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**Decision 00-05-034 May 18, 2000**

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

Application of the City of Morgan Hill to construct one pedestrian grade crossing of the Southern Pacific Transportation Company E Line, at the Downtown Transit Center in said City of Morgan Hill, State of California

Application 93-11-008  
(Filed November 1, 1993)

**OPINION**

The City of Morgan Hill (City) requests authority to construct a pedestrian crossing at-grade along the mainline tracks of the Union Pacific Railroad (UP) in said City of Morgan Hill, County of Santa Clara. The new pedestrian crossing will henceforth be referred to as California Public Utilities Commission (CPUC) Crossing No. 001E-70.83-D.

**Background of Filing Process**

This application has had a convoluted procedural history. It began on November 1, 1993 when City filed its original application requesting Commission authorization to construct the above-mentioned crossing. City made several changes to its original application, and as a result, filed an Amended Application on August 22, 1994. Eventually, Decision (D.) 95-04-070 approved the project for only a five-year period. After the five-year period, the project was to be examined again. This limitation, recommended by the Commission staff, was to “permit re-evaluation of the suitability of the submitted at-grade design, as there remains disagreement as to the need for and funding feasibility of a grade separated design.” (D.95-04-070, p. 2.) Ordering Paragraph

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9 of D. 95-04-070 also provided that if construction had not commenced within two years of the effective date of the order, the authorization to construct would expire. Unless extended, the two-year period would end on May 26, 1997.

Southern Pacific Transportation Company (SPT) filed an Application for Rehearing for D. 95-04-070, to which City filed a Response and Opposition to SPT Application for Rehearing on July 14, 1995. The Commission initially considered the Application for Rehearing at its executive session on February 19, 1997. Up to that time, several attempts by the parties to negotiate their differences had been unsuccessful. The Commission held the item until its March 18, 1997 executive session. The day before that meeting, the Commission's Legal Division received a letter from the attorney representing UP, now merged with SPT. The letter was co-signed by City's attorney. The letter stated that the two parties wished to explore the possibility of reaching an agreement that would allow the project to go forward and at the same time resolve the railroad's safety and operational concerns. Assuming that progress was likely, the two parties anticipated that a joint filing would soon be made requesting extension of the two-year expiration date for commencing construction of the project set forth in Ordering Paragraph 9 of D. 95-04-070. The parties asked that in view of this, the Commission hold the Application for Rehearing to the May 21 meeting, which the Commission did.

On May 16, 1997, the parties jointly filed a "Petition For Extension Of Time Pursuant To Rule 43" with the Commission's Docket Office. The petition requested that in view of the renewed efforts at negotiation, the effective date of D. 95-04-070 be extended to May 26, 1999. D. 97-05-097 granted the joint petition by extending the date by which the project must be commenced for nine additional months, to February 26, 1998. The Commission took no action on the Application for Rehearing.

Meanwhile, the parties continued to talk to each other and to Commission staff for the purpose of working out the details of a satisfactory project. On February 18, 1998, UP and City submitted a written request to the Executive Director for another extension of time. The Executive Director granted the parties an extension until May 26, 1998. The Executive Director advised that the parties meet with Commission staff to inform them of the parties' progress with regard to finalizing construction plans and specifications. The Executive Director also asked that the parties apprise Commission staff of any changes to the design of the project or to any other conditions which had changed from those originally approved in D. 95-04-070. By May 26, 1998, City was directed to file a new or amended application to construct the project, and/or a petition to modify D. 95-04-070 and D. 97-05-097, based on the advice received from Commission staff. City filed a second Amended Application on May 26, 1998, and the parties continued discussing the terms and specifications of the project subsequent to that date.

On September 23, 1998, the attorney for UP wrote a letter to the Executive Director stating that discussions held with City since the filing of the second Amended Application had finally resulted in UP's safety and operational concerns being satisfied, and consequently, UP was withdrawing its 1995 Application for Rehearing. Unfortunately, that did not turn out to be the case. On October 23, 1998, UP's attorney wrote again to the Executive Director, stating that there was still an outstanding issue related to the secondary track at the site. City had thought that the secondary track was a spur track that the railroad was willing to remove from the site. However, UP's letter informed the Executive Director that this track was being used as a runaround track that UP also intended to use for new business expected to be handled at this location. While the letter did not explicitly say UP was *not* withdrawing its Application for

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Rehearing, that was the clear implication. The letter did acknowledge the Commission's desire to close this docket, and provided assurances that the railroad would make every effort to resolve this remaining issue quickly.

Regardless of the fact that the parties were still not in agreement, the Commission's D. 98-12-095 dismissed the Application for Rehearing as moot, reasoning that once City filed its second Amended Application, the project that had been approved by D. 95-04-070 ceased to exist. Thus, the Application for Rehearing was no longer relevant to the project.

