

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Southern California Regional Rail Authority (SCRRA), in cooperation with the City of Pomona, allow the existing at-grade pedestrian crossing to remain open at the Pomona Metrolink Station located on the San Gabriel Subdivision at railroad milepost 30.93 in the City of Pomona, County of Los Angeles, California.

Application 07-03-018
(Filed March 19, 2007)

**DECISION GRANTING AUTHORITY FOR EXISTING AT-GRADE
PEDESTRIAN- RAILROAD CROSSING TO REMAIN OPEN AT THE
POMONA METROLINK STATION**

Summary

This decision grants authority to the Southern California Regional Rail Authority (SCRRA) to keep open an existing at-grade pedestrian-railroad crossing at the Pomona Metrolink Station in the City of Pomona (City), Los Angeles County.

Discussion

SCRRA is a five-county joint powers authority, created pursuant to the California Public Utilities Code Section 130255 and California Government Code Section 6500 et seq., to build and operate Metrolink commuter trains. SCRRA is requesting authorization to keep open an at-

grade pedestrian-rail crossing that was constructed without Commission approval.

The pedestrian crossing was intended to be a temporary crossing pending redesign of the Pomona Station and platform. However, plans for this crossing did not receive approval and the pedestrian-rail at-grade crossing was then constructed to provide access to the station platform from the parking lot that is located on the north side of the platform. To the east of this crossing is the Pomona Station Entry vehicular crossing, identified as CPUC Crossing No 101SG-31.05.

The existing pedestrian at-grade crossing (CPUC Crossing No. 101SG-30.93-D) is currently equipped with two Commission Standard 8 (flashing light signal assembly) warning devices. Additionally, SCRRA shall install a stop line in advance of the track at the Commission Standard 8 warning device to inform pedestrians of the safe location to stop.

SCRRA plans to eliminate the existing pedestrian-rail at-grade crossing and construct a new pedestrian-rail crossing to the west of the existing crossing. This new crossing will be equipped with full channelization, pedestrian gates, and swing gates. Upon approval of the plans by the City of Pomona, the existing pedestrian crossing will be closed within four years.

Processing of the application to eliminate the existing pedestrian-rail at-grade crossing and construct a new pedestrian-rail crossing to the west of the existing crossing was delayed due to SCRRA's inability to reach an agreement with the City on a final design of the relocated crossing and a resultant hesitancy to provide the Commission a commitment on the number of years the existing at-grade pedestrian-rail crossing would need

to remain open. On May 7, 2007, SCRRA agreed to provide the Rail Crossings Engineering Section (RCES) of the Commission's Consumer Protection and Safety Division with a letter stating that the existing pedestrian-rail crossing would be closed within four years. However RCES never received a formal letter from SCRRA. On March 13, 2008, SCRRA Manager of Public Projects sent an email to RCES stating that the concept for the new pedestrian crossing had changed and is pending further approval by the City. The email also states that the temporary crossing will be closed within four years.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources (PR) 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 must 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 the public agency with the greatest responsibility for supervising or approving the project as a whole.¹ Here, the SCRRA is

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

the lead agency for this project and the Commission is a responsible agency. 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.²

Section 21080(b)(10) of the Public Resources Code finds that projects instituting or increasing "passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities" are exempt from CEQA. If SCRRRA had submitted its proposal for the existing pedestrian at-grade crossing (CPUC Crossing No. 101SG-30.93-D) prior to its completion, the project would have been exempt as "modernization of existing stations and parking facilities" pursuant to Section 21080(b)(10) of the Public Resources Code.

CPUC approval of an already constructed at-grade crossing does not appear to be "modernization" of an existing station or parking facility and the statutory exemption of Section 21080(b) therefore would not apply. However, continued operation of an existing at-grade crossing, which would have been exempt from CEQA if it had been reviewed when it was constructed, appears exempt under CEQA guideline 15301(b), which exempts continued operation of existing facilities with negligible or no expansion of existing use.

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, including Rule 3.7 of Rules of Practice and Procedure, which relates to the construction of a public road across a railroad. RCES

² CEQA Guidelines, Sections 15050(b) and 15096.

reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant SCRRA's request.

Categorization and Need for Hearings

In Resolution ALJ 176-3190, dated April 12, 2007, and published in the Commission Daily Calendar on April 13, 2007, 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 made in Resolution ALJ 176-3190.

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

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on April 11, 2007. There are no unresolved matters or protests; a public hearing is not necessary.
2. SCRRA requests authority to keep open the Pomona Station at-grade pedestrian-rail crossing, identified as CPUC Crossing No. 101SG-30.93-D.
3. The pedestrian at-grade crossing, identified as CPUC Crossing No. 101SG-30.93-D, was constructed without Commission approval. The

pedestrian crossing is a temporary crossing, and SCRRA shall close the crossing upon construction of a new proposed pedestrian crossing.

4. Continued operation of an existing at-grade crossing, subject to installation of a stop line in advance of the track at the Commission Standard 8 warning device to inform pedestrians of the safe location to stop, appears exempt under CEQA guideline 15301(b), which exempts continued operation of existing facilities with negligible or no expansion of existing use.

Conclusions of Law

1. The application is uncontested and a public hearing is not necessary.
2. The application should be granted as set forth in the following order.

ORDER

IT IS ORDERED that:

1. The Southern California Regional Rail Authority (SCRRA) is authorized to keep open the existing at-grade pedestrian-rail crossing, identified as CPUC Crossing No. 101SG-30.93-D, for a period not to exceed four years from the date of this order.
2. SCRAA shall paint a stop line at the warning device in advance of the track at the entrance to the pedestrian-rail crossing.
3. Upon approval of the plans for the new at-grade pedestrian-rail crossing by the City of Pomona, SCRRA shall submit a General Order 88-B request to Rail Crossings Engineering Section staff for authorization to construct the new crossing.

4. SCRRRA shall close the pedestrian-rail crossing upon construction of the proposed pedestrian at-grade crossing to the west of this location and modification of the platform.

5. This authorization may be revoked or modified if public convenience, necessity, or safety so require.

6. This application is granted as set forth above.

7. Application 07-03-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.