



**FILED**

07-27-12

09:52 AM

RIM/acr 7/27/2012

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Neighbors for Smart Rail for Rehearing of Resolution SX-100 and for Oral Argument.

Application 11-12-010  
(Filed December 14, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING SETTING A PREHEARING CONFERENCE AND ORDERING THE APPLICANT, NEIGHBORS FOR SMART RAIL, AND THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY TO MEET AND CONFER IN ORDER TO FILE A JOINT PREHEARING CONFERENCE STATEMENT**

**1. The Prehearing Conference (PHC)**

This ruling schedules a PHC for October 5, 2012, at 10:00 a.m. at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. The ruling further instructs the applicant, Neighbors for Smart Rail (NFSR), and the Exposition Metro Line Construction Authority (Expo Authority) to meet and confer in order to file a joint PHC statement by September 28, 2012. The PHC is called to: (1) determine the parties; (2) accept appearances and establish the permanent service list; (3) determine the positions of the parties; (4) identify issues for inclusion in the scoping memo for this proceeding; (5) discuss the schedule for this proceeding; (6) determine if there are any challenges to either the categorization of this proceeding or to the preliminary determination that there is a need for hearings; and (7) discuss any additional procedural matters relevant to this proceeding.

## **2. Background**

### **2.1 Issuance of Resolution SX-100**

On November 14, 2011, the Commission issued Resolution SX-100 and granted Expo Authority authorization pursuant to Commission General Order 164-D to construct 16 new at-grade and 11 grade-separated highway-light rail crossings as part of Phase 2 of the Exposition Corridor Light Rail Transit Project. Expo Authority, on behalf of the Los Angeles County Metropolitan Transportation Authority (LACMTA), is charged with planning and constructing the Exposition Corridor Light Rail Transit Project. The project is a light rail transit extension that, when complete, will provide public transit service between downtown Los Angeles and the City of Santa Monica. Phase 1 of the project, an 8.5 mile segment from downtown Los Angeles to Culver City, has received Commission approval and is under construction. Phase 2 of the project will extend approximately 6.7 miles from the terminus of Phase 1, at the Venice/Robertson/Washington aerial station in Culver City, to the downtown area of Santa Monica.

### **2.2 NFSR's Rehearing Application**

In its rehearing application, NFSR challenged Resolution SX-100 on the following grounds:

1. At-grade crossings are not cheaper, and Expo cannot claim cost as a factor in eliminating analysis and adoption of grade separations if they did not seek funding for those options;
2. The Commission failed in its duties as a responsible agency under the California Environmental Quality Act (CEQA), and the Commission cannot claim it did not know the requirements of CEQA;
3. The Commission failed to comply with Section 13.6 of the Commission's Rules of Practice and Procedure, which states that the substantial rights of the parties must be protected;

4. The Commission has lost objectivity in proceedings with LACMTA and therefore further fails to serve the public interest and need for transparency, due diligence, and due process in transit planning in Los Angeles County;
5. The metro grade crossing policy circumvents safety and defers environmental review;
6. NFSR agrees with Commissioner Simon that the public was excluded in the crossing approvals, and the Commission erred in relying on Expo to conduct public outreach; and
7. The ratesetting categorization wrongly disallows intervenor compensation for parties who are members of the public. NFSR also requests oral argument on its rehearing application.

### **2.3 The Order Granting Limited Rehearing of Resolution SX-100**

On June 25, 2012, the Commission issued an order granting limited rehearing of Resolution SX-100 and narrowed the issues on rehearing to those on involving CEQA and due process. Specifically, the order directed the assigned Administrative Law Judge (ALJ) to address and resolve the following issues identified in the June 25, 2012 order:

1. CEQA compliance;<sup>1</sup>
2. Due process;<sup>2</sup>
3. Allegations of error regarding cost issues, compliance with standards of practicability, and the Commission's objectivity;<sup>3</sup> and
4. Whether Resolution SX-100 should be modified or revised to include two overhead structures (the Interstate Highway 405 and the

---

<sup>1</sup> Order at 4, Section III. A.

<sup>2</sup> *Id.* at 4-5, Section III. B.

<sup>3</sup> *Id.* at 6-7, Section III. C.

