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PROPOSED DECISION

Agenda ID #15154 (Rev. 1)
Ratesetting
10/13/2016, Item 10

Decision **PROPOSED DECISION OF ALJ PARK** **(Mailed 9/9/2016)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California Department of Transportation for an Order Authorizing Construction of a Grade Separated Structure to be known as the State Route 58 Overhead over a Single Track owned by the BNSF Railway Company near the Unincorporated Community of Borax in the County of San Bernardino, State of California.	Application 15-11-003 (Filed November 5, 2015)

DECISION AUTHORIZING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT A GRADE-SEPARATED STRUCTURE TO BE KNOWN AS THE STATE ROUTE 58 OVERHEAD IN SAN BERNARDINO COUNTY

Summary

This decision authorizes the California Department of Transportation to construct a new grade-separated highway-rail crossing overhead structure to be known as the State Route 58 Overhead over one track owned by the BNSF Railway Company near the unincorporated community of Borax in San Bernardino County. The crossing will be identified as California Public Utilities Commission Crossing Number 002-775.15-A and United States Department of Transportation Number 929165T.

1. Background and Procedural History

Pursuant to Pub. Util. Code § 1202, the Commission has the exclusive jurisdiction to authorize the construction of a public road, highway or street across a railroad, and to determine and prescribe the manner of each such crossing.

On November 5, 2015, the California Department of Transportation (Caltrans) filed Application (A.) 15-11-003 requesting authority to construct a grade-separated structure to be known as the State Route 58 Overhead over a single railroad track owned by the BNSF Railway Company (BNSF) near the unincorporated community of Borax in San Bernardino County. The proposed State Route 58 Overhead is part of a larger project, which will realign and widen a 13.3 mile segment of State Route 58 from a two-lane conventional highway to a four-lane expressway (expressway project). The new segment will extend from a point approximately 0.4 miles west of the Kern County/San Bernardino County line to a point that is approximately 7.5 miles east of US Route 395.

On January 14, 2016, BNSF filed a Motion for Leave to Late File Protest. The assigned Administrative Law Judge (ALJ) granted this motion on February 23, 2016, and BNSF filed its protest on February 24, 2016. The protest stated that although BNSF generally supports the overall project, it does not support leaving an existing at-grade crossing located approximately 5.4 miles from the proposed crossing in place once the project is completed.

A prehearing conference was held on April 18, 2016, to develop the procedural schedule and to determine the issues properly within the scope of the proceeding.

On May 23, 2016, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo), which set forth the procedural schedule and addressed

the scope of the proceeding. The Scoping Memo determined the following issues to be within the scope of this proceeding:

1. Should the Commission authorize Caltrans to construct the proposed grade-separated structure to be known as the State Route 58 Overhead on the plans and specifications provided in the application?

   A. Is the proposed crossing needed?

   B. Do the plans and specifications for the proposed crossing comply with all applicable laws and rules?

2. Did the Commission review and consider the final Environmental Impact Report (FEIR)/Environmental Impact Statement prepared by Caltrans and is it adequate for purposes of the Commission's approval of the proposed crossing?

3. Are there any safety considerations raised by this application?

The Scoping Memo determined that the issue raised in the protest regarding closure of the existing crossing should not be included within the scope of the proceeding as it had no bearing on the question of whether the Commission should grant Caltrans' application.

The parties agreed that no further proceedings would be necessary with regard to the issues ultimately included within the scope of this proceeding as those issues were undisputed. Therefore, we rely solely on the information provided by Caltrans in its application in determining whether to authorize the State Route 58 Overhead.

2. Discussion

The proposed State Route 58 Overhead is part of Caltrans' expressway project.[1] Caltrans states that the purpose of the expressway project is to upgrade an existing two-lane conventional highway with no access control to a four-lane expressway with limited access control to improve east-west mobility, reduce congestion and travel time, reduce potential traffic conflicts, and maintain an uninterrupted and consistent facility between economic and community centers within the project area. The expressway project is intended to accommodate increased regional and inter-regional traffic and provide continuity between the cities of Bakersfield and Barstow. This connective portion of the State Route 58 is known as the Barstow-Bakersfield Highway.

