

SEP 3, 1992

Decision 92-09-002 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Stockton)
to Construct One Grade Crossing of)
Union Pacific Railroad Company Line)
at Swain Road in Said City of)
Stockton, State of California.)

Application 89-12-043
(Filed December 26, 1989)

Millicent Rudd Guilliani, Attorney at Law,
for City of Stockton, applicant.
Jeff S. Asay, Attorney at Law, for Union
Pacific Railroad Company, protestant.
Laurence S. Cope, for United Transportation
Union, interested party.
Elliott L. Bershodsky, for the Commission's
Safety Division.

O P I N I O N

On December 26, 1989, the City of Stockton (City) filed this application for authority to construct a new at-grade crossing of Union Pacific Railroad Company's (UPRR) main line and siding of Swain Road. UPRR filed its protest to the application on January 30, 1990.

The parties could not resolve the matter by negotiation and a hearing was requested by the City and UPRR. Hearings were held before Administrative Law Judge O'Leary in Stockton on January 7, 8, and 15, 1992. The matter was submitted subject to the filing of concurrent briefs on or before April 30, 1992. Briefs were filed by all parties except the Commission's Safety Division.

UPRR opposes the application for the following reasons:

1. The City has not shown that a new at-grade crossing at Swain Road is required by public convenience and necessity, nor that any identified public need overrides the policy of the Commission against new main line grade crossings.

2. A new at-grade crossing at Swain Road will adversely impact the safety of the public and railroad employees, and the efficient operations of the railroad.
3. Assuming there is sufficient public need for a crossing at Swain Road, the City has not met its burden of proof that a grade separation at that location is not practical.

The United Transportation Union requests that approval of the application be contingent upon relocation of the Hammer Lane siding to a location which will not disrupt the function of the siding. Furthermore, that the relocation be completed prior to the opening of the grade crossing.

The City of Stockton has a metropolitan population of 269,622 people according to the 1990 census. The population ten years ago was 205,000, with the rate of growth between 1980 and 1990 doubling the rate of growth between 1970 and 1980.

The Calaveras River separates the City into north and south Stockton. The proposed crossing at Swain Road across UPRR's main track is located in north Stockton.

In no area of the City has the growth been as pronounced as it has been in the general area of the UPRR and Swain Road intersection. The Stockton Subarea Map (Exhibit 6) shows the three census tracts which border the UPRR/Swain Road junction to be Area 33.05, Area 33.06, and Area 34.02. Exhibit 7, a chart comparing population growth in the census tracts in this area, illustrates that while the percentage of change over the ten-year period from 1980-1990 in Areas 33.05 and 33.06 was a minimal decrease, the area designated 34.02 showed a 1,312% increase in population. This population increase is expected to continue. Despite this growth, there have been no corresponding changes to the roadways serving these areas since 1987.

Swain Road is an east-west, two-lane residential collector street located approximately midway between Hammer Lane

and March Lane. Two sets of railroad tracks, UPRR's main line and also the passing track or siding named Hammer Lane, are in place at the proposed crossing. The Hammer Lane siding (siding) begins and ends between March Lane and Hammer Lane. The siding is 5,750 feet long.

The City proposes to install the most up-to-date protection at the crossing.

Applicant is the lead agency for this project under the California Environmental Quality Act (CEQA), and has prepared a Negative Declaration. A copy of the notice of determination was filed with the County of San Joaquin by the City (Exhibit 23).

Hammer Lane, located approximately 0.75 mile north of Swain Road, is a four-lane, east-west arterial that connects Interstate 5 to Highway 99. There is a four-lane at-grade crossing where Hammer Lane crosses the UPRR.

The at-grade crossing at Hammer Lane will most likely be converted to a grade separation in the near future.

March Lane, located approximately 0.64 mile south of Swain Road, is a six-lane, east-west arterial. The City plans to extend March Lane to Highway 99 and may enlarge the street from six lanes to eight lanes east of the UPRR tracks. There is a four-lane at-grade crossing where March Lane crosses the UPRR.

Swain Road does not currently access Interstate 5 or Highway 99 and the City has no plans to extend Swain Road to these highways.

The PUC crossing numbers and/or mile posts of the crossings in the vicinity of Swain Road are as follows (the list is south to north):

Bianchi Road	4-96.60
March Lane	4-97.10
Swain Road (proposed)	4-97.73
Hammer Lane	4-98.50
Lower Sacramento Road	4-100.40
Eight Mile Road	4-101.30

The two major thoroughfares running north and south on either side of the UPRR tracks are El Dorado Street, located approximately 0.7 mile west of the UPRR tracks and West Lane, located approximately 0.2 mile east of the UPRR tracks.

