

Memorandum

To: Chairman and Commissioners

Date: October 26, 2007

From: John F. Barna, Jr.
Executive Director

File No: Reference #4.9
TAB #59
ACTION

Ref: **PROPOSED FY 2008-09 ALLOCATION SET-ASIDE FOR THE PUBLIC UTILITIES COMMISSION RAILROAD GRADE CROSSING PROTECTION MAINTENANCE PROGRAM RESOLUTION G-07-**

Issue:

Should the Commission support the Public Utilities Commission's (PUC) request (Attachment A) to increase the statutorily required \$1 million allocation set-aside in next year's FY 08-09 State Budget up to a \$3.9 million allocation set-aside for its Railroad Grade Crossing Maintenance Program, as permitted by Public Utilities Code Section 1231.1?

Recommendation:

In previous years when the PUC requested additional funds from the upcoming budget, the Commission considered the projected revenues estimated to be available in the State Highway Account, which funds the Railroad Grade Crossing Maintenance Program. For the last two years, the Commission increased the statutorily required amount of \$1 million to \$2 million. As noted in recent years, revenues directed towards the Railroad Grade Crossing Maintenance Program would mean less for projects in the State Highway Operation and Protection Program (SHOPP). Although it is important to maintain grade crossing protection devices at the interface of road/rail transportation systems, the Commission must take into account the funding of all of the programs under its purview.

Accordingly, Commission staff recommends that the Commission only support \$2 million for inclusion in the upcoming FY 08-09 Budget for the Railroad Grade Crossing Maintenance Program (Attachment B).

Background:

The Automatic Grade Crossing Protection Maintenance Fund was established in 1965 by the State Legislature to pay the locals' share of the cost for maintaining automatic grade crossing protection devices installed by the railroad corporations after October 1, 1965. The cities' and counties' share for maintaining automatic grade crossings typically represents only 50% of the total project cost; the remaining 50% is borne by the railroad corporations. This 50-50-payment split presumes that rail and highway users equally share the crossing and should therefore equally share the cost of maintaining the crossing devices, unless prescribed otherwise by the PUC. The reimbursement of claims in FY 08-09 would be limited to the amount recommended for allocation by the Commission.

Initially, the \$1 million annually appropriated for maintenance of warning devices was sufficient to cover all claims filed by the railroad and street railroad corporations. In 1973, changes to the federal grade crossing protection funding program resulted in the increased installation and upgrading of automatic grade crossing protection devices. Consequently claims began exceeding the funds available from Calendar Year 1977 onward. The projected maintenance fund claims for FY 08-09 are expected to be about \$3.9 million for approximately 2,800 crossings, which is consistent with the claims made over the last four years.

In response to questions raised several years ago about the Commission's discretion on the matter, the Commission's attorney reviewed Public Utilities Code Section 1231.1, as well as the Commission's overall authority regarding Caltrans' budget. The Commission's attorney concurs that the PUC can make a recommendation which the Commission can accept as an assessment of the anticipated need for the upcoming year. However, the Commission's attorney points out that under Section 165 of the Streets and Highway Code (SHC), the Commission "shall review the assumptions and policy directions used in preparing the budget and forward its comments and recommendations to the department." Under SHC Section 165, the Commission can consider the broader issue regarding the current and projected cash flow in the State Highway Account, as well as funding for other programs, and make a separate recommendation to the Legislature with regards to Caltrans proposed budget.

Attachments

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division
Rail Transit and Crossings Branch
Rail Crossings Engineering Section

Resolution SX-81
August 23, 2007

RESOLUTION

RECOMMENDATION TO THE CALIFORNIA TRANSPORTATION
COMMISSION FOR INCREASED FUNDING TO BE SET ASIDE FOR
MAINTAINING AUTOMATIC GRADE CROSSING PROTECTION DEVICES
UNDER PUBLIC UTILITES CODE SECTION 1231.1

Summary

This resolution recommends that the California Transportation Commission (CTC) allocate the sum of \$3,900,000 for the 2008-09 fiscal year (FY) for the purpose of paying the local government's share of the cost of maintaining automatic grade crossing warning devices.

Background

The Grade Crossing Protection Maintenance Fund was established by the Legislature in 1965 to pay railroad corporations the local government's share of the cost of maintaining automatic railroad crossing warning devices installed or upgraded after October 1, 1965. Public Utilities Code Section 1231.1 requires the Department of Transportation (Caltrans) to set aside a minimum of \$1,000,000 for the payment of those costs.

In 1988, an amendment to Public Utilities Code Section 1231.1¹ was enacted which specifies that the PUC may recommend a sum greater than \$1,000,000 be set aside if it finds that the \$1,000,000 is not sufficient due to an increase in the number of grade crossing warning devices or an increase in the cost of maintenance of those devices. The specific amount of the total allocation shall be determined by the CTC.

