

Decision 93763

November 13, 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Lompoc,)
)
 Complainant,)
)
 v.)
)
 Southern Pacific Transportation)
 Company,)
)
 Defendant.)
)

Case 10865
(Filed May 21, 1980)

Alan D. Davidson, City Attorney, for the City
 of Lompoc, complainant.
Anthony P. Parrille, Attorney at Law, for
 Southern Pacific Transportation Company,
 defendant.

OPINION AND ORDER

This is a complaint by the City of Lompoc (Lompoc) against Southern Pacific Transportation Company (SP). It involves a dispute over franchises.

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in San Francisco on January 5, 1981. The case was submitted subject to the filing of transcript and briefs, which were received by February 18, 1981. Lompoc timely petitioned for a Proposed Report and it was authorized by the Commission on April 21, 1981. The ALJ's Proposed Report was filed on June 23, 1981. Exceptions and Replies were filed by July 30, 1981, and the matter is ready for decision.

The Proposed Report is attached to this decision. It sets forth the history, positions of the parties, and material issues in this proceeding; these matters need not be repeated.

Lompoc contends that Finding 9 of the Proposed Report is unsupported by evidence and should be deleted. There is no merit in this contention.

Finding 9 states:

"Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 are not reasonable because they contain provisions which deal with matters which are solely or primarily within the jurisdiction of the Commission."

Lompoc argues that there is no testimony to support the finding. However, Finding 9 is based on Finding 8 which states:

"The following statutes confer jurisdiction in the Commission generally over all railroad operations. PU Code § 315, 556-57, 560-61, 581-84, 701-02, 706, 761-65, 767, 768-69, 7526 et seq. The following GOs were adopted pursuant to the authority of these statutes: GOs 22B, 26D, 33B, 36E, 72B, 75C, 88, 108, 110, 118."

Each item in Finding 8 is the subject of mandatory official notice (Rule 73) in accordance with the provisions of Evidence Code Section 451 which provides in part that:

"Judicial notice shall be taken of:

- "(a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution.
- "(b) Any matter made a subject of judicial notice by Section 11383, 11384, or 18576 of the Government Code...."

The statutes and General Orders (GOs) which were required to be officially noticed constitute ample evidence to support Finding 9.

Lompoc next contends that Conclusions 6 and 7 are incorrect insofar as they maintain that sections of Ordinance 1067 are invalid due to any purported conflict with the jurisdiction of the Public Utilities Commission with regard to longitudinal trackage. The contention is not correct.

Conclusions 6 and 7 state that:

- "6. Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 are illegal, improper, void, and in excess of Lompoc's jurisdiction insofar as Lompoc 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.
- "7. Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 are illegal, improper, void, and in excess of Lompoc's jurisdiction insofar as Lompoc seeks to apply them to grade crossings which are within the exclusive jurisdiction of the Commission and the construction and maintenance of other railroad trackage which is within the primary jurisdiction of the Commission; each being a matter of statewide concern whose regulation has been delegated to the Commission."

Ordinance 1067 purports to apply to all trackage in Lompoc. The Proposed Report carefully delineates matters which are within the exclusive jurisdiction of the Commission and those within its primary jurisdiction. The Proposed Report concludes that specified sections of the ordinance are in excess of Lompoc's jurisdiction and void.

In Evans v Superior Court (1939) 14 C 2d 563, the Supreme Court discussed the word "jurisdiction" where it held:

". . . In the recent case of Rodman v. Superior Court, 13 Cal. (2d) 262 [89 Pac. (2d) 109], this court had occasion to discuss the meaning of the term 'jurisdiction' and the question of what constituted proceedings

in excess of jurisdiction. It was there said on page 490, quoting with approval from Spreckels S. Co. v. Industrial Acc. Com., 186 Cal. 256 [199 Pac. 8]: 'But the word (jurisdiction) is frequently used as meaning authority to do the particular thing done, or, putting it conversely, a want of jurisdiction frequently means a want of authority to exercise in a particular manner a power which the board or tribunal has, the doing of something in excess of the authority possessed.'" (14 C 2d at pp. 579-80.)

Ordinance 1067 seeks to regulate the construction, use, and maintenance of SP trackage in Lompoc as well as impose a fee for the use of the streets. The ALJ correctly found the fee provision to be reasonable. He found many of the regulatory provisions to be invalid because they conflict with the jurisdiction of the Commission and, therefore, are in excess of Lompoc's jurisdiction.

The ALJ set forth how Ordinance 1067 conflicted with the jurisdiction of the Commission. We summarize these points.

As indicated, the language of the ordinance applies to all trackage in Lompoc. Public Utilities Code § 1202 grants the Commission exclusive jurisdiction of grade crossings and trackage at those crossings. To the extent Ordinance 1067 purports to regulate trackage at grade crossings, it is in excess of Lompoc's jurisdiction.

The Proposed Report finds that: (1) The regulation of railroads in California is a matter of statewide concern and not a municipal affair. (2) The Commission has primary and paramount jurisdiction of railroad tracks which run longitudinally in city streets. The Proposed Report finds that the Commission has adopted the following GOs which relate to longitudinal trackage:

GO 26-D

Regulations governing clearances on railroads and street railroads with reference to side and overhead structures, parallel tracks, crossings of public roads, highways, and streets.

GO 33-B

Regulations governing the construction, reconstruction, maintenance, and operation of interlocking plants at crossings, junctions, drawbridges, in yards and at sidings of railroads and street railroads.

GO 36-E

Establishment or abolition of agencies, non-agencies, sidings, spur tracks, and other station facilities and the curtailment of agency service of common carriers.

GO 118

Regulations governing the construction, reconstruction, and maintenance of walkways adjacent to railroad trackage and the control of vegetation adjacent thereto.^{1/}

In sum, the Commission has exercised its primary and paramount jurisdiction by regulating longitudinal trackage. It has occupied the field. Thus, for example, the provisions of the ordinance which call for strict construction and forfeiture for failure to comply, coupled with requirements for work to be done to the satisfaction of the city engineer, are attempts to arrogate to the city jurisdiction over matters in which the Commission has jurisdiction, which has been exercised. The Superior Court shared this view when it sustained SP's demurrer to Lompoc's action for a writ of mandate to compel SP to accept the franchise. The Superior Court held that it lacked jurisdiction because the jurisdiction was in the Commission.