Palm Park pedestrian bridge) that are situated above new crossings locations.<sup>4</sup>

The Order denied rehearing of the following issues:

1. Intervenor Compensation;<sup>5</sup> and
2. Request for Oral Argument.<sup>6</sup>

As for the scope of the proceeding, the order further directed the assigned ALJ to do all of the following in the course of addressing these issues:

1. Assemble the administrative record for Resolution SX-100, which shall become part of the administrative record for the rehearing proceeding and which shall be lodged with the Commission's Central Files office, so that the record is available to all parties involved in this rehearing proceeding;
2. Ask the interested parties to supplement this record, as necessary, by way of prepared testimony and/or additional comments;
3. Based on the record evidence, make specific findings for each significant effect of the project that is related to the Commission's crossing jurisdiction;
4. Provide opportunity for interested parties to comment on whether, in light of a fully developed record, the crossings approved in Resolution SX-100 should be revised, modified, or re-approved by the Commission on rehearing;
5. Determine whether the baseline issues addressed in Section III. F of the Order Granting Limited Rehearing require a CEQA addendum, and if so, to prepare such an addendum with the assistance of the Commission's CEQA Staff; and

---

<sup>4</sup> *Id.* at 8-9, Section III. F.

<sup>5</sup> Order at 7, Section III.D.

<sup>6</sup> Order at 8, Section III.E.

6. Determine whether any related, pending Commission proceedings should be consolidated with the issues addressed herein to facilitate coordinated consideration and review.

### **3. The PHC Statement**

In preparation for the PHC, the parties shall meet and confer either in person, telephonically, or e-mail to discuss the following subjects:

1. The issues identified above in Section 2.3 of this ruling setting the PHC, and determine what are the parties respective positions as to each issue that the Commission needs to decide in this case;
2. What material facts as to the issues identified above in Section 2.3 of this ruling are undisputed;
3. What material facts as to the issues identified above in Section 2.3 of this ruling are disputed;
4. The status of settlement discussions, if any;
5. Whether mediation conducted by a neutral ALJ, other than the assigned ALJ, would be helpful in resolving the disputed issues;
6. Whether any discovery is needed and the anticipated date that discovery will be completed;
7. Whether hearings are needed;
8. If the parties believe that a hearing is needed, the estimated number of days required, and the number of witnesses that each side plans to present at the hearing; and
9. A proposed schedule for this case, including dates for completing discovery, filing prepared written testimony, and for hearing.

### **4. Filing, Service, and Service List**

The parties shall file their joint PHC statement that addresses the above subjects with the Commission's Docket Office, and provide a copy to me, by no later than September 28, 2012. The joint PHC statement shall identify all material

facts that are either undisputed or disputed. Parties shall submit their copy to me by e-mail addressed to [rim@cpuc.ca.gov](mailto:rim@cpuc.ca.gov). A second copy shall be submitted to me by personal delivery or mail.

Parties are encouraged to file and serve electronically, whenever possible. This proceeding will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served. This rule allows electronic service of documents, in a searchable format, unless the party or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by U.S. mail. Concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only," is required. Parties are expected to provide paper copies of served documents upon request. More information regarding electronic filing is available at <http://www.cpuc.ca.gov/puc/efiling>.

Parties are responsible for ensuring that the correct information is contained on the service list and notifying the Commission's Process Office and other parties of corrections or ministerial changes. (See Rules of Practice and Procedure Rule 1.9(f).)

If either party has questions regarding Commission procedures, please contact the Commission's Public Advisors Office by phone at (866) 849-8390 or (415) 703-2074 or by e-mail at [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov). The Commission's Rules of Practice and Procedure are also available for review on our website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

**IT IS RULED** that:

1. The Commission has set a prehearing conference in the above-captioned matter for October 5, 2012, at 10:00 a.m. at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.
2. The Parties shall file and serve their joint prehearing conference statement, as described above, no later than September 28, 2012, and shall serve the undersigned with the joint PHC statement by same day e-mail service at [rim@cpuc.ca.gov](mailto:rim@cpuc.ca.gov).
3. To the extent discovery is required, parties shall not wait for the PHC to commence it.

Dated July 27, 2012, at San Francisco, California.

/s/ ROBERT M. MASON III  
Robert M. Mason III  
Administrative Law Judge