

ORIGINAL

Decision 97-05-097

May 21, 1997

Application 93-11-008 of the City of Morgan Hill to construct one pedestrian grade crossing of the Southern Pacific Transportation Company E Line at the Downtown Transit Center in said City of Morgan Hill, State of California

Application 93-11-008
(Filed November 1, 1993)
(Amended August 22, 1994)

**ORDER GRANTING EXTENSION OF TIME
TO COMPLY WITH DECISION 95-04-070**

On April 26, 1995, the Commission issued Decision (D.) 95-04-070. This decision had authorized, ex parte, an application filed by the City of Morgan Hill ("City") to construct a pedestrian at-grade crossing linking the City's new Downtown Transit Center with the County of Santa Clara's CalTrain Park and Ride Facility. The proposed crossing would traverse two tracks of the Southern Pacific Transportation Company ("SPT"), a main line track and a spur track. Currently, pedestrians riding CalTrain cross these tracks back and forth at random, without any significant safety protections in place. No protests to the application were filed.

On May 24, 1995, SPT filed an application for rehearing of Decision 95-04-070. The City filed a response in opposition.

We initially considered the application for rehearing at our executive session of February 19, 1997. Up to that time, several attempts by the parties to negotiate their differences had been unsuccessful. We held the item until our March 18 executive session. The day before our March meeting, our Legal Division received correspondence from the attorney representing Union Pacific Railroad Company ("UP", with whom SPT had merged subsequent to the filing of the application for rehearing), co-signed by the City's attorney. The letter stated that the two parties now wished to explore the possibility of reaching an agreement that would allow the project to go forward and at the same time resolve the railroad's safety and operational concerns. Assuming that progress was likely, the two parties anticipated that a joint filing would soon be made requesting extension of the two-year expiration date for commencing construction of the project set forth in Ordering Paragraph 9 of D.95-04-070. The parties asked that in view of this, we put the agenda item over until our May 21 meeting, which we did. On May 16, 1997, the parties filed such a joint petition,¹ requesting that in view of the renewed efforts at negotiation, the effective date of D.95-04-070 be extended from May 26, 1997 to May 26, 1999.

While we cannot extend the effective date of D.95-04-070, since that order became effective May 26, 1995, we can extend the time within which construction of this project must be commenced. We are persuaded that the parties have justified such an extension. However, we do not think an extension for the full two years they request is in the public interest, considering the safety problems presented by the existing crossing situation. Also, we are optimistic that with UP's involvement, negotiations can be concluded successfully in much less than two years' time. Therefore, we will grant

¹ The petition was docketed as a Petition for Modification of D.95-04-070.

the parties' joint request by extending our authorization of construction of the project for nine additional months, to February 26, 1998.

IT IS ORDERED that authorization to construct the at-grade pedestrian crossing approved by Decision 95-04-070 shall expire if not exercised by February 26, 1998 unless time is further extended, or if the conditions set forth in Decision 95-04-070 are not complied with. Should the parties find it necessary to request an additional extension, they shall provide full justification for it in writing. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

This order is effective today.

Dated May 21, 1997, at Sacramento, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

Commissioners

I dissent.

/s/ **JOSIAH L. NEEPER**

Commissioner

I dissent.

/s/ **RICHARD A. BILAS**

Commissioner

CORRECTION !!

*THE PREVIOUS DOCUMENT(S) MAY HAVE
BEEN FILMED INCORRECTLY*

RESHOOT FOLLOWS

L/bjk*

MAIL DATE
5/28/97

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