Decision 07-10-011 October 4, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Big Bird Partnership, a California General Partnership, Complainant, v. Union Pacific Railroad, a Corporation, formerly known as Southern Pacific Railroad Company, Defendant.	Case 06-10-012 (Filed October 10, 2006)

DECISION APPROVING SETTLEMENT

1. Summary

This decision approves a settlement between Big Bird Partnership and Union Pacific Railroad Company regarding a private at-grade crossing (DOT 745371U) near Pismo Beach, California. The settlement agreement provides for the establishment and maintenance of the crossing and we find that it is (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest, in accordance with Commission Rule 51.1(e). Thus, we approve the settlement.

2. Background

On October 10, 2006, Big Bird filed this complaint alleging that defendants had violated California law and Commission regulations by destroying a crossing which allowed Big Bird access to its property. The complaint requested a Commission order directing Union Pacific to reconstruct and maintain the crossing. In its answer, Union Pacific raised, among other defenses, that a private crossing was not necessary at this location, but that the parties were attempting to reach an informal resolution of this matter.

The parties continued negotiations, with the assistance of Commission staff. A formal investigative report was prepared by the staff and provided to the parties. A prehearing conference was held on June 8, 2007, and the parties participated in formal mediation in June 2007.

On September 17, 2007, the parties filed their joint motion for Commission approval of their Settlement Agreement, which resolved all outstanding issues in this proceeding. The Settlement Agreement is Attachment A to today's decision.

3. Description of the Settlement Agreement

The Settlement Agreement provides that Union Pacific will reestablish the private crossing, including private crossing signage as required by California and federal regulations. The duty of removing vegetation in specific areas is assigned between the parties. Union Pacific recognizes Big Bird's right to the crossing, and Big Bird agrees that the crossing will be strictly private and not open to the public. Union Pacific agrees to make a settlement payment to Big Bird to, among other things, fund paving and approach slope reduction for the crossing.

The Settlement Agreement also provides that Big Bird will "promptly notify" Union Pacific of any "significant" change in its use of the crossing,

including any plans to subdivide adjacent property. Big Bird, however, retains the right to "change or increase its use" of the crossing 'as permitted by law."

4. Discussion

4.1. Approval of Parties' Settlement Agreement

4.1.1. Reasonableness in Light of the Whole Record

The parties contend the Settlement Agreement is reasonable in light of the whole record because it provides a safe, private crossing for Big Bird subject to continuing regulation by this Commission and federal authorities.

We agree that the Settlement is reasonable in light of the record, and reflects a reasonable compromise between the parties.

4.1.2. Consistent With the Law

The parties represent that no term of the proposed Settlement contravenes statutory provisions or prior Commission decisions. We find that the Settlement Agreement is consistent with the law.

4.1.3. In the Public Interest

Finally, we find that the Settlement is in the public interest. The proposed Settlement Agreement provides for a safe, private at-grade crossing.

The Settlement Agreement, however, recognizes that Big Bird may subdivide or develop its property in a manner that could significantly increase or affect the use of the private crossing. Although the Agreement provides for notice to Union Pacific, our staff should also be informed of changes in the use of this crossing to evaluate the need for any additional safety measures. We will, therefore, require that Big Bird notify the Director of the Consumer Protection and Safety Division of any planned material increase above current levels in use of the crossing.

For the foregoing reasons, the Commission finds that the Settlement in this proceeding is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The Settlement Agreement should therefore be approved.

5. Categorization and Need for Hearings

The original complaint categorized this proceeding as adjudicatory and determined that hearings were necessary. The motion we approve today was filed before the hearing, and the hearing therefore did not occur.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

7. 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. All parties have agreed to the Settlement Agreement.
2. The Settlement Agreement requires Union Pacific to reestablish an at-grade private crossing, and for maintenance and vegetation removal.
3. Big Bird should notify the Director of the Consumer Protection and Safety Division of any planned material increase in use of this private crossing.

Conclusions of Law

1. The Settlement in this proceeding is reasonable in light of the whole record, is consistent with the law, and is in the public interest.
2. Hearings are not necessary.

3. The Settlement Agreement should be approved.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement appended to this decision as Appendix A and signed by all parties is approved.
2. Big Bird Partnership shall provide written notification to the Director of the Consumer Protection and Safety Division of any planned material increase in use of this private crossing.
3. The Settlement Agreement is binding on the parties.
4. The Settlement Agreement shall be enforceable before this Commission.
5. No hearing was necessary for this proceeding.
6. Case 06-10-012 is closed.

This order is effective today.

Dated October 4, 2007, at San Francisco, California.

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