

SEP 4 1997

Decision 97-09-008 September 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of El Segundo for an Order authorizing construction of a new crossing at-grade between Douglas Street and the track of The Los Angeles County Metropolitan Transportation Authority, P.U.C. 2H-15.0.

ORIGINAL
Application 96-11-023
(Filed November 18, 1996)

Gregory T. Dion, Attorney at Law; Bellur Devaraj, City Engineer; Ed Schroder, Public Works Director; Deleuw, Cather & Co., by Lenwood Howell; and Bob Barton; for City of El Segundo, applicant.

Hill, Farrer & Burrill, by R. Curtis Ballantyne, Attorney at Law, for Burlington Northern and Santa Fe Railway Company, protestant.

James T. Quinn, Attorney at Law, for the Rail Safety/Carriers Division.

OPINION

On November 18, 1996, the City of El Segundo (the City) filed an application seeking Commission authorization, pursuant to Public Utilities Code §§1201-1205, to construct an at-grade crossing of the tracks owned by the Burlington Northern/Santa Fe Railway Company (Railroad) at Douglas Street in El Segundo. In the application, the City alleged that the extension of Douglas street over the tracks was an essential part of the City's master plan, that the City is suffering acute traffic congestion in the vicinity, that the traffic from the expansion of the nearby Los Angeles International Airport will require mitigation, and that a local employer must transport oversize and overheight spacecraft assemblies to the airport via a circuitous route, which could be avoided with the extension of Douglas Street.

On December 12, 1996, the Railroad filed a protest to the application. In its protest, the Railroad alleged that this at-grade crossing has been the subject of three previous applications by the City. The Commission has denied each of the previous

applications. Decision (D.) 65703, D.70065, and D.90-08-005. The Railroad also alleged that the current application is substantially similar to the previous application. The Railroad requested that the application be dismissed, or, if not dismissed, that the matter be set for public hearing.

On February 19, 1997, the assigned Administrative Law Judge (ALJ) issued a ruling stating that the instant application and the application (Application (A.) 89-02-007) which resulted in D.90-08-005 contained virtually the same statements and requests for relief. The assigned ALJ further found that the Commission had developed a thorough record and that D.90-08-005 carefully and clearly analyzed the facts and policies which supported denying the earlier application. The ALJ directed the City to file and serve, no later than 30 days from the date of the ruling, an amendment to its application which specifically set out the facts which had changed since 1989 and which could lead the Commission to reach a different conclusion.

On April 10, 1997, the City filed an amendment (which was dated March 19, 1997, and provided to parties on that date) to its application in which it stated that the number of trains using the tracks has fallen, a crossing will facilitate an intermodal transit station which will lead to decreased automobile use, and the financing for the Alameda Street Consolidated Rail Corridor is complete.

On April 3, 1997, Railroad filed its response in which it stated that the Commission has a long history regarding this proposed crossing in particular and all at-grade crossings in general of disfavoring such crossings and only approving them where the advantages outweigh the dangers and hazards created by such crossings. Railroad also stated that each of the applicant's asserted factual changes are either irrelevant or were fully litigated in the previous proceeding.

On June 10, 1997, ALJ Anand V. Garde held a prehearing conference in which the parties were given an opportunity to state for the record which issues are in dispute such that hearings are required. Applicant stated the number of trains passing the proposed crossing has decreased and that the Alameda Corridor rail project is almost complete, the federal government having spent nearly \$250 million, which will result in

further reductions in train use. An at-grade crossing is also necessary, according to applicant, to allow commuters to use a nearby parking lot for the transit system.

The Commission Staff disagreed with the applicant and stated that the Alameda Corridor project is just in the preliminary stage; no construction has actually started. Staff also stated that their visual inspection of the site revealed that three large pillars which support the elevated Green Line train would end up in the middle of the proposed crossing, obstructing automobile drivers' view of any on-coming trains. Staff concluded that no changes have occurred since the Commission last reviewed this proposal which would make a favorable ruling more likely. In fact, Staff concluded that current circumstances would make an at-grade crossing less desirable now than in 1989.

Railroad stated that it agreed with Staff generally and that it specifically disputed applicant's assertion that the train usage frequency had decreased. Railroad emphasized that applicant has omitted any analysis of the inherent safety issues involved with this site, which has severe line-of-sight limitations due to its 48 degree angle.

Discussion

The Commission is committed to conducting the public's business in an efficient manner. Where the Commission has issued a well-supported decision on a specific matter, the Commission is unwilling to expend public resources trodding the same ground once again.

The Commission's policy disfavoring at-grade crossings is well-stated in Railroad's response. This policy requires at least the assertion of compelling evidence that will overcome the disfavored nature of these crossings, prior to scheduling hearings.

As regards the proposed Douglas street crossing, applicant must overcome both of these hurdles before the Commission will expend its limited resources to litigate this matter. Applicant has not met this burden.

The instant application, even as amended, makes substantially the same factual arguments as have been previously presented and rejected by the Commission on several occasions. The "new" policy arguments are largely irrelevant.

Tipping the balance further away from applicants is the Commission policy disfavoring at-grade crossings. We require clear, compelling evidence (or at this stage of a proceeding, descriptions of such evidence) that specific, tangible benefits will accrue to the public which justify imposing the dangers created by an at-grade crossing on the public. The applicant has not made such a demonstration.

For these reasons, we will dismiss this application, without prejudice to the City's ability to submit a new application which meets the standards articulated above.

Findings of Fact

1. The instant application, as amended, and the application (A.89-02-007) which resulted in D. 90-08-005 contained virtually the same statements and requests for relief.
2. The Commission's policy disfavors at-grade crossings.

Conclusions of Law

1. The Commission developed a thorough record and D.90-08-005 carefully and clearly analyzed the facts and policies which supported denying the earlier application.
2. Applicant has not alleged a substantial change in material fact that would warrant relitigating this application.
3. Applicant has not alleged sufficient facts which, if proven, would overcome the Commission's policy disfavoring at-grade crossings.
4. This application should be dismissed, without prejudice to submit a new application which meets the standards set out above.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Application 96-11-023 is dismissed, without prejudice to submit a new application which demonstrates substantial changes in material facts and which alleges facts which will overcome the Commission's policy disfavoring at-grade crossings.

2. This docket is closed.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners