

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

December 19, 2003

**Agenda ID #3098**  
**Ratesetting****TO: PARTIES OF RECORD IN THE PETITION FOR MODIFICATION OF  
DECISION 00-06-036, IN APPLICATION 99-10-029**

This is the draft decision of Examiner Richard Clark. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on Examiner Clark and David Stewart, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

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/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:vdl

Attachment

Decision **DRAFT DECISION OF EXAMINER CLARK** (Mailed 12/19/03)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of the City of Novato and Black Point Partnership, L.P., for an Order authorizing an at-grade crossing of the tracks of the Northwestern Pacific Railroad Authority in the City of Novato, County of Marin.

Application 99-10-029  
(Filed October 22, 1999;  
Petition For Modification  
filed December 15, 2000)

**OPINION DISMISSING PETITION FOR MODIFICATION**

**Summary**

This decision dismisses the Petition for Modification of Decision (D.) 00-06-036 filed by the City of Novato (City). The City requested authority to modify D.00-06-036 by changing the warning devices from CPUC Standard #9-A's automatic gate-type signals with cantilever lights to CPUC Standard #9's automatic gate-type signals without cantilever lights. The crossing was constructed in late 2000 with two No. 9-A automatic gate-type signals with cantilever lights as authorized by the original D.00-06-036. CPUC Standard #9-A's automatic gate-type signals with cantilever lights provide the crossing with a higher level of safety than provided by CPUC Standard #9's automatic gate-type signals without cantilever lights. Therefore, the City's Petition for Modification is now moot.

The City requests authority to modify Commission D.00-06-036 to change the type of warning devices approved by the decision. The City requested that the "two No. 9-A automatic gate-type signals with cantilever lights" as ordered

in Ordering Paragraph 5 of the decision be replaced with two No. 9 automatic gate-type signals without cantilever lights. The Commission's Consumer Protection and Safety Division — Rail Crossings Engineering Section staff (RCES) recommends that the Petition for Modification of D.00-06-036, in Application (A.) 99-10-029, be dismissed.

### **Discussion**

By D.00-06-036, dated June 8, 2000, in A.99-10-029, City was authorized to construct a new at-grade highway-rail crossing (crossing) at Black Point Drive. On December 15, 2000, the City filed a Petition for Modification of D.00-06-036 requesting the “two No. 9-A automatic gate-type signals with cantilever lights” as ordered in Ordering Paragraph 5 of the decision be replaced with two No. 9 automatic gate-type signals without cantilever lights.

The crossing was constructed in late 2000 with two No. 9-A automatic gate-type signals with cantilever lights as authorized by the original D.00-06-036. CPUC Standard #9-A's automatic gate-type signals with cantilever lights provide the crossing with a higher level of safety than provided by CPUC Standard #9's automatic gate-type signals without cantilever lights. Therefore, the City's petition for modification is now moot.

Notice of the petition for modification was published in the Commission's Daily Calendar on December 19, 2000. No protests have been received. A public hearing is not necessary.

The Commission's Consumer Protection and Safety Division recommends that the petition for modification be dismissed without prejudice.

### **Comments on Draft Decision**

The draft decision of the Examiner in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of

the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_,  
and reply comments were filed on \_\_\_\_\_.

**Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

**Findings of Fact**

1. The City requests authority to modify D.00-06-036 by changing the warning devices from CPUC Standard #9-A's automatic gate-type signals with cantilever lights to CPUC Standard #9's automatic gate-type signals without cantilever lights.

2. The crossing was constructed in late 2000 with two No. 9-A automatic gate-type signals with cantilever lights as authorized by the original D.00-06-036.

3. CPUC Standard #9-A's automatic gate-type signals with cantilever lights provide the crossing with a higher level of safety than provided by CPUC Standard #9's automatic gate-type signals without cantilever lights.

4. The City's petition for modification is now moot.

5. RCES recommends that the petition for modification be dismissed without prejudice.

**Conclusion of Law**

The petition for modification should be dismissed without prejudice.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition for Modification of Decision 00-06-036, in Application (A.) 99-10-029, is dismissed without prejudice.
2. A.99-10-029 is closed.

This order becomes effective 30 days from today.

Dated \_\_\_\_\_, at San Francisco, California.