

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Union Pacific Railroad for authority to construct an at grade public crossing at the Sunset Branch Line in the Kern County at Mile Post 103SN-19.83.

Application 12-11-015
(Filed November 14, 2012;
Amendments filed
July 29, 2013 and
August 22, 2013)

DECISION GRANTING AUTHORIZATION TO THE UNION PACIFIC RAILROAD TO CONSTRUCT AN AT-GRADE CROSSING ON THE LOS ANGELES SERVICE UNIT, SUNSET BRANCH OVER THE SANTIAGO ROAD ROADWAY OWNED BY KERN COUNTY IN AN UNINCORPORATED AREA OF KERN COUNTY

Summary

This decision grants the Union Pacific Railroad authorization to construct one new at-grade rail crossing over Santiago Road in an unincorporated area of Kern County. The proposed crossing is to be identified as California Public Utilities Commission Crossing No. 103SN-19.83 and United States Department of Transportation No. 440814H.

Discussion

Union Pacific Railroad (UPRR) is proposing to extend freight service on its Los Angeles Service Unit, Sunset Branch tracks from the current terminus northeast of Santiago Road to just southwest of Santiago Road, in an unincorporated area of Kern County (County), as part of the County’s South Kern Industrial Center (SKIC) Specific Plan (Plan). UPRR will implement the extension of rail service across existing Santiago Road specifically to provide

freight service to serve Plains All American Pipeline's proposed crude oil terminal plant. The proposed track configuration will allow railroad delivery of crude oil tank cars and allow for switching movements.

The existing rail line hosts only freight service. San Joaquin Valley Railroad Company (SJVR), a common carrier short-line railroad, leases this track from UPRR and operates freight trains over the Sunset Branch Line tracks. BNSF Railway Company (BNSF), a common carrier Class 1 railroad, has joint-use right to operate over this line and is considered a project stakeholder by UPRR.

The daily vehicle traffic count on Santiago Road is approximately 1,416 vehicles per hour during the afternoon peak period, with fewer vehicles during morning peak period.

The California Public Utilities Commission's (CPUC/Commission) Safety and Enforcement Division -Rail Crossings Engineering Section (RCES) staff participated in a field diagnostic review meeting at the proposed crossing location in September 2012.

UPRR proposes to extend its Los Angeles Service Unit, Sunset Branch tracks by constructing a new at-grade public crossing located at milepost 19.83. The crossing is proposed to consist of a single track.

The crossing design and construction will conform to all UPRR, BNSF, SJVR and CPUC standards for horizontal clearances and requirements specified in the Commission General Order (GO) 26-D, Regulations Governing Clearances on Railroads and Street Railroads, and the walkways will conform to GO 118.

The single track will cross over Santiago Road and will be equipped with two curb mounted and two median mounted Commission Standard 9 (flashing light signal assembly with automatic gate arm) warning devices, pavement markings and advanced warning signage. The raised center medians at the

crossing will be constructed at ten feet in width and 100 feet in length for the westbound approach, and ten feet in width and 60 feet in length for the eastbound approach. The proposed crossing will consist of:

- Installation of one main line track;
- Installation of two new Commission Standard 9 warning devices for each approach;
- Installation of concrete crossing panel surface;
- Installation of concrete raised medians for both approaches; and
- Application of California Manual on Uniform Traffic Control Devices (CA MUTCD) compliant signage including W10-1, W10-2L, W10-2R, R15-8 "LOOK," R8-8 "DO NOT STOP ON TRACKS," and 'RXR' pavement markings as shown in plans.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,¹ or the one with the greatest responsibility for supervising or approving the project as a whole.² Here, Kern County is the lead agency for this project, as the rail crossing is only a small part of a much larger project for which the County has already performed extensive environmental review under CEQA. Accordingly, this Commission is a responsible agency because it has jurisdiction to issue a permit for the rail crossing project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.³

The rail crossing project falls within the area covered by Kern County's SKIC Plan. The SKIC was the subject of a Program Environmental Impact Report (EIR) prepared by Kern County in 1992, and also a Supplemental EIR prepared by Kern County in 2002 (SCH # 1991122017).

The Plan specifically designates the plan area for Heavy Industrial uses, and includes an at-grade crossing for Santiago Road. The Supplemental EIR specifically addressed the crossing at Santiago Road. (See Figure 3.2-5 at p. 3.0-21.) In the EIR the County did not identify any environmental impacts specific to the rail crossing project.

In 2012, the Kern County Planning and Community Development Department found that the rail crossing project was exempt from CEQA as a ministerial project under CEQA Guideline 15300.1, presumably because it was

¹ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

² CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

³ CEQA Guidelines, Sections 15050(b) and 15096.

consistent with the previously reviewed and approved SKIC Plan and corresponding EIRs.

The Commission has reviewed and considered the Program and Supplemental EIRs prepared by Kern County, and has analyzed the potential for significant environmental impacts from the specific rail crossing project that is before us. Given the context of the project, particularly the SKIC Plan, we find that the proposed rail crossing project by itself will have no significant environmental impact. Accordingly, no further review under CEQA is required. (CEQA Guideline 15061(b)(3); see also CEQA Guideline 15183.)

