



**FILED**

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

Application of the City of Davis to Construct one new at-grade pedestrian and bicycle crossing at the main train station platform access in the vicinity of Mile Post No. 76.0, and an emergency-access only private crossing in the vicinity of Mile Post 76.3 of the Union Pacific Railroad Company in the City of Davis, County of Yolo, State of California.

Application 11-08-014  
(Filed August 11, 2011)

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, scope, and schedule of the proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure. The applicant's written direct testimony shall be served on March 19, 2012; intervenors' written direct testimony shall be served on April 16, 2012; the applicant's written rebuttal testimony shall be served on May 7, 2012; and an evidentiary hearing will be held on May 16, 17, 23, and 24, 2012, in San Francisco, California, as set forth more fully in the ruling.

**Background**

By this application, the City of Davis (the City) seeks authority to construct a new, at-grade pedestrian and bicycle crossing and a new, at-grade emergency vehicle crossing over the Union Pacific Railroad Company's (Union Pacific) railroad near the main train station in downtown Davis, pursuant to Pub. Util. Code §§ 1201 et seq. and 7537. The City asserts that the crossings are

needed, that it is not practicable to separate the grades at the proposed crossings, and that its proposed design is in compliance with the Commission's safety requirements. The City submitted, as part of its application, a Negative Declaration determining that the proposed crossings will not have any adverse environmental impacts pursuant to the California Environmental Quality Act (CEQA).

In determining the scope of this proceeding, we have considered the City's application, the protests filed by the Commission's Consumer Protection and Safety Division, Union Pacific, and the Capitol Corridor Joint Power Authority, and the discussion at the prehearing conference conducted on October 25, 2011.

### **Scope of Issues**

Pursuant to Pub. Util. Code §§ 1201 and 1202,<sup>1</sup> the Commission has the exclusive authority to allow the construction of a public road, highway or street across a railroad, and to determine and prescribe the manner of each such crossing. Section 1202(c) authorizes the Commission to require, where in its judgment it would be practicable, such crossing to be grade-separated. In addition, CEQA requires the Commission, as a responsible agency,<sup>2</sup> to certify that it reviewed and considered the information contained in the Negative Declaration prior to acting upon or approving the proposed project(s). (CEQA Guidelines § 15050(b).)

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<sup>1</sup> All references are to the Pub. Util. Code unless otherwise noted.

<sup>2</sup> See CEQA Guideline § 15381. The City of Davis is the lead agency per CEQA Guidelines § 15051.

Accordingly, in considering whether to authorize the construction of one or both proposed crossings, the Commission must determine the following issues:

1. Is a new crossing needed?<sup>3</sup>
2. Is it practicable to require the crossing to be grade-separated?
3. How should the crossing be constructed to ensure safe use?
4. Did the Commission review and consider the information contained in the Negative Declaration?

Union Pacific cites to *In re Exposition Metro Line Const.*, Decision (D.) 07-12-029, and *In re City of San Diego*, D.03-12-018, for the proposition that the applicant must “satisfy” the following factors “to overcome the strong presumption that a new crossing must be grade-separated”:

1. A demonstration that there is a public need for the crossing;
2. A convincing showing that the applicant has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. The comparative costs of an at-grade crossing with a grade separation;
6. Staff’s recommendation, including any conditions; and
7. Commission precedent in factually similar crossings.

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<sup>3</sup> This issue encompasses whether the crossing is “necessary” pursuant to Section 1202.1(a) or whether it is “reasonably necessary or convenient” pursuant to Section 7537.

These factors (other than a demonstration of need) are not separate issues that must be proved by the applicant, but they are relevant to our consideration and determination of the issues of need, practicability, and safe construction of the crossing. (*See, e.g.*, D.07-12-029 at 18, “However, the seven issues [sic] established for judging practicability in the above cases provide a valuable guide and are used here for discussion.”)

**Need for Evidentiary Hearing**

The issues of need, practicability, and how to construct the crossings to ensure safe use are factual issues and are contested by the parties. Accordingly, evidentiary hearings are needed.

**Schedule**

The following schedule is adopted here and may be modified by the administrative law judge (ALJ) as required to promote the efficient and fair resolution of the application:

Applicant’s prepared direct testimony served*	March 19, 2012
Prepared responsive direct testimony served*	April 16, 2012
Prepared rebuttal testimony served*	May 7, 2012
Cross-examination estimates (by email to ALJ and service list)	No later than May 11, 2012
Evidentiary hearings	9:00 a.m. May 15-16 and 23-24, 2012 Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, California
Opening briefs	To be determined
Reply briefs (proceeding submitted)	To be determined

Proposed decision	[no later than 90 days after submission]
Commission decision	[no later than 18 months after today]

\* Parties shall serve any prepared testimony on the official service list pursuant to Rule 1.9 and Rule 1.10, and shall serve two hard copies of it on the assigned administrative law judge.

The ALJ shall set the time for filing concurrent opening and reply briefs at the conclusion of evidentiary hearing. Requests for final oral argument pursuant to Rule 13.13(b) shall be made in concurrent opening briefs.

The proceeding should be resolved within 18 months of this scoping memo as provided by Pub. Util. Code § 1701.5.

### **Category of Proceeding/Ex Parte Requirements and Need for Hearing**

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding, and changes the Commission's preliminary determination that hearings are not needed. (Resolution ALJ 176- 3186, January 25, 2007, and Resolution ALJ 176-3191, May 3, 2007.) Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

### **Assignment of Proceeding**

Commissioner Michel P. Florio is the assigned commissioner and ALJ Hallie Yacknin is the presiding officer to the proceeding.

Therefore, **IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. This proceeding is categorized as ratesetting.
4. Evidentiary hearings are needed, as described above.

5. The presiding officer is Administrative Law Judge Hallie Yacknin.

Dated November 15, 2011, at San Francisco, California.

/s/ MICHEL PETER FLORIO

Michel Peter Florio  
Assigned Commissioner