^{1/} We have not cited GOs dealing with grade crossings and separations, which have a relationship to longitudinal trackage.

The Proposed Report does not attempt to draft an ordinance for Lompoc. It holds that various sections are invalid. Similar provisions were held to be invalid in prior Commission decisions. (So. Pac. Transportation Co. (1974) 76 CPUC 736, review denied January 29, 1975, SF 23191 and 23192; So. Pac. Transportation Co. (1975) 78 CPUC 593.) In view of the many invalid provisions of Ordinance 1067, the Proposed Report correctly holds that SP is not required to execute a franchise containing these provisions but shall be required to execute one that Lompoc may hereafter enact, which is not in excess of its jurisdiction.

"When, as here, a statute contains unconstitutionally broad restrictions and its language is such that a court cannot reasonably undertake to eliminate its invalid operation by severance or construction, the statute is void in its entirety regardless of whether it could be narrowly applied to the facts of the particular case before the court. The only way in which the statute now at issue could be limited to a proper scope with respect to the officials and employees of plaintiff city would be by reading into it numerous qualifications and exceptions, thereby performing a wholesale rewriting of the statute which the courts cannot reasonably be expected to undertake. (Bagley v. Washington Township Hospital Dist., supra, 65 Cal. 2d 499, 508-509, and cases cited; Fort v. Civil Service Com., supra, 61 Cal. 2d 331, 338-340.) We conclude that the statute is unconstitutional in its entirety." (City of Carmel-By-The-Sea v Young (1970) 2 C 3d 259, 272.)

This proceeding involves more than an academic joust over jurisdiction. The regulation of railroads which has been given to the Commission is a matter of statewide concern. (Cal. Const., Art. XII, Sec. 8.) To ensure an adequate system of statewide rail service, it is necessary to have uniform standards of construction

and maintenance of trackage. If municipalities, through franchise ordinances, can intrude into the system of statewide regulation, a series of reasonable but disparate requirements could ensue. This would defeat the purpose of statewide regulation.

The Proposed Report recognizes that Lompoc has legitimate concerns about the use of its streets. It indicates that if problems arise between Lompoc and SP a remedy may be had before the Commission. We agree with this position.

No other points require discussion. The Commission adopts as its own the findings and conclusions made by the ALJ in the Proposed Report. The order recommended by the ALJ is made the order of the Commission.

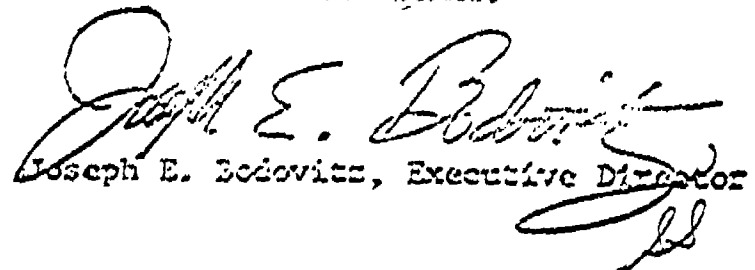
This order becomes effective 30 days from today.

Dated NOV 13 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

Commissioner LEONARD M. GRIMES, JR. abstained.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bobovitz, Executive Director

ALJ/jn

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City of Lompoc,)
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Case 10865
(Filed May 21, 1980)

Alan D. Davidson, City Attorney, for the City
of Lompoc, complainant.
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defendant.

PROPOSED REPORT OF
ADMINISTRATIVE LAW JUDGE DONALD B. JARVIS

This is a complaint by the City of Lompoc (Lompoc) against Southern Pacific Transportation Company (SP). It involves a dispute over franchises.

A duly noticed public hearing was held in this matter in San Francisco on January 5, 1981 and it was submitted subject to the filing of transcript and briefs, which were received by February 18, 1981. Lompoc timely petitioned for a Proposed Report and it was authorized by the Commission on April 21, 1981.

History

SP has two sets of railroad tracks in Lompoc: the Laurel Branch and the White Hills Branch. In 1899, Lompoc granted SP a perpetual franchise for constructing and operating the Laurel Branch. Originally, northbound passenger and freight service to

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San Francisco and intermediate points was provided on the Laurel Branch. SP's trackage did not extend southward to Los Angeles at that time.

In the 1920's a predecessor to Johns-Manville, which was engaged in quarrying diatomaceous earth, requested that SP construct trackage to its property. SP denied the request and the Johns-Manville predecessor hired a contractor who built approximately three and a half miles of track, which is known as the White Hills Branch. The White Hills Branch connects to the Laurel Branch. The White Hills Branch was subsequently sold to SP. On April 17, 1923, Lompoc granted SP a 50-year franchise for the White Hills Branch.

The White Hills Branch franchise expired on April 18, 1973. On February 20, 1979, the Lompoc City Council enacted two ordinances. Ordinance No. 1068 (79)^{1/} purported to revoke the perpetual franchise for the Laurel Branch. It was contingent "to the extent that a franchise issued pursuant to Ordinance No. 1067 (79)^{2/} adopted simultaneously, comes into effect." Ordinance 1067 purported to grant SP a 12-year franchise for both the Laurel and White Hills Branches. It included a provision for fees to be paid to Lompoc for exercising the franchise.

SP declined to accept the franchise. An impasse developed between the parties. Lompoc filed an action against SP in the Santa Barbara Superior Court seeking a writ of mandate compelling SP to accept and execute the franchise. On November 29, 1979, the Superior Court sustained SP's demurrer to the complaint and

1/ Hereafter, Ordinance 1068.

2/ Hereafter, Ordinance 1067.

dismissed the proceeding on the ground that it lacked jurisdiction over the cause of action alleged in the complaint, because that jurisdiction was in the Commission. The complaint at bench ensued.

Positions of the Parties

Lompoc contends that perpetual franchises are, as a matter of law, illegal and contrary to public policy. Thus, it has the right to repeal the 1899 Laurel Branch franchise. It argues that the authority for SP's operations in the city should be contained in one franchise. Lompoc also contends that the terms of the franchise in Ordinance 1067 are reasonable, not in conflict with the jurisdiction of the Commission and that SP should be ordered to accept and execute the franchise.

SP contends that the Laurel Branch franchise is subsisting and valid. It argues that it cannot be compelled to obtain a new franchise as to that trackage. SP asserts that it has refused to execute the franchise for the White Hills Branch because it considers some of the terms to be illegal and others to be unreasonable. SP states that "it will execute a franchise to use Lompoc's streets and it will agree to a franchise when the terms are just and reasonable."

Material Issues

The material issues presented in this proceeding are:
(1) Is the 1899 perpetual franchise for the Laurel Branch still valid? (2) Are any of the terms of Ordinance 1067 illegal or unreasonable with respect to the franchise for the White Hills Branch, and, if applicable, the Laurel Branch?

Discussion

A. The Perpetual Franchise

Lompoc argues that the 1899 grant of a perpetual franchise for the Laurel Branch was an undue restraint upon the legislative powers of subsequent city councils.^{3/} Thus, Lompoc contends the franchise is void and it can require SP to enter into a new, valid one. Lompoc concedes that it cannot cite any California case holding a perpetual franchise invalid.

None of the cases cited by Lompoc deal with a franchise similar to the one at bench. Those cases fall into three categories: (1) Cases which consider whether the contracting municipality was the appropriate arm of government to enter into the disputed contract or whether the contract exceeded the powers granted in the municipal charter. (2) Cases which hold contracts void because the contracting governmental body could not commit its successors to levy future taxes. (3) Cases which hold contracts void because the contracting governmental body could not surrender its governmental power to regulate rates. Since none of these cases is in point, they need not be discussed at length.

Two California cases are controlling. In County of L.A. v Southern Cal. Tel. Co. (1948) 32 C 2d 378, the Supreme Court upheld a perpetual telephone franchise granted under Section 536 of the Civil Code. The court held:

"Section 536 has been judicially construed by many decisions of this court, and it has been uniformly held that the statute is a continuing offer extended to telephone and telegraph companies to use the

^{3/} In 1899 and 1923 the governing body of Lompoc was its Board of Trustees. The terminology is not consequential to the discussion.

highways, which offer when accepted by the construction and maintenance of lines constitutes a binding contract based on adequate consideration, and that the vested right established thereby cannot be impaired by subsequent acts of the Legislature." (Citations omitted. 32 C 2d at p. 384.)

"A franchise such as is authorized by section 536 is not an absolute grant in fee or an appropriation of money, but is merely a limited right to use the highways and only to the extent necessary for the furnishing of services to the public. Also, the privilege must be exercised "in such manner and at such points as not to incommode the public use of the road or highway." (Civ. Code, § 536.) It is obvious that the right acquired by the company is of less substance than the transfers involved in the cited cases which condemn appropriations of money and grants in fee.

"Moreover, the state is assured of a continuing benefit in return for the privileges granted under section 535, whereas this may not be true in transactions involving an outright appropriation or transfer in fee. The company must not only construct a telephone system but it must render service, and if it fails to do so the franchise terminates. Thus the state receives benefits during the life of the franchise, since in order to retain it the company must continue to serve the public. If and when the public benefit ceases and the franchise expires, the state is in as good a position as it was before the limited privilege was granted. The building of a public utility and the consequent benefit to the people may not be a sufficient consideration to support a grant in fee, but it does not follow that the benefit received from the construction and continued operation of a telephone system is not an adequate return for the use of the highways so long as the public service continues." (32 C 2d at pp. 387, 388.)

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While the County of L.A. case involved a telephone franchise, the Supreme Court in its discussion of an equal protection point gave recognition to the fact that there were similar statutes which applied to railroad corporations. (32 C 2d at p. 391.)

The most recent California case to consider a perpetual franchise is County of Kern v Pacific Gas & Electric Co. (1980) 108 CA 3d 418. That case involved a perpetual franchise for gas and electric service. Contentions similar to those raised by Lompoc were advanced in the County of Kern case. The Court of Appeal held:

"Finally County contends that the perpetual grants are void because California appellate decisions have implicitly sustained public contracts of only limited duration. County then suggests that a long-standing course of administrative interpretation had established 50 years as the outside time parameter for franchises, and that this construction should be placed upon the present ordinances. None of the cases cited by County deal with franchise grants under Government Code section 26001. As noted earlier, perpetual franchises can be tolerated so long as the grantee furnishes adequate services and abides by the obligations in the grant. (See 34 Cal.Jur.3d, Franchises From Government § 35, p.521.) Since these implied-in-law conditions prevent perpetual franchises from becoming unduly oppressive, it is unnecessary to adopt a 50-year period as the franchise time limit." (108 CA 3d at p. 426.)

Lompoc does not contend that SP has failed to perform under the franchise. I hold the Laurel Branch franchise to be valid in the light of the authorities cited.

B. Jurisdictional Questions

As indicated, the White Hills Branch franchise has expired. There is a dispute over the terms of the franchise proposed in Ordinance 1067. The Commission has the power to order SP to execute a franchise which contains reasonable conditions. (So. Pac. Transportation Co. (1974) 76 CPUC 736, review denied January 29, 1975, SF 23191 and 23192; So. Pac. Transportation Co. (1975) 78 CPUC 593.)

Lompoc contends that most of the challenged portions of Ordinance 1067 are valid because they attempt to regulate the longitudinal use of streets as distinguished from crossings. Lompoc argues that Public Utilities (PU) Code § 1202 grants the Commission exclusive power over grade crossings, but under § 7555 a city can impose regulations dealing with the longitudinal use of its streets.

SP contends that railroad operations are matters of statewide concern subject to the jurisdiction of the Commission. SP argues that the Commission's jurisdiction encompasses "railroad construction, operations, and maintenance in public streets, roads and highways whether longitudinally or at an intersection."

