

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 2010-2011 and 2011-2012 of existing crossings at grade of city streets, county roads or state highways in need of separation, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways Code.

FILED
PUBLIC UTILITIES COMMISSION
JULY 30, 2009
SAN FRANCISCO OFFICE
INVESTIGATION 09-07-028

ORDER INSTITUTING INVESTIGATION

Summary

This Order Instituting Investigation (OII) is for the purpose of establishing the Grade Separation Priority List (Priority List) for the fiscal year (FY) 2010-2011 and FY 2011-2012. The OII requests project nominations, from interested parties, for existing crossings at grade of city streets, county roads, or state highways in need of separation, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways (S&H) Code. Completed nomination applications must be filed with the California Public Utilities Commission (Commission) by Friday, October 16, 2009. Nomination forms and instructions are contained in this OII and are available on-line at the Commission's website at:

www.cpuc.ca.gov/static/hottopics/4railsafety/index.htm .

Background

By July 1 of each year, the Commission is required, pursuant to S&H Code Section 2452, to establish and furnish to the California Transportation

Commission (CTC) a priority list of existing crossings at grade in need of separation, and existing grade separations in need of alteration or reconstruction. The Priority List, based on criteria established by the Commission, includes projects on city streets, county roads, and state highways, which are not freeways as defined in S&H Code Section 257.

Funding for projects included on each annual priority list is provided by S&H Code Section 190, and the basis for allocation and state requirements are contained in S&H Code Sections 2450-2461. For a project that eliminates an existing crossing or alters or reconstructs an existing grade separation, an allocation of up to 80% of the estimated cost of the project may be made, with the local agency and railroad each contributing 10%. Subsequent to the Commission's issuance of the Priority List, the California Department of Transportation (Caltrans) accepts applications for an allocation of funds on or before April 1, of each fiscal year. Requirements for Priority List projects filing an allocation application with Caltrans are described in the California Administrative Code, Title 21, Division 2, Chapter 13, Grade Separation Projects - Applications for Allocations or Supplemental Allocations. A copy of Chapter 13 is attached as Appendix 1.

Our typical procedure in regards to developing the Priority List of projects is to promulgate the list for the first fiscal year by issuing an interim decision, and then to revise the list for the second year by deleting projects for which funds were actually allocated in the first year. We adopt the revised list by final decision in the second year of the proceeding, close the proceeding and begin the funding cycle again the following year by instituting a new proceeding. Interim Decision (D.) 08-06-032, dated June 26, 2008, established the 51st Priority List for FY 2008-2009. On June 4, 2009, by D. 09-06-014, the Commission issued its final decision establishing the 52nd Priority List for FY 2009-2010, and furnished the

list to Caltrans and CTC before July 1, 2009. That final list will expire on June 30, 2010, necessitating the establishment of a new Priority List for FY 2010-2011 and 2011-2012.

The Commission will consider projects nominated by cities, counties, a separation-of-grade district, and any public entity that provides rail passenger transportation services for inclusion on the Priority List for FY 2010-2011 and 2011-2012.

Ranking Formula

In accordance with S&H Code Section 2452, the Commission is responsible for establishing criteria to be used in determining the priority of projects nominated for separation or alteration. The Commission does so using formulas initially developed by the Commission in 1975, but modified since that time. There are two formulas used: one for ranking projects proposing new grade-separation structures, and one ranking projects proposing alteration or reconstruction of existing structures. Commission adopted the most recent priority evaluation formulas in I.07-07-009, issued July 12, 2007, which are contained in Appendix 2 - Priority Index Formulas.

Ranking Projects Under Construction

S&H Code Section 2460.7 authorizes a local agency to construct a project on the Priority List prior to the time that it reaches a high enough position for funding. The following conditions will be applied to prioritize grade separation projects on which construction has commenced:

1. The project must have been on the priority list for the fiscal year during which construction commenced.
2. The project must be renominated for the fiscal year during which funding consideration is desired.

3. The renomination must include the same data as included in the nomination for the fiscal year during which construction commenced, but shall also include the actual cost data.
4. Cost data included in the renomination shall be:
 - a. Final costs for completed projects, or
 - b. Current anticipated final costs for projects still under construction.
5. All projects renominated under the provisions of Section 2460.7 shall also comply with the filing requirements in this order.

Notice and Distribution

After the OII is adopted, the Commission staff will mail the notice appearing in Appendix 3 - OII Interested Party Notice Letter to the known railroads, light rail transit agencies, cities, counties and other interested parties. Parties interested may then download the OII from the Commission's website www.cpuc.ca.gov. The OII will also be published on the Commission's Daily Calendar. Project nomination forms and instructions are found in Appendix 4 - GSN-1 Form and in Appendix 5 - GSN-2 Form, of the OII.

Preliminary Scoping Information

The scope of this proceeding will include all issues raised in this order, but will not be limited to these issues. Any party may suggest related issues (i.e., issues involving the existing crossings at grade of city streets, county roads, or state highways) for the Commission consideration. The applicable rules and procedures are found in the Rules of Practice and Procedure which are posted on the Commission's website at www.cpuc.ca.gov.

The assigned Administrative Law Judge will convene a prehearing conference to develop a service list for this proceeding and to further delineate issues related to scope and schedule for this proceeding.

This proceeding is categorized as quasi-legislative because it establishes a priority list affecting an entire regulated industry.

In I.99-07-001, the Commission established a new procedure for adopting a two-year Priority list, due to statutory time limitations.

For this proceeding to be completed timely, the Priority List established by this OII shall serve for both fiscal years in the investigation. The Commission staff is authorized to revise the Priority List after the first year based upon input from Caltrans (removal of already funded projects) and issue the Priority List for 2011-2012. This process complies with the statutory deadline of S&H Code Section 2452 that requires the Commission to certify an annual Priority List on or before July 1.

Any party interested in participating in this investigation who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Office in Los Angeles at (213) 576-7056 or in San Francisco at (415) 703-2074; or email public.advisor@cpuc.ca.gov.

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted for the purpose of establishing a new Grade Separation Priority List (Priority List) for fiscal years 2010-2011, and 2011-2012, of existing railroad grade crossings of public streets, roads, or highways most urgently in need of separation, and existing separation structures most urgently in need of alteration or reconstruction as required by Streets and Highways (S&H) Code Section 2452.

2. The Executive Director shall serve a copy of this order on the following:

- Every railroad corporation operating in California
- California Department of Transportation
- California Transportation Commission
- League of California Cities
- California State Association of Counties

- Light Rail Transit Agencies

3. Local agencies desiring to have a crossing separation project considered for inclusion in the Priority List for fiscal years 2010-2011, and 2011-2012, to be established under S&H Code Section 2452, shall file the **original** GSN-1 or GSN-2 nomination forms with **three** copies to:

California Public Utilities Commission
Attn: Rosa Muñoz, P.E.
320 West 4th Street, Suite 500
Los Angeles, CA 90013

Applications on GSN-1 Forms or GSN-2 Forms may be mailed or delivered in person. All nominations are due to the California Public Utilities Commission in Los Angeles postmarked no later than Friday, October 16, 2009. Applications delivered in person are due no later than 4:00 p.m. on Friday, October 16, 2009.

Applications postmarked or delivered after the deadline will not be processed. Applications are not accepted via fax. Each party is also required to provide one copy of its nomination(s) to **California Department of Transportation (Caltrans)**:

Caltrans - Division of Rail
Attn: Bruce Plowman, Chief
1120 N Street, MS 74
Sacramento, CA 95814

4. Each nomination shall include the following:
- a. For existing crossings nominated for separation, a completed Nomination Form GSN-1 (Appendix 5).
 - b. For existing grade separation nominated for alteration or reconstruction, a completed Nomination Form GSN-2 (Appendix 6).
 - c. A legible location map of the project, on 8 1/2" x 11" sheet of paper showing the existing railroads and roadway system.

- d. Two current 8" x 10" photographs of the crossing(s), one from each direction of approach, shall be included with the original nomination. Other nomination copies may contain photocopies of the photographs.
- e. Data submitted in the nomination must be based on **verifiable facts occurring on or before October 16, 2009**. Speculative data involving events anticipated to occur at some time in the future will not be considered. Applications for separations of existing at grade crossings with estimated data (vehicle counts, train counts, blocking delay, etc.), *other than the project costs*, will not be processed or included on the Priority List.

5. Nomination(s) shall not include multiple projects that are separate and distinct and clearly severable. The combining of severable projects precludes the Commission from effectively determining which projects are most urgently in need of separation or alteration as required by S&H Code Section 2452. All consolidation projects (that involve two or more existing at grade crossings) must satisfy these criteria to be considered.

6. All project proposals to eliminate existing grade crossings shall include, for each crossing: the crossing location, crossing geometrics, average daily vehicle and train volumes, blocking delay, speed limits, accident data, ecetera (see sections B through H of GSN-1 Form in Appendix 4). Applications that have missing or incomplete data will not be used for the priority evaluation.

7. A nominating party may elect to exclude pre-construction costs (engineering, right-of-way, preparation of environmental impact reports, and utility relocation) if those costs are less than the local agency's share of the total costs (S&H Code Section 2454). The nominating party may be required to submit evidence in support of the fact that the funds have been expended. To the extent that pre-construction costs are excluded from a project's cost for the purpose of a nomination, the costs as nonparticipating, that is, the railroad will not be required to contribute 10 percent of the excluded pre-construction costs.

8. In addition to submitting the Grade Separation Nomination Form (GSN-1 or GSN-2), each party, or its representative, nominating a crossing for inclusion in the Priority List is **required to appear in person at the hearings** to present evidence concerning the nomination. Supplemental data may be submitted at the hearings in support of a nomination. The data may include facts not known at time of nomination. The Staff must receive verification of all supplemental data no later than one week after the last scheduled day of hearing.

9. Appearance schedules will be mailed to the interested parties 10 days prior to the scheduled hearings, usually held in the Commission's Los Angeles and San Francisco offices. All parties will be notified of the dates and locations of the hearings. Appearances will be limited to one witness in support of each project or railroad.

10. Parties anticipating the need for an allocation greater than \$5,000,000 shall be prepared to present evidence at the hearings to justify the additional award.

S&H Code Section 2454 (d)(1) states:

"(d) (1) Notwithstanding the provisions of Subdivision (a) to (c), inclusive, a single project in excess of five million dollars (\$5,000,000), but not exceeding twenty million dollars (\$20,000,000), shall be considered without specific legislative authority, if the project (A) is included in the Public Utilities Commission's priority list of projects scheduled to be funded, (B) eliminates the need for future related grade separation projects, (C) provides projected cost savings of at least 50 percent to the state or local jurisdiction, or both of them, by eliminating the need for future projects, and (D) alleviates traffic and safety problems or provides improved rail service not otherwise possible. Projects approved pursuant to this subdivision shall be funded over a multiyear period, not to exceed five years, and the allocation for any one of those years shall not exceed the amount prescribed by subdivision (c) for a single project."

11. Failure to supply all of the requested information or to appear before the Commission will constitute grounds for exclusion of a project from the Priority List.

This order is effective today.

Dated July 30, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners