

Decision No. 84752

ORIGINAL

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
construction at grade of an indus-
trial drill track in and upon and
across ALONDRA BOULEVARD in the
City of Santa Fe Springs, County
of Los Angeles, State of California.

Application No. 54467
(Filed November 27, 1973)

William E. Still, Attorney at Law, for applicant.
William Camil, Attorney at Law, for City of Santa
Fe Springs, interested party.
Elmer J. Sjoström, Attorney at Law, for the
Commission staff.

FINAL OPINION

By Decision No. 82801 dated April 30, 1974, we authorized Southern Pacific Transportation Company (SP) to construct a drill track, at grade, across Alondra Boulevard in the city of Santa Fe Springs, said crossing having been assigned No. BK 501.69-C.

At the hearing, the parties agreed that the issue of the validity of conditions contained in the city of Santa Fe Springs' (City) permit was reserved for consideration, after briefing, in a final opinion and order on the application.

Opening, reply, and closing briefs have been filed by the parties. The matter is ready for decision.

In its opening brief, SP sets forth the following issues:

- "1. Can the City through its franchise or permit impose conditions on a railroad applicant in an area that has been exclusively occupied by the State?
- "2. When does the jurisdiction of the Commission attach or begin?

- "3. Are the terms and conditions of a franchise, permit, or contract between the railroad and a local governmental agency for a grade crossing subject to review by the Commission?"

SP seeks a declaration which would void numerous provisions of the spur track permit, and matters included by reference within it, i. e., the Municipal Code of the City, Chapter 10, Franchises, on the grounds they impinge on the Commission's exclusive jurisdiction. The following are the conditions SP seeks to have voided, which are contained in either the permit or ordinance, with SP's reasoning:

Permit

1. Section 2(c) of the spur track permit provides:

"Automatic crossing gates shall be installed at existing crossing No. BK 501.2 SP (Carmenita Road) at no cost to City if required by the PUC at this time or in the future."

This condition is an attempt to allocate costs on an upgrading.

2. Section 2(h) of the permit provides:

"No train movements shall be made crossing Alondra Boulevard between the hours of 7:00 a.m. and 8:30 a.m. and 4:00 p.m. and 6:00 p.m. of any day."

This condition is an attempt to regulate operation and is void. The rights of the City are fully protected by the continuing jurisdiction of the Commission. Upon complaint or application and good showing the Commission may determine operating procedures.

Ordinance

3. Section 10-10, Suspension or forfeiture of franchise.

This section attempts to regulate the utility, the primary responsibility of the Commission.

4. Section 10-26, City to be held harmless.

This section imposes a duty on the railroad utility which may cause the railroad to act contrary to Commission order and will tend to interfere with Commission jurisdiction.

5. Section 10-27, Compliance with building, etc. codes, etc.
This section attempts to control construction and may be contrary to expressed General Orders of the Commission.

6. Section 10-32, Reservation of right to relocate, etc. streets.
This section is in conflict with Section 1201, Public Utilities Code.

7. Section 10-33, Relocation of franchise facilities.
Generally this section is in conflict with Sections 1201 and 1202 of the Public Utilities Code.

8. Sections 10-34, 10-35, 10-36, Same.

9. Section 10-45, Use of spur track limited.
This section attempts to regulate use and operation.

10. Section 10-46, Improvement of street, etc.
May conflict with General Orders.

11. Section 10-47, Pedestrian walks, etc.
Commission only has right to determine conditions of a crossing and apportionment of costs.

12. Sections 10-48, 10-49, 10-50, 10-51:
All violate Sections 1201 and 1202 of the Public Utilities Code.

13. Section 10-56, Agreement to comply with traffic regulations.

14. Section 10-57, Blocking streets, etc.
Invades the Commission's exclusive province of regulation.

15. Section 10-58, Connection and use of spur tracks by adjoining persons.
Violates Commission's jurisdiction under Sections 560, 761, 762, and 765 of the Public Utilities Code.