The plans and specifications for the proposed crossing are set forth in Exhibit C of the application. The grade-separated highway-rail crossing overhead will consist of two structures, the north roadbed and the south roadbed that span over one track of BNSF at an approximate 26-degree skew angle. The north roadbed will be 930-feet long and 85-feet, 10-5/8 inches wide. The south roadbed will be 860-feet long and 86-feet, 6-7/8 inches wide. There will be a temporary minimum overhead clearance of 21 feet, 6 inches during construction, with a permanent minimum overhead clearance of 24 feet, 6 inches. Current rail operations on the track consist of an average of 26 freight and 2 passenger trains per day at a maximum speed of 70 miles per hour.

[1] The Commission only has authority over the proposed rail crossing. It is not responsible for authorizing the expressway project as a whole.

We find the application to be in compliance with the Commission's filing requirements, including Rule 3.7 of the Rules of Practice and Procedure, which governs applications to construct a public road, highway, or street across a railroad. As described above, the application provides sufficient justification of the need for the proposed crossing. We have reviewed and analyzed the plans submitted with the application and find them to be acceptable and in compliance with General Order 26-D, which sets forth minimum clearance requirements for railroads and street railroads. Therefore, we authorize Caltrans to construct the proposed State Route 58 Overhead on the plans and specifications set forth in Exhibit C of the application. The new crossing will be identified as California Public Utilities Commission Crossing Number 002-775.15-A and United States Department of Transportation Number 929165T.

3. Environmental Review and CEQA Compliance

The California Environmental Quality Act (CEQA) of 1970 (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,[2] or the one with the greatest responsibility for supervising or approving the project as a whole.[3] Here, Caltrans is the lead agency for this project, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the 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.[4] As a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.[5] Impacts identified under CEQA relating to the rail crossing are within the scope of the Commission's jurisdiction.

Caltrans issued a FEIR for the expressway project in July 2014.[6] The Commission has reviewed and considered the FEIR and finds the document adequate for our decision-making purposes.

The FEIR finds that the only significant and unavoidable impacts are visual impacts. Visual changes would occur along the entire length of the expressway project, including at the rail crossing. The rail crossing would add urbanizing elements into an otherwise rural desert setting and alter the views of travelers and the area's businesses and residents. Caltrans will implement measures to

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[2] CEQA Guidelines, Cal. Code Regs., tit. 14, § 15051, subd. (a).

[3] CEQA Guidelines, Cal. Code Regs., tit. 14, § 15051, subd. (b).

[4] CEQA Guidelines, Cal. Code Regs., tit. 14, §§ 15050, subd. (b) & 15096.

[5] CEQA Guidelines, Cal. Code Regs., tit. 14, § 15096, subd. (g).

[6] The FEIR is attached as Exhibit E to Caltrans' application. The State Clearinghouse Number for the expressway project is 2007051051.

avoid, minimize, and/or mitigate the potential visual impacts. For example, bridge structures, signs, and other highway appurtenances will be selected for their form, scale, color, aesthetic treatment, spacing, and configuration to enhance compatibility with the rural community and desert landscape design contexts. Native plantings will also be used to minimize the visual impact of the highway and associated detention basins. However, even with the incorporation of the proposed mitigation measures, the visual impacts would not be reduced to a level that is less than significant.

The FEIR also identifies multiple impacts as less than significant or less than significant with mitigation measures incorporated. However, these impacts relate to the larger expressway project and are not specific to the proposed rail crossing.