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, including Rule 3.9 of Rules of Practice and Procedure, which relates to the construction of a railroad across a public road. On July 29, 2013, UPRR filed an amendment to its initial filing for Exhibits "A," "B," "D-1," "D-2," "E-1," and "E-2" which depict the finalized drawings for the crossing, correct the erroneous jurisdictional reference to "within the City of Bakersfield," correct location from "Los Angeles Subdivision" to "Los Angeles Service Unit," and reference the assigned United States Department of Transportation (DOT) No. An additional amendment was filed by UPRR on August 22, 2013, for revisions to Exhibits "D-1," and "E-1" which includes additional switching tracks on the west side of the crossing for both finalized drawings.

The Commission's Safety and Enforcement Division - Rail Crossings Engineering Section has inspected the site of the proposed crossing, has reviewed and analyzed the plans submitted with the application and both amendments, and recommends that the requested authority to construct the subject crossing be granted for a period of three years.

Categorization and Need for Hearings

In Resolution ALJ 176-3305, dated November 29, 2012, and published in the Commission Daily Calendar on November 29, 2012, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, it is not necessary to disturb the preliminary determinations.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Emory J. Hagan, III is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on November 29, 2012. On July 29, 2013, UPRR filed an amendment to its initial filing, for Exhibits "A," "B," "D-1," "D-2," "E-1," and "E-2" which depict the finalized drawings for the crossing, correct the erroneous jurisdictional reference to "within the City of Bakersfield," correct location from "Los Angeles Subdivision" to Los Angeles Service Unit," and reference the assigned DOT No. An additional amendment was filed by UPRR on August 22, 2013, for revisions to Exhibits "D-1," and "E-1" which includes additional switching tracks on the west side of the crossing for both finalized drawings. There are no unresolved matters or protests. A public hearing is not necessary.

2. UPRR requests authority, under Public Utilities Code Sections 1201-1205, to construct a new at-grade rail crossing across Santiago Road, in an unincorporated area of Kern County.

3. Approximately one UPRR train per day, including ten switching movements, at approximately 20 mph will operate over the newly extended Los Angeles Service Unit, Sunset Branch railroad tracks.

4. Kern County is the lead agency for this project under CEQA, as amended.

5. Kern County prepared a Program EIR in 1992 and a Supplemental EIR in 2002 for the SKIC Plan, which included this project.

6. In 2012, Kern County found that the rail crossing project before this Commission was exempt from CEQA as a ministerial project.

7. The Commission is a responsible agency for this project and has reviewed and considered Kern County's Program EIR, Supplemental EIR, and Notice of Exemption.

8. The project will not have a significant effect on the environment.

9. The Program EIR in 1992 and a Supplemental EIR in 2002 for the SKIC Plan reflect the Commission's independent judgment and analysis.

Conclusions of Law

1. The EIR and Supplemental EIR prepared by Kern County are adequate for our decision-making purposes.

2. The EIR and Supplemental EIR were completed in compliance with CEQA.

3. The Commission does not need to perform further CEQA review on this project.

4. The application is uncontested and a public hearing is not necessary.

5. The application should be granted as set forth in the following order.

O R D E R**IT IS ORDERED** that:

1. The Union Pacific Railroad is authorized to construct one new at-grade rail crossing across Santiago Road in an unincorporated area of Kern County.
2. The proposed crossing shall be identified as CPUC Crossing No. 103SN-19.83 and United States Department of Transportation No. 440814H.
3. The new at-grade rail-crossing shall have the treatments and configuration described above and specified in the application, both amendments and attachments.
4. The Union Pacific Railroad shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.
5. The Union Pacific Railroad shall notify the Commission's Safety and Enforcement Division – Rail Crossing Engineering Section at least five business days prior to opening the crossing. Notification should be made to rces@cpuc.ca.gov.
6. Within 30 days after completion of the work under this order, Union Pacific Railroad shall notify the California Public Utilities Commission's Safety and Enforcement Division – Rail Crossings Engineering Section in writing, by submitting a completed California Public Utilities Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission web site Form G page at <http://www.cpuc.ca.gov/PUC/safety/Rail/Crossings/formg>. This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

7. Within 30 days after completion of the work under this order, Union Pacific Railroad shall notify the Federal Railroad Administration of the existence of the crossing by submitting a U.S.DOT CROSSING INVENTORY FORM, form FRA F6180.71. A copy shall be provided concurrently to the California Public Utilities Commission's Safety and Enforcement Division - Rail Crossings Engineering Section. This copy of the form may be submitted electronically to rces@cpuc.ca.gov.

8. This authorization shall expire if not exercised within three years, unless time is extended or if the above conditions are not satisfied. The Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

9. A request for extension of the three-year authorization period shall be submitted to the California Public Utilities Commission's Safety and Enforcement Division - Rail Crossings Engineering Section at least 30 days before its expiration. A copy of the extension request shall be sent to all interested parties.

10. The application is granted as set forth above.

11. Application 12-11-015 is closed.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.