16. Section 10-59, Erection of warning and protective devices.
This section attempts to usurp Commission jurisdiction to apportion costs of protection.

17. Section 10-61, Abandonment of spur track, etc.
Violation of Section 1201 of the Public Utilities Code.

In its reply brief, City states:

"The City does not contest, nor has it ever contested, the following principles:

- "1. The terms of the City's permit, in any area that has been exclusively occupied by the State, are subject to review by the Commission, which has the power to void unreasonable or improper terms.
- "2. The Commission has a continuing power to act and to review."

City contends that there is but a single, real issue presented which is the reasonableness of the condition placing time limitations on train operations over the crossing (Section 2(h) of the spur track permit). City states that if the Commission were to rule on each of the conditions, a great percentage of franchises now in existence in the State of California would be outlawed.

The staff argues that the permit conditions requiring (1) crossing protection to be installed by the railroad at no cost to the City, (2) the installation of automatic gates at existing Crossing No. BK 501.2 (Carmenita Road) at no cost to the City, and (3) that no train movements shall be made crossing Alondra Boulevard at the proposed crossing between the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. and 6:00 p.m. of any day are void because the Commission has exclusive jurisdiction over these matters.

The Issues

1. Whether City can impose conditions on a railroad through its franchise, permit, or ordinance in an area which has been exclusively occupied by the State?

2. Whether the Commission should strike down as void, the challenged conditions contained in the spur track permit and the franchise code as requested by SP?

Discussion

The law is well settled 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 2d 1, 7, 10; Union City v Southern Pacific Co. (1968) 261 CA 2d 277, review denied June 11, 1968; Decision No. 82934 dated May 29, 1974, Southern Pacific Transportation Company, Applications Nos. 52982, 53279, and 53280, rehearing denied, Decision No. 83328 dated August 20, 1974, review denied January 29, 1975, SF 23191 and 23192.)

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. (Miller v Railroad Commission (1937) 9 Cal 2d 190, 197; Northwestern Pa. R. R. Co. v Superior Court (1949) 34 Cal 2d 454, 458; Orange County Air Pollution Control Dist. v Public Utilities Com. (1971) 4 Cal 3d 945, 950-51.)

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; Palermo L. & W. Co. v Railroad Commission (1916) 173 Cal 380, 385; People v Western Air Lines, Inc. (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. (Applications Nos. 52982, 53279, and 52380 of Southern Pacific Transportation Company, Decision No. 82934, rehearing denied Decision No. 83328, review denied January 29, 1975, SF 23191 and 23192, citations omitted.)

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 of the Public Utilities Code.)^{1/}

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 2d (Supp.) 729, 733-34.)

^{1/}"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."

Under the law cited, City cannot lawfully act in matters which are cognate and germane to regulation of matters within the ambit of the Commission's exclusive jurisdiction.

We turn now to the second issue. City has conceded the principle that in any area where the terms of the permit conflict with the exclusive occupancy of the field by the State, the Commission has jurisdiction to review the matter and void the unreasonable or improper terms. It still contends, however, that the condition on the use of the crossing during peak traffic periods should be upheld.

SP accepted the permit tendered by the City, with all of the conditions therein. At the hearing, counsel for SP stated that the permit was accepted subject to notations of certain disagreements. The permit, attached to the application in accordance with Rule 40 of our Rules of Practice and Procedure, does not contain such notations. No evidence was adduced on these areas of disagreement other than with respect to the non-use of the crossing during peak traffic periods.

The essential question is whether any of the conditions imposed by City are beyond purely municipal affairs and enter into an area over which the Commission has exclusive jurisdiction. If so, they are void as a matter of law. (Application of Southern Pacific Trans. Co., Decision No. 82934, *supra*.)

Section 2(c) of the spur track permit provides:

"Automatic crossing gates shall be installed at existing crossing No. BK 501.2 SP (Carmenita Road) at no cost to City if required by the PUC at this time or in the future."

This section is void. The Commission has exclusive jurisdiction over the apportionment of costs. (Sec. 1201.1).

Section 2(h) of the spur track permit provides:

"No train movements shall be made crossing Alondra Boulevard between the hours of 7:00 a.m. and 8:30 a.m. and 4:00 p.m. and 6:00 p.m. of any day."

This section is void as an attempt to regulate railroad operations which is within the exclusive jurisdiction of the Commission. However, SP has agreed to abide by the requirements of this condition, at least on an interim basis. City produced evidence to the effect that Alondra Boulevard is a main arterial boulevard and that the blocking of the thoroughfare for train movements during peak traffic hours would tend to increase auto-auto accidents. Also, that automatic gates remain in the down position too long, thus backing up traffic excessively. On the other hand, SP produced evidence that the crossing will be protected by automatic gates, and that there would be no switching over the crossing, since this would be done within the confines of an industrial park. SP contends that if the condition is enforced there would be a possibility that their switching crews would be in the industrial complex at the expiration of their working time, thus requiring the sending out of another crew at additional expense to the shipper. The staff pointed out that there has been no experience with traffic patterns at this crossing, therefore, the condition should not be implemented.

We are of the opinion that the condition should be implemented. Alondra Boulevard is a heavily traveled thoroughfare with an anticipated growth in the volume of traffic. Furthermore, SP has already agreed to abide by the condition, at least on an interim basis. Consideration must be given to the safety of the public traveling over arterial streets during peak rush hours. Under the circumstances, we believe this factor outweighs the shippers' needs for unrestricted rail service. We take official notice of a report from the staff that no train movements have taken place over the crossing as of the first week of May 1975. The restriction of train movements such as we propose to order is not novel. We have previously imposed restrictions on switching movements during certain hours. (In re AT & SF Ry. (1972) 73 CPUC 194.)

When, and if, the operational restriction becomes unduly burdensome, SP can seek its removal through an application to us.

The spur track permit incorporates 45 sections of City's Franchise Code (Exhibit 12). Twenty-eight of the sections are of a general nature and 17 sections pertain specifically to spur tracks. SP challenges 20 sections.

We have reviewed the challenged sections of the Franchise Code. Under the general provisions of the Code, Sections 10-10, 10-26, 10-32, 10-33, 10-35, and 10-36 pertain to other utilities as well as railroads. To the extent these sections apply to railroad grade crossings, they are unenforceable. Section 10-27 contains a specific provision^{2/} deferring to the Commission's jurisdiction and therefore is not in conflict, but rather in furtherance of our regulation. Section 10-34 provides:

"As to franchise for spur, team or drill tracks,
Section 10-33:

"(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 10-63."

Section 10-63 provides:

"Apportionment of costs by contract.

"If, either before or after the granting of a
franchise for a spur track, the grantees of
such franchise and the city or a public entity
enter into a contract as to how the costs or

^{2/} "In case of public utilities subject to the jurisdiction of the public utilities commission of the state, the rules, regulations and orders of the public utilities commission shall govern whenever any conflict may exist between them and the ordinances, codes, rules and regulations adopted or prescribed by the city council."

expenses, or both arising from the erection or maintenance, or both, of warning or protective devices authorized or ordered by the public utilities commission of the state, or the permanent or temporary relocation of any facilities, shall be apportioned to or between the parties while such contract is in effect, the terms thereof shall control, insofar as they may be inconsistent with Sections 10-30, 10-34, or 10-59. The acceptance of such a franchise, incorporating one or more of such sections by reference shall not be deemed to modify or supersede any provision of such a contract."

While these two sections appear to regulate in an area exclusively reserved to the Commission, they are actually in furtherance of public policy to promote the settlement of cost apportionment by contract rather than regulation. It is noted that Section 10-63 is not challenged by SP. We will not rule on these two sections, since they appear compatible with our jurisdiction.