The FEIR does not identify any negative impacts that relate to transportation and safety as a result of the proposed State Route 58 Overhead. To the contrary, the separation of rail and vehicular traffic will help ensure an uninterrupted flow of highway traffic. The FEIR finds that emergency service providers could benefit from improved traffic flow and decreased congestion because it would help them maintain adequate response times. Moreover, grade separating the crossing will increase public safety by helping to prevent collisions between trains and vehicles or pedestrians.

4. Categorization and Need for Hearing

In Resolution ALJ 176-3367 issued on November 19, 2015, the Commission preliminarily determined that the category of this proceeding is ratesetting and that hearings would not be needed. The Scoping Memo issued on May 23, 2016 confirmed these preliminary determinations. Evidentiary hearings were not necessary as none of the issues within the scope of the proceeding were disputed.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments on the proposed decision were filed.

6. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Sophia J. Park is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on November 6, 2015.

2. Caltrans requests authority, under Public Utilities Code Sections 1201-1205, to construct a new grade-separated highway-rail crossing overhead structure that will span over one track owned by the BNSF Railway Company near the unincorporated community of Borax in the County of San Bernardino.

3. The proposed State Route 58 Overhead is part of an expressway project that is intended to accommodate increased regional and inter-regional traffic in the project area.

4. On February 24, 2016, BNSF filed a protest to the application stating that although BNSF generally supports the overall expressway project, it does not support leaving an existing at-grade crossing located approximately 5.4 miles from the proposed crossing open and in place once the new crossing is completed.

5. The application provides sufficient justification of the need for the proposed crossing.

6. The plans and specifications set forth in Exhibit C of the application are acceptable.

7. Caltrans is the lead agency for this project under CEQA.

8. In July 2014, Caltrans issued the FEIR for the State Route 58 expressway project.

9. The Commission is a responsible agency for the expressway project and has reviewed and considered the lead agency's FEIR.

10. Visual impacts are the only significant and unavoidable impacts of the proposed crossing. The incorporation of proposed mitigation measures will reduce the visual impacts but not to a level that is less than significant.

11. The FEIR did not identify any negative impacts that relate to transportation and safety as a result of the grade-separated crossing requested in the application.

Conclusions of Law

1. The issue raised in the protest regarding closure of the existing crossing was not included within the scope of the proceeding as it has no bearing on the question of whether the Commission should grant Caltrans' application.

2. The FEIR prepared by Caltrans is adequate for our decision-making purposes.

3. The FEIR was completed in compliance with CEQA.

4. 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 California Department of Transportation is authorized to construct a new grade-separated highway-rail crossing overhead structure over one track owned by the BNSF Railway Company near the unincorporated community of Borax in the County of San Bernardino, to be identified as California Public Utilities Commission Crossing Number 002-775.15-A and United States Department of Transportation Number 929165T.

2. The new State Route 58 grade-separated highway-rail crossing shall have the crossing treatments and configuration specified in the California Department of Transportation's application and its attachments.

3. The California Department of Transportation shall notify the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety–Rail Crossings Engineering Section at least five (5) business days prior to opening the grade-separated highway-rail crossing overhead structure. Notification should be made to rces@cpuc.ca.gov.

4. Within 30 days after completion of the work under this order, the California Department of Transportation shall notify the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety-Rail Crossings Engineering Section in writing, by submitting a completed 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/formg. This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

5. Within 30 days after completion of the work under this order, BNSF Railway Company shall notify the Federal Railroad Administration of the existence of the road over track crossing by submitting a U.S. DOT CROSSING INVENTORY FORM, form FRA F6180.71. Concurrently, BNSF Railway Company shall provide a copy of the inventory form to the California Public Utilities Commission's Safety and Enforcement Division, Office of Rail Safety-Rail Crossings Engineering Section. This copy of the form may be submitted electronically to rces@cpuc.ca.gov.

6. The California Department of Transportation shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

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

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

9. The application is granted as set forth above.

10. Application 15-11-003 is closed.

This order is effective today.

Dated _____, at Long Beach, California.