

Decision 90 07 043 JUL 18 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of the UNITED STATES OF AMERICA,)
acting by and through the United)
States Department of Agriculture,)
Forest Service, to construct a)
pedestrian and equestrian crossing)
at grade, across the railroad)
tracks of the Southern Pacific)
Transportation Company in Soledad)
Canyon, County of Los Angeles.)

Application 85-12-028
(Filed December 13, 1985;
amended April 23, 1990)

O P I N I O N

Statement of Facts

The Congress of the United States, in order to provide for ever increasing outdoor recreation needs of the expanding population and to promote public access to, travel within, and enjoyment of the open air, outdoor areas of the nation, on October 2, 1968, with the passage of Public Law 90-543, directed that trails should be established near urban areas and within established scenic areas more remotely located.

The Pacific Crest Trail was designated as one of the initial components of that trail system. The trail extends 2,400 miles, Mexico to Canada through California, Oregon, and Washington, and is administered by the Secretary of Agriculture, Forest Service, in cooperation with the Secretary of Interior. Its purpose is to provide a continuous, high quality public trail for hikers and equestrians. Use of motorized vehicles is prohibited.

The trail has been substantially completed. But southwest of Acton, California, it was proposed to cross the Southern Pacific Transportation Company's (S.P.) El Paso mainline tracks in Soledad Canyon in the rugged mountains of Angeles National Forest on the northern rim of the Los Angeles Basin. In

1981 the Forest Service selected for the crossing site a large existing concrete drainage structure at approximately Milepost 431.6 on the railroad's mainline in the canyon. This would have resulted in a grade separated crossing in the canyon, and was acceptable to S.P., provided the Forest Service would agree to hold the railroad harmless. The Forest Service was not adverse but also advised it was looking at possible alternative routes before final decision would be made.

In 1985, the Forest Service changed its mind and determined upon an at-grade crossing at Milepost 431.8. Assertedly, the trail was to be located so as to provide the shortest route, affect the least amount of private landowners, and minimize the impacts on private land and future development. Rights of way to the north and south of the new site were acquired. The nearest other public crossings along the S.P. tracks are approximately 2-3/4 miles to the east and 3-1/2 miles to the west. At the point chosen the topography and the low volume of pedestrian and equestrian use (approximately 250-300 crossings per year) and train traffic (approximately four trains daily) assertedly preclude the construction and high cost of a grade separation.

When the Forest Service contacted S.P. with its standard easement deed for signature, S.P. refused to sign and suggested Forest Service file an application before the Commission. Accordingly, the Forest Service in 1985 filed the present application, seeking permission pursuant to §§ 1201-1205 of the Public Utilities (PU) Code to construct an at-grade crossing 20 feet wide, including a longitudinal trail extending 424 feet roughly parallel to the S.P. tracks before passing over the tracks northward. This longitudinal trail would utilize S.P.'s service road within the railroad's right-of-way.

S.P. protested the application, asserting both that the proposed crossing was not properly designed and would be incompatible with rail operations, and that the Public Utilities

Commission lacked power to order such use of its longitudinal road and right-of-way.

The United Transportation Union (Union) also protested, asserting that an easterly bound freight train on that grade would be unable to stop within the 700-foot visibility distance to the west; that pack mules tied together might be unable to clear the tracks in time, and raising questions about safety warnings and policing the area for four-wheel drive vehicles and/or motorcycles.

The Department of Public Works of Los Angeles County had no objections since the proposed crossing was near no county roads.

The application was set for hearing September 10, 1986 before Administrative Law Judge (ALJ) William S. Pilling. In view of ongoing discussions it was reset at the request of the Forest Service. During this time attorneys for the Forest Service and S.P. were exploring compromises. The Forest Service took the position that unless S.P. and the Union would stipulate before the Commission that its congressionally enacted power removed from the Commission the consideration of a split-grade crossing, the Secretary of Agriculture was prepared, first, to "dismiss, without prejudice" this application, then execute a "Declaration of Taking" for an at-grade crossing at the point under consideration which would be filed in a condemnation proceeding in U.S. District Court in Los Angeles. Once the Order of Possession was received, the Forest Service would have title and would refile with the Commission, leaving the sole issue before the Commission that of defining the safety facilities for an at-grade crossing.

S.P. declined to stipulate, suggesting that if the California Public Utilities Commission could exercise only such safety jurisdiction as the Secretary of Agriculture in his sole discretion wishes to permit, the statutory language "in his judgment" found in the National Trails System Act (16 USC 1241, et seq., 16 USC 1246(g)) would be so broad and convey such arbitrary power as to raise serious questions of due process.

The Union also declined to stipulate.

At the written request of the Department of Agriculture, the hearing set for June 25, 1987 was canceled, and the matter was removed from the Commission calendar; the Department advising the ALJ that it would initiate condemnation proceedings.

With the retirement of ALJ Pilling, the matter was reassigned to ALJ William Turkish, and thence on January 27, 1989 to ALJ John B. Weiss. The latter contacted the Department of Agriculture attorney to suggest that further efforts be undertaken to resolve the open matter. The federal attorney followed up with S.P., the Union, and Commission staff, leading to a November 14, 1989 meeting attended by representatives of the Forest Service, S.P., and Commission staff. Certain conditions were agreed upon, and on April 23, 1990 the United States of America, acting by and through the U.S. Department of Agriculture, Forest Service, filed the present amendment to Application 85-12-028, superseding the originally submitted application.

By the amended application, permission is sought pursuant to §§ 1201-1205, inclusive, of the PU Code, to construct an at-grade pedestrian and equestrian crossing for the Pacific Crest National Scenic Trail, across the tracks of S.P. in Soledad Canyon at the same point as planned in the original application, but providing for installation of 300 feet of 5-foot, 4-inch welded wire fencing south of and parallel to the S.P. track to channel trail users to the trail crossing while still permitting them to use the S.P. parallel road. The fence will be gated and locked to permit access for S.P.'s track maintenance. The trail width at the crossing will be 9 feet wide to permit use of standard crossing materials. S.P. will construct the crossing. The approach footing ties have been redesigned to meet S.P.'s requirements, and the approaches will be posted with railroad crossing signs as set forth in Exhibits A and B to the amended application. These amendments

were made to reflect the conditions agreed upon in the November 14, 1989 meeting.

Although all parties, including S.P., the Union, and the staff's Traffic Engineering Section were served copies of the amendment, only the Union responded. The Union on May 24, 1990 wrote ALJ Weiss stating its continued serious concerns as to the safety of such pedestrian crossings. The Union's State Legislative Director, James Jones, forthrightly stated his awareness of other pedestrian at-grade crossing authorizations having been granted under like circumstances by the Commission and expressed belief that there would be no productive purpose to the Union burdening the Commission by insisting on a public hearing.

In view of the apparent fact that no further evidence would be presented or developed by going to hearing, the ALJ determined to proceed ex parte and submitted the matter for decision.

Discussion

Chapter 6 (Railroad Crossings) of the PU Code is concerned with requirements associated with crossings over, under, and at grade of the track of any railroad corporation. Section 1201 of that chapter requires prior Commission authorization before construction of any at-grade crossing. Other sections of the chapter provide for other aspects related to crossings and are not at issue here.

The choice of crossing point was determined after consideration of alternative routes, and these considerations were discussed at length in the Environmental Assessment Report prepared in 1981 pursuant to provisions of the National Environmental Policy Act of 1969. A Negative Declaration and Notice of Determination were filed on November 1, 1983.

The proposed at-grade pedestrian and equestrian crossing with a 9-foot tread width using standard crossing materials, as well as access way, together with appropriate warning signs

described in Exhibits A and B to the application, is necessary to provide reasonably safe hiker and equestrian access across the S.P. tracks.¹

Separation of the grades is infeasible in that the topography of the area and the low volume of pedestrian and equestrian use (approximately 250-300 crossings per year) and train traffic (approximately four trains daily) preclude the construction and high cost of a grade separation. The Forest Service will install and maintain all signs within the right-of-way, as well as a fence along the track side of the right-of-way, gated to permit S.P. access for track maintenance. The maintenance cost of the crossing will be borne by the Forest Service.

We are appreciative of the Union's concerns, as expressed by its Legislative Director, that only separations can adequately provide fully for pedestrian and equestrian safety at such crossings. But where separations are not reasonably practical and the exposure is thus limited, the cost involved to provide such

1 The legal description of the proposed crossing is:

"A strip of land 20 feet wide by 521 feet long, paralleling then perpendicular to the Southern Pacific Company railroad tracks near structure number 431.9 and located in the W1/2 of the SW1/4 of Section 8, T 4N., R. 13W., S.B.M., or particularly described as:

"Beginning at a point on the west line of Section 8, Township 4 North, Range 13 West, San Bernardino Meridian, said point lying north 813 feet of the corner common to Sections 7, 8, 18 and 17 of said township and range, thence easterly, utilizing the dirt service road along a line with a bearing of North 85°52'45" East for a distance of 424 feet, thence north for a distance of 46 feet to the centerline of the Southern Pacific Transportation company tracks, thence northeasterly for a distance of 51 feet ending at a point on the northline of the south half of the southwest quarter of said Section 8, said point lying 509.16 feet west of the southwest 1/16th corner of said Section 8."

separations can better be applied elsewhere. Local authorities, represented here by the County, accept the alternative. Accordingly, we will grant the application as amended.

Findings of Fact

1. The Congress has mandated certain trails for the use of the general public, one of which is the Pacific Crest Trail extending from Mexico to Canada.

2. The trail, largely completed, extends through the rugged mountains of Angeles National Forest where a segment to be completed must cross the Soledad Canyon. ✓

3. A mainline track of the S.P. traverses the Soledad Canyon, necessitating a crossing at approximately Milepost 431.8 in the canyon.

4. The United States Government, acting by and through the federal Department of Agriculture, Forest Service, and S.P. have, together with the Commission's Traffic Engineering Section, agreed after negotiations and conference, upon the detailed construction particulars for such a crossing, memorializing these in the present amended application.

5. Natural terrain conditions, difficulty of access, high cost, and very limited projected usage of the crossing preclude the construction of a separated crossing.

6. An at-grade pedestrian and equestrian crossing under all attendant conditions appears a reasonably safe alternative for this location.

7. The amended application under consideration was protested by the Union, which advises that while it maintains its protest, it believes a public hearing would serve no productive purpose. Accordingly, there is no need for a public hearing, and the matter may be resolved ex parte.

Conclusions of Law

1. No hearing is necessary.
2. The amended application should be granted.

ORDER

IT IS ORDERED that:

1. The United States of America, acting by and through the United States Department of Agriculture, Forest Service, is authorized to construct a pedestrian and equestrian crossing at grade, across the railroad tracks of the Southern Pacific Transportation Company (S.P.) near Structure No. 431.9 in Soledad Canyon, County of Los Angeles, subject to an appropriate agreement between the parties on a price for S.P. to construct the crossing portion two feet on either side of the track.

2. The at-grade crossing will conform to the provisions of the application and its exhibits.

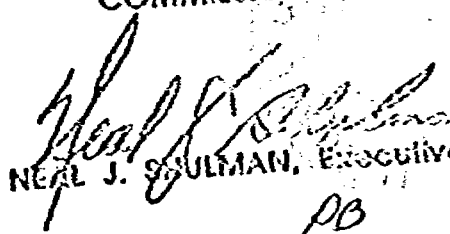
3. This authorization shall expire within 1 year after today if not exercised within that time, unless time be extended. Authorization may be revoked or modified if public convenience, necessity, or safety so requires.

This order becomes effective 30 days from today.

Dated JUL 18 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SCHULMAN, Executive Director
PB