

Decision 00-06-041 June 8, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Oakland, a municipal Corporation, acting by and through its Board of Port Commissioners for permission to construct three separate crossings at grade on 7th Street in the City of Oakland

Application 99-06-022
(Filed June 16, 1999)

OPINION GRANTING APPLICATION

The Board of Port Commissioners of the City of Oakland (the City) requests, pursuant to Public Utilities Code Sections 1201-1205, to construct three new railroad crossings at grade on 7th Street and make specific improvements and realignment of the roadway within the commercial container port area. The purpose of the project is to provide more usable marine terminal space and enable the construction of a public park at the intersection of New Road and 7th Street. The additional roadway capacity will accommodate new berths off 7th Street and the New Road and serve the proposed Joint Intermodal Terminal to be constructed on the existing Oakland Navy Base.

Seventh Street will be widened and straightened to cross railroad tracks at three locations: south of the New Road (Crossing 1, identified as PUC Crossing No. 001A-3.7-C), at the intersection of New Road and 7th Street (Crossing 2, identified as PUC Crossing No. 001A-3.8-C), and north of the New Road (Crossing 3, identified as PUC Crossing No 001A-4.1-C). A grade separation is not practical at these locations because of the limited use and the physical constraints of the San Francisco Bay and existing surrounding land use, including the proposed Joint Intermodal Terminal.

At Crossing 1, the crossing of the public park driveway just south of the realigned 7th Street, the City will install post-mounted flashing light signals for traffic on the park driveway. (Exh. B-1.) The City will also install flashing light signals directed at traffic turning off of 7th Street into the park and pavement markings, including railroad crossing warnings and "Keep Clear" markings.

At Crossing 2, the railroad track at the 7th Street/New Road intersection will cross entirely within the intersection. Trains will pass through the intersection on all-red signal indications. In the westbound direction, train crews will use a switch key to activate the train traffic signal phase, which will be deactivated when the train clears the proposed AC-DC island track circuit. Westbound trains will be detected via a motion detector, which will initiate the signal's all-red signal phase. Because of infrequent train movements occurring at low speeds of less than 10 miles per hour, the City did not propose to install a flashing light at Crossing 2. Traffic signals will control all vehicle and train traffic at this intersection. For eastbound traffic at this intersection, the City will install "No Turn on Red" signs, as well as advance warning signs and pavement markings.

At Crossing 3, rail improvements at this location include warning devices at the new crossing with cantilever-supported flashing light signals, advance warning signs and pavement markings as described above for the other crossings.

The Rail Safety and Carriers Division Traffic Engineering (RSCD, staff) timely protested the application requesting that applicant be required to install at Crossings 1 and 3 the Standard No. 9 and 9A automatic gate with a cantilever. Staff contends this device is more effective and applicant has not shown any reason why they should not be installed.

After discussion of staff's recommendations, Union Pacific Railroad (UPRR) and applicant agreed that at each of the three crossings, rail vehicles will stop, wait for the warning devices to activate and proceed across the intersection when safe. After this agreement, staff withdrew its protest. Thus, based upon this condition, applicant will install two Standard No. 8 flashing lights at Crossing 1 and two Standard No. 8A flashing lights with cantilever at Crossing 3, as initially proposed.

The Port is the lead agency¹ for the Joint Intermodal Terminal project which includes the proposed 7th Street realignment, the New Road and a new track crossing at grade across Middle Harbor Road in the City, in Alameda County.² Under the California Environmental Quality Act of 1970 (CEQA), as amended in Public Resources Code 21000, et. seq., the Port prepared and reviewed an EIR addressing the entire project, including the three proposed crossings addressed herein, and approved the project. On April 22, 1999, the Port filed a CEQA Notice of Determination³ for the entire project with the County of Alameda and the State Office of Planning and Research. This notice states that the project will have a significant effect on the environment, though mitigation measures were made a condition of approval of the project and the Port adopted a statement of overriding considerations.

¹ Under CEQA Guidelines Section 15051, a public agency is the lead agency for its own projects, even if the project will be located within the jurisdiction of another agency. This Commission is the lead agency for utility projects specified in its Rules of Practice and Procedure, Rule 17.1.

² The Commissioner granted authority to construct the Middle Harbor Road crossing, Application 99-06-023, on April 6, 2000, by Decision 00-04-021.

³ This notice required by CEQA Guidelines Section 15094 provides a brief summary of the project, any environmental impacts and mitigation measures and makes the final EIR available for public review.

This Commission is a responsible agency⁴ for this project under CEQA. We have reviewed the lead agency's EIR and Notice of Determination. In addition, our RSCD staff has inspected the site of the application. Staff examined the need for and safety of the proposed crossings. As long as the safety conditions agreed by applicant and UPRR are met, staff recommends that the sought authority be granted.

We take official notice of this EIR, a copy of which we have placed in the formal file of this proceeding. By ruling dated April 17, 2000, the assigned Commissioner notified parties of our intention to take official notice of this document. No party objected.

The City attached to its application plans for the general area improvements as well as detailed legal descriptions of the new crossings and plans for the signs, striping and guards at each crossing and improved roadway. (Exhs. A, B-1, B-2, B-3, C-1, C-2, C-3, D, E-1, E-1, E-3, F-1, F-2 and F-3.) Thus, the application meets the filing requirements of the Commission's Rules of Practice and Procedure, including Rule 38, which requires a description and maps of the proposed construction.

