

Decision No. 91891 JUN 3 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

Application of the CITY OF SALINAS )  
for an order authorizing construction )  
of a crossing at separated grades )  
between Davis Road and the tracks of )  
the Southern Pacific Transportation )  
Company, sometimes referred to as the )  
Davis Road Overhead, PUC No. E-117, )  
23-A. )

Application No. 59126  
(Filed September 6, 1979)

ORDER DENYING REHEARING AND MODIFYING  
DECISION NO. 91469

The Southern Pacific Transportation Company (SP) has filed a petition for rehearing of Decision No. 91469, issued March 18, 1980. The Commission has considered each and every allegation raised therein, and is of the opinion that sufficient grounds for rehearing have not been shown. Rehearing will therefore be denied.

In addition, the City of Salinas (City) has filed a petition for modification of Decision No. 91469 in several particulars, pursuant to Rule 43 of the Commission's Rules of Practice and Procedure. The modifications sought by the City would explicitly grant it the authority to enter upon SP's right of way to effectuate construction.

We have carefully considered the arguments of both parties on this issue, and have come to the conclusion that Decision No. 91469, issued pursuant to our exclusive authority over grade separation projects, should be modified. This decision has authorized construction of the Davis Road Overhead. Inherent in this authorization, we believe, is authorization to the City to enter onto so much of SP's right of way as it must to carry out the construction we have authorized. This authorization became effective the same date as the order authorizing construction, i.e., March 18, 1980. We are of the opinion that this authorization

to enter is not only a necessary and logical concomitant of an order authorizing construction, but is supported by legislative enactment as well. Public Utilities Code Section 1204, which discusses grade separation projects, states in pertinent part:

"...The Commission may provide that the physical work of making the grade separation as well as the proceedings for letting contracts therefor, collecting and enforcing the assessments, and making payment for damages and for the acquisition of property shall be done through the agency of the political subdivision in accordance with law. The order of the commission shall authorize the officers of the political subdivision to enter upon so much of the right of way of the railroad, interurban railroad, or street railroad as is necessary to effect the physical grade separation." (Emphasis added.)

We do not consider Section 1202.1 to be applicable to the facts of the instant case, despite SP's contrary argument.

A caveat is in order, however. While we view our order authorizing construction of this grade separation project to contain by implication the authority for the City to enter SP's right of way, this authorization is in the nature of a license. It is not intended to convey any property right to the City, and does not eliminate the necessity for the City to obtain any necessary easements through appropriate eminent domain proceedings.

Despite our view that this authorization pursuant to Section 1204 is inherent in Decision No. 91469, to avoid any confusion on this point, we will modify that decision to explicitly recognize the operation of that statute.

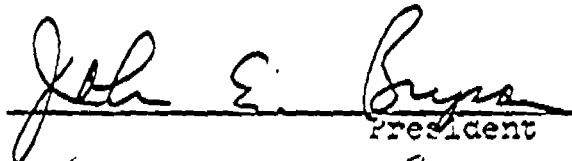
IT IS THEREFORE ORDERED that rehearing of Decision No. 91469 is hereby denied.

IT IS FURTHER ORDERED that Decision No. 91469 is modified by adding the following ordering paragraph:

Pursuant to Public Utilities Code Section 1204, the City of Salinas is authorized to enter upon so much of the right of way of SP as is necessary to effect the physical grade separation.

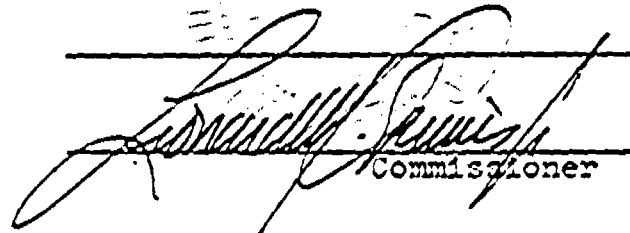
The effective date of this order is the date hereof.

Dated JUN 3 1980, at San Francisco, California.

  
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President

  
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Commissioner

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.