

Decision 07-03-027 March 15, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Glendale for Authority to Construct an At-Grade Crossing of Flower Street Across the Los Angeles County Metropolitan Transportation Authority's Main Line Tracks in the City of Glendale, Los Angeles County.

Application 05-06-020
(Filed June 10, 2005)

OPINION APPROVING SETTLEMENT AGREEMENTS AND AUTHORIZING CONSTRUCTION OF FLOWER STREET AT-GRADE CROSSING

Summary

This decision approves two unopposed settlement agreements which provide for a new at-grade crossing in Glendale, substantial safety improvements to existing at-grade crossings in Glendale and Los Angeles, "best efforts" to secure needed funding for a grade-separated crossing of Fairmont Avenue at State Route 134 and Fernando Road, and cooperation to close the at-grade crossing at Doran Street.

Background

On June 10, 2005, the City of Glendale (Glendale or City) filed this application seeking Commission authorization to construct an at-grade crossing of Flower Street across Main Line Tracks 1 and 2 of the Los Angeles Metropolitan Transportation Authority. The tracks are used by Southern California Regional Rail Authority (Metrolink), the National Railroad Passenger Corporation (Amtrak), and the Union Pacific Railroad Company. Glendale stated that the

purpose of the crossing is to improve access to the Grand Central Creative Center, located west of the crossing, at which Walt Disney World Corporation expects to employ up to 7,000 persons.

Glendale explained that in Decision (D.) 01-02-022, this Commission approved the Flower Street at-grade crossing as a replacement for two other at-grade crossings which were closed. Glendale failed to begin construction within the two-year period specified in D.01-02-022, and its authorization for the Flower Street at-grade crossing lapsed and this application became necessary.

On July 14, 2005, the Commission's Rail Crossings Engineering Section (Staff) filed its protest to the application. Staff opposed the proposed at-grade crossing because Glendale had not provided an updated traffic study that reflected expected new commercial development, the design of the crossing was not safe, and other nearby crossings made the proposed crossing redundant. Staff also contended that Glendale had failed to demonstrate that grade separation was impracticable, as required by Commission regulations, decisions, and the Public Utilities Code.

On September 12, 2005, the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference (PHC) for September 30, 2005. However, Glendale informed the ALJ that it intended to supplement its application and that discussions with the staff were ongoing. In response, the ALJ removed the PHC from the calendar, directed the parties to meet and confer, and to file a status report after the supplement was filed.

On March 17, 2006, the ALJ issued a ruling noting that Glendale had not filed the supplement to its application, and required that parties file a status report no later than April 14, 2006. On March 29, 2006, Glendale filed its supplement to the application.

The parties submitted a joint status report and PHC statement on April 17, 2006. The parties stated that evidentiary hearings were required and they included a proposed procedural schedule.

The ALJ convened a PHC on May 9, 2006, and granted requests for party status from the Union Pacific Railroad Company, California Department of Transportation, the Southern California Regional Rail Authority, and the Pelanconi Homeowners Association. The procedural schedule proposed by the parties was adopted at the PHC.

Pursuant to the adopted procedural schedule, Glendale distributed its direct testimony on May 23, 2006.

On May 26, 2006, counsel for The Walt Disney Company (Disney) sent an electronic mail message to the assigned ALJ, with copies to the parties, requesting permission to intervene and for a continuance in the schedule. On June 2, 2006, the assigned Commissioner and ALJ issued their ruling determining the scope, schedule and need for hearing in this proceeding, which responded to the request for a continuance. Pursuant to the adopted schedule, a Public Participation Hearing (PPH) was held in Glendale on June 12, 2006, and the parties met and conferred regarding resolving issues in the proceeding without litigation.

On August 15, 2006, the ALJ convened the second PHC and set a schedule for distributing testimony. The schedule also provided for a mediation, facilitated by another ALJ, as a means for the parties to pursue resolution of this matter. For consideration at the scheduled mediation, the City circulated a settlement agreement it had reached with parties other than Staff and the Pelanconi Homeowners' Association. The mediation concluded without the Staff or the Homeowners' Association joining the settlement agreement and on

November 2, 2006, the City and Disney filed a motion for approval of the settlement agreement.¹ The settlement agreement supported the Flower Street crossing, with additional safety measures above and beyond those included in the application, and also provided for numerous safety enhancements to several nearby crossings which had not been included in the original application.