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 2d 1, 7, 10; Union City v Southern Pacific Co. (1968) 261 CA 2d 277, review denied, June 11, 1968.) There are specific statutes

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dealing with the Commission's jurisdiction over grade crossings and separations. (PU Code § 1201 et seq.) There are also statutes which confer jurisdiction generally over all railroad operations and Commission General Orders (GO) promulgated thereunder. (PU Code § 315, 556-57, 560-61, 581-84, 701-02, 706, 761-65, 767, 768-69, 7526 et seq.; GOs 22B, 26D, 33B, 36E, 72B, 75C, 88, 108, 110, 118.)^{4/}

The Commission has primary and paramount jurisdiction of railroad tracks which run longitudinally in city streets. (Northwestern Pac. RR Co. v Superior Court (1949) 34 C 2d 454, 458; 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.) It has also been held that this jurisdiction extends to the remainder of the street if it is necessary for the regulation of railroad operations. (Sincerney v City of Los Angeles (1921) 53 CA 440, 447-48.)

Lompoc argues that even if some of the provisions of Ordinance 1067 assert jurisdiction over railroad operations, SP should be required to accept the franchise and seek relief if Lompoc attempts to apply these provisions in a manner inconsistent with Commission regulations. This is not correct.

PU Code § 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 any city or county, unless the right to do so is granted by a vote of the governing body of the city or county. If any railroad corporation operating within a city or county

^{4/} Statutes dealing with the regulation of rates and financial matters have been omitted.

applies to the governing body of the city or county 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 or county, 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 or county. 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."

"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)" (So. Pac. Transportation Co. (1974), supra at pp. 736, 748; So. Pac. Transportation Co. (1975), supra.)

Lompoc, of course, has legitimate concerns about the use of its streets. However, concern does not confer jurisdiction. Where Ordinance 1067 exceeds Lompoc's jurisdiction those provisions are not "reasonable terms and conditions" and SP should not be ordered to accept them.

C. Disputed Provisions of the White Hills Branch Franchise

The following sections of Ordinance 1067 are the ones specifically disputed.

1. Section 2

Section 2 provides that:

"The right, privilege and franchise subject to each and all terms and conditions contained in this ordinance and in other ordinances and regulations of the City of Lompoc is hereby granted to the Southern Pacific Transportation Company, hereafter referred to as grantee, to lay and use railroad tracks across and upon the streets indicated and listed in the attachments to this ordinance, which are hereby referred to and incorporated herein by reference.

"Any other provisions of this ordinance to the contrary notwithstanding, said franchise may be terminated by the voluntary surrender or abandonment by its possessor, or by acquisition by the State of California, or some municipal or public corporation, by voluntary purchase, or exercise of the power of eminent domain, or by forfeiture for non-compliance with the terms of this ordinance by the grantee."

The first paragraph is acceptable. The second paragraph does not properly deal with abandonment, which is within the purview of the Commission and the Interstate Commerce Commission. To the extent the second paragraph incorporates other sections of the ordinance which may be invalid, the vice is in the other sections.

2. Section 3

Section 3 provides that:

"The franchise is granted and shall be held and enjoyed upon each and every condition contained in this ordinance, and shall ever be strictly construed against the grantee. Nothing shall pass hereby unless it is granted in plain and

unambiguous terms. Any neglect, failure or refusal to comply with any of the terms and conditions of the franchise shall constitute grounds for the suspension or forfeiture thereof. The City Council, prior to any suspension or forfeiture of the franchise, shall give to the grantee not less than thirty days notice in writing of any defaults hereunder. If the grantee does not within the noticed period begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the City Council may hold a hearing, at which the grantee shall have the right to appear and be heard, and thereupon the City Council may determine whether such conditions are material and essential to the franchise and where the franchise is in default with respect thereto and may declare the franchise suspended or forfeited. Notice of said hearing shall be given to the grantee by certified mail not less than ten days before said hearing."

The section is too broad and attempts to regulate SP in areas in which the Commission has jurisdiction. It assumes the City has the power to require SP to do "work" in connection with the tracks. Such requirements are within the jurisdiction of the Commission. (GOs 22B, 26D, 33B, 36E, 72B, 75C, 88, 108, 110, 118.)

3. Section 8.

Section 8 provides that:

"A facilities erected, constructed, laid, operated or maintained under the franchise shall be in accordance with applicable federal or state rules and regulations pertaining thereto. The grantee will keep all painted warning signs in good repair, clearly legible."

The first sentence restates applicable law and is appropriate. The second sentence is ambiguous. If it refers to signs at public or private crossings it is an impermissible

intrusion into the jurisdiction of the Commission. (GO 75C.)
This is particularly so since Lompoc claims the right to terminate the franchise for nonperformance of its conditions.

4. Section 9.

Section 9 provides that:

"The work of erecting, construction, laying, replacing, repairing, or removing facilities authorized under the franchise in, upon, over, under, along or across any streets shall be conducted with as little hindrance as practicable to the use of the city streets for the purpose of travel, and as soon as the erecting, constructing, laying, replacing, repairing, or removing of any of said facilities is completed, all portions of the city streets which have been excavated or otherwise damaged thereby shall be replaced in as good condition as the same was before such work, to the satisfaction of the City Engineer. All such work shall be protected as provided in the Manual of Warning Signs, Lights and Devices for Use in Performance of Work Upon Highways issued by the California Department of Transportation, Division of Highways. The grantee shall be responsible for, and shall save the city, its officers and employees free and harmless from. all damages or liability or claims thereof or arising from any damage or injury suffered by any person by reason of any excavation or obstruction being improperly guarded during said work, or the failure of the grantee to properly perform, maintain or protect any phase of the work; except that the City shall be responsible for its own acts or omissions."