El Dorado Street and West Lane are four-lane roads which are major north-south thoroughfares through the City. Both are truck routes.

The latest average daily traffic counts taken in 1989 and 1990 are as follows:

March Lane and UPRR	33,700 vehicles
Hammer Lane and UPRR	48,800 vehicles
El Dorado Street between March Lane and Hammer Lane	27,500 vehicles
West Lane between Swain Road and March Lane	38,500 vehicles
Swain Road and Hammer Lane	26,500 vehicles

It is projected that these traffic counts will increase in the future rather than decrease.

Mr. Meissner, a senior transportation planner for the City, testified that the City has set as a policy and part of its general plan a provision that the level of service within the City shall be the level of Service D. The level of Service D provides that the maximum range of traffic shall be 90% of capacity or less. Levels of Service A through C shall provide for a maximum range of traffic less than set forth in Level D and Levels E and F exceed the maximum range set forth in Level D.

Mr. Meissner testified that the level of service on both Hammer and March Lanes at the two existing crossings is at Level F. He also testified that the level of service on El Dorado Street, between March and Hammer Lanes, is between Levels E and F and that the level of service on West Lane between March and Hammer Lanes is at between Levels C and D.

Future development in the surrounding area of the proposed crossing consists of the following:

1. A 1,700-seat, 8-plex theater which has been approved for construction within 800 feet of the proposed crossing and
2. A 200-bed hospital by Kaiser which is in the process of construction.

The City presented witnesses from the police and fire departments and a private ambulance company who testified that the proposed at-grade crossing would be a great benefit to their operations in that response times in many instances would decrease substantially.

Fire Station 11, the most recent to be constructed, is located just east of the UPRR tracks on Swain Road. The site of that fire station was chosen in anticipation of the extension of Swain Road across the railroad tracks.

There was also considerable public support for approval of the application. The pastor of the Calvary Baptist Church complex located on Swain Road, just west of the UPRR tracks, testified concerning his congregation's desire for the proposed crossing. Also, a petition was presented by a dental office located just east of UPRR tracks on Swain Road showing its patrons' desires for an opening of the crossing.

UPRR operates approximately 14 trains a day through Stockton. These include double-stack and conventional intermodal trains, primary and secondary manifest-type trains, coal trains, and grain and unit grain trains.

UPRR has a single main track running through Stockton and also has a train yard in Stockton. The siding is used to meet and pass trains. This siding is extremely important to the operations of the Stockton yard because it is the first siding to the north of Stockton. The nearest comparable siding (in length) is 24 miles away at Phillips. The sidings at Phillips (6,171 feet) and Hammer

Lane (5,750 feet) are the only two sidings of substantial length between Stockton and Sacramento. The Pollock siding (4,848 feet) and the Thornton siding (3,613 feet) cannot accommodate most freight trains which are generally around 6,000 feet in length to maximize productivity. The siding is used two to three times per day. It is common for trains to use this siding for short period of time (15-30 minutes) and also for a longer periods (2-6 hours).

An at-grade crossing at Swain Road, without the relocation of the siding, would virtually eliminate UPRR's ability to use the siding at Hammer Lane to meet and pass trains because Commission rules prohibit blockage of an at-grade crossing for extended periods of time. Splitting the train at Swain Road is not a feasible solution because it cannot be done without blocking the crossing for extended periods and without burdening UPRR employees with additional procedures that waste time and impinge on railroad efficiency.

The City has admitted on the record that a new at-grade crossing at Swain Road will require relocation of the siding to a point north of the Hammer Lane crossing. The City has indicated that it will pay the cost of such relocation for a comparable length siding. If the relocation were to take place after the Hammer Lane grade separation is finished, the portion of the existing siding trackage between Swain Road and Hammer Lane could be left in place, reducing the cost of relocation somewhat.

Relocation of the siding to the north would eliminate most if not all of the interference problems with the UPRR's operation. Since the City has indicated that it would pay for the necessary relocation of the siding, should the crossing be authorized, further discussion of this issue is not necessary. Presently, there are plans to convert the at-grade crossing at Hammer Lane to a grade separation. Should the relocation take place after the completion of the Hammer Lane grade separation, the cost of the relocation could be reduced.

We are convinced from the evidence adduced that sufficient need for the proposed crossing has been demonstrated. We now turn to the subject of whether or not a grade separation is practicable rather than an at-grade crossing.

At the hearing, Keith Halvorson (Halvorson), a licensed civil engineer, presented testimony concerning engineering studies which he had done at the City's request to explore the practicability of both an overcrossing and an undercrossing grade separation at this location. The overcrossing design did not appear practicable to Halvorson because, in both overcrossing proposals prepared by him, the driveway of Fire Station 11 would end up below the proposed roadway. Halvorson also discussed an undercrossing design but that too created practicability problems, involving the fire station driveway, access to homes on the west side, and the necessity to relocate utilities. When asked what changes would have to be made to the fire station driveway to meet the underpass design, Halvorson replied, "I think you'd have to lower the building." He went on to testify that an undercrossing would require lowering the street and that there was no engineering solution to that problem, other than the City buying the homes.

We are convinced that a separated grade is not practicable at this location and that the application for an at-grade crossing should be granted. We will authorize the construction of the crossing; however, prior to its opening, the City will be required to bear the expense of relocation of the Hammer siding to a location north of Swain Road.

Comments to the Proposed Decision

The administrative law judge's (ALJ) proposed decision was filed and mailed to the parties on July 28, 1992. Comments on the proposed decision were filed by the City and UPRR. A reply to the comments filed by UPRR was filed by the City.

The comments filed by the City advise it supports the ALJ's proposed decision. The comments filed by UPRR are basically

further argument as to why its position in this proceeding should be adopted.

Rule 77.3 of the Rules of Practice and Procedure deals with the Scope of Comments. The rule provides in part that:

"Comments shall focus on factual, legal or technical errors in the proposed decision and in citing such errors shall make specific references to the record. Comments which merely reargue positions taken in briefs will be accorded no weight and are not to be filed."

In view of the above provision of Rule 77.3, it is not necessary for us to discuss the comments filed by UPRR, and the reply thereto filed by the City.

We concur with the ALJ's proposed decision and adopt it in its entirety.

Findings of Fact

1. The City seeks authority to construct an at-grade crossing across the railroad tracks of UPRR at Swain Road.
2. The proposed crossing will, in addition to crossing the main line of UPRR, also cross an operating siding which parallels the main line.
3. The operating siding extends for a distance of approximately 5,750 feet in its entirety.
4. The siding is used by UPRR for the passing of trains traveling in opposite directions which meet at Stockton on the main line and for other operations.
5. Stockton is the lead agency for this project under CEQA, as amended.
6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Negative Declaration.
7. The project will not have a significant effect on the environment.

Conclusion of Law

The application should be granted subject to the conditions set forth in the ensuing order.

ORDER

IT IS ORDERED that:

1. The City of Stockton (City) is authorized to construct Swain Road at grade across the tracks of Union Pacific Railroad Company (UPRR) at the location and substantially as shown by the plans attached to the application to be identified as Crossing 4-97.7.
2. Construction of the crossing shall be in accordance with the provisions of General Order (GO) 72-B.
3. Clearances shall conform to GO 26-D. Walkways shall conform to GO 118.
4. Protection at the crossing shall be as follows:
One Standard No. 9-A automatic gate type signal with cantilever arm and one Standard No. 9 automatic gate type (GO-75C) installed in the median for Swain Road in each direction.
5. Construction expense of the crossing and installation cost of the automatic protection shall be borne by the City.
6. Maintenance cost of the automatic protection shall be borne by the City under Public Utilities Code § 1202.2.
7. Construction plans of the crossing, approved by UPRR, together with a copy of the agreement entered into between the parties, shall be filed with the Commission's Safety Division prior to commencing construction.
8. Within 30 days after completion of the work under this order, the City shall notify the Commission's Safety Division in writing that the authorized work has been done. The notification shall set forth the date the crossing was opened.
9. The Hammer Lane siding shall be relocated at City expense to a location north of Swain Road prior to the opening of the crossing.

10. This authorization shall expire if not exercised within 4 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.

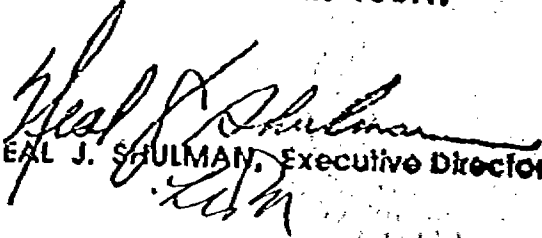
This order becomes effective 30 days from today.

Dated September 2, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director