In Article II of the Franchise Code, which specifically pertains to spur tracks, the following sections are in excess of City's powers in connection with franchises and illegal under the authorities heretofore cited: Sections 10-45 through 10-51, 10-56 through 10-59, and 10-61.^{3/} None of these sections can be applied to a public utility whose operations are a matter of statewide concern and whose regulation has been delegated to the Commission. (Application of Southern Pacific Transportation Co., Decision No. 83934, supra.)

Findings of Fact

1. Alondra Boulevard is a heavily traveled main artery for vehicular traffic.
2. Train movements over the crossing authorized are estimated at four per day.

^{3/} See Appendix A.

3. The authorized crossing was not installed until March 13, 1975.

4. There were no train operations over the crossing as of the first week in May 1975.

5. SP agreed to abide by the condition prohibiting train movements over the crossing between the hours of 7:00 a.m. to 8:30 a.m., and 4:00 p.m. to 6:00 p.m. for an interim period.

6. In view of the recent completion of the crossing, it is not unreasonable to require SP to abide by its agreement in Finding 5 above until such time as experience dictates the condition is unworkable.

7. City has conceded to our exclusive jurisdiction over grade crossing matters and our power to act and review in such matters.

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.

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 City's franchise ordinance and permit 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 herein.

6. 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.

7. 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.

8. Section 2(c) and Section 2(h) of the spur track permit and Sections 10-45 through 10-51, 10-56 through 10-59, and 10-61 of the Franchise Code are illegal, improper, void, and in excess of City's jurisdiction insofar as City 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.

9. Sections 10-10, 10-26, 10-32, 10-33, 10-35, and 10-36 are unenforceable insofar as City 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.

FINAL ORDER

IT IS ORDERED that Southern Pacific Transportation Company shall not conduct train operations over Crossing No. BK 501.69-C located on Alondra Boulevard in Santa Fe Springs during the hours

of 7:00 a.m. to 8:30 a.m., and 4:00 p.m. to 6:00 p.m., Monday through Friday.

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

Dated at San Francisco, California, this 5th day of AUGUST, 1975.

William S. Holmes President
Vernon L. Sturgeon
Alon
Robert K. Burt Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

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10-45 Use of spur track limited.

The spur track to be laid and constructed under the franchise shall be used exclusively for the purpose of connecting warehouses, factories, businesses, industries or enterprises with the railroad line operated by the grantee, or its successors or assigns; or as a "team track" for the general unloading; and the track of such spur track shall be used for the transportation of freight only and shall not be used as a main line or part thereof. (Ord. No. 168, Section 61.)

10-46 Improvement of street between rails, etc.;⁹
maintenance of rails.

The grantee, at no cost to the city, shall pave, gravel or otherwise improve the city street between the rails, and for a distance of two feet on each side thereof, with the same type of material as used by the city, under the same specifications and in the same manner or in a similar manner as that upon the adjacent city street, or of a material under specifications approved by the director of public works. 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. (Ord. No. 168, Section 62.)

10-47 Pedestrian walks; track changes.

If pedestrian 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 feet on each side thereof. In either case, the grantee shall maintain such portions of such pedestrian walks to standards of adjacent walks or to standards approved by the director of public works. The top of the rails shall be

⁹ As to streets and sidewalks, see ch. 19 of this Code.

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maintained at all times at the established grade of the city street at the crossing. All construction, repairs or any other changes of track shall be made under the inspection and to the satisfaction of the director of public works, in compliance with the provisions of the ordinances and regulations of the city, as now existing or hereafter amended. (Ord. No. 168, Section 62.)

10-48 When special rails required; reconstruction of pavement.

If any city street is paved at the time the spur track is constructed, the grantee shall use girder rails, weighing approximately one hundred twenty-eight pounds per yard, or standard main-line rails of equal or greater weight, within the paved street 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, excepting only those modifications approved by the director of public works. If standard main-line rails are used, the method of providing flangeways and of reconstructing the pavement shall be subject to the approval of the director of public works. The rail joints within the crossing shall be welded, unless the director of public works approves another type of equally effective joint fastening (Ord. No. 168. Section 62.)

