

Decision 09-09-018 September 10, 2009

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

Application of the City of Mendota for authority to construct an at-grade pedestrian crossing along the prolongation of 2<sup>nd</sup> Street across the tracks of the Union Pacific Railroad Company in the City of Mendota, Fresno County.

Application 09-03-021  
(Filed March 11, 2009)

**DECISION GRANTING AUTHORIZATION TO THE CITY OF MENDOTA TO CONSTRUCT AN AT-GRADE PEDESTRIAN CROSSING ALONG THE PROLONGATION OF 2<sup>ND</sup> STREET ACROSS THE RAILROAD TRACK AND RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD IN THE CITY OF MENDOTA, COUNTY OF FRESNO**

**Summary**

This decision grants the City of Mendota (City) authorization to construct an at-grade pedestrian crossing along the prolongation of 2<sup>nd</sup> Street across the railroad track of the Union Pacific Railroad (UPRR), leased to the San Joaquin Valley Railroad Company (SJVR), in the City, County of Fresno. The new crossing will be identified as CPUC Crossing No. 103A-174.10-D.

**Discussion**

The City proposes to construct a pedestrian at-grade crossing at the prolongation of 2<sup>nd</sup> Street between Naples Street and Marie Street across the UPRR track to replace an unimproved and unauthorized pathway in essentially the same location, where trespassing routinely occurs. The existing unimproved pathway, which has no crossing surfaces, no warning devices, and dirt and gravel approaches, is used by adults, and many school children going to and

from nearby McCabe Junior High School. The proposed crossing is needed to provide a legitimate, safe, and proper crossing for pedestrians, who are currently trespassing across the railroad tracks, using the unauthorized pathway to get from one section of the City to the other.

In Application 04-05-038, filed on May 25, 2004 (amended May 27, 2005), the City originally sought authorization to construct the proposed crossing. On July 21, 2005 the Commission issued Decision 05-07-035 granting this authority. However, the City experienced various delays in the project and could not complete the project within the time authorized by the Commission; therefore, the City seeks the Commission's authorization once again to construct the proposed crossing. The City claims in its application filed on March 11, 2009, that all "parties are prepared to commence with the construction of these improvements if the Commission permits the renewal of the previous authorization."

The unimproved pathway has been for years, the preferred and most direct route for school children from McCabe Junior High School, who walk in an eastward direction along 2<sup>nd</sup> Street, crossing Naples Street, followed by crossing the UPRR track to reach the residences east of Marie Street. There are two at-grade highway-rail crossings nearby, State Route (SR) 33/ Derrick Avenue, CPUC Crossing No. 103A-173.90, and 9<sup>th</sup> Street, CPUC Crossing No. 103A-174.60 that are not appropriate or convenient for pedestrians who are currently using the unimproved pathway. SR 33/Derrick Avenue is a two-lane arterial highway that has no sidewalks at the rail crossing, and although this crossing is only approximately 1100 feet from the unimproved pathway, there is no direct public access between the two locations, and private property fencing and other impediments on the east side of the tracks. The 9<sup>th</sup> Street crossing is

0.63 miles from the unimproved pathway and also has no sidewalks that continue across the tracks. Due to the lack of sidewalks across the tracks at the existing crossings and limited pedestrian facilities leading to them, these crossings are a less preferred and more inconvenient route for school children who are currently using the unimproved pathway, and thus are impractical alternatives.

The train traffic at the proposed crossing will be three to four trains per week, operating at between 5 to 15 miles per hour. SJVR, which leases the track from UPRR, currently operates freight trains through this rail corridor, but UPRR typically does not. No passenger trains operate through the rail corridor.

The new crossing shall be a 10-foot wide sidewalk extending across the track with two Commission Standard 8 ( automatic flashing lights signal assembly) warning devices, each with a Commission 1-D (Pedestrians and Bicycles Only) sign attached to the mast of the warning device below the flashing light signals. The crossing will be equipped with swing gates (which open manually but are self-closing) extending across the entire pathway on both sides of the track, detectable warning tactile strips on both sides of the track, and concrete panel crossing surfaces. The swing gates will be connected to vandal resistant fencing extending north of the crossing of appropriate length (at least 100 feet) in order to channel pedestrians to the crossing. South of the proposed crossing, fencing shall be installed along the west side of the railroad right-of way to channelize pedestrians to the new crossing and to close access to another unauthorized crossing route near 5<sup>th</sup> Street, where trespassing is occurring. Vandal resistant fencing at this location shall extend from the existing private fence at the auto parts recycler adjacent to the unauthorized pathway (5<sup>th</sup> Street and Naples Street), north to the new 2<sup>nd</sup> Street swing gate, to prevent trespassing and direct

pedestrians to the proposed crossing. All fencing used as noted above and in all other areas along the right-of-way for this entire project should be of a robust nature so that it can not be easily vandalized or circumvented.

Accompanying the City's application for the proposed crossing is a memorandum of understanding executed by the City and the two railroads, UPRR and SJVR, stating that the parties will enter into agreements covering the City's acquisition of property rights (easement) from UPRR in order to construct the crossing. It also requires the City: to install and maintain fencing along the perimeter of UPRR's right-of-way on both sides of the crossing to channel pedestrians and bicyclists away from the railroad tracks; to implement measures to promote rail crossing safety at nearby schools; and to monitor the new crossing to ensure that students are abiding by railroad safety rules. The City also pledges that it will not seek authority for any additional highway-rail crossing projects that would produce a net increase in the number of existing at-grade crossings within city limits.

### **Environmental Review and CEQA Compliance**

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources 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 has the exclusive authority to 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 either the public agency that carries out the project,<sup>1</sup> or the one with the greatest responsibility for supervising or approving the project as a whole.<sup>2</sup> Here, the City is the lead agency for this project because they intend to construct the proposed pedestrian crossing, and the Commission is a responsible agency because it has jurisdiction to issue a permit for the project. 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.<sup>3</sup>

In this case, pursuant to State CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15061, the City has determined that the construction of the pedestrian crossing is classified as a minor alteration of an existing public or private structure (Class 1) involving negligible or no expansion of use beyond the existing right-of-way at the time of the City's determination, and thus is categorically exempt from the provisions of CEQA (Title 14 of the California Code of Regulations), Section 15301(c) , Class 1. On February 18, 2009, the City filed with the Fresno County Clerk, a Notice of Exemption for construction of the proposed crossing.

The Commission reviewed and considered the City's Notice of Exemption and finds it adequate for our decision-making purposes. We are aware of no reason why the City's determination of exemption from CEQA for the project is not warranted. Accordingly, we also find that the project is exempt from CEQA.

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<sup>1</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

<sup>2</sup> CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

<sup>3</sup> CEQA Guidelines, Sections 15050(b) and 15096.

### **Filing Requirements and Staff Recommendations**

This 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.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section has inspected the site of the proposed crossing, has reviewed and analyzed the plans submitted with the application, and recommends that the requested authority to construct the subject crossing be granted for a period of two years.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3232 dated April 16, 2009, and published in the Commission's Daily Calendar on April 17, 2009, 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 176-3232.

### **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 March 30, 2009. There are no unresolved matters or protests. A public hearing is not necessary.

2. The City requests authority, under Public Utilities Code Sections 1201-1205, to construct an at-grade pedestrian crossing along the prolongation of 2<sup>nd</sup> Street across the railroad track and right-of-way of UPRR, leased to SJVR, in the City of Mendota, Fresno County. The new crossing will be identified as CPUC Crossing No. 103A-174.10-D.

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

4. On February 18, 2009, the City filed a Notice of Exemption with the Fresno County Clerk, pursuant to CEQA, which contains the determination that the construction of the pedestrian crossing is a minor alteration of an existing public or private structure (Class 1) involving negligible or no expansion within the existing right-of way, and therefore the project is categorically exempt from CEQA under CEQA Guideline, Section 15301 (c), Class 1.

5. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Notice of Exemption wherein the City has determined that the construction of the proposed crossing is exempt from CEQA.

6. We agree with the City's findings that the project is exempt from CEQA.

## **Conclusions of Law**

1. The Notice of Exemption, as prepared by the City as the documentation required by CEQA, is adequate for our decision-making purposes.

2. The application is uncontested and a public hearing is not necessary.

3. 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 Mendota (City) is authorized to construct a pedestrian at-grade crossing along the prolongation of 2<sup>nd</sup> Street between Naples Street and Marie Street across the railroad track and right-of-way of the Union Pacific Railroad, leased to San Joaquin Valley Railroad Company to replace the existing unauthorized and unimproved pathway, in the City of Mendota, Fresno County. The new crossing will be identified as CPUC Crossing No. 103A-174.10-D.

2. The new crossing shall be a 10-foot wide sidewalk extending across the track with two Commission Standard 8 ( automatic flashing lights signal assembly) warning devices, each with a Commission 1-D (Pedestrians and Bicycles Only) sign attached to the mast of the warning device below the flashing light signals. The crossing will be equipped with swing gates (which open manually but are self-closing) across the entire pathway on both sides of the track, detectable warning tactile strips on both sides of the track, and concrete panel crossing surfaces.

3. The swing gates will be connected to vandal resistant fencing extending north of the crossing at least 100 feet, in order to channel pedestrians to the crossing. South of the crossing, at a minimum, vandal resistant fencing shall be installed along the west side of the railroad right-of way between the new swing gate at 2<sup>nd</sup> Street, and the existing private fence near 5<sup>th</sup> and Naples Streets.

4. The City shall notify the Commission's Consumer Protection and Safety Division - Rail Crossings Engineering Section (RCES) at least 5 business days prior to opening the crossing and placing the warning devices in service. Notification should be made to [rces@cpuc.ca.gov](mailto:rces@cpuc.ca.gov) .

5. Within 30 days after completion of the work under this order, the City shall notify RCES in writing, by submitting a completed Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements and forms can be obtained at the CPUC web site Form G page at <http://www.cpuc.ca.gov/formg>. This report may be submitted electronically to [rces@cpuc.ca.gov](mailto:rces@cpuc.ca.gov) as outlined on the web page.

6. The City shall comply with all applicable rules, including Commission General Orders and the California Manual on Traffic Control Devices.

7. This authorization shall expire if not exercised within two years unless time is extended or if the above conditions are not satisfied. The Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

8. A request for extension of the two-year authorization period must be submitted to RCES at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

9. This application is granted as set forth above.

10. Application 09-03-021 is closed.

This order becomes effective 30 days from 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