FILED
04/23/18
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of the California High-Speed Rail Authority for Approval to Construct Two New Grade Separated Crossings Over the Proposed High-Speed Rail Tracks Operated by California High-Speed Rail Authority at Kansas Avenue (MP 231.18) and Kent Avenue (MP 232.21) Located in the County of Kings, State of California.	A.18-02-017 (Filed February 23, 2018)

THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY'S REPLY TO THE PROTEST OF COUNTY OF KINGS TO THE APPLICATION TO CONSTRUCT TWO GRADE-SEPARATED HIGHWAY-RAIL CROSSINGS IN THE COUNTY OF KINGS (APPLICATION NO. 18-02-017)

I. INTRODUCTION

On February 23, 2018, the California High-Speed Rail Authority (CHSRA) filed Application No. 18-02-018 (Application) seeking approval to construct two grade separate crossings in Kings County, California.

On April 11, 2018, Kings County (County), an openly hostile opponent of the California High-Speed Rail Project (Project), filed the Subject Protest to the Authority's Application. (Protest)

As more fully set forth below, the Protest is not presented in good faith; it is offered solely to advance the County's open and hostile opposition to the Project itself; it is unsupported by law or fact, and it should be summarily rejected.

II. THE PROTEST WAS NOT PRESENTED IN GOOD FAITH

The California Public Utilities Commission's Rules of Practice and Procedure, Rule 1.1 states:

> *Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to so do and agrees to comply with the laws of this State; to maintain the respect due to the commission and its Administrative Law Judges; and never to mislead the Commission or its staff by any artifice or false statement or fact or law."*

Contrary to the mandates imposed by Rule 1.1, the County's Protest was not offered in good faith and represents nothing more than the continued effort by the County to delay and obstruct the High-Speed Rail Project (Project).

From its inception, the County has actively opposed the Project by filing multiple legal actions attacking the Authority's funding , its environmental approvals , and even the decisions rendered on Project's behalf by the Surface Transportation Board .

In February of 2015, the County Board of Supervisors even took the extraordinary step of adopting, as its formal platform, to "oppose any federal funding or support of the California High Speed Rail Project". See "Exhibit 1" to the Declaration of Donald A. Odell in support of the California High-Speed Rail Authority's Response to The Kings County CPUC Protest to Application of the California High-Speed Rail Authority to Construct Two Grade-Separated Highway-Rail Crossings in County of Kings. Hereinafter "Odell Dec."

The County's open hostility to the Project has not only subject to Project to extensive public criticism by County officials, it resulted in the recusal of the entire bench of the Kings County Superior Court from all Authority's cases filed in the County.

This mass recusal required the Judicial Counsel to appoint Los Angeles County Superior Court Judge Edward Ross to the bench, this on a two day per month schedule, to the Authority's condemnation cases in Kings County, causing significant delays in the Authority's condemnation actions and in turn, the Project itself.

By April of 2016, the County tactics has delayed the Project to such a point that the Authority was forced to exercise the State's sovereign rights over the sections of the County's roads needed for the Project, which including the Excelsior Avenue, Flint Avenue, and Fargo Avenue overpasses area subject to this Application. See Letter from California High-Speed Rail Authority to Board of Supervisors, County of Kings Re: High-Speed Rail Project – Status Update and Planned Construction Activities, dated April 28, 2016, attached as "Exhibit 2" to Odell Dec.

Having impacted the Project to the extent possible by its prior actions, the County now turns its sights on attacking the Project at the project element approval stage and presents before this Commission, not with a good faith concern about the design or the grade separated crossings, which, as more fully set forth herein below fully comply with all appropriate engineering and design standards, but with the wrongful intent of furthering its misplaced opposition to the Project itself.

III. Reply

The California High-Speed Rail Authority (the "Authority") respectfully submits this Reply to the Protest of the County of Kings (the "County") to the Authority's Application No. 18-02-017 (the "Application") pursuant to California Public Utilities Commission (the "CPUC" or "Commission") Rule of Practice and Procedure 2.6(e). As the CPUC's Safety and Enforcement Division's Rail Crossings and Engineering Branch ("SED") has already determined, the two grade-separated crossings proposed by the Application comply with applicable Rules of Practice and Procedure and with the safety and engineering requirements of General Order 26-D. Consistent with the SED's determination that there are "no safety or other issues with A.18-02-017," the Application should be granted.

The County's Protest is entirely without merit. The Protest opens with a baseless allegation – that the "CHSRA has knowingly, willingly, and voluntarily acted in disregard of the safety and

welfare of the communities represented by the County." This accusation is, of course, entirely unfounded and directly contrary to the facts. Moreover, the County's meritless allegations regarding the Authority's supposed subjective intent are flatly irrelevant to the CPUC's assessment of proposed grade crossings. Rather, in evaluating the Application, the CPUC must consider whether the proposed grade crossings comply with applicable rules and statutes, namely the safety and engineering requirements of General Order 26-D. As discussed in the SED's Response and in this Reply, the Application fully complies with applicable safety standards and, for this reason, should be granted.

IV. The Authority's Application Should be Granted Because it has Satisfied all Applicable Safety Standards Established by the Commission.

As detailed in its Response, the SED conducted site visits to the proposed crossings and thoroughly reviewed the Authority's Application. Based on this evaluation, the SED determined that "the crossings comply with all applicable regulatory and safety requirements and [] the Application material meets the requirements set forth in the Commission's Rules of Practice and Procedure." Consequently, the SED's Response concludes that "[t]he Commission should approve these crossings." On this basis, alone, the Application should be granted.

V. The Authority's Adherence to Local Improvement Standards is Irrelevant to This Proceeding.

A. The Commission is not Required to Implement Local Standards, Such as the County's Improvement Standards.

The County's Protest relies almost exclusively upon the Application's purported failure to comply with the County's Improvement Standards. However, the County has not provided any legal authority in support of the proposition that in reviewing an application to construct overcrossings in a given county, the Commission is obligated to implement that county's local regulations, rules, or standards. In fact, such position is directly at odds with the clear language of the California Public Utilities Code, section 1202, which states that "[t]he Commission has the exclusive power . . . [t]o determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection . . . of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street

by a railroad or of a railroad by a street." (Emphasis added.) In line with section 1202, "Judicial decisions have established that the subject of railroad grade crossings is a matter of statewide concern within the jurisdiction of the Public Utilities Commission and that it does not come within the field of municipal affairs." (*City of Union City v. S. Pac. Co.* (1968) 261 Cal. App. 2d 277, 279 (emphasis added).) Given the Commission's exclusive jurisdiction over railroad crossings, there is no basis for the assertion that the Commission is in any way bound by the County's local construction standards. The County's allegations as to the Authority's purported failure to comply with local construction standards should, therefore, have no bearing on the Commission's evaluation of whether the Application complies with applicable safety standards.

B. The Authority is not Bound by the County's Local Construction Standards.

Despite the County's sweeping assertion to the contrary, the Authority is not bound by the County's local construction standards. The State of California, via the Authority, possesses sovereign rights in connection with the high-speed rail project. As such, and as will be discussed in greater detail in subsequent briefing in this matter, the Authority, as an entity of the State of California, is not subject to local construction standards. (*See e.g., City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 244; *see also Rapid Transit Advocates, Inc. v. Southern California Rapid Transit Dist.* (1986) 185 Cal.App.3d 996, 1002.) Consistent with principles of sovereign rights, county roads, such as the roadways and overcrossings at issue in this proceeding, are held in trust for the State of California. Thus, the Authority, as a State entity, may modify the County's roadways without County permission. California's courts have consistently held that property under county management is public property belonging to the State. (*Reclamation Dist. No. 1500 v. Superior Court* (1916) 171 Cal. 672, 679-80.) Even if a county holds legal title to the property, it is property held in trust for the public. (See *id.* at 679 ("The proprietary interest in all such property belongs to the public, and if there be a legal title in the county, it is a title held in trust for the whole public."); *Board of Education v. Martin* (1891) 92 Cal. 209.) Therefore, "as against the state, [a] county has no ultimate interest in the property under its care." (*County of Marin v. Superior Court* (1960) 53 Cal.2d 633, 639.) Given the County's lack of any legal interest in the roadways at issue, the County has no basis for demanding that the Authority be bound by local rules, regulations, or standards.

This conclusion is bolstered by the general rule that a state transit authority is not required to comply with a county's general plan. (*See Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal. App. 3d 996, 1001 (observing that "[g]eneral plans for the most part deal with the imposition of zoning ordinances," and holding that "arguments [of local control] fail to recognize long-established principles that local agencies are not authorized to apply local zoning restrictions to state agencies").) Similarly, the County's Improvement Standards, as a component of its General Plan, are not binding on the Authority, a state agency. Thus, the question of whether the Authority complied with the Improvement Standards is not directly relevant to this proceeding.

Notably, even if the Improvement Standards were actually binding on the Authority, which they are not, the Improvement Standards are, by their own terms, inapplicable to the proposed grade crossings at issue. The County argues that its Improvement Standards "serve as an engineering reference" for "the design and construction of streets and street appurtenances, including overcrossings." (Emphasis added.) However, the Improvement Standards do not once mention overcrossings (or undercrossings for that matter). Thus, even if the Improvement Standards were considered generally applicable to the Authority's planned construction in Kings County, as a practical matter, they are of limited relevancy, as they do not address overcrossings--the subject matter of this proceeding.

VI. The County's Claim That the Authority's Basis of Design is Unsafe Fails Because it Relies on Incomplete and Incorrect Information.

The County states that the "potential for accidents . . . is the crux of [their] entire Protest." The Authority wholeheartedly agrees that minimizing potential for accidents should be –and is – a critically important objective in the planning and construction of every aspect of the high-speed rail project. However, the County does not, and cannot, provide meaningful support for the claim that the Authority has failed to make that objective paramount with respect to the grade crossings at issue. The County claims that the "CHSRA pushes forward full throttle without consideration of the safety of the Kings County community," that "the CHSRA is rushing the process . . . for the sake of saving an additional dollar," and that "the CHSRA's [sic] is unwilling to consider the information presented . . . so the CHSRA can save time and money, not life and limb." These allegations are entirely belied by the facts.

In reality, the Authority has made continued efforts to cooperate and coordinate with the County. Indeed, notwithstanding the fact that the Authority is not bound by the County's local construction requirements, and despite the limited applicability of the County's Improvement Standards, the Authority (and its Design-Build Contractor) considered the County's General Plan and Improvement Standards in preparing the Kings County Basis of Design (the "Basis of Design"). The Basis of Design comports with applicable provisions of the County's Improvements Standards, as supplemented by other relevant standards. [*See* Basis of Design, §§ 1, 2, 3.1 (finding that the County's Improvement Standards are "intended as a guide for commercial and residential developments in the County. . . . While DFJV/Jacobs has reviewed these standards and followed them when deemed appropriate, it was determined that these standards must be supplemented with additional criteria from another source.").] Where applicable, the Authority has adhered to the County's local standards. For example, the Authority has generally utilized the County's construction standards in areas outside of the Authority's right-of-way. Conversely, the Project utilizes the Authority's Design Criteria Manual ("DCM") for portions of the facility located within the Authority right-of-way. [*See* Basis of Design, § 2 (stating that DFJV used the DCM, General Plan, and County Improvement Standards (among other documents) in determining the appropriate design).][1]

Additionally, in a continued effort to collaborate with the County, the Authority agreed to have its design plans reviewed by a County-selected consultant (the "Consultant") and revised its design plans to accommodate County requests. Conversely, the County has failed to avail itself of the many opportunities the Authority has offered the County to participate in the design process and even be reimbursed for its costs. Despite the fact that several other counties have readily entered into agreements with the Authority for the same purpose, the County refused to do so. Nonetheless, the County has demanded that the Authority change its Basis of Design based upon a report prepared by the County's Consultant. The County's Protest presents a handful of comments from the Consultant's report relating primarily to design speeds (i.e., the speeds drivers are presumed to travel at, for design purposes, on a roadway to be constructed). The Consultant's findings are largely unfounded, and any revisions based thereon would actually render the design less safe, as set forth below.

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[1] Thus, the County's complaint that the Authority relied on its own DCM is without merit because the Authority relied on the DCM only for the portions of the design that are within the Authority's right-of-way.

The County first cites the Consultant's opinion, which states, "The first step in determining the design criteria for improvements or alterations to an existing roadway is to count and classify the existing traffic load. This was not done, and the Report suffers accordingly." Had the County consulted page five of the Basis of Design, it would know this is not true. Section 3.1.2 (Road Classification) specifically states, "The first step in determining the design criteria for a given roadway is to determine the roadway classification," and goes on to detail how the roadway classification was conducted. Appendix B to the Basis of Design identifies specific traffic load data for Kansas Ave. As there was no ADT (average daily trip) data for Kent Ave., the Authority prepared a conservative traffic load estimate based on a thorough analysis of local traffic conditions. Thus, there is no support for the claim that the Authority failed to classify the roadways at issue.

Next, the County claims that the Authority relied on incorrect design standards, stating, "Most figures expressed in AASHTO Tables are minimums and are to be used solely when building new roads, not existing roads . . . . [Also] [i]f the local agency having jurisdiction over the facility in question maintains design standards that exceed AASHTO standards, then the local agency standards should apply." The claim that AASHTO (American Association of State Highway and Transportation Officials) standards apply only to new roads is simply not true. Rather, AASHTO standards apply to roadways generally, whether modifications to existing roadways or new roadways. Consequently, the Authority followed AASHTO standards in designing modifications of the County's roadways. More importantly, where the County's standards were more stringent than AASHTO standards, then the County's standards were used.

The County next quotes the Consultant, stating, "The designer must design to the Kings County Improvement Standards of 70 mph, which is supported by the 85th percentile speed." From both a technical and practical standpoint, following the Consultant's opinion here (1) is not required, and (2) would be unsafe.

First, there is nothing in the Standards of Improvement that requires that all roads in the County have a design speed of 70 mph. The only reference to a 70 mph design speed in the Standards of Improvement is in a table that relates strictly to intersection sight distances (the distance to an intersection within which motorists must be able to see to see other vehicles near the intersection to safely avoid collision). If it were true that the Improvement Standards mandated a 70-mph design speed, then all or most of the County roads would already be designed to that

design speed – they are not. Critically, the speed surveys the Consultant relied on assumed straight and flat roadways. With the new overcrossings, vertical and horizontal curves have been introduced and have an impact on design. The County has apparently failed to take these impacts on design into account. In this case, blind adherence to a 70-mph design speed would be dangerous, and at the very least, impractical.

The County also raises a concern with the roads' "proposed maximum superelevation of 10% to 12%," stating that it "may present problems with trucks with a high center of gravity." Again, either the Consultant, the County, or both, fundamentally misunderstand the Authority's Basis of Design. While it is true the roads are being designed with a maximum superelevation (the amount by which the outer edge of a curve on a road is banked above the inner edge) of 10% and 12%, that does not mean the roads will actually have a superelevation of 10% or 12%. Rather, those percentages do not refer to the actual superelevations to be used, they refer to tables in the AASHTO Design Manual, which in turn specify the actual superelevation to be used.

The other concerns raised by the County are similarly unsubstantiated. For example, the County cites "the omission of design standards for joint-jurisdiction roadways" as an "area of concern." The Authority did not include these particular standards in its Basis of Design for the crossings because design standards for joint-jurisdiction roadways are inapplicable to the crossings at issue pursuant the County's General Plan. (*See* Land Use Policy E1.2.2 (discussing the application of City, not County, improvement standards).) Consequently, design standards for joint-jurisdiction roadways were included in the Authority's project designs within the cities of Hanford and Corcoran, but not for the construction proposed by the Application.

The position expressed by the County's Director of the Department of Public Works, Kevin McAlister, is consistent with the Authority's reasoning. On the subject of the County's roads, Mr. McAlister stated, "Kings County has always maintained that unique features of these roads, including the prevalence of Tule Fog and agricultural traffic, require flexibility in determining the appropriate applicable standard." The Authority has taken the unique features of the County's roads into account in its Basis of Design, with an understanding that flexibility is required in determining the appropriate standard to apply to roadway design in order to maximize a given roadway's safety. In so doing, the Authority has adhered to all applicable safety and design standards, and has made consistent efforts to cooperate and coordinate with the County. Thus, the

litany of baseless complaints made in the County's Protest should not be indulged, and the Application should be granted.

VII. Conclusion

For the foregoing reasons, the Authority respectfully requests that the Commission grant the Application.

Dated: April 23, 2018

Respectfully submitted,

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