A third PHC was convened on November 7, 2006, and the parties returned to mediation. On November 20, 2006, the applicant and the Commission's Staff reached agreement on additional safety measures beyond those included in the first settlement agreement.² As provided in the second agreement, on December 19, 2006, Commission Staff filed a document stating its intention to withdraw its protest of the Flower Street at-grade crossing 15 days after a proposed decision approving the settlement agreements is mailed.

No comments in opposition to the settlement agreements have been filed.

Description of the Crossing

The proposed Flower Street at-grade crossing will be constructed across the Metrolink Main Line Tracks 1 and 2. These tracks currently carry about 67 high-speed passenger and 12 Main Line freight rail trains per day, with traffic expected to increase in the future.

¹ This is the first of the two settlement agreements at issue, and it is Attachment 1 to today's decision. The signatories are: the applicant, Walt Disney World Co., the Southern California Regional Rail Authority, the Union Pacific Railroad Company, and the California Department of Transportation.

² This hand-written agreement is the second settlement agreement, and it is Attachment 2 to this decision.

The crossing will be constructed by extending the existing Flower Street from its intersection with Air Way Road (where Flower Street currently ends) across the tracks to intersect with San Fernando Road, approximately 240 feet. Pelanconi Avenue will be opposite the Flower Street interconnection with San Fernando Road. A diagram of the proposed crossing and its safety features is Exhibit 2 to Attachment 1 to this decision.

Public Participation Hearing

A large crowd filled the Glendale auditorium for the PPH. After brief presentations by the applicant and the Commission staff, 46 speakers presented their comments over the course of nearly three hours.

Many speakers criticized Glendale City government for being overly receptive to business and real estate developer interests. Specifically, several speakers complained that they were not given information about the overall developments at the proposal stage and that their comments and concerns were disregarded in the decision-making process. Other speakers felt that Glendale City government had put business development ahead of resident's safety and quiet enjoyment of their homes and neighborhoods.

Speakers also emphasized the safety hazards inherent in an at-grade crossing of a high-speed rail line. The proposed Flower street at-grade crossing is located near the Grayson Power Plant, an electric generating plant and associated substation owned and operated by the City of Glendale.

The primary objection of other speakers was the traffic likely to spill over from the new crossing into the adjacent residential neighborhood. Residents fear that motorists using the crossing will attempt to avoid San Fernando Road (a reportedly severely congested main arterial road) by driving through the residential neighborhood. These drivers may disregard the lower residential

area speed limit in their haste to take an alternative route to the freeway ramps and will thus pose a danger to residents and their families.

Representatives of local and regional business interests supported the proposed crossing. They explained that the Walt Disney Corporation development will bring about new 7,000 jobs to Glendale, with about \$1 billion in payroll, and result in up to \$20 million a year in additional municipal income to the City of Glendale. They contended that the Flower street crossing is necessary to alleviate projected traffic congestion at existing crossings.

Provisions of the Settlement Agreements

A. First Settlement Agreement

This agreement provides for approval of the Flower Street at-grade crossing with state-of-the-art safety features and safety improvements to other crossings both within Glendale and shared with the City of Los Angeles:

- The proposed Flower Street crossing will include advance traffic signal pre-emption program, four quadrant gates, raised medians, a refuge lane to provide additional storage space for right-turn traffic going southbound on San Fernando Road, no left turn lane from eastbound Flower Street onto San Fernando Road, and a smoother approach grade over the tracks.
- The existing Grandview Avenue and Sonora Avenue crossings will receive safety enhancements, including an advance traffic signal preemption program, designed, funded, and constructed by the City, following its environmental review.
- The existing Broadway/Brazil and Chevy Chase crossings, which are shared with the City of Los Angeles, will also receive safety enhancements.
- The settling parties will use their best efforts to close the Doran Street crossing, with the cooperation and assistance of the City of Los Angeles.

- The City will place \$2,000,000 in an escrow fund as an initial deposit to fund the safety improvements and closing at the three shared crossings.

B. Second Settlement Agreement

The second settlement agreement builds on the first and requires greater specificity and certainty in financial commitments, as well as active pursuit of closing the Doran Street crossing and constructing a grade-separated crossing of Fairmont Avenue at State Route 134 and San Fernando Road.

This agreement obligates the City and its Redevelopment Agency, within 30 days of the Commission approval of the settlement agreements, to pass resolutions authorizing \$6 million to fund the safety improvements for the rail corridor. Also within 30 days of the Commission's approval, the City will begin environmental review of the safety improvements to the other crossings in Glendale and the crossings shared with the City of Los Angeles.

The City will also provide written confirmation of its commitment to use its "best efforts" to pursue funding for the grade-separated crossing of Fairmont Avenue at State Route 134 and San Fernando Road. The City will provide quarterly updates to the Commission's Executive Director and the Director of the Consumer Protection and Safety Division on the status of all the crossing improvements in the settlement agreement and funding for the grade separation.

Discussion

Where the parties to a proceeding settle disputed issues,³ the Commission applies the criteria set forth in Rule 12.1(d) of our Rules of Practice and

³ Although no party opposes the settlement agreements, the Pelanconi Homeowners' Association did not join in the agreements.

Procedure to evaluate the proposed settlement. This rule requires that the settlement be "reasonable in light of the whole record, consistent with law, and in the public interest."

As analyzed below, the settlement agreements as presented comply with these criteria, and we approve the agreements.

A. Reasonable in Light of the Whole Record

As indicated by the lengthy procedural history set forth above, this has been an evolving application with the City making numerous safety improvements to address issues raised in the proceeding.

The record shows that in D.01-02-022, the Commission authorized the City to construct and open an at-grade crossing at Flower Street, after the City closed two other at-grade crossings in Glendale (Bekins Way and Allen Avenue). Although the City closed the two crossings, it did not timely commence its construction of the Flower Street at-grade crossing. Consequently, the City was required to file this subsequent application to again seek authorization to construct the Flower Street at-grade crossing.

As described above, the settlement agreements require the City to take additional safety measures beyond the initial proposal. The advance traffic signal preemption will override regular traffic signaling at nearby intersections to ensure that traffic can clear the at-grade crossing well before the arrival of the train. A pre-signal will be used to stop eastbound vehicles prior to the tracks, rather than continuing through the intersection and being stopped by a red light at the Air Way intersection, thus preventing vehicles from being stopped on the tracks. The four quadrant gates will completely enclose the track crossing when a train passes to prevent reckless drivers from entering the crossing on the wrong side of the road. Raised medians on the Flower Street extension will also prevent

similar actions. A refuge lane will also be added to southbound San Fernando Road to accommodate any traffic exiting the crossing and turning right onto San Fernando Road when traffic is congested. The left hand turn from Flower Street on to northbound San Fernando Road has been eliminated to reduce traffic movements and prevent direct access from the Flower Street crossing to Pelanconi Avenue. Finally, the grade change in the intersection has been decreased to provide a smoother approach and departure.

Safety improvements will also be made at two nearby crossings in Glendale. In cooperation with the City of Los Angeles, Glendale will use best efforts to close the Doran Street crossing and construct the grade separation of Fairmont Avenue at State Route 134 and San Fernando Road.

Our Staff concluded that, taken together, these safety improvements will sufficiently reduce the risks to motorists, bicyclists, and pedestrians to “offset the risks created by construction of the Flower Street at-grade crossing.”

We agree and conclude that a crossing constructed in compliance with the settlement agreements will be reasonable in light of the whole record.

B. Consistent with Law

The second requirement for approving these settlement agreements under Rule 12.1(d) is that they are consistent with law. As set forth in the analysis below, the proposed Flower Street crossing is consistent with standards by which the Commission evaluates requests for authority to construct and maintain an at-grade crossing.

In D.03-12-018, the Commission recently restated the requirements of an applicant seeking authority for an at-grade crossing:

1. A demonstration that there is a public need for the crossing;

2. A convincing showing that the applicant has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation;
6. Staff's recommendation, including any conditions; and
7. Commission precedent in factually similar crossings.

The presumption is that grade separation is required, and the applicant must overcome this presumption, with convincing evidence, that the particular crossing can be safely operated as an at-grade crossing.

Here, all parties agree that new commercial development will substantially increase the motor vehicle traffic that will cross Metrolink Main Line Tracks 1 and 2. The City's traffic study showed that, absent the proposed Flower Street crossing, the level of service at the nearest alternative crossing would deteriorate to level of service F, which is characterized by "tremendous delays with continuously increasing queue lengths." With the proposed crossing, the level of service improves to B during the am commute and E for the pm commute. No party offered evidence in opposition, and we conclude that the record shows that there is a need for this crossing.

Similarly, all parties agree that the two settlement agreements improve overall safety in the rail corridor. Our Staff, however, continues to have reservations about any at-grade crossing of a high-speed rail line. We share these reservations, and continue to support the presumption against any new at-grade crossings. The settlement agreements present us with overall safety

improvement for the corridor that also meets the applicant's interests in supporting commercial development. We note as well that the level of safety improvements reflected in the settlement agreements is substantially greater than included in the initial application.

The local community and emergency officials, i.e., the applicant and its emergency services divisions, as well as regional economic boosters, all support the crossing.

As shown by the summary of the Public Participation Hearing, however, the general public, and especially those who may be affected by the proposed crossing, do not support it. The root cause of much of the dissatisfaction appears to be a sense of having been kept out of the City's decision making on the crossing. The residents' specific complaints, however, appear to have been addressed by the modifications to the crossing in the settlement agreements. The adjacent residential neighborhood is protected from crossing traffic because there will be no direct access to Pelanconi Avenue from the crossing, and medians should hamper any illicit efforts to access the neighborhood. General traffic in the surrounding areas, particularly on San Fernando Road, will almost certainly increase but this will occur regardless of the Flower Street crossing. We encourage Glendale and its residents to cooperate in addressing any traffic issues that arise as the new commercial development is occupied.

No party supported a grade separated structure at this crossing. As set forth in the settlement agreements, Glendale will use its "best efforts" to obtain funding for a grade separated structure of Fairmont Avenue at State Route 134 and San Fernando Road, which will alleviate the heavy use of this and other at-grade crossings.

Although our staff does not affirmatively support this crossing, staff agrees that the settlement agreements result in increased safety for the traveling public in the Glendale Metrolink corridor.

Finally, we have precedent directly on point in that we have previously approved an earlier version of this crossing. As now presented, this crossing and others have enhanced safety features, and Glendale is committed to seeking the closure of another crossing and construction of grade-separation structure.

In sum, the Flower Street at-grade crossing and related safety measures provided for in the settlement agreements meets our standards for approval of an at-grade crossing. We, therefore, conclude that the settlement agreements are consistent with the law.

C. In the Public Interest

The public interest is furthered by safe crossings. These settlement agreements provide for substantial safety enhancements at existing crossings, state-of-the-art safety features at the proposed Flower Street crossing, and best efforts to close another crossing and construct a grade separation. We conclude that the settlement agreements are in the public interest.

We find that the two unopposed settlement agreements are reasonable in light of the record, consistent with the law, and in the public interest. For these reasons we adopt the settlement agreements, authorize the applicant to construct and maintain a public at-grade crossing of the Metrolink Main Line Tracks 1 and 2 at Flower Street in Glendale. Unless substantial physical construction of an at-grade crossing of Flower Street has occurred and the City is diligently pursuing completion of the crossing, this authority shall expire two years from the effective date of our order.

Compliance With CEQA

The Glendale Redevelopment Agency is the lead agency for CEQA under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Section 21000 et seq. The Commission is in the role of responsible agency under CEQA, which requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's environmental impact report or negative declaration prior to acting upon or approving the project (CEQA Guideline Section 15050(b)). The specific activities that must be conducted by a responsible agency are contained in CEQA Guideline Section 15096.

Commission staff has reviewed the Glendale Redevelopment Agency's environmental documents and found these environmental documents to be adequate for our decision-making purposes. The scope of our permitting authority under the present Application is limited to the proposed Flower Street crossing. We find that the Glendale Redevelopment Agency reasonably concluded that the proposed activity will not have any significant effect on the environment. Accordingly, we adopt that finding for purposes of our approval.

Need for Evidentiary Hearings

No party opposes the settlement agreements so evidentiary hearings are not necessary

Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Therefore, as provided in Rule 14.6(c) of the Commission's Rules of Practice and Procedure, the period for comment was reduced to 15 days.

Glendale and Staff filed comments setting out minor editorial corrections, which have been incorporated.

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The settlement agreements provide for safety enhancements to at-grade crossings at Grandview Avenue and Senora Avenue in Glendale, as well as at the Broadway/Brazil and Chevy Chase crossings shared with the City of Los Angeles.

2. The settlement agreements require Glendale, in cooperation with the City of Los Angeles, to use its best efforts to close the Doran Street crossing.

3. The settlement agreements require Glendale to use its best efforts to obtain funding for a grade separated crossing of Fairmont Avenue at State Route 134 and San Fernando Road.

4. The settlement agreements provide for state-of-the-art grade crossing protective devices, which are appropriate to protect the safety of the public at the Flower Street crossing, considering the anticipated volume and speed of vehicular traffic, the anticipated number of train movements, the speed of train operations, and the visibility at each location.

5. No party opposes the settlement agreements.

6. It is desirable to expedite the effective date of the Commission's Order to enable the parties to commence construction of the Flower Street crossing and implement safety enhancements at the other crossings.

7. Glendale is the lead agency under CEQA and has prepared environmental documents which are adequate for our decision-making purposes. These

documents show that the proposed activity will not have a significant effect on the environment.

8. The scope of our CEQA authority under this application is limited to the Flower Street crossing.

Conclusions of Law

1. The settlement agreements are reasonable in light of the whole record, consistent with law, and in the public interest.

2. The Commission should adopt the settlement agreements as part of its Order, with consistent additional conditions to ensure that all grade crossing protection provided for by the settlement agreements will comply with the Commission's applicable General Orders and other rules.

3. This is an unopposed matter which grants the relief requested.

4. The comment period on the proposed decision should be reduced to 15 days.

5. The Order should be effective today.

O R D E R

IT IS ORDERED that:

1. The written settlement agreement entered into on September 27, 2006, among City of Glendale (Glendale), Walt Disney World Co., Southern California Regional Rail Authority (Metrolink), Union Pacific Railroad Company, and California Department of Transportation, a copy of which is appended as Attachment 1, is adopted without modification, and its terms are incorporated herein to the extent of the Commission's jurisdiction. The parties shall comply with all provisions of the agreement.

2. The written settlement agreement entered into on November 20, 2006, among Glendale, Walt Disney World Co., Metrolink, and the staff of the Commission's Rail Crossing and Engineering Division, a copy of which is appended as Attachment 2, is adopted without modification, and its terms are incorporated herein. The parties shall comply with all provisions of the agreement.

3. Glendale is authorized to construct, operate, monitor, and maintain a public at-grade crossing of the Metrolink Main Line Tracks No. 1 and 2 at Flower Street in Glendale, California. The new public crossing will be identified as Public Utilities Commission Crossing No. 101 VY-8.50.

4. Consistent with past Commission practice, Glendale and Metrolink shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices (CA MUTCD), published by the California Department of Transportation.

5. Glendale and Metrolink shall meet and confer with staff of the Rail Crossing Engineering Section regarding the specific details for safety systems to be installed at the Flower Street crossing and the safety enhancements to be made to the other crossings as provided in the settlement agreements.

6. Glendale, in coordination with Metrolink and the Rail Crossing Engineering Section shall develop a regular maintenance schedule for all safety devices at this crossing under each party's jurisdiction.

7. Prior to construction of the Flower Street crossing, Glendale shall submit final construction plans to the Rail Crossing Engineering Section.

8. Within 30 days after completion of the work under this order, Metrolink shall notify the Commission's Rail Crossing Engineering Section that the

authorized work is completed, by submitting a completed Commission Standard Form G titled Report of Changes at Highway Grade Crossings and Separations.

9. Unless substantial physical construction of an at-grade crossing of Flower Street has occurred and Glendale is diligently pursuing completion of the crossing, the authority granted in this order shall expire if not exercised within two years of the effective date, unless the time is extended by the Commission.

10. The authority granted in this order may be suspended or revoked in the event that the parties, or any of them, fail to comply with the foregoing conditions of approval. The Commission, upon a showing of good cause, may at any time revoke or modify the authority if public convenience, necessity, or safety so require.

11. No hearing is necessary in A.05-06-020.

12. Application 05-06-020 is closed.

This order is effective today.

Dated March 15, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners