. 9329 and 10,231, are illegal, improper, void, and in excess of County's jurisdiction

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insofar as County seeks to apply them to a railroad corporation whose operations are a matter of statewide concern and whose regulation has been delegated to the Commission.

11. Section 4 of Ordinance No. 9949 and Sections 139, 140, 142, 143, 144, 203, 204, 209, 212, and 218 of County's basic franchise Ordinance No. 7468, as amended by Ordinances Nos. 9329 and 10,231, are illegal, improper, void, and in excess of County's jurisdiction insofar as County seeks to apply them to a grade crossing project, which is a matter of statewide concern and the jurisdiction over which has been delegated to the Commission.

12. Section 218 of County's basic franchise ordinance is invalid insofar as it attempts to revoke a franchise of a public utility, whose operations are a matter of statewide concern and whose regulation has been delegated to the Commission, when this Commission or a court of competent jurisdiction invalidates any other portion of the basic franchise ordinance. Section 218 of the basic franchise ordinance is in excess of County's jurisdiction and powers and is void.

13. Southern Pacific should be authorized to construct, operate, and maintain tracks and crossings at grade in and across Doogan Avenue, Via Baron, and Bonnie Beach Place in accordance with the findings made herein.

14. Southern Pacific should be ordered to accept and comply with any franchises which County may hereafter enact which are not in excess of its jurisdiction with respect to the aforesaid tracks and grade crossings until such time as County enacts franchise ordinances within its jurisdiction, Southern Pacific should be authorized to construct, operate, and maintain the crossings here involved.

15. In the light of the actions previously taken by County, with respect to attempting to impose franchise provisions in excess of its jurisdiction upon railroad corporations in connection with crossings at grade, the Commission should retain continuing jurisdiction in these consolidated matters.

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I recommend that the Commission adopt the following order.

O R D E R

IT IS ORDERED that:

1. Southern Pacific Transportation Company is hereby authorized to construct, operate, and maintain a drill track and a spur track at grade across Doogan Avenue in the County of Los Angeles at the location and substantially as shown by plan attached to Application No. 52982, to be identified as Crossing No. BBM-497.54-C.

a. The width of the crossing shall be not less than 84 feet and grades of approach not greater than two percent as shown on plan attached to the application. Construction shall be equal or superior to Standard No. 2 of General Order No. 72-A. Protection shall be by two Standard No. 8 flashing light signals (General Order No. 75-B) supplemented with additional flashing lights on cantilever arms. Applicant shall install stop signs for rail traffic on each side of Doogan Avenue.

b. Applicant shall replcce the existing self-guarded frog with a rail-bound frog.

c. Applicant shall pave the crossing area between lines two feet outside of rails.

d. Applicant shall bear the entire construction expense, including the requisite automatic protection, stop signs, and maintenance cost of the crossing between lines two feet outside of rails. The County of Los Angeles shall bear the maintenance cost of the crossing outside such lines.

e. Clearances, including any curbs, shall conform to General Order No. 26-D. Walkways shall conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway shall provide a reasonable regular surface with gradual slope not to exceed 1-inch vertical 8-inches horizontal in all directions of approach.

f. Within thirty days after completion of the work authorized by this order, applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within one year from the effective date of this order unless time be extended

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or if conditions set forth herein are not complied with. The authorization may be revoked or modified if public convenience, necessity, or safety so require.

2. Southern Pacific Transportation Company is hereby authorized to construct, operate, and maintain a drill track at grade across Via Baron in the County of Los Angeles at the location and substantially as shown by plan attached to Application No. 53280, to be identified as Crossing No. BBM-499.29-C.

a. The width of the crossing shall be not less than 84 feet and grades of approach not greater than two percent as shown on plan attached to the application. Construction shall be equal or superior to Standard No. 2 of General Order No. 72-A. Protection shall be by two Standard No. 8 flashing light signals (General Order No. 75-B) supplemented with additional flashing lights on cantilever arms. Applicant shall install stop signs for rail traffic on each side of Via Baron.

b. Applicant shall bear the entire construction expense, including the requisite automatic protection, stop signs, and maintenance cost of the crossing between lines two feet outside of rails. The County of Los Angeles shall bear the maintenance cost of the crossing outside such lines.

c. Clearances, including any curbs, shall conform to General Order No. 26-D. Walkways shall conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway shall provide a reasonable regular surface with gradual slope not to exceed 1-inch vertical to 8-inches horizontal in all directions of approach.

d. Within thirty days after completion of the work authorized by this order, applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within one year from the effective date of this order unless time be extended or if conditions are not complied with. The authorization may be revoked or modified if public convenience, necessity, or safety so require.

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3. Southern Pacific Transportation Company is hereby authorized to construct, operate, and maintain a spur track at grade across Bonnie Beach Place in the County of Los Angeles at the location and substantially as shown by plan attached to Application No. 53279, to be identified as Crossing No. B-485.1-C.

a. The width of the crossing shall be not less than 60 feet and grades of approach not greater than two percent as shown on plan attached to the application. Construction shall be equal or superior to Standard No. 2 of General Order No. 72-A. Protection shall be by one Standard No. 1 crossing sign (General Order No. 75-B), reflectorized with reflex-reflective sheet material, in the southeast quadrant of the crossing, and by one Standard No. 2 crossing sign, reflectorized with reflex-reflective sheet material, in the northwest quadrant of the crossing.

b. Applicant shall bear the entire construction expense, including the requisite automatic protection, and maintenance cost of the crossing between lines two feet outside of rails. The County of Los Angeles shall bear the maintenance cost of the crossing outside such lines.

c. Clearances, including any curbs, shall conform to General Order No. 26-D. Walkways shall conform to General Order No. 118 in that the transition slope between walkways required under General Order No. 118 and top of roadway shall provide a reasonable regular surface with gradual slope not to exceed 1-inch vertical to 8-inches horizontal in all directions of approach.

d. Within thirty days after completion of the work authorized by this order, applicant shall so advise the Commission in writing. This authorization shall expire if not exercised within one year from the effective date of this order unless time be extended or if conditions are not complied with. The authorization may be revoked or modified if public convenience, necessity, or safety so require.

4. Southern Pacific Transportation Company is authorized to construct, operate, and maintain the tracks and crossings at grade authorized in Ordering Paragraphs 1, 2, and 3 of this order without obtaining a franchise from the County of Los Angeles until such time

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as the County enacts franchise ordinances in connection therewith which do not contain provisions in excess of its jurisdiction. At such time as County may hereafter enact franchise ordinances which are not in excess of its jurisdiction, Southern Pacific shall accept and comply with such franchises.

5. The Commission retains continuing jurisdiction over these consolidated matters to make such further orders consonant with its jurisdiction to implement this decision and such further orders which may be necessary for the public safety, convenience, and necessity in connection with the crossings here involved.

Dated at San Francisco, California, this 13th day of March, 1974.

/s/ Donald B. Jarvis

Donald B. Jarvis
Examiner

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The basic franchise ordinance of Los Angeles County, Ordinance No. 7468, as amended by Ordinance No. 9329, provides in part as follows:

"Section 139. The County reserves the right to change the grade, to change the width or to alter or change the location of any highway over which the franchise is granted.

"Section 140. If any of the facilities heretofore or hereafter erected, constructed, installed or maintained by the grantee pursuant to the franchise on, along, upon, over, in, under or across any highway are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, alteration or relocation of the highway, the grantee shall relocate permanently or temporarily any such facility at no expense to the County, city or public entity upon receipt of a written request from the Road Commissioner to do so, and shall, commence such work on or before the date specified in such written request which date shall be not less than thirty days from receipt of such written request, and thereafter diligently prosecute such work to completion; provided, however, if such highway be subsequently constituted a state highway, thereafter and so long as such highway remains a state highway, no such change of location shall be required for a temporary purpose.

"As to franchises for spur, team or drill tracks, this section:

(a) Does not apply to a separation of grades between a highway and a railroad track.

(b) In all other cases, is subject to the provisions of Section 217."

"Section 142. The County reserves the right for itself, for all cities and public entities which are now or may later be established to lay, construct, repair, alter, relocate and maintain sub-surface or other facilities or improvements of any type or description in a governmental but not proprietary capacity within the highways over which the franchise is granted. If the County or city or other public entity finds that the location or relocation of such facilities or improvements conflicts with the facilities laid, constructed or maintained

under the franchise, whether such facilities were laid before or after the facilities of the County or such city or such public entity were laid, the grantee of such franchise shall at no expense to the County or city, or public entity, on or before the date specified in a written request from the Road Commissioner, which date shall be not less than thirty days after the receipt of such notice, and request to do so, commence work to change the location either permanently or temporarily of all facilities so conflicting with such improvements to a permanent or temporary location in said highways to be approved by the Road Commissioner; and thereafter diligently prosecute such work to completion. If such highway be subsequently constituted a state highway, while it remains a state highway the rights of the State of California shall be as provided in Section 680 of its Streets and Highways Code.

"As to franchises for spur, team or drill tracks, this section is subject to the provisions of Section 217.

"Section 143. If the County, city, or public entity constructs or maintains any storm drain, sewer structure or other facility or improvement, under or across any facility of the grantee maintained pursuant to the ordinance, the grantee shall provide, at no expense to the County, city or public entity such support as shall be reasonably required to support, maintain and protect grantee's facility.

"This section shall not relieve any contractor of liability arising from violation of any law, ordinance or regulation, or from negligence which may proximately cause injuries to any of grantee's facilities.

"Section 144. If the grantee after reasonable notice fails or refuses to relocate permanently or temporarily its facilities located in on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required pursuant to any provision of the franchise, the County, city, or public entity may cause the work to be done and shall keep an itemized account of the entire cost thereof, and the grantee shall hold harmless the County, its officers and employees from any liability which may arise, or be claimed to arise from the moving, cutting or alteration of any of grantee's facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity.

"The grantee agrees to, and shall reimburse the County, city or public entity for such cost within thirty (30) days after presentation to the said grantee of an itemized account of such cost."

"Section 203. The grantee, at no cost to the County, shall pave, gravel, or otherwise improve the highway between the rails and for a distance of two (2) feet on each side thereof, with the same type of material as used by the County, under the same specifications and in the same manner or in a similar manner as that upon the adjacent highway, or of a material under specifications approved by the Road Commissioner. The grantee shall maintain the crossing flush with the top of the rails at all times, so that vehicles and the traveling public may pass over it in a smooth and comfortable manner.

"If pedestrain walks are in place, the grantee shall reconstruct such walks. If pedestrian walks are constructed after the spur track has been laid, the grantee shall construct that portion of the walk between the rails and two (2) feet each side thereof. In either case, the grantee shall maintain such portions of such pedestrain walks to standards of adjacent walks, or to standards approved by the Road Commissioner. The top of the rails shall be maintained at all times at the established grade of the highway at the crossing. All construction, repairs, or any other changes of track shall be made under the inspection and to the satisfaction of the Road Commissioner. In compliance with the provisions of Ordinance No. 3597, as now existing or hereafter amended.

"If any highway is paved at the time the spur track is constructed, the grantee shall use girder rails (weighing approximately 128 pounds per yard), or standard mainline rails of equal or greater weight, within the paved roadway so crossed. If girder rails are used, the pavement shall be reconstructed as set forth in General Order No. 72, Standard No. 4 of the Public Utilities Commission of the State of California, excepting only those modifications approved by the Road Commissioner. If standard mainline rails are used, the method of providing flangeways and of reconstructing the pavement shall be subject to the approval of the Road Commissioner. The rail joints within the crossing shall be welded, unless the Road Commissioner approved another type of equally effective joint fastening.

"A highway which is not paved at the time the spur track is constructed, or the portion of a paved highway which is not paved at the time the spur track is constructed

shall be constructed in accordance with General Order No. 72, Standard No. 1 of the Public Utilities Code of the State of California. If the highway thereafter is paved or if the pavement thereafter is widened, the grantee, within ninety (90) days after being notified by the Road Commissioner, shall reconstruct that portion of the highway crossing within the newly paved portion to conform to that specified for paved portion of highways.

"Where the proposed spur track crossing requires a revision of the highway grades to fit the proposed spur track, the engineering work required for the necessary profile readjustment and the grading and repaving, if such is required, shall be done at no cost to the County and shall be done in a manner approved by the Road Commissioner. In the event the grantee fails to comply with the instructions given by the Road Commissioner within ten (10) days after service thereof upon the grantee, or its manager or agent in the County, the said Road Commissioner shall have the right to have the work done by the Road Department, or otherwise, and shall keep an itemized account of the cost of said work, which the grantee, by the acceptance of the franchise, agrees to pay within thirty (30) days after it is presented to the grantee, its manager or agent stationed in the County.

"Section 204. In unpaved highways, the grantee shall use, in construction other than rails, such materials as are approved by the Road Commissioner. In paved highways, the grantee shall use ballast, creosoted ties, tie plates and other appurtenances below the rails such as are used in mainline construction of first-class railroads, except where a different depth of ballast is required by soil conditions, in which case such depth shall be specified by the Road Commissioner."

"Section 209. The grantee shall further agree, as a condition of the franchise, throughout the unincorporated territory of the County, to comply at all times with the provisions of Article 4, Chapter II of Ordinance No. 6544, Ordinances of the County of Los Angeles, entitled 'Traffic Ordinance,' adopted September 28, 1954."

"Section 212. Except as otherwise provided in Section 217, the grantee shall erect or construct and maintain without cost to the County, city or public entity all warning and protective devices authorized or ordered by the Public Utilities Commission of the State of California, for the protection of traffic in connection with the spur track authorized by the ordinance granting the franchise."