

Decision 09-11-024 November 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application granting authority for the City of Hesperia to construct a railroad lead track and siding track across Mojave Street, within the City of Hesperia, California: proposed CPUC Crossing No. 002D-1.25-C, DOT No. 929014D.

Application 09-07-012
(Filed July 10, 2009)

DECISION GRANTING AUTHORIZATION TO THE CITY OF HESPERIA TO CONSTRUCT AN AT-GRADE CROSSING ON MOJAVE STREET OVER ONE SET OF RAILROAD TRACKS OWNED BY THE CITY OF HESPERIA IN THE CITY OF HESPERIA, COUNTY OF SAN BERNARDINO

Summary

This decision grants the City of Hesperia (City) authorization to construct an at-grade highway-rail crossing on Mojave Street, with proposed CPUC No. 002D-1.25-C and DOT No. 929014D, over one set of railroad tracks owned by the City of Hesperia in the City of Hesperia, County of San Bernardino.

Discussion

The City requests authority to construct a railroad spur track from the BNSF Railway Company's (BNSF) Lucerne Valley Subdivision Cushenbury Branch tracks that will cross Mojave Street in the City at grade. The proposed spur track is part of the City's Industrial Rail Lead Track Project to promote economic growth within the City. The spur track will extend northerly approximately one mile from the existing BNSF track and will serve the City's future Industrial Park.

The daily vehicle traffic count on Mojave Street is estimated to be less than 65 vehicles per hour for peak afternoon periods with fewer than 65 vehicles in the peak morning periods. Train speeds are a maximum 10 miles per hour, with an estimated one train per week and increasing to three trains per week at full build-out.

The crossing will be equipped with two Commission Standard 9 (flashing light signal assembly with automatic gate) warning devices, one on each approach to the crossing. In addition, raised center medians at the crossing will be constructed at two feet in width, eight inches in height and 100 feet in length west of the crossing and 55 feet in length east of the crossing.

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,¹ or the one with the greatest responsibility for supervising or approving the project

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

as a whole.² Here, the City is the lead agency for this project because it is proposing and carrying out the project to improve economic growth within the City, 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.³

The City has prepared an Initial Study/Mitigated Negative Declaration (IS/MND) dated March 2009 for the Industrial Rail Lead Track project. The City approved a Notice of Determination (NOD) on January 21, 2009 and adopted the IS/MND on April 7, 2009 as the document required by CEQA, in approving the project. The IS/MND stated that there are no major environmental impacts associated with the proposed project and other minor impacts are mitigated to a less-than-significant level. No significant impacts relating to safety or traffic/transportation were identified, however, mitigations were adopted to reduce any potential noise impacts, although none were specifically identified by the IS. Other significant impacts identified were mitigated to a less-than-significant level, but are unrelated to the crossing portion of the project and the Commission's jurisdiction.

The Commission reviewed and considered the IS/MND and NOD environmental documentation and findings and the adopted Mitigation Measuring Monitoring Reporting Program and believes that the City adopted

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

³ CEQA Guidelines, Sections 15050(b) and 15096.

reasonable mitigations to the identified impacts. The Commission finds the IS/MND and NOD adequate for our decision-making purposes.

Filing Requirements and Staff Recommendation

The 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 highway across a railroad.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) has inspected the site of the proposed crossing, participated in a diagnostic review 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 176-3238, dated July 30, 2009, and published in the Commission Daily Calendar on July 31, 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 176-3238.

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 July 14, 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 a new at-grade highway-rail crossing across Mojave Street, in the City of Hesperia, County of San Bernardino.

3. RCES participated in a diagnostic review meeting for the proposed at-grade highway-rail crossing and concurred with the design and proposed warning devices.

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

5. The City prepared an IS/MND for this project and approved a NOD for the project on January 26, 2009.

6. The City adopted the IS/MND as the document required by CEQA on April 7, 2009.

7. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's IS/MND, including NOD and the Mitigation Measuring Monitoring Reporting Program.

8. The project will not have a significant effect on the environment.

Conclusions of Law

1. The NOD, Mitigation Measuring Monitoring Reporting Program and IS/MND prepared by the City as the documentation required by CEQA for the project are 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 Hesperia is authorized to construct a new at-grade highway-rail crossing for its own tracks across Mojave Street, to be identified as CPUC Crossing No. 002D-1.25-C and DOT No. 929014D, in the City of Hesperia, County of San Bernardino.
2. The crossing shall be equipped with two Commission Standard 9 (flashing light signal assembly with automatic gate) warning devices, one for each approach. In addition, raised center medians at the crossing will be constructed at two feet in width, eight inches in height and 100 feet in length west of the crossing and 55 feet in length east of the crossing.
3. The City of Hesperia shall notify the Commission's Consumer Protection and Safety Division - Rail Crossing Engineering Section at least five (5) business days prior to opening the crossing. Notification should be made to rces@cpuc.ca.gov.
4. Within 30 days after completion of the work under this order, the City of Hesperia shall notify Rail Crossing Engineering Section 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 as outlined on the web page.
5. The City of Hesperia shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

6. 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.

7. A request for extension of the two year authorization period must be submitted to Rail Crossing Engineering Section at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

8. The application is granted as set forth above.

9. Application 09-07-012 is closed.

This order becomes effective 30 days from today.

Dated November 20, 2009, at San Francisco, California.

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