

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of the City of Santa Rosa for Approval to Construct a Public Pedestrian and Bicycle At-Grade Crossing of the Sonoma-Marín Area Rail Transit (SMART) Track at Jennings Avenue Located in Santa Rosa, Sonoma County, State of California.

Application No. 15-05-014
(Filed May 14, 2015)

**REPLY BRIEF OF
THE SAFETY AND ENFORCEMENT DIVISION**

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Title 20, California Code of Regulations, Article 1, Rules 1.1 through 1.17 and 13.11, and the December 11, 2015 Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”), the Safety and Enforcement Division (“SED”) respectfully submits its reply brief in this proceeding.

The City of Santa Rosa (“City”) and the Sonoma County transportation and Land Use Coalition, the Sierra Club, the Friends of SMART, and Stephen C. Birdlebough (collectively “SCTLC”) propose to construct an at-grade pedestrian/bicycle crossing on the Sonoma-Marin Area Rail Transit (“SMART”) commuter passenger railroad line (double tracks) shared with the Northwestern Pacific Railroad Company’s (“NWP’s”) freight railroad operations. Jennings Avenue is presently bisected by the railroad line.

The immediate area is residential, commercial, and located in a single-family home and apartment residential district of growing population density (SED Opening Brief (“OB”) at p. 11). The area has an elementary school (the Helen Lehman Elementary School) and a park (Jennings Park) and approximately 62 children living on or near Jennings Avenue walk or ride their bikes to school. (*Id.* at p. 10, n. 15.) The NWP currently operates two trains a week but intends to increase traffic to 2 to 4 trains per day at speeds of 25 miles per hour (“mph”) (Ex. SED-2 at p.8). SMART will operate 32 trains per day at 35 to 40 mph (*id.* at pp. 8-9). At that speed a SMART train would take over 800 feet to come to a full stop once the brakes are applied. (*Id.* at pp. 9-10.) The majority of all crossing incidents happen with trains that are traveling less than 30 mph. (*Id.* at p. 10.) The characterization of these facts as “few and disparate” and indicate an absence of analytical foundation (City OB at p. 19 and SCTLC OB at p. 7) begs the question of what the City and SCTLC would demand instead since these facts evidence the danger to persons in this particular neighborhood of being struck by heavy railroad trains.

The City and SCTLC have not demonstrated that it is “impracticable” to build a grade separation at the crossing. (*Id.* at pp. 9-11.) Finally, aside from trespasser incidents

with trains, the risk of being struck by a train is effectively eliminated by the construction of a grade separation.¹

II. THE CITY OF BAKERSFIELD², AND D.14-08-045³ ERR IN APPLYING THE COMMISSION'S *BLUE LINE* DECISION

At page 12 of the Opening Brief of SCTLC refers to three decisions that apply the Commission's *Blue Line* decision⁴ to railroads, D.14-08-013 (*City of Bakersfield*), D.03-12-018 (*City of San Diego*)⁵, and D.14-08-045. SED contends that because the

¹ *Application of the City of Oceanside to construct a street crossing at grade at Third Street across the tracks of the Atchison, Topeka, and Santa Fe Railway Company*, D.92-01-017, 1992 Cal. PUC LEXIS 16 (Jan. 10, 1992), at pp. *8-*9.)

² *In the Matter of the Application of the City of Bakersfield to construct Akers Road, a public Street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern. In the Matter of the Application of the City of Bakersfield to construct Harris Road, a public Street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern. In the Matter of the Application of the City of Bakersfield to construct Mountain Vista Drive, a Public street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern. In the Matter of the Application of the City of Bakersfield to construct Old River Road, a public Street, across the tracks of the Union Pacific Railroad Company (Operated by the San Joaquin Valley Railroad) in City of Bakersfield, County of Kern, ("City of Bakersfield")* D.14-08-013, 2004 Cal. PUC LEXIS 390 (Aug. 23, 2004).

³ *In the Matter of the Application of the Los Angeles County Metropolitan Transportation Authority for an order authorizing the construction of two-track at-grade crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line across West 59th Street, Slauson Avenue, West 57th Street, West 54th Street, West 52nd Street, West 50th Street and across West 48th Street in the City of Los Angeles*, D.14-08-045 2014 Cal. PUC LEXIS 418 (Aug. 18, 2014).

⁴ *In the Matter of the Application of the Los Angeles to Pasadena Metro Blue Line Construction Authority for an order authorizing the construction of two light rail transit tracks at-grade crossing West Avenue 45 in the City and County of Los Angeles, California And Related Matters ("Blue Line")*, D.02-05-047, 2002 Cal. PUC LEXIS 301 (May 16, 2002). SCTLC also refers to the Application of the City of Gridley to remove the Laurel Street crossing of the Union Pacific Railroad Company tracks and construct a new crossing in the *City of Gridley*, County of Butte ("**City of Gridley**") Decision, D.06-06-032, 2006 Cal. PUC LEXIS 211. However, SED's Rail Crossing Engineering Section did not protest the at-grade and made no recommendations regarding the safety of the crossing in *City of Gridley* although it did suggest closure of other at-grade crossings more lightly used. (Id. at p. *15.) The Application for the construction of a new at-grade crossing in *City of Gridley* was denied without prejudice.

⁵ *In the Matter of the Application of the City of San Diego for an order authorizing modification of an existing at-grade crossing on three light rail vehicle tracks and one heavy rail track of the Metropolitan Transit Development Board, and one heavy rail track of the Burlington Northern and Santa Fe Railway Company, at Park Boulevard, in the City of San Diego, San Diego County, California, ("City of San Diego")* Decision 03-12-018, 2001 Cal. PUC LEXIS 1269 (Dec. 4, 2003).

crossing in question in *City of San Diego* was fundamentally a light-rail crossing, the Commission's decision in *City of San Diego* was not in error as discussed *infra*.

A. "Impracticability" Test in the *City of Bakersfield* Decision

The *City of Bakersfield* Decision erroneously applied the *Blue Line* Decision. The at-grade crossing at issue was approved upon closure of the existing at-grade crossing. SED's Rail Crossing Engineering Section ("RCES") filed a protest to the Application eight months late believing that the two affected railroads would protest the Application on the same grounds that RCES would raise. RCES' late-filed protest was denied. While applying the *Blue Line* Decision in *City of Bakersfield*, the decision does note that "grade separated crossings provide a higher level of safety than at-grade crossings." (*City of Bakersfield*, 2004 Cal. PUC LEXIS 390, *supra*, at p. *9.)

The *City of Bakersfield* recognized that *Blue Line* concerned a light-rail system. (*Id.* at pp. *9-*10) Nevertheless, *City of Bakersfield* contends that *Blue Line*'s six factor test for grade separation "provide[s] a valuable guide for judging practicability in cases involving light rail or heavy rail...". (*Id.* at p. *10.) Because SED did not file its Protest timely, it was unable to point out its strong opposition to such a ruling and the dangers of applying *Blue Line* to freight railroad lines. Nevertheless, *City of Bakersfield* does hold that at-grade crossing reviews must be made on the "unique facts" of each case. (*Id.* at p. *12.)

B. The Facts in *City of Bakersfield* Are Inapposite To This Proceeding

The safety issues presented in *City of Bakersfield* are substantially less problematic than those raised in the instant proceeding. The volume of train traffic in *City of Bakersfield* was two to three trains per day, there was no passenger train traffic, the track was a single track, and, most importantly, the speed of the two to three trains per day was limited to 10 miles per hour ("mph"). (*Id.* at p. *13.) In contrast, the number of passenger trains per day here is 32 (Ex. SED-2 at pp. 8-9) with the beginning of revenue service in addition to two to four freight trains per day in the foreseeable future (*ibid.*). The SMART line has double track creating an additional risk of a pedestrian being struck

by a train running in the opposite direction immediately following the first train (see the explanation in Ex. SED-2 at p. *9, lines 6-8). Finally, SMART train speeds will operate at 35 mph (*ibid.*) and freight trains may operate at speeds up to 79 mph on SMART's improved Class IV track. Consequently, SED asserts that the facts in *City of Bakersfield* do not create the safety risks that exist here in the SMART proceeding.

C. "Impracticability" Test and the *Blue Line* Decision in D.14-08-045

At page 7 of *D.14-08-045*, the decision provides that, as set forth in *D.13-08-005*, the Commission uses the *Blue Line* criteria for judging practicability in all at-grade crossing cases "(light-rail transit, passenger railroad, and freight railroad)." That Decision, *D.13-08-005*,⁶ states that the Commission has addressed the issue of practicability many times and cites: "D.82-04-033 (*City of San Mateo*), D.92-01-017 (*City of Oceanside*), D.98-09-059⁷, D.03-12-018 (*City of San Diego*), and D.02-05-047 (*Blue Line*)." The Decision then provides: "To assist it in its determination, the Commission uses the following seven criteria for judging practicability in all at grade crossing cases (light rail transit, passenger railroad, and freight railroad)...". As authority for this proposition the Decision cites the *City of Bakersfield, supra*, and *D.07-03-027 (Flower Street)*⁸ However, *D.07-03-027* does not discuss *Blue Line*. Yet, *D.14-08-045* and *D.13-08-005* rely exclusively for their holding that *Blue Line* applies to both passenger and freight railroads on *D.07-03-027* and *City of San Diego*. As previously discussed, the *City of San Diego* did properly concern a light-rail transit crossing and

⁶ **DECISION FOLLOWING REHEARING AFFIRMING RESOLUTION SX-100 AND GRANTING AUTHORIZATION TO EXPO AUTHORITY TO CONSTRUCT 16 AT-GRADE AND 11 GRADE-SEPARATED HIGHWAY LIGHT RAIL CROSSINGS AS PART OF PHASE 2 OF THE EXPOSITION CORRIDOR LIGHT RAIL TRANSIT PROJECT**, *D.13-08-005*, 2013 Cal. PUC LEXIS 436 (Aug. 15, 2013) in *Application of Neighbors for Smart Rail for Rehearing of Resolution SX-100 and for Oral Argument, A.11-12-010*.

⁷ *Application of the City of San Diego for an order authorizing the re-opening of the existing at grade pedestrian crossing at 54th Street (between Market Street and Naranja Street) to vehicular traffic in the City and County of San Diego, California*, *D.98-09-059*, 1998 Cal. PUC LEXIS 1092 (Sept. 17, 1998).

⁸ *Application of the City of Glendale for Authority to Construct an At-Grade Crossing of Flower Street Across the Los Angeles County Metropolitan Transportation Authority's Main Line Tracks in the City of Glendale, Los Angeles County*, *D.07-03-027*, 2007 Cal. PUC LEXIS 280 (March 15, 2007).

only incidentally to a railroad crossing and, therefore, should not be applied to the greater dangers of purely railroad crossings.

The suggestion in D.07-03-027 that the *Blue Line* Decision applies to freight railroads (on which *D.14-08-045* and *D.13-08-005* rely exclusively for their holding that *Blue Line* applies to both passenger and freight railroads) is in error and directly contradicts the provisions of the *Blue Line* Decision itself which clearly states the inapplicability of its “impracticability” test to freight railroad crossings.

Light rail transit differs from rail rapid transit, such as BART in the San Francisco Bay Area, in that it is composed of trains of up to three cars, generally has closer-spaced stations, usually operates at lower speeds, has shorter stopping distances, and is less costly to build and operate.

(*Blue Line*, 2002 Cal. PUC LEXIS 301, *supra*, at p. *3.)

Further, *Blue Line* states:

Certainly the safety of the proposed crossing is influenced by the characteristics of heavy versus light rail, as noted by Commission's approval for separate general orders for each type system. General Order (GO) 143 specifically for light rail operations.

(*Id.* at p. *13.)

These differences in the two rail transportation systems resulted in an impracticability test for light-rail different from *San Mateo v. Railroad Com. of California*, 9 Cal.2d 1 (1937) and *City of San Mateo v. SoPac Transp. Co.*, D.82-04-033, 1982 Cal. PUC LEXIS 1317 (April 6, 1982) based on the very different circumstances of light-rail versus heavy freight rail.

After examining those differences, *Blue Line* determined that even in light-rail situations where the danger of collision and pedestrian interaction is reduced, the Applicant must demonstrate impracticability. “The need to address practicability does not disappear with the reduction of heavy rail movements.” (*Blue Line, supra*, at p. *13.)

Contrary to the assertions in *D.14-08-045*⁹ and *D.13-08-005*, *supra*, the *Blue Line* Decision clearly states that the CPUC is not changing its impracticability test for freight railroads.

City of San Diego [(1998) D.98-09-059, *rhng. den.*] [original italics]¹⁰ indicated there would be 150 light rail movements over the crossing in question and only two freight movements. (*Mimeo*. p 3) Once again the Commission denied an at-grade crossing, relying on *City of San Mateo*. The Commission has not been restricting *City of San Mateo* to instances where there are major, or even moderate, heavy rail movements [emphasis added].

(*Blue Line*, *supra*, at p. *14.)

A fair reading of *Blue Line* clearly indicates that its six-factor test for “impracticability” applies *only* to light-rail systems. Assertions to the contrary are dangerous and not based on the provisions of the *Blue Line* Decision itself.¹¹

D. “Impracticability” Test in the *City of San Diego* Decision

The *City of San Diego* concerned a highway-railroad and light-rail transit street intersection and crossing. It was both a heavy railroad and light-rail transit crossing. The parties to the proceeding agreed with the Scoping Memo to apply *Blue Line* to the crossing. RCES agreed to the *Blue Line* application with respect to the light-rail transit crossings (*City of San Diego*, *mimeo*, at p. 9) and was less concerned with the railroad aspects of the crossing because of the proximity of the rail yard and the slow speeds of freight trains as they approached the rail yard. Since no railroad passenger trains used the

⁹ Further supporting SED’s position that *Blue Line* applies to light-rail transit and not freight railroads is the statement of the same position by the Los Angeles County Metropolitan Transportation Authority (“LACMTA”) in *D.14-08-045*, 2014 Cal. PUC LEXIS 418, *supra*, at pp. *9-*10, “LACMTA asserts that practicability analysis was designed to address the interaction of traditional freight and heavy rail traffic with urban settings not light-rail projects serving commercial districts. [Footnote omitted] LACMTA contends that street level light rail is easily accessible to passengers and helps support the vitality of commercial districts by allowing passengers to see businesses they may want to patronize.”

¹⁰ This *City of San Diego* case is an earlier and different proceeding from *City of San Diego*, D.03-12-018, 2001 Cal. PUC LEXIS 1269 (Dec. 4, 2003), mentioned in the City’s and SCTLC’s OBs.

¹¹ The only Commission decision applying *Blue Line* to a purely railroad crossing is the *City of Bakersfield* and may have done so possibly because it did not have the advice of RCES.

crossing, the passenger rail traffic was confined to transit and the crossing was primarily a light-rail transit and motor vehicle crossing.¹² The application of *Blue Line* to the Park Boulevard, Eighth Avenue, and Harbor Drive crossing intersection was perfectly reasonable and appropriate. It is only the misapplication of this decision to heavy railroad operations after issuance of *City of San Diego* that has blurred the lines between the two different systems with two very different safety implications.

The Commission in *City of San Diego* began its review of the crossing “with the presumption that the crossing must be separated” (*City of San Diego, mimeo*, at p. 23.) While the Commission approved the at-grade crossing, it is important to note that its approval was limited to 12 years¹³ to enable the Commission to re-evaluate its safety “in light of residential and commercial development and resulting changes in traffic conditions.” (*City of San Diego, mimeo*, at p. 35).¹⁴ It has been more than 12 years since the at-grade crossing in *City of San Diego* was approved but there is no at-grade crossing at Park Boulevard, Harbor Drive, and Eighth Avenue; the crossing has remained closed since the issuance of the decision in *City of San Diego*.

E. The Facts in *City of San Diego* Are Inapposite To This Proceeding

In *City of San Diego*, BNSF Railroad (owning tracks at the crossing near to its train assembly yard), the United Transportation Union, the Commission’s Rail Operations Safety Branch, and RCES opposed construction of the at-grade crossing as unsafe. The crossing in *City of San Diego* is located immediately next to the Padres’ (now Petco) Ballpark, office buildings, and Harbor Drive near the San Diego Bay, encompasses two BNSF tracks and four San Diego Trolley, Inc. light-rail tracks (*City of*

¹² “The San Diego Trolley Superintendent of Transportation testified that 163 trolley trains pass through the bayside corridor daily, with occasional special event service adding 10 to 20 trolleys.” (*City of San Diego, mimeo*, at p. 3.)

¹³ “At least one year before the expiration of its authority, the City shall submit an application requesting authorization to (1) continue at-grade operations, (2) modify the at-grade crossing (3) close the crossing, or (4) grade separate the crossing.” (*Id.* at p. 35.)

¹⁴ In addition, the Commission ordered that City of San Diego serve staff with “a compliance filing showing specific construction details of all safety features of this crossing.” (*Id.* at p. 32.)

San Diego, mimeo, at p. 16). The BNSF tracks (also used lightly by the Arizona Eastern Railroad Company) were of little safety concern because they were very near the rail yard and freight trains operated at speeds of 5 to 10 mph (*City of San Diego, mimeo*, at p. 21). Similarly, the Trolley ran at reduced speeds of 15 mph (*City of San Diego, mimeo*, at p. 13).

Still, RCES was concerned with special events at the crossing such as ball games or performances at Petco Park and the effect this would have on pedestrians and Trolley passengers attempting to enter Petco Park. The protesters' concern for pedestrian safety was addressed by the City of San Diego with an assurance that it would build a pedestrian overpass at the crossing and would close the crossing to pedestrian traffic until built. RCES agreed that the bridge provided an adequate level of safety for pedestrians (*City of San Diego, mimeo*, at p. 24).

However, no plans existed at the time of the hearings for the construction of the pedestrian overpass (*City of San Diego, mimeo*, at pp. 31-32). Given the fact that there were no designs or contracts for the construction of a pedestrian overpass, RCES was obviously concerned that the City might return with another Application for an at-grade crossing before the pedestrian bridge was built and so continued to oppose the motor vehicle at-grade crossing.

RCES was also concerned, albeit to a lesser degree, with the motor vehicle traffic (see the problem of queuing on the crossing's tracks (*City of San Diego, mimeo*, at p. 27)). RCES' concern for high motor vehicle traffic volumes at the crossing during special events was addressed by an agreement to build four-quad gates¹⁵ at the crossing intersection (*City of San Diego, mimeo*, at pp. 32-33) and an agreement with the City to enhance safety throughout this rail corridor (*City of San Diego, mimeo*, at pp. 33-35).¹⁶

¹⁵ See: *City of San Diego, mimeo*, at pp. 5, n.1, and 6, for an explanation of quad gates.

¹⁶ "The City's development planning to date appears to have given inadequate prospective consideration of these objectives" of taking a corridor approach to enhancing the safety of all crossings in this area as recommended by RCES. (*City of San Diego, mimeo*, at p. 34.)

F. “Impracticability” Test for Heavy Freight Railroad Lines

SED first contends that the *City of Bakersfield* erred in blurring the bright line distinction in the *Blue Line* decision by applying it to heavy freight railroad crossings without sufficient analysis. While it is true that the decision does not permanently damage the “impracticability” test announced in the California Supreme Court decision in *San Mateo v. Railroad Com. of California*, 9 Cal.2d 1 (1937) and the Commission’s decision in *City of San Mateo v. SoPac Transp. Co.*, D. 82-04-033, 1982 Cal. PUC LEXIS 1317 (April 6, 1982), the decision does call into question the efforts of railroads, RCES staff, and Operation Lifesaver to close redundant at-grade railroad crossings, and generally limit construction of at-grade railroad crossings to only the most extreme cases where it is not possible to construct grade separations on “railroad” lines.¹⁷ SED noted in its Opening Brief that in those cases it acquiesces in the approval of at-grade railroad crossings (SED OB at p. 8).

The application of the more lenient restrictions on at-grade crossings in the *Blue Line* makes sense because light-rail systems are, by their very nature, designed to interact with motor vehicles (as is the case when they are street running) and pedestrians when operating in cities, malls, and business districts. The increased safety to motor vehicles and pedestrians by light-rail operations versus freight railroad operations is well-known and is discussed in SED’s Opening Brief. However, light-rail is not present in this proceeding. Both SMART and NWP are heavy rail commuter railroad and freight railroad operations.

¹⁷ At p. 17, n.46 of the City’s OB, the City alleges that the Commission “makes no distinction between at-grade crossing proposals involving light rail versus heavy rail transit.” SED contends that this was because the proceeding concerned at-grade crossings of the Los Angeles County Metropolitan Transportation Authority’s light-rail Crenshaw Line, a line not shared with railroad operations. At p. 12 of the decision mentioned at p. 17 of City’s OB, i.e., D.14-08-045, the ALJ in that earlier decision, D.13-08-005, states that no distinction is made between “light-rail transit, passenger railroad, and freight railroad” (D.13-08-005, at p. 12.) Because D.13-08-005, *In the Matter of the Application of the Los Angeles County Metropolitan Transportation Authority for an order authorizing the construction of two-track at-grade crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line across West 59th Street, Slauson Avenue, West 57th Street, West 54th Street, West 52nd Street, West 50th Street and across West 48th Street in the City of Los Angeles*, concerns only LACMTA’s light rail system, the statement is purely *dicta* and wholly irrelevant to railroads.

The *Blue Line* decision has little application to the Jennings Avenue crossing under the facts of this proceeding and its application to facts such as these can only result in increased numbers of more dangerous at-grade crossings in lieu of grade separations. The resistance in recognizing that grade separations are inherently safer than at-grade crossings as argued by the City and the Intervenors, SCTLIC, is likely to result in moving away from safe railroad operations towards more dangerous interactions between railroads and the public, particularly pedestrian interactions. The railroads, the United States Department of Transportation¹⁸, and until recently, the Commission¹⁹, have focused on efforts to limit pedestrian and motor vehicle interactions with railroads as a means of reducing the hundreds of injuries/fatalities occurring on U.S. railroad lines every year.²⁰

III. THE CITY’S AND SCTLIC’S FAILURE TO RECOGNIZE THAT GRADE SEPARATIONS ARE INHERENTLY SAFER THAN AT-GRADE CROSSINGS PLACES THE YOUNG AND THE ELDERLY USING THE PROPOSED AT-GRADE CROSSING AT-RISK

Both the City and SCTLIC contend that public bodies such as the City Council and like entities (City OB at p. 11) prefer the at-grade crossing proposal to the grade separated structure funded by the Metropolitan Transportation Commission (Ex SR-1 at p. 15, n.5).²¹ The City and SCTLIC believe that grade separated crossings are not inherently safer than at-grade crossings (Tr. Vol. 3, at pp. 233-234) and, therefore, the

¹⁸ Federal Railroad Administration, Crossing Consolidation Guidelines, RR 09-12 (July 2009), <http://search.usa.gov/search?affiliate=fra&query=highway-rail%20crossings&commit=Search>.

¹⁹ The Commission has long-recognized the importance of closing or limiting at-grade crossings. *Investigation on the Commission's Own Motion Into the Fatal Accident at the North Street Crossing (MP 220.50) in the City of Selma, Fresno County, on June 6, 2003, and Order to Show Cause Why this Crossing Should Not Be Closed*, Decision 04-02-064; Investigation 03-08-017, California Public Utilities Commission, 2004 Cal. PUC LEXIS 42 (Feb. 26, 2004); and *In the Matter of the Application of the SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD AND CITY OF SAN DIEGO for an order authorizing an at-grade crossing of two light rail tracks and two freight/intercity/commuter rail tracks at Vine Street in the city of San Diego, San Diego County, California*, D.98-06-008, 1998 Cal. PUC LEXIS 471 (June 4, 1998).

²⁰ Operation Lifesaver, Crossing Collisions & Casualties by Year, Source: Federal Railroad Administration, updated 3/25/16, <http://oli.org/about-us/news/collisions-casulties>.

²¹ SCTLIC contends that this “available grant would more than meet the estimated extra cost of a grade separation.” (SCTLIC OB at p. 7.)

locally approved at-grade crossings should be approved by the Commission. The fact is that people make mistakes when judging distances, the speed of oncoming trains, and the proximity of fast moving trains. People are also inattentive from time-to-time. This means that placing them directly in the path of an oncoming freight or commuter train places lives in jeopardy unnecessarily.²² The danger can be greater for school children, the disabled, and seniors. Regardless of the City's and SCTLTC's outright denial, at-grade crossings are inherently more dangerous than grade separations and the crossing in this corridor in this neighborhood is too dangerous to approve.

IV. CONCLUSION

The City and SCTLTC have failed to demonstrate that it is impracticable to construct a grade separate crossing at Jennings Avenue. Both parties have failed to acknowledge that *Blue Line* does not apply to the Jennings Avenue pedestrian at-grade crossing. Both parties have failed to demonstrate that all potential safety hazards at the proposed site of the at-grade crossing at Jennings Avenue (on a heavy commuter rail and freight line in the vicinity of family residences, a nearby elementary school, retirement residences), have been satisfactorily addressed since, among other reasons, the grade separated structure was rejected by the City. For these reasons and those mentioned above, the Application for an at-grade pedestrian crossing at Jennings Avenue should be denied.

²² See: People Almost Getting Hit by a Train Compilation [2015], <https://www.youtube.com/watch?v=dMRlanye5Nw> .

Respectfully submitted,

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