The requirement that work be done to the "satisfaction of the City Engineer" is invalid. As indicated various GOs govern govern the construction and operation of railroad tracks and adjacent areas. If the franchise contained an objective standard it could be examined to determine whether it was in conformity with the Commission's jurisdiction.^{5/} Lompoc argues that this provision

^{5/} The portion of Section 9 which provides for protecting work in progress in accordance with a Department of Transportation manual that is an objective standard from which it can be ascertained that there is no conflict with Commission jurisdiction.

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should be construed to mean, or specifically amended to provide that that the City Engineer must exercise his discretion in a reasonable manner. This contention is incorrect. What the City Engineer considers to be reasonable may conflict with Commission requirements or the exercise of its jurisdiction. Furthermore, if each municipality which enfranchises SP were to have similar provisions a series of reasonable but disparate requirements could ensue. This would be contrary to the doctrine that regulation of railroads is of state-wide concern and not subject to local regulation.

Lompoc cannot under the guise of a franchise regulate railroad operations which are within the jurisdiction of the Commission. If SP engages in improper construction practices a remedy may be had before the Commission. (PU Code § 1702, see also §§ 761, 762, 768.)

5. Section 10.

Section 10 provides that:

"The City reserves the right to change the grade, to change the width or to alter or change the location of any city street over which the franchise is granted. Grantee shall maintain its track at the grade of the pavement in which it is located and upon a grade change and upon receipt of a written request from the Engineer to do so, shall commence such work on or before the date specified in such written request which date shall not be less than thirty days from the date of such written request, and shall thereafter diligently prosecute such work to completion."

The provision is invalid. It is an attempt to regulate railroad operations which are beyond the jurisdiction of Lompoc. The grade of railroad tracks is a matter of statewide concern. There are specific statutes and GOs dealing with the grade at crossings.

(PU Code § 1201, et seq., GOs 72B, 88.) The time requirement of section is also an impermissible intrusion into the Commission's jurisdiction.

6. Section 11.

Section 11 provides that:

"If the City constructs or maintains any storm drain, sewer structure or other facility or improvement over, under, or across any facility of the grantee maintained pursuant to the ordinance, the grantee shall provide, at no expense to the City, such facilities as may be reasonably required to support, maintain and protect grantee's facilities. 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 injury to any of grantee's facilities."

The section is invalid. If an improvement is made at a crossing the apportionment of expenses is solely within the jurisdiction of the Commission. (PU Code §§ 1201 et seq.) Other improvements may be subject to Commission jurisdiction.

7. Section 12.

Section 12 provides that:

"The grantee, at no cost to the City, shall pave or otherwise improve the city street between the rails and for a distance of two feet on each side thereof, and maintain said street with the same type of material as used by the City, and under the same specifications and in the same manner or in a similar manner as that upon adjacent city streets, or of a material under specifications approved by the Engineer or as required by the California Public Utilities Commission. The grantee shall maintain the street flush with the top of the rails at all times so that vehicles in traveling public may pass over it in a smooth and comfortable manner. If pedestrian walks are constructed the grantee shall construct that portion of the walk between the rails and two feet each side thereof. In either case grantee shall maintain such portions of the pedestrian walk to standards of adjacent walks or the standards approved by the Engineer.

The top of the rails shall be maintained at all times at the established grade of the city street or pedestrian walk. All construction, repair or any other changes or tracks shall be made under the inspection or to the satisfaction of the Engineer in compliance with the provisions of this ordinance and other ordinances and regulations of the City, as now exist or may hereinafter be adopted or amended.

In the event any city street is not paved at the time a track is installed or constructed, or a portion of a paved city street in the area of the track is not paved, and the city street thereafter is paved or the pavement is widened, the grantee, within ninety days after being notified by the Engineer, shall pave that portion of the street and clean the rails and for a distance of two each side thereof in the same manner and to the same specifications as is the adjacent city street."

The section is invalid. Lompoc can reasonably require SP to pave its portion of an unpaved street which the city decides to pave. However, the requirements for construction of the railroad right of way are within the jurisdiction of the Commission and cannot be made subject to the discretion of the City Engineer. The requirement that the top of the rails "shall be maintained at all times at the established grade of the city street or pedestrian walk" conflicts with the Commission's jurisdiction. Were the Commission to order or authorize a grade separation or the elevation or depression of tracks for safety reasons there would be a violation of the franchise which illustrates the impermissible intrusion into its jurisdiction.

8. Section 15.

Section 15 provides that:

"The grantee shall at no expense or cost to the city, county or public entity, construct all necessary flumes, aqueducts and culverts for the free passage of surface water under the tracks to and in accordance with plans and specifications approved by the Engineer."

The section is invalid. Drainage of its streets is an important concern to Lompoc. The jurisdiction to address any problems in this area relating to railroad tracks is in the Commission and not the City Engineer. As indicated, specific statutes give the Commission exclusive jurisdiction over the construction, operation, and maintenance of grade crossings. Other statutes and GOs confer general jurisdiction over all railroad operations. If the construction or operation of railroad tracks cause drainage problems in Lompoc the Commission is prepared to address the problem. It cannot be regulated by local franchise.

9. Section 16.

Section 16 provides that:

"The City Council, in granting the franchise, expressly reserves the right to pave, macadamize, oil, gravel or otherwise improve or renew any of the city streets or to lay gas, water, sewer, storm lines and drains and other public utility lines and structures, said work to be done so as to affect any tracks as little as practicable."

The section is invalid because it is too broad.

Lompoc certainly has the right to pave and maintain those portions of a street outside the area related to railroad operations and to put other utilities in those portions of the street. However, the area encompassed by the tracks and required clearances (GOs 26D, 118) are subject to the jurisdiction of the Commission.

10. Section 18.

Section 18 provides that:

"Any other provision of this ordinance to the contrary notwithstanding, the City reserves the right to use the entire area covered by the franchise for street purposes for the term hereof."

This is another section which is invalid because it is too broad. Again, those portions of a street outside the area of railroad operations are under the control of Lompoc. However, the city does not have the unlimited right to use a street in the area subject to Commission jurisdiction. It cannot install traffic signs, barriers or structures within the required clearance areas. (GOs 26D, 118.) The question of traffic control at intersection with relation to the tracks is within the exclusive jurisdiction of the Commission. (PU Code § 1201 et seq.) The right of free passage over the tracks, when not in use, can be regulated by the Commission to protect the safety of the public and railroad employees. (PU Code § 761, 762, 768.)