10-49 Construction of spur track on unpaved street; requirements upon paving.

A city street which is not paved at the time the spur track is constructed, or the portion of a paved city street 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 commission of the

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10-49--Contd.

state. If the city street thereafter is paved or if the pavement thereafter is widened, the grantee, within ninety days after being notified by the director of public works, shall reconstruct that portion of the street crossing within the newly paved portion to conform to that specified for paved portion of streets. (Ord. No. 168, Section 62.)

10-50 Revision of street grades.

Where the proposed spur track crossing requires a revision of the city street 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 city, and shall be done in a manner approved by the director of public works. In the event the grantee fails to comply with the instructions given by the director of public works within ten days after service thereof upon the grantee or its manager or agent in the city, the director of public works shall have the right to have the work done by the public works department or otherwise, and shall keep an itemized account of the cost of the work, which the grantee, by the acceptance of the franchise, agrees to pay within thirty days after it is presented to the grantee, its manager or agent stationed in the city. (Ord. No. 168, Section 62.)

10-51 Materials other than for rails to be approved.

In unpaved city streets, the grantee shall use, in construction other than rails, such materials as are approved by the director of public works. In paved city streets, the grantee shall use ballast, creosoted ties, tie plates and other appurtenances below the rails, such as are used in main-line 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 director of public works. (Ord. No. 168, Section 63.)

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10-56 Agreement to comply with traffic regulations.

The grantee shall further agree, as a condition of the franchise, throughout the incorporated territory of the city to comply at all times with the provisions of all ordinances and regulations of the city regulating traffic within the city. (Ord. No. 168, Section 68.)

10-57 Blocking streets for more than ten minutes.

In the event it becomes necessary for trains to stand on that portion of a track in a city street crossing for longer than ten consecutive minutes, the trains shall be broken and the cars separated at such city streets to permit the full use of such streets by vehicles and pedestrians. (Ord. No. 168, Section 69.)

10-58 Connection and use of spur tracks by adjoining persons.

The franchise is granted upon the express agreement, understanding and condition that the grantee shall and will permit any person owning any warehouse, factory, business, industry or enterprise to connect with the private track, tracks or railroad connected with the railroad of the grantee, and to use the same for the transportation and delivery of any and all cars upon payment to the party or parties incurring the primary expense of such private track, tracks or railroad, of a reasonable proportion of the cost thereof, to be determined by mutual agreement by and between the interested parties. If such interested parties are unable to agree, the cost shall be determined by the public utilities commission of the state after notice to the interested parties and a hearing thereof; provided, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense. (Ord. No. 168, Section 70.)

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10-59 Erection of warning and protective devices.

Except as otherwise provided in section 10-63, the grantee shall erect or construct and maintain without cost to the city or public entity, all warning and protective devices authorized or ordered by the public utilities commission of the state, for the protection of traffic in connection with the spur track authorized by the ordinance granting the franchise. (Ord. No. 168, Section 71.)

10-61 Abandonment of spur track; restoration of streets.

Failure to use the spur track for a continuous period of six months shall constitute an abandonment of the spur track. Thirty days after notice to the grantee of such abandonment, the franchise and all rights and privileges granted thereunder shall be deemed to be null and void, unless:

- a. The city council by order or resolution entered in its minutes or by ordinance, consents to such nonuse.
- b. Such failure is caused by strikes, acts of God or other causes beyond reasonable control of the grantee.

In the event of abandonment, lapse or expiration of the franchise by the city council for noncompliance, the grantee shall remove all rails, ties, poles and appurtenances from the street, and shall reconstruct the pavement and other street improvements adjacent to the tracks so that the work shall join and be continuous with the work done in adjoining portions of the street. The grantee shall perform all of the work within six months from the termination of the franchise. Such work shall be done at no cost to the city and shall be done to the satisfaction of the director of public works. (Ord. No. 168, Section 74.)