Negotiations between the City and UP continued. On September 27, 1999, City filed a third Amended Application with the Commission's Docket Office. Staff reviewed the Application and consulted further with the parties on several design issues. These design issues have been resolved to Commission staff's satisfaction and now warrant the third Amended Application be considered for Commission approval.

**Description of Proposed Crossing**

The proposed pedestrian at-grade crossing will be utilized to link pedestrians from the existing Morgan Hill Caltrain Station platform and associated Park and Ride Facility to the existing central business district which includes parking lots, walkways, and shelter areas. The entire area is known as the "Downtown Transit Center". Trackage includes one mainline track and one siding track. The siding track will be removed prior to the construction of the pedestrian crossing. Caltrain, a commuter rail service which is owned and operated by the Peninsula Corridor Joint Powers Board (PCJPB), currently utilizes the mainline track at speeds of up to 79 MPH.

The proposed pedestrian crossing is approximately 19 feet long (from gate to gate) and approximately 12-feet wide. Two Calgary-type swing gates will be

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installed at the beginning of each approach. New railing and fencing will surround the approach areas to prevent pedestrians from entering the dynamic envelope of the track. Four (4) CPUC Standard No. 10 flashing-light warning devices will be installed to warn pedestrians of on-coming trains. Two devices will be installed at each approach and will be configured in such a manner to warn pedestrians coming in all directions. A sketch of the proposed pedestrian crossing is set forth as Appendix A of the Decision.

City is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code 21000, et. seq. City has determined that the project is an improvement to an existing mass transit project and is, as such, exempt from CEQA under Section 21080(b)(11) of the Public Resource Code and Section 15275(a) of the CEQA Guidelines. On April 21, 1993, City filed a Notice of Exemption with the County Clerk of Santa Clara. The Notice of Exemption states that the project is categorically exempt as defined under CEQA.

The Commission is a responsible agency for this project under CEQA and has reviewed and considered the lead agency's exemption determination.

The Commission's Rail Safety and Carriers Division, Rail Crossings Engineering staff has inspected the site of the proposed project. The staff examined the need for and safety of the proposed crossing and recommends that the requested authority be granted.

Application 93-11-008 meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which relates to the construction of a public highway across a railroad.

This is an uncontested matter in which the Decision grants the relief requested. Accordingly, pursuant to PU Code Section 311 (g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Findings of Fact**

1. Notice of the original Application was published in the Commission's Daily Calendar on November 9, 1993. Notice of an Amended Application was published in the Commission's Daily Calendar on August 24, 1994. Notice of a second Amended Application was published in the Commission's Daily Calendar on June 1, 1998. Notice of a third Amended Application was published in the Commission's Daily Calendar on October 5, 1999. No protests were filed for any of the applications.

2. City requests authority, under Public Utilities Code Sections 1201 - 1205, to construct a single pedestrian crossing at-grade along the mainline tracks of the UP in said City of Morgan Hill, County of Santa Clara.

3. Public convenience, necessity, and safety require the construction of the at-grade pedestrian crossing.

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

5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's exemption determination.

**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.

**O R D E R**

**IT IS ORDERED** that:

1. The City of Morgan Hill (City) is authorized to construct a pedestrian crossing at-grade along the mainline tracks of the Union Pacific Railroad (UP) in

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said City of Morgan Hill, County of Santa Clara. The new pedestrian crossing will henceforth be referred to as California Public Utilities Commission (CPUC) Crossing No. 001E-70.83-D.

2. Clearances shall be in accordance with General Order (GO) 26-D.

3. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

4. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the parties. A copy of the agreement shall be filed by City with the Commission's Rail Safety and Carriers Division, Rail Crossings Engineering Section prior to commencing construction. Should the parties fail to agree, the Commission shall apportion the costs of construction and maintenance by further order.

5. Final construction plans shall be filed by City with the Rail Safety and Carriers Division, Rail Crossings Engineering Section prior to commencing construction. The proposed crossing shall be constructed according to the design as set forth in Appendix 'A' of this Decision.

6. As a condition of approval from the Commission, Decision 95-04-070 shall be vacated.

7. Within thirty (30) days after completion of the work under this order, City shall advise the Rail Safety and Carriers Division, Rail Crossings Engineering Section in writing that the authorized work has been completed.

8. This authorization shall expire if not exercised within three (3) years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

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9. This application is granted as set forth above.

10. Application 93-11-008 is closed.

This order becomes effective thirty (30) days from today.

Dated May 18, 2000, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
CARL W. WOOD  
Commissioners