11. Section 19.

Section 19 provides that:

"The grantee shall pay to the City within thirty days after acceptance of the franchise under this ordinance, as partial compensation for the franchise granted, the sum \$17,713.00.

On May 1, annually, beginning in 1977, the grantee shall pay to the City for each track in place the proceeding January 1, the sum of .283 per foot for each foot or fraction thereof, as measured along the center line of the track and within a City street or City property. The annual payment accruing to the City shall be increased or decreased by the same percentage difference that the final U. S. Bureau of Labor Statistics All Commodities Wholesale Price Index (1967 = 100) for that year varies from the level in 1967 of 100. Checks shall be made payable to the City Treasurer.

Should any payment required not be made within the time provided therefor, the grantee shall further pay interest on any such amount due at the rate of one percent per month from the last day of the franchise payment period for which said payment was due."

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To the extent Section 19 encompasses the Laurel Branch it is invalid. The remaining controversy is over whether the formula used by Lompoc for the fee is reasonable.

Lompoc contends that the fee formula is based upon one used in a franchise between SP and the city of Los Angeles. SP contends that the Los Angeles franchise is not comparable because it was originally entered into with its Pacific Electric subsidiary and required the city to construct and maintain passenger unloading facilities and safety zones within city streets. SP concedes that Los Angeles no longer provides or maintains these facilities.

The legislature has not established a uniform fee for railroad franchises. The question presented is whether the fee sought by Lompoc is reasonable under the circumstances.

As indicated, the fee provision is patterned after the city of Los Angeles franchise. Lompoc contends that it tested the reasonableness of the provision by calculating the land occupied by SP tracks running through the city and relating it to the value of industrial property within Lompoc.

While SP argues the fee provisions are unreasonable it does not state what it considers to be reasonable.

The record indicates that in 1977 the gross freight revenues generated by the White Hills Branch were approximately \$3,000,000. These revenues were subject to division with other railroads. The approximate franchise fee for the White Hills Branch in 1977 would have been \$8,000. The method used by Lompoc has not been shown to be unreasonable. When tested against the impact on railroad operations it is not unreasonable. I find the franchise fee provisions reasonable as applied to the White Hills Branch.

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

Findings of Fact

1. SP is a railroad corporation, a common carrier and a public utility as defined in PU Code § 230, 211 and 216.
2. SP has two sets of railroad tracks in Lompoc. The Laurel Branch and the White Hills Branch.
3. In 1899, Lompoc granted SP a perpetual franchise for constructing and operating the Laurel Branch.
4. In the 1920's a predecessor to Johns-Manville, which was engaged in quarrying diatomaceous earth, requested that SP construct trackage to its property. SP denied the request and the Johns-Manville predecessor hired a contractor who built approximately three and a half miles of track, which is known as the White Hills Branch. The White Hills Branch connects to the Laurel Branch. The White Hills Branch was subsequently sold to SP. On April 17, 1923, Lompoc granted SP a 50-year franchise for the White Hills Branch.
5. The White Hills Branch franchise expired on April 18, 1973. On February 20, 1979, the Lompoc City Council enacted two ordinances. Ordinance 1068 purported to revoke the perpetual franchise for the Laurel Branch. It was contingent "to the extent that a franchise issued pursuant to Ordinance 1067 (79) adopted simultaneously, comes into effect." Ordinance 1067 purported to grant SP a 12-year franchise for both the Laurel and White Hills Branches. It included a provision for fees to be paid to Lompoc for exercising the franchise. Ordinance 1067 is set forth in attachment A and made a part hereof.

6. SP declined to accept the franchise. An impasse developed between the parties. Lompoc filed an action against SP in the Santa Barbara Superior Court seeking writ of mandate compelling SP to accept and execute the franchise. On November 29, 1979, the Superior Court sustained SP's demurrer to the complaint and dismissed the proceeding on the ground that it lacked jurisdiction over the cause of action alleged in the complaint because that jurisdiction was in the Commission.

7. SP has not failed to perform under the terms and conditions of the 1899 perpetual franchise for the Laurel Branch.

8. The following statutes confer jurisdiction in the Commission generally over all railroad operations. PU Code § 315, 556-57, 560-61, 581-84, 701-02, 706, 761-65, 767, 768-69, 7526 et seq. The following GOs were adopted pursuant to the authority of these statutes: GOs 22B, 26D, 33B, 36E, 72B, 75C, 88, 108, 110, 118.

9. Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 are not reasonable because they contain provisions which deal with matters which are solely or primarily within the jurisdiction of the Commission.

10. The portion of Section 19 of Ordinance 1067 which seeks to apply a franchise fee to the trackage in the Laurel Branch is unreasonable because SP has an existing perpetual franchise which covers those tracks. The portion of Section 19 which relates to the White Hills Branch is reasonable.

11. It would be reasonable to require SP to accept and execute a franchise for the White Hills Branch which is not inconsistent with the views set forth.

Conclusions of Law

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

2. The Commission has primary and paramount jurisdiction over the construction and maintenance of railroad tracks which run longitudinally in city streets. The Commission has exclusive jurisdiction over grade crossings and railroad tracks at these crossings.

3. The perpetual franchise which Lompoc granted SP in 1899 to construct and operate the Laurel Branch is still valid.

4. PU Code § 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 votes 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.

5. Franchise conditions which are beyond the jurisdiction of a municipality and which deal with matters whose regulation has been placed solely or primarily within the jurisdiction of the Commission are not reasonable terms within the meaning of § 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.

6. Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 are illegal, improper, void, and in excess of Lompoc's jurisdiction insofar as Lompoc 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.

7. Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 are illegal, improper, void, and in excess of Lompoc's jurisdiction insofar as Lompoc seeks to apply them to grade crossings which are within the exclusive jurisdiction of the Commission and the construction and maintenance of other railroad trackage which is within the primary jurisdiction of the Commission; each being a matter of statewide concern whose regulation has been delegated to the Commission.

