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Decision No. 92299 OCT 8 1980**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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. 91891

A petition for rehearing of Decision No. 91891 has been filed by Southern Pacific Transportation Company (SP). We have considered all of the allegations raised in the petition, and are of the opinion that good cause for granting rehearing has not been shown. However, the petition has raised certain areas of ambiguity or omission which we will correct through the modifications set forth below. Therefore,

IT IS ORDERED that Decision No. 91891 is modified in the following particulars:

A. The first full paragraph on page 2 is deleted and the following language substituted:

"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 not intended to convey any property right to the City, and does not eliminate the necessity for the City to obtain any necessary easements or other property rights through appropriate condemnation proceedings. However, we also do

not intend it to preclude SP from filing an action in inverse condemnation with this Commission, or, for that matter, with a Superior Court, for any damages alleged to be sustained by the City's entry upon SP's right of way, and will give full consideration to such a petition if filed with this Commission."

B. The following Conclusions of Law are added:

1. Sections 1201 and 1202 of the Public Utilities Code give this Commission the exclusive authority over approval of new or elimination of existing grade separation projects.

2. Section 1202.1 is not applicable to this case, where the Commission has issued a final order authorizing construction of a grade separation project.

3. Section 1204 allows the Commission, upon approval of a grade separation project applied for by a political subdivision, to authorize that political subdivision to do the physical work of the project, and to authorize its officers to enter upon so much of the right of way of the railroad as is necessary to effect the physical grade separation.


4. The authorization to enter the railroad's right of way as provided in Section 1204 inheres in any final order of the nature described above.


5. The authorization to enter the railroad's right of way as provided in Section 1204 does not eliminate the necessity for the applicant to obtain any necessary easements or other property rights through appropriate condemnation proceedings, nor does it preclude the affected railroad from filing an inverse condemnation action with the Commission or a Superior Court for damages alleged to be sustained upon the applicant's entry, if the aforementioned eminent domain proceedings have not properly been instituted, or if the railroad is of the opinion that for some other reason, filing such an action is appropriate.


IT IS FURTHER ORDERED that rehearing of Decision No. 91891 as modified herein is hereby denied.

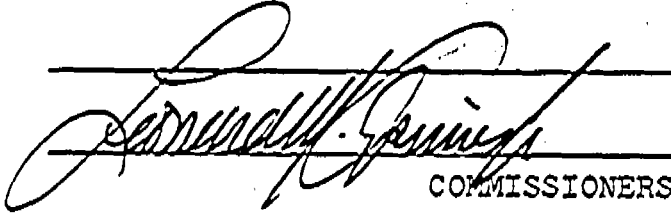
The effective date of this order is the date hereof.

Dated OCT 8 1980, in San Francisco, California.



PRESIDENT






COMMISSIONERS

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