

Decision 09-09-008 September 10, 2009

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

In the Matter of the Application of the City of Petaluma, a Municipal Corporation, for an Order Authorizing the Relocation of One At-Grade Crossing of the Tracks of the Sonoma Marin Area Rail Transit District in the City of Petaluma, County of Sonoma.

Application 04-06-030  
(Filed June 21, 2004; reopened  
August 28, 2008)

**DECISION GRANTING AMENDMENT TO SECOND PETITION  
FOR MODIFICATION OF DECISION 06-02-036 AND PROVIDING FURTHER  
GUIDANCE ON THE DEADLINE FOR FILING A NEW APPLICATION FOR  
CROSSING AUTHORITY PRIOR TO THE COMMENCEMENT  
OF PASSENGER RAIL SERVICE**

**1. Summary**

This decision grants the Amendment to the Second Petition for Modification of Decision 06-02-036 and thereby extends to December 31, 2010, the deadline for the City of Petaluma (Petaluma) to file a new application to expand certain existing crossing authority, now applicable only to freight rail service, to also cover passenger rail service. Should Petaluma require additional time to finalize the environmental review of passenger rail service necessary to complete its new application, Petaluma may apply to the Commission's Executive Director for a reasonable, limited extension in accordance with Rule 16.6 of the Commission's Rules of Practice and Procedure. However, such an extension request must retain a review period of no less than 18 months between the date Petaluma files a complete, new application and the date passenger rail

service is set to commence (the latter date as determined by the Board of Directors of the Sonoma Marin Area Rail Transit District).

## **2. Background and Procedural History**

Decision (D.) 06-02-036, as modified by D.09-06-007, authorizes Petaluma to relocate the at-grade mainline track crossing of the Sonoma Marin Area Rail Transit District (SMART)<sup>1</sup> railroad tracks from its current location at Milepost 5-38.3 to Milepost 5-37.8, according to the design and the safety-related conditions referenced in D.06-02-036. D.09-06-007 clarifies that the nearby, but separate, at-grade industrial lead track crossing is not affected but is to remain open to provide access to several businesses.

The authority for the at-grade mainline track crossing applies only to freight traffic. No passenger rail service runs along the track at present. Ordering Paragraph 2 of D.06-02-032 expressly limits the authority granted to Petaluma:

Petaluma's authorization continues as long as no passenger rail service operates along the SMART tracks. This authorization shall expire in the event that passenger rail service initiates along the SMART tracks. In the event passenger rail service commences along the SMART railroad tracks, Petaluma shall apply to the Commission for continued authorization of this at-grade crossing. Any such new application shall be complete (including but not limited to compliance with appropriate environmental review). Provided that Petaluma files such a new application within 90 days after it is announced that passenger rail service shall commence along the

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<sup>1</sup> SMART, established on January 1, 2003, following passage of AB 2224 (Stats. 2002, ch. 341 [Nation]) is a regional transportation district charged to oversee the development and implementation of passenger rail service in Sonoma and Marin Counties.

SMART tracks, Petaluma may include in this application a request for interim relief that would continue the authorization granted in this decision while the new application is pending.

On March 16, 2007, before D.09-06-007 issued, Petaluma filed a Second Petition of the City of Petaluma to Modify Decision 06-02-036 (Second Petition). The Second Petition seeks a 90 day extension of time to file the new application contemplated by Ordering Paragraph 2 of D.06-02-032. On June 15, 2009, Petaluma filed an Amendment to the Second Petition (Amendment); the Amendment requests a filing extension to December 31, 2010.

On July 13, 2009, the Transportation Solutions Defense and Education Fund (TRANSDEF) filed a response to the Amendment. On July 27, 2009, Petaluma filed a reply.

### **3. Discussion**

#### **3.1. Timeliness**

Rule 16.4(d) of the Commission's Rules of Practice and Procedure (Rules) provides that if more than one year has elapsed, a petition for modification must explain why the petition could not have been presented within one year of the effective date of the decision. The Commission issued D.06-02-036 in February 2006, more than one year before Petaluma filed the Second Petition.

Petaluma explains that the need for this modification arose more than two and one half years after D.06-02-036 issued:

A quarter-cent sales tax measure to fund passenger rail service was approved by ballot initiative at the November 2008 election, and election results were certified by the Sonoma and Marin County Boards of Supervisors on December 16, 2008, which could be interpreted as an announcement of the resumption of passenger rail service. (Second Petition at 1.)

We find that Petaluma has sufficiently justified why its petition was not filed within the year contemplated by Rule 16.4(d) and we proceed to address the petition, as amended, on its merits.

### **3.2. The Modification Sought**

Petaluma's Amendment seeks an extension, until December 31, 2010, to file a new application for crossing authority. As described above in Section 2, D.06-02-036 requires Petaluma to file such an application before passenger service commences along the SMART tracks. More particularly, if Petaluma desires to retain the authority granted by D.06-02-036 while review of the new application is underway, Petaluma must file within 90 days after an announcement of the commencement of passenger service.

Petaluma states that the December 16, 2008, certification by the Sonoma and Marin County Boards of Supervisors that voters had approved Measure Q, a quarter-cent sales tax measure to fund passenger rail service, "could be interpreted as an announcement of the resumption of passenger rail service." (Second Petition, p.1) Thus, Petaluma points to that certification as the trigger for its Second Petition and Amendment.

At the time the Second Petition was filed, the SMART Board of Directors had not announced a date for the start of passenger rail service. The Amendment and TRANSDEF's response both recognize that SMART now anticipates that passenger rail service will commence in 2014. SMART's 2009 Measure Q Strategic Plan forecasts vehicle selection and final engineering in the near-term, construction activity beginning in 2011, and passenger train service beginning in 2014. (See <http://www.sonomamarintrain.org/>).

The Second Petition and Amendment both describe the economic hardships that will continue to prevent Petaluma from undertaking

environmental review of passenger rail service in the near future. Petaluma's difficulties stem primarily from the current economic downturn, which has resulted in budget cuts and necessitated substantial staff layoffs. Petaluma's planning department now has only one part-time city planner and two hourly contract planners to support work such as the new application D.06-02-036 requires.

TRANSDEF does not oppose Petaluma's request for an extension of the filing deadline but asks us to order that the new application, when filed, include information about whether the city's future road design will include a southern crossing of the Petaluma River. Such an order is premature since the Commission has already given Petaluma explicit notice that, as required by law, we expect the new application to be complete. (*See* D.06-02-036, Ordering Paragraph 2.) Failure to file a complete application will impede timely review and could place in jeopardy the continuation of Petaluma's current crossing authority.

The filing extension that Petaluma seeks, December 31, 2010, is three years before SMART expects to have passenger trains running and should provide more than ample time for review of a new application, if the application is complete when filed. Staff of the Rail Crossings Engineering Section in the Commission's Consumer Protection and Safety Division have informally advised the Commission that they not only do not object to Petaluma's extension request but that they would support extending the filing deadline to no later than 18 months prior to the commencement of passenger service on the SMART railroad tracks. Under the SMART Board's present forecast that date would fall sometime during mid-year 2012.

After considering all views and concerns expressed, we conclude that the preferred course is to grant Petaluma the filing extension its Amendment requests (until December 31, 2010) but also to permit Petaluma a low-cost means to seek additional flexibility, as long as any new proposal retains a review period of no less than 18 months between the date Petaluma files a complete, new application and the date passenger rail service is set to commence (the latter date as determined by the SMART Board). Therefore, should Petaluma require a further, reasonable extension of time to complete its environmental review of passenger rail service (because of continuing budgetary crises or a delay in the SMART passenger service schedule, etc.), Petaluma may apply to extend the filing deadline for its new application, in accordance with Rule 16.6 of the Commission's Rules. Rule 16.6 establishes an administrative means for parties to request an extension of time to comply with a Commission decision.

Requests for extension of time to comply with a Commission decision or order may be made by letter or e-mail to the Executive Director, with a copy served at the same time on all parties to the proceeding and on the Chief Administrative Law Judge. The e-mail, the letter, or a facsimile of the letter, must be received by the Executive Director at least three business days before the existing date for compliance. If the Executive Director grants the extension, the party requesting the extension must promptly inform all parties to the proceeding of the extension and must state in the opening paragraph of the document that the Executive Director has authorized the extension.

Accordingly, Petaluma's Amendment should be granted consistent with the foregoing.

#### **4. Comments on Proposed Decision**

The proposed decision of ALJ Jean Vieth in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments are

allowed pursuant to Rule 14.3 of the Commission's Rules. No comments were filed.

## **5. Assignment of Proceeding**

Commissioner Dian M. Grueneich is the assigned Commissioner and Jean Vieth is the assigned ALJ.

### **Findings of Fact**

1. The need for the requested modification occurred more than two and one half years after D.06-02-036 issued, measured by the December 16, 2008, certification of the Sonoma and Marin County Boards of Supervisors of the November 2008 election results (approval of Measure Q, which imposed a quarter-cent sales tax measure to fund passenger rail service).

2. Petaluma has shown good cause for the requested filing extension, given budget cuts and substantial staff layoffs attributable to the current economic downturn and given the SMART Board's forecast that passenger rail service will commence in 2014.

3. TRANSDEF does not oppose the Petaluma's extension request; Staff of the Rail Crossings Engineering Section would support a longer extension.

4. D.06-02-036 provides express notice to Petaluma that its new application, when filed, must be complete.

### **Conclusions of Law**

1. Petaluma has sufficiently justified why the Second Petition was not filed within the year contemplated by Rule 16.4(d).

2. Petaluma's March 16, 2009, Second Petition to Modify D.06-02-036, as revised by its June 15, 2009, Amendment to Petition to Modify D.06-02-036, should be granted to extend Petaluma's filing deadline to December 31, 2010.

3. If Petaluma requires a further, limited extension of time to complete its environmental review of passenger rail service, Petaluma should be authorized to apply for an extension of time to file its new application, in accordance with Rule 16.6 of the Commission's Rules of Practice and Procedure; however, any new filing deadline should be calculated so as to provide 18 months for Commission review between the date of the filing of the complete, new application and the date set by the SMART Board for the commencement of passenger rail service.

4. This decision should be effective immediately to provide Petaluma and other interested parties with clear schedule guidance.

## O R D E R

**IT IS ORDERED** that:

1. The Petition to Modify Decision 06-02-036, filed March 16, 2009, by the City of Petaluma (Petaluma), as modified by Petaluma's Amendment to Petition to Modify Decision 06-02-036, filed June 15, 2009, is granted, and Ordering Paragraph 2 of Decision 06-02-036 is modified to read as follows:

Petaluma's authorization continues as long as no passenger rail service operates along the SMART tracks. This authorization shall expire in the event that passenger rail service initiates along the SMART tracks. In the event passenger rail service commences along the SMART railroad tracks, Petaluma shall apply to the Commission for continued authorization of this at-grade crossing. Any such new application shall be complete (including but not limited to compliance with appropriate environmental review). Provided that Petaluma files such a new application ~~within 90 days after it is announced that passenger rail service shall commence along the SMART track~~ **on or before December 31, 2010**, Petaluma may include in the application a request for interim relief that would continue the authorization granted in this decision while the new application is pending.

2. If Petaluma requires a further, limited extension of time to complete its environmental review of passenger rail service beyond December 31, 2010, Petaluma may apply for an extension of time to file its new application in accordance with Rule 16.6 of the Commission's Rules of Practice and Procedure; however, any filing deadline beyond December 31, 2010 shall be calculated so as to provide 18 months for Commission review between the date of the filing of a complete, new application and the date set by the Board of Directors of the Sonoma Marin Area Rail Transit District for the commencement of passenger rail service.

3. This decision shall be effective immediately.

4. This proceeding is closed.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

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