8. Ordinance 1068 which purports to repeal the perpetual franchise granted in 1899 for the Laurel Branch is invalid.

9. Section 19 of Ordinance 1067 is invalid insofar as it seeks to apply the franchise fee provision to the Laurel Branch.

10. SP should be ordered to accept and execute a franchise which Lompoc may hereafter enact containing terms and conditions not in excess of Lompoc's jurisdiction.

11. SP should be authorized to continue operations over the White Hills Branch until such time as Lompoc enacts a franchise ordinance which does not contain provisions in excess of its jurisdiction.

12. The Commission should retain continuing jurisdiction in this matter.

I recommend that the Commission adopt the following order.

O R D E R

IT IS ORDERED that:

1. The perpetual franchise which the city of Lompoc (Lompoc) granted Southern Pacific Transportation Company (SP) in 1899 to construct and operate the Laurel Branch is still valid. Ordinance 1068 (79) which purports to repeal the franchise is invalid.

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2. Sections 2, 3, 8, 9, 10, 11, 12, 15, 16, and 18 of Ordinance 1067 (79) are invalid. SP is not required to execute a franchise with Lompoc which contains these sections.

3. Section 19 of Ordinance 1067 (79) is invalid insofar as it seeks to apply the franchise fee provision to the Laurel Branch. SP is not required to execute a franchise with Lompoc which contains these provisions.

4. SP is authorized to operate and maintain its trackage on the White Hills Branch until such time as Lompoc enacts a franchise ordinance which does not contain provisions in excess of its jurisdiction. At such time as Lompoc may hereafter enact a franchise ordinance which is not in excess of its jurisdiction, SP shall accept, execute, and comply with the franchise.

5. The Commission retains continuing jurisdiction over this matter 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.

Dated June 23, 1981, at San Francisco, California.

/s/ DONALD B. JARVIS
Donald B. Jarvis
Administrative Law Judge

Attachment A

ORDINANCE NO. 1067(79)

AN ORDINANCE OF THE CITY OF LOMPOC, CALIFORNIA CONCERNING A FRANCHISE TO MAINTAIN AND OPERATE A RAILROAD AND TRACKS ACROSS AND ALONG CERTAIN CITY STREETS

THE CITY COUNCIL OF THE CITY OF LOMPOC does ordain as follows:

SECTION 1. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions unless, in a given instance, the context wherein they are used shall clearly import a different meaning:

(a) Grantee shall mean the corporation to which the franchise in this ordinance is granted and its lawful successors or assigns;

(b) City shall mean the City of Lompoc, a municipal corporation, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(c) Engineer means the City Engineer of the City;

(d) "Lay and use" means to lay, construct, erect, install, operate, maintain, use, and repair, replace or remove;

(e) "Effective Date" means the 31st day after the date of passage of this ordinance, provided that the acceptance of the franchise has been theretofore filed;

(f) "Facilities" means the rights granted by this franchise and all property constructed, installed, operated or maintained in, across or upon the public streets pursuant to any right or privilege granted by this franchise;

(g) Street means any public street, road, highway, lane, alley, court, sidewalk, parkway, easement or similar public place which now exists or which may hereafter exist within the City including any public highway within the City of Lompoc heretofore or hereafter constituted a state highway.

As used in this ordinance, a singular number includes the plural, and the plural number includes the singular; the masculine includes the feminine and the feminine includes the masculine.

SECTION 2. The right, privilege and franchise subject to each and all terms and conditions contained in this ordinance and in other ordinances and regulations of the City of Lompoc is hereby granted to the Southern Pacific Transportation Company, hereafter referred to as grantee, to lay and use railroad tracks across and upon the streets indicated and listed in the attachments to this ordinance, which are hereby referred to and incorporated herein by reference.

Any other provisions of this ordinance to the contrary notwithstanding, said franchise may be terminated by the voluntary surrender or abandonment by its possessor, or by acquisition by the State of California, or some municipal or public corporation, by voluntary purchase, or exercise of the power of eminent domain, or by forfeiture for non-compliance with the terms of this ordinance by the grantee.

SECTION 3. The franchise is granted and shall be held and enjoyed upon each and every condition contained in this ordinance, and shall ever be strictly construed against the grantee. Nothing shall pass hereby unless it is granted in plain and unambiguous terms. Any neglect, failure or refusal to comply with any of the terms and conditions of the franchise shall constitute grounds for the suspension or forfeiture thereof. The City Council, prior to any

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Ordinance No. 1067(79).

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suspension or forfeiture of the franchise, and give to the grantee not less than thirty days notice in writing of any defaults hereunder. If the grantee does not within the noticed period begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the City Council may hold a hearing, at which the grantee shall have the right to appear and be heard, and thereupon the City Council may determine whether such conditions are material and essential to the franchise and where the franchise is in default with respect thereto and may declare the franchise suspended or forfeited. Notice of said hearing shall be given to the grantee by certified mail not less than ten days before said hearing.

SECTION 4. The grantee shall, within thirty days after the passage of this ordinance, file with the City Clerk a written acceptance of the terms and conditions of this ordinance.

SECTION 5. The franchise is not transferable except on the express condition that the transferee shall take subject to the terms and conditions of this ordinance. By acceptance or causing the transfer of the franchise or operations thereunder, the transferee agrees to be bound by the terms and conditions of this ordinance.

SECTION 6. The grantee shall not commence any work under the franchise until it shall have obtained such permit as may be required by any ordinances and regulations of the City then in effect, governing excavations in, and other work in and upon, the public streets of the city. This section does not apply to routine maintenance of track or the street or pedestrian way surface within two feet of the outer rail of track.

SECTION 7. The grantee shall be responsible for, and save the City and its officers and employees free and harmless from, all damages or liabilities and claims therefor arising from the use, operation or possession of the franchise and from the use, operation or maintenance of the facilities erected, constructed, laid, operated or maintained thereunder; except that the City shall be responsible for its own acts or omissions.

SECTION 8. A facilities erected, constructed, laid, operated or maintained under the franchise shall be in accordance with applicable federal or state rules and regulations pertaining thereto. The grantee will keep all painted warning signs in good repair, clearly legible.

SECTION 9. The work of erecting, constructing, laying, replacing, repairing, or removing facilities authorized under the franchise in, upon, over, under, along or across any streets shall be conducted with as little hindrance as practicable to the use of the city streets for the purpose of travel, and as soon as the erecting, constructing, laying, replacing, repairing, or removing of any of said facilities is completed, all portions of the city streets which have been excavated or otherwise damaged thereby shall be replaced in as good condition as the same was before such work, to the satisfaction of the City Engineer. All such work shall be protected as provided in the Manual of Warning Signs, Lights and Devices for Use in Performance of Work Upon Highways issued by the California Department of Transportation, Division of Highways. The grantee shall be responsible for, and shall save the city, its officers and employees free and harmless from, all damages or liability or claims thereof or arising from any damage or injury suffered by any person by reason of any excavation or obstruction being improperly guarded during said work, or the failure of the grantee to properly perform, maintain or protect any phase of the work; except that the City shall be responsible for its own acts or omissions.

SECTION 10. The City reserves the right to change the grade, to change the width or to alter or change the location of any city street over which the franchise is granted. Grantee shall maintain its track at the grade of the pavement in which it is located and upon a grade change and upon receipt of a written request from the City to do so, shall commence such work on or before the date specified in such written request which date shall not be less than thirty days from the date of such written request, and shall thereafter diligently prosecute such work to completion.

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SECTION 11. If the City constructs or maintains any storm drain, sewer structure or other facility or improvement over, under, or across any facility of the grantee maintained pursuant to the ordinance, the grantee shall provide, at no expense to the City, such facilities as may be reasonably required to support, maintain and protect grantee's facilities. 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 injury to any of grantee's facilities.

SECTION 12. The grantee, at no cost to the City, shall pave or otherwise improve the city street between the rails and for a distance of two feet on each side thereof, and maintain said street with the same type of material as used by the City, and under the same specifications and in the same manner or in a similar manner as that upon adjacent city streets, or of a material under specifications approved by the Engineer or as required by the California Public Utilities Commission. The grantee shall maintain the street flush with the top of the rails at all times so that vehicles in traveling public may pass over it in a smooth and comfortable manner. If pedestrian walks are constructed the grantee shall construct that portion of the walk between the rails and two feet each side thereof. In either case grantee shall maintain such portions of the pedestrian walk to standards of adjacent walks or the standards approved by the Engineer.

The top of the rails shall be maintained at all times at the established grade of the city street or pedestrian walk. All construction, repair or any other changes or tracks shall be made under the inspection or to the satisfaction of the Engineer in compliance with the provisions of this ordinance and other ordinances and regulations of the City, as now exist or may hereinafter be adopted or amended.

In the event any city street is not paved at the time a track is installed or constructed, or a portion of a paved city street in the area of the track is not paved, and the city street thereafter is paved or the pavement is widened, the grantee, within ninety days after being notified by the Engineer, shall pave that portion of the street and clean the rails and for a distance of two feet on each side thereof in the same manner and to the same specifications as is the adjacent city street.

SECTION 13. The term of this franchise shall be for twelve years, commencing on the 15th day of April, 1973, and ending at 12:01 a.m., on the 15th day of April, 1985.

SECTION 14. Whenever this ordinance requires grantee to take any action or to perform and complete any work within the specified time, and the grantee is prevented from taking such action or performing or completing such work by reasons of conditions or delays beyond the reasonable control of the grantee, time for taking such action or performing or completing such work shall be extended by the time the grantee was so prevented, provided that such conditions or delays were communicated to the City Engineer.

SECTION 15. The grantee shall at no expense or cost to the city, county or public entity, construct all necessary flumes, aqueducts and culverts for the free passage of surface water under the tracks to and in accordance with plans and specifications approved by the Engineer.

SECTION 16. The City Council, in granting the franchise, expressly reserves the right to pave, macadamize, oil, gravel or otherwise improve or renew any of the city streets or to lay gas, water, sewer, storm lines and drains and other public utility lines and structures, said work to be done so as to affect any tracks as little as practicable.

SECTION 17. Omitted.

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SECTION 18. Any other provision of this ordinance to the contrary notwithstanding, the City reserves the right to use the entire area covered by the franchise for street purposes for the term hereof.

SECTION 19. The grantee shall pay to the City within ninety days after acceptance of the franchise under this ordinance, as partial compensation for the franchise granted, the sum of \$17,713.00.

On May 1, annually, beginning in 1977, the grantee shall pay to the City for each crack in place the preceding January 1, the sum of .250 per foot for each foot or fraction thereof, as measured along the center line of the crack and within a City street or City property. The annual payment accruing to the City shall be increased or decreased by the same percentage difference that the final U. S. Bureau of Labor Statistics All Commodities Wholesale Price Index (1967 = 100) for that year varies from the level in 1967 of 100. Checks shall be made payable to the City Treasurer.

Should any payment required not be made within the time provided therefor, the grantee shall further pay interest on any such amount due at the rate of one percent per month from the last day of the franchise payment period for which said payment was due.

SECTION 20. The grantee shall within ten days after written demand, pay to the City all publication costs incurred by the City in connection with this ordinance.

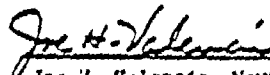
SECTION 21. This ordinance shall be in full force and effect at 12:01 a.m. on the first day after its date of adoption.

PASSED AND ADOPTED this 30th day of February, 1979, by the City Council of the City of Longue, California, by the following vote:


AYES: Councilmembers: Charlotte Benton, Tom Green, E. C. Stevens, Charles Ward,
Mayor Joe K. Valencia.

NOES: Councilmembers: None

ABSENT: Councilmembers: None


Joe K. Valencia, Mayor, City of Longue

ATTEST:


Minerva Blades, City Clerk, City of Longue
By: Minerva Blades, Deputy