In Resolution ALJ 176-3018 dated June 24, 1999, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that a public hearing was not necessary. Since staff withdrew its protest, no public hearing was held. The application, as amended by the agreement between applicant and UPRR, is reasonable, necessary and in the public interest. Therefore, we will grant the amended application.

⁴ A responsible agency is one that will carry out or approve a project for which a lead agency is preparing a CEQA document. This includes all state or local agencies, other than the lead agency, with discretionary approval power over a project.

Although this matter was contested initially, the parties have resolved their differences, and this decision grants the application as amended. Accordingly, pursuant to Public Utilities Code Section 311 (g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. As part of the Joint Intermodal Terminal Project, the City requests authority under Public Utilities Code Sections 1201-1205 to construct three at grade railroad crossings in conjunction with the widening and straightening of 7th Street in Oakland, CA. The City filed all legal descriptions, facility descriptions, and maps in its application as required by Rule 38.
2. Notice of the application was published in the Commission's Daily Calendar on June 21, 1999.
3. Staff timely protested the application, requesting that applicant be required to install at Crossings 1 and 3 the Standard No. 9 and 9A automatic gate with a cantilever, rather than the proposed two Standard No. 8 flashing lights at Crossing 1 and two Standard No. 8A flashing lights with cantilever at Crossing 3.
4. Subsequent to staff's protest, applicant and UPRR entered into an agreement that at each of the three crossings, rail vehicles will stop, wait for the warning devices to activate and proceed across the intersection when safe.
5. After this agreement was made, staff formally withdrew its protest.
6. Staff has inspected the proposed site and examined the need for and safety of the proposed crossings. As long as the safety conditions agreed by applicant and UPRR are met, staff recommends that the sought authority be granted.
7. The marine terminal area is constricted by San Francisco Bay and existing terminal use making grade separations impractical. Therefore, public convenience and necessity require the construction of applicant's three proposed

at grade railroad crossings identified as: PUC Crossing No. 001A-3.7-C, PUC Crossing No. 001A-3.8-C, and PUC Crossing No 001A-4.1-C.

8. Public safety requires that UPRR stop rail vehicles at each of the three proposed crossings, wait for the warning devices to activate and proceed across the intersection when safe.

9. On April 17, 2000 the Assigned Commissioner notified the parties of the Commission's intention to take official notice of the EIR. No party objected.

10. The Port is the lead agency for the Joint Intermodal Terminal Project under the CEQA, as amended in Public Resources Code 21000, et. seq. The EIR for this terminal project includes the traffic impact of the proposed crossings in this proceeding.

11. After preparation and review of the EIR, the Port approved the project.

12. On April 22, 1999, the Port filed a CEQA Notice of Determination for the entire terminal project with the County of Alameda and the State Office of Planning and Research.

13. The staff has reviewed and considered this EIR in its recommendations.

14. The project will have a significant effect on the environment; however, the Port made mitigation measures a condition of approval of the project, and adopted and filed a statement of overriding considerations.

Conclusions of Law

1. The requirements of Rule 38 of the Commission's Rules of Practice and Procedure are met.

2. After staff withdrew its protest based upon the condition agreed between applicant and UPRR, the application is uncontested and a public hearing is not necessary.

3. The application should be granted as proposed, subject to the condition agreed between UPRR and applicant.

O R D E R

IT IS ORDERED that:

1. The Board of Port Commissioners of the City of Oakland (City) are authorized to construct three at-grade railroad crossings, PUC Crossing No. 001A-3.7-C, PUC Crossing No. 001A-3.8-C, and PUC Crossing No 001A-4.1-C, at the location and substantially as shown on the plans attached to the application, provided the condition below between applicant and Union Pacific Railroad (UPRR) is met.
2. At PUC Crossing No. 001A-3.7-C, the City shall install post-mounted flashing light signals for traffic on the park driveway, flashing light signals directed at traffic turning off of 7th Street into the park and pavement markings, including railroad crossing warnings and "Keep Clear" markings.
3. At PUC Crossing No. 001A-3.8-C, trains shall pass through the intersection on all-red signal indications. In the westbound direction, train crews shall use a switch key to activate the train traffic signal phase, which will be deactivated when the train clears the proposed AC-DC island track circuit. Westbound trains shall be detected via a motion detector, which will initiate the signal's all-red signal phase. Traffic signals will control all vehicle and train traffic at this intersection. For eastbound traffic at this intersection, the City shall install "No Turn on Red" signs, as well as advance warning signs and pavement markings, including railroad crossing warnings and "Keep Clear" markings.
4. At PUC Crossing No 001A-4.1-C, rail improvements shall include warning devices with cantilever-supported flashing light signals, advance warning signs and pavement markings, including railroad crossing warnings and "Keep Clear" markings.

5. At each crossing, on-rail vehicles shall first be brought to a stop, signals will be activated, and vehicular traffic must be clear before on-rail vehicles proceed through the crossing. Signals shall be operated on a manual switch key activated by a competent employee of the railroad.

6. Clearances shall be in accordance with General Order (GO) 26-D.

7. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

8. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the relevant parties. A copy of the agreement shall be filed by the City with the Commission's Rail Safety and Carriers Division (RSCD) prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

9. Final construction plans, approved by the City, shall be filed by the City with RSCD prior to commencing construction.

10. This authorization shall expire if not exercised within four (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.

11. The Executive Director shall serve a copy of this order on UPRR, so that the railroad company is informed of the obligation herein imposed upon it.

12. The application in this proceeding is granted as set forth above.
13. This proceeding is closed.

This order is effective today.

Dated June 8, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners