

Decision 11-04-023 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the San Luis Obispo County Public Works Department for an order to modify D.07-07-003 authorizing construction of an at-grade pedestrian crossing in San Miguel, California, crossing Union Pacific Railroad in the vicinity of 16th Street, County of San Luis Obispo.

Application 10-10-009
(Filed October 11, 2010)

DECISION GRANTING AUTHORIZATION TO THE COUNTY OF SAN LUIS OBISPO TO EXTEND THE TIME DEADLINE OF JULY 12, 2009 TO COMPLETE THE AT-GRADE PEDESTRIAN CROSSING SPECIFIED IN DECISION 07-07-003

Summary

This decision grants the County of San Luis Obispo's request to extend the authorization period set forth in Decision 07-07-003 for construction of a new pedestrian at-grade crossing over the track and right-of-way of the Union Pacific Railroad Company in the community of San Miguel, San Luis Obispo County. The new crossing will be identified by CPUC Crossing No. 001E-203.35-D.

Procedural History

San Luis Obispo County (County) filed this application on July 1, 2004, seeking to construct an at-grade pedestrian crossing of Union Pacific Railroad Company (UPRR) tracks, primarily to serve the 70 to 80 children who live near

16th Street¹ and who on weekdays go to and from their homes and the Lillian Larson Elementary School. According to the County, rapid growth of housing west of the proposed crossing has caused more and more children to use a dirt path across the tracks as a direct route to the school. The application was protested by UPRR, which maintained that children could be routed to an existing road crossing at 14th Street, which could be improved for pedestrians at less cost than building the new crossing.

Following the protest, this proceeding was reassigned from the Consumer Protection and Safety Division (CPSD) to the Administrative Law Judge (ALJ) Division on September 3, 2004. No prehearing conference was conducted, but the parties in informal telephone conferences with the assigned ALJ sought and were given additional time to negotiate a settlement with the help of CPSD's Rail Crossings Engineering Section (RCES). When those efforts failed, the parties exchanged written testimony and participated in a public participation hearing in the community on April 19, 2006, followed by two days of hearing on April 20 and 21, 2006. The Commission heard from 10 witnesses and received 38 exhibits into evidence. Briefs were filed on June 12, 2006, and reply briefs were filed on June 26, 2006, at which time the matter was deemed submitted for Commission consideration. Subsequent to issuing the Proposed Decision in this matter and granting several requests for extended time to comment on the Proposed Decision, the final Decision (D.07-07-003) approving the settlement

¹ 16th Street does not cross over the Union Pacific railroad tracks. 16th Street ends at the Union Pacific right-of-way, and pedestrians are on Union Pacific property when they cross the railroad tracks. The use of the term "16th Street crossing" in the application and in this decision refer to the crossing in the vicinity of 16th Street.

agreement and setting further compliance requirements was issued by the Commission on July 13, 2007.

Discussion

UPRR operates approximately nine freight trains per day and Amtrak operates two passenger trains per day on this segment of track.

Many trespass over the railroad tracks at the location of the proposed pedestrian at-grade crossing. Many of the trespassers are students traveling between the school and their residences. The Commission authorized construction of a new at-grade pedestrian crossing in the vicinity of 16th Street with D.07-07-003. The authorization was dependent on fulfillment of a settlement agreement between the County and UPRR, which was adopted by the Commission as part of the final Decision in this case.

The County and UPRR agreed on the terms of settlement, which included:

- The County permanently closing one active crossing in San Luis Obispo County prior to construction of the proposed 16th Street Pedestrian crossing and closing a second crossing before seeking any new at-grade crossing in the future;
- The County modifying the existing 14th Street crossing by installing a new pedestrian path (sidewalk) through the crossing;
- The County installing vandal resistant fencing along the railroad right of way from 11th Street to 200 feet north of the proposed 16th Street Pedestrian crossing; and
- The County constructing a concrete panel crossing surface and installing two Commission Standard 8 (flashing light signal assemblies) warning devices at the proposed 16th Street Pedestrian crossing.

However, the authorization set forth in D.07-07-003 expired on July 12, 2009. The Terms of Settlement automatically extended the time deadline by an additional two years if vandal resistant fencing was installed between 14th and 16th Street by July 12, 2009. The Settlement also provided that if additional vandal resistant fencing is installed between 11th and 14th Street within four years of the Decision date, in addition to the area between 14th and 16th Street, then the Commission authorization shall be extended to July 12, 2011. To date, no fencing has been installed. The settlement also extends the authorization time by the amount of time for UPRR to review and approve the plans for the required improvements.

The County has made some progress in satisfying several requirements of the authorization and settlement agreement. The County and UPRR closed the Depot Avenue private crossing, identified as CPUC Crossing No. 001E-254.60-X and DOT No. 745364J. In addition, RCES authorized the County to modify the 14th Street at-grade crossing, identified as CPUC Crossing No. 001E-203.55, DOT No. 752078V, via General Order 88-B, in case G.08-02-002. The 14th Street crossing project, which was to add a sidewalk through the crossing as outlined in the settlement agreement approved by D.07-07-003, suffered a delay due to design issues. Subsequently, on April 12, 2010, RCES granted the County a two year time extension set to expire on March 13, 2012 to complete the 14th Street improvements. Fencing along the right of way will begin with the construction of the 14th Street crossing modifications.

Additionally, the County notes that it was unable to secure the funding for the necessary improvements until over 17 months after the Commission issued its Decision, and that for a number of reasons UPRR has taken over 27 months to

review, agree with the County on final design, and provide the necessary documents to allow the improvements to proceed.

We also note that UPRR has provided a letter of concurrence to the County's time extension request.

Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, 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,² or the one with the greatest responsibility for supervising or approving the project as a whole.³ Here, the County is the lead agency for this project because the project is being constructed by them, and is subject to their review and approval, 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

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

³ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

must consider the lead agency's environmental documents and findings before acting on or approving this project.⁴

In issuing D.07-07-003, the Commission found the County's Notice of Exemption adequate and the project exempt from CEQA. The County offered evidence to show that on March 17, 2006, it filed a Notice of Exemption for work at the proposed new crossing. The notice concludes that construction of a pedestrian walkway is classified as a minor alteration of an existing facility involving negligible or no expansion of use as described in State CEQA Guidelines Section 15301(c) and which will not result in a significant effect on the environment, and is therefore categorically exempt from CEQA review under Pub. Res. Code § 21084 and CEQA Guideline §15301(c). The exemption was filed with the County Clerk and was available for public review for 30 days.

The project for the new pedestrian at-grade crossing has not changed from the original design. Because the application requests modification of an existing decision for a project which has not been altered, we find no reason to disturb those original findings. We find that no further environmental review by the Commission is necessary.

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 has remained in contact with the County

⁴ CEQA Guidelines, Sections 15050(b) and 15096.

regarding developments on the project at the proposed crossing and has reviewed the County's request. The conditions at the proposed crossing location have not changed since the original filing. Children continue to trespass over the tracks at this location to travel between their residences and school. The project will increase the safety of pedestrians in San Miguel. The proposed crossing will allow for safe pedestrian travel over the tracks.

RCES recommends that the requested time extension to complete construction of the subject crossing and fulfill the remaining requirements of the settlement agreement laid out in D.07-07-003 be approved for at least an additional two years. Staff recommends an additional 6 month period to account for potential unforeseen delays, and suggests extending the authorization period to January 13, 2012.

Categorization and Need for Hearings

In Resolution ALJ 176-3262, dated October 14, 2010, and published in the Commission Daily Calendar on October 15, 2010, 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 176-3262.

Waiver of Comment Period

This request for an extension of the authorization period 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 October 15, 2010. There are no unresolved matters or protests. A public hearing is not necessary.

2. The County requests that the authority granted under Public Utilities Code Sections 1201-1205 by Decision 07-07-003, to construct a new at-grade pedestrian crossing over the track and right-of-way of UPRR in San Miguel, San Luis Obispo County be extended until at least July 13, 2011.

3. As evidenced by Exhibit 2 to the County's application, UPRR does not object to the requested time extension.

4. The County will be the lead agency for design, funding, and construction of the pedestrian crossing.

5. The County will take ownership and maintenance responsibilities after the pedestrian crossing is constructed.

6. The County is the lead agency for this project under CEQA.

7. The County adopted the Notice of Exemption and has determined the project to be categorically exempt from further environmental review under CEQA.

8. The project's environmental documentation has not changed from the documentation provided at the public hearings.

Conclusions of Law

1. The County's determination of the project to be categorically exempt and the Notice of Exemption 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 authority granted to the County of San Luis Obispo by Commission Decision 07-07-003 to construct an at-grade pedestrian crossing to be identified as CPUC Crossing No. 001E-203.35-D, over the track and right-of-way of the Union Pacific Railroad Company in the town of San Miguel, County of Santa Clara is extended for a period of 30 months from the original expiration of July 12, 2009, to January 12, 2012.

2. The County of San Luis Obispo shall notify the California Public Utilities 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.

3. Within 30 days after completion of the work under this order, the County of San Luis Obispo shall notify the Rail Crossings 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 California Public Utilities Commission 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.

4. Within 30 days after completion of the work under this order, Union Pacific Railroad shall notify the Federal Railroad Administration of the existence of the crossing by submitting a U.S.DOT CROSSING INVENTORY FORM, form

FRA F6180.71. A copy is to be provided concurrently to the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section.

This copy of the form may be submitted electronically to rces@cpuc.ca.gov .

5. The County of San Luis Obispo shall comply with all applicable rules, including the California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

6. This authorization shall expire if not exercised by January 12, 2012, unless time is extended or if the above conditions are not satisfied. The California Public Utilities Commission may revoke or modify this authorization if public convenience, necessity, or safety so require.

7. Any further request for extension of the authorization period must be submitted to the Commission 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 10-10-009 is closed.

This order becomes effective 30 days from today.

Date April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners