

Decision 07-10-026 October 18, 2007

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

Application of the City of Fontana for authority to construct a new Cypress Avenue Overhead highway-rail crossings, proposed CPUC Crossing No. 001-B-531.93-A, DOT No. 924231L within the City of Fontana, California, over the Union Pacific Railroad.

Application 07-06-032  
(Filed June 28, 2007)

**OPINION GRANTING AUTHORITY TO CONSTRUCT A NEW GRADE-SEPARATED HIGHWAY-RAIL CROSSING AT CYPRESS AVENUE WITHIN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO**

**Summary**

This decision grants the City of Fontana (City) permission to construct a new Cypress Avenue structure over Union Pacific Railroad Company (UPRR) tracks, in the City of Fontana, San Bernardino County.

**Discussion**

Proposed Project

The California Department of Transportation (Caltrans), the Federal Highway Administration (FHWA), and the City, in cooperation with the County of San Bernardino, propose to construct a new four-lane Cypress Avenue bridge structure over the UPRR tracks. The new grade-separation would extend approximately 0.5 mile from Valley Boulevard on the north to Slover Avenue on the south. The new grade-separation will provide an additional access route across Interstate 10 freeway, which will relieve

current and future congestion and improve safety at the adjacent existing Citrus and Sierra Avenue freeway interchanges. Plans attached to the application show the minimum permanent vertical clearance of 23 feet 0 inches will be provided from the top of rail to the under-side of the bridge and minimum permanent horizontal clearance will be 18 feet 0 inches from the future tracks centerline to the face of future crash wall. However, during construction the vertical clearance will be 21 feet 0 inches. Commission General Order (GO) 26-D requires a minimum vertical clearance of 22 feet 6 inches. City requests permission for temporary deviation from the vertical clearance requirements of GO 26-D. In addition to UPRR trains, the National Passenger Railroad Corporation (Amtrak) operates Amtrak passenger trains over this line. The application includes letters of concurrence from UPRR and Amtrak to grant the requested permission to deviate from GO 26-D.

#### Environmental Review

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 must approve the project pursuant to 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 the public agency with the greatest responsibility for supervising or approving the project as a whole.<sup>1</sup> Here, the lead agency is the City of Fontana for this project and the Commission is a responsible agency. 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>2</sup>

A Draft Initial Study/Environmental Assessment (IS/EA), dated December 2005, was prepared for the proposed project. The purpose of the IS/EA was to evaluate the potential environmental impacts associated with implementation of the proposed Cypress Avenue Overcrossing Project. The Draft IS/EA was prepared to fulfill the requirements of the CEQA and the National Environmental Policy Act (NEPA, U.S.C. 42 Section 4321 et seq.) and to comply with the environmental regulations of the City and Caltrans.

On March 28, 2006 FHWA issued a Finding of No Significant Impact. The City, acting as the lead agency under CEQA, certified a Final Initial Study with a Mitigated Negative Declaration/Environmental Assessment (with Finding of No Significant Impact) dated March 2006.

---

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

<sup>2</sup> CEQA Guidelines, Sections 15050(b) and 15096.

### **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 road across railroad.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section has reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant the City's request.

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

In Resolution ALJ 176-3195 dated July 12, 2007, and published in the Commission Daily Calendar on July 13, 2007, 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 176-3195.

### **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 6, 2007. There are no unresolved matters or protests; a public hearing is not necessary.

2. City requests authority, under Public Utilities Code Sections 1201-1205, to construct a grade-separated highway-rail crossing over UPRR tracks.

3. City requires permission for temporary deviation, during construction period, from the vertical clearance requirements of GO 26-D. Amtrak and UPRR have provided letters of concurrence to the project.

4. City acting as the lead agency under provisions of the CEQA certified the Final Initial Study with a Mitigated Negative Declaration/Environmental Assessment (with Finding of No Significant Impact) for the Cypress Avenue Overcrossing.

5. The Commission is a responsible agency for this project, and has reviewed and considered the lead agency's Final Initial Study with a Mitigated Negative Declaration/Environmental Assessment (with Finding of No Significant Impact).

### **Conclusions of Law**

1. The Final Initial Study with a Mitigated Negative Declaration/Environmental Assessment (with Finding of No Significant Impact) prepared by the City as the documentation required by CEQA for the project 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.

## ORDER

**IT IS ORDERED** that:

1. The City of Fontana (City) is authorized to construct a grade-separated highway-rail crossing structure over Union Pacific Railroad (UPRR) tracks, identified as CPUC Crossing No. 001B-531.93-A in the City of Fontana, County of San Bernardino.
2. City is granted permission to have temporary impaired vertical clearance of 21 feet 0 inches (measured from top of rail to the lowest portion of the overhead structure) during the construction period only.
3. National Railroad Passenger Corporation (Amtrak) and UPRR shall issue instructions to their operating employees regarding the temporary reduced overhead clearance of 21 feet 0 inches beneath the proposed Cypress Avenue Overhead bridge structure. They shall submit the instructions in advance of the date when the City will create the temporary overhead clearance to the Los Angeles office of the Commission's Consumer Protection and Safety Division – Rail Operations Safety Branch (ROSB) and Rail Crossings Engineering Section (RCES).
4. The City shall notify Amtrak and UPRR and the Los Angeles office of ROSB and RCES at least 15 days but not more than 30 days in advance of the date when the City will create the temporary overhead clearance.
5. Within 30 days after completion of the grade-separated crossing, City shall notify RCES that the authorized work is completed by submitting a completed Commission Standard Form G titled *Report of Changes at Highway Grade Crossings and Separations*.
6. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with.

Authorization may be revoked or modified if public convenience, necessity, or safety so require.

7. A request for extension of the three-year authorization 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.

8. This application is granted as set forth above.

9. Application 07-06-032 is closed.

This order becomes effective 30 days from today.

Dated October 18, 2007, at San Francisco, California.

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