Discussion

When the automatic grade crossing protection maintenance fund was first established in 1965, the maximum annual allocation of \$1,000,000 was sufficient to cover all claims filed by railroad and street railroad corporations. However, the increase in the number of crossing warning devices and the increase in cost for maintaining these devices caused claims to exceed the funds available for calendar year 1977 and thereafter.

The railroads perform the required maintenance during a given calendar year, and then file a claim with the PUC for reimbursement of the local government's share of the maintenance costs. The PUC verifies the claims and forwards valid claims to Caltrans for payment. These claims are paid from the allocation made by the CTC in the Caltrans budget. Claims and payments for the past five years were as follows:

CY *	FY*	No. of crossings	Total Claims (\$)	Total Paid (\$)
2002	02-03	2,814	4,076,295	4,076,295
2003	03-04	2,805	4,088,563	4,088,563
2004	04-05	2,810	4,102,674	4,102,674
2005	05-06	2,797	4,091,802	1,000,000
2006	06-07	2,788	3,899,995	1,000,000

*CY-Calendar Year

*FY-Fiscal Year

The maintenance fund costs and respective claims for calendar year 2008 (FY 08-09) are expected to be significantly higher than the \$2,000,000 the CTC allocated for FY 2007-2008². Based on the previously submitted maintenance claims and the numbers and types of warning devices eligible, an allocation of \$3,900,000 will be needed for the 2008-2009 fiscal year and would constitute the minimum amount necessary for that maintenance.

¹ AB 3065, (Polanco) September 29, 1988.

² CTC Resolution G-06-15, October 12, 2006.

The draft resolution was mailed to the 26 railroads which apparently may be eligible to receive funds under this program consistent with Public Utilities Code Section 311(g) and Rule 14.5 of the Rules of Practice and Procedure. No comments were received.

Findings

The Commission staff has reviewed the amount needed to be allocated pursuant to Public Utilities Code Section 1231.1 and finds that an amount of \$1,000,000 will be insufficient and finds, instead, that an allocation of \$3,900,000 is the minimum amount necessary for allocation to the Grade Crossing Protection Maintenance Fund for FY 2008-2009.

Therefore, in accordance with Public Utilities Code Section 1231.1, the Commission staff finds that the PUC should recommend to the CTC that a sum of \$3,900,000 be allocated for the 2008-09 fiscal year for the purpose of paying to railroad or street railroad corporations the share of the costs to cities and counties of maintaining automatic grade crossing protection/warning devices.

Commission staff recommends that this Resolution be adopted.

THEREFORE, IT IS ORDERED that:

The PUC recommends to the CTC that a sum of \$3,900,000 be allocated for the 2008-2009 fiscal year for the purpose of paying to railroad corporations the share of the costs to cities and counties of maintaining automatic grade crossing protection/warning devices pursuant to Public Utilities Code Section 1231.1.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on August 23, 2007. The following Commissioners voted favorably thereon:

/s/ PAUL CLANON

PAUL CLANON

Executive Director

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

CALIFORNIA TRANSPORTATION COMMISSION

California Public Utilities Commission
Railroad Grade Crossing Protection Maintenance Program
Allocation Set-Aside for \$2 Million in FY 2008-09

Resolution #G-07-__

- 1.1 WHEREAS, the Automatic Grade Crossing Protection Maintenance Fund was established by the Legislature in 1965 (PUC Section 1231.1) to pay the cities' and counties' share of the cost of maintaining automatic grade crossing protection devices installed by railroad corporations after October 1, 1965; and
 - 1.2 WHEREAS, since 1967 a minimum of \$1 million per year has been appropriated by the State Legislature and allocated by the California Transportation Commission to the PUC for its Railroad Grade Crossing Protection Maintenance Program; and
 - 1.3 WHEREAS, in 1973 the federal law changed which resulted in the increased installation and upgrading of automatic grade crossing protection devices; and
 - 1.4 WHEREAS, the total claims submitted by the railroad corporations have substantially exceeded the \$1 million cap since 1977; and
 - 1.5 WHEREAS, the anticipated claims to be submitted to the PUC for FY 2008-09 are estimated to be about \$3.9 million, which exceeds the annual \$1 million cap by \$2.9 million; and
 - 1.6 WHEREAS, the Commission considered the revenues in the State Highway Account, as well as other programs funded through the State Highway Account.
- 2.1 NOW THEREFORE BE IT RESOLVED, that the California Transportation Commission only supports a \$2.0 million allocation set-aside in the upcoming FY 2008-09 Budget for use in the PUC grade crossing protection maintenance program rather than the PUC-requested allocation set-aside of \$3.9 million.