

Decision 99-09-059 September 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Richmond for an order granting a variance to General Order No. 135 to further limit the time permitted for blocking the public streets with crossings at Richmond Avenue and Marina Bay Parkway in the City of Richmond, Contra Costa County, California.

Application 99-03-003
(Filed March 2, 1999)

O P I N I O N

Summary

The City of Richmond (City) filed this application seeking a variance from Commission General Order (GO) 135 with respect to two Burlington Northern Santa Fe (BNSF) railroad crossings at grade. The effect of the variance would be to reduce the allowable time that a train may occupy each crossing from 10 to 5 minutes under GO 135. The parties have settled the underlying dispute, and the City, with BNSF's concurrence, now asks the Commission to dismiss the proceeding without prejudice.¹ We will grant the request.

¹ In pursuing this procedure the City is complying with the instructions of the administrative law judge (ALJ), who inadvertently assumed that this was a complaint proceeding. In complaint proceedings, the Executive Director may issue a dismissal upon written request of the complainant pursuant to Pub. Util. Code § 308 and Resolution A-4638. Because there is no such procedure available in application proceedings, we will treat the City's request as an unopposed motion and issue a decision of the Commission instead.

Discussion

The City initiated this proceeding in an effort to remedy a longstanding traffic problem at two grade crossings, about which the principal parties have disagreed for the past decade. The two crossings are in locations where historically industrial districts served by BNSF's rail lines are in immediate proximity to redeveloped residential neighborhoods, placing the two uses in conflict. Interference with local vehicular traffic movement by BNSF rail operations is one aspect of this conflict.

The ALJ held a prehearing conference on May 10, 1999, to define the issues and establish a procedural schedule. Appearances were made by the Richmond City Attorney's Office and BNSF, and by the United Transportation Union as an interested party. All were involved in the ensuing discussion. BNSF's chief operations officer for California, Arizona, and parts of Utah also attended and participated. The personal confrontation of the principal players apparently stimulated serious discussion about a potential solution, as the parties reported that they had reached a negotiated resolution to their differences after meeting and conferring at the behest of the ALJ.

The City seeks to dismiss its application without prejudice to preserve its right to file a new application if the agreement fails to remedy the traffic problem. We will grant the City's request.

In Resolution ALJ 176-3012 dated March 18, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings would be necessary. Our examination of the record persuades us that a public hearing is not necessary. Accordingly, we confirm the designation of this proceeding as ratesetting, but we amend the designation to eliminate the requirement for hearing.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The City filed this application for an exemption from GO 135 in an effort to prevent BNSF trains from blocking two grade crossings for extended periods of time.
2. The parties have negotiated a resolution of the underlying problem, and the City seeks to dismiss its application without prejudice.
3. BNSF concurs with the City's request.
4. The Commission has not devoted substantial time or resources to the processing of the City's application up to this time.

Conclusion of Law

The City's request to dismiss this application should be approved.

O R D E R

IT IS ORDERED that:

1. Application (A.) 99-03-003 is dismissed without prejudice.
2. A hearing is not required.
3. A.99-03-003 is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners