

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



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In the Matter of the Application of the Los Angeles County Metropolitan Transportation Authority for an Order authorizing the construction of a two-track at-grade crossing 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.

Application No. 13-01-012
(Filed January 23, 2013)

**OPENING BRIEF OF THE
LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY
ADDRESSING PETITION FOR MODIFICATION**

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In the Matter of the Application of the Los Angeles County Metropolitan Transportation Authority for an Order authorizing the construction of a two-track at-grade crossing 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.

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**OPENING BRIEF OF THE
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TRANSPORTATION AUTHORITY
ADDRESSING PETITION FOR MODIFICATION**

Pursuant to the Ruling filed July 1, 2016, by Administrative Law Judge (“ALJ”) W. Anthony Colbert in the above-captioned proceeding (the “July 1 Ruling”) regarding the Crenshaw/LAX Light Rail Project (the “Project”) and in accordance with Rule 13.11 of the Commission’s Rules of Practice and Procedure (“Rules”), the Los Angeles County Metropolitan Transportation Authority (“LACMTA”), Applicant herein, hereby respectfully submits its opening brief on the issues identified at page 5 of the July 1 Ruling.

The July 1 Ruling provides that the parties should specify the legal and factual basis on which the Commission should grant or deny the Petition for Modification of Decision 14-08-045 (the “Petition”) that was filed February 26, 2016, in this proceeding by Ms. Chandra V. Mosley (“Petitioner”). LACMTA contends that the Petition should be denied.

Pursuant to the directions provided at page 5 of the July 1 Ruling, LACMTA's opening brief addresses the following authorities and matters in support of that contention:

- Rules 16.4(d) and (e) and relevant statutes and case law.
- Whether LACMTA issued adequate public notice during the Project proposal phase and subsequent to issuance of Decision ("D.") 14-08-045.
- Whether Petitioner raises new issues that were not previously addressed by the Commission in response to the interested parties' protests.

I. Rules 16.4(d) and (e) and Relevant Statutes and Case Law Impose a Heavy Burden on a Petitioner Seeking to Modify a Final Commission Decision.

Rule 16.4 defines procedures for requesting modification of Commission decisions, including decisions, such as D.14-08-045, that have become final and are no longer subject to judicial review. The statutory basis for Rule 16.4 is Section 1708 of the Public Utilities Code, which is cited as a reference in the official Note to Rule 16.4.

Section 1708 provides, in part, that the Commission "may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it." A petition to modify a final Commission decision is a request for the Commission to exercise its discretion under Section 1708, and a proper exercise of such discretion is not subject to judicial review.¹

A. The Commission Has Repeatedly Held That Section 1708 Provides the Commission Extraordinary Authority to Reopen Settled Proceedings but That Such Authority Should Be Exercised Sparingly.

The Commission has noted that Section 1708, by its very nature, provides the possibility of an extraordinary remedy, because it departs from the fundamental principle of

¹ *Northern California Association to Preserve Bodega Head and Harbor, Inc. v. Public Utilities Commission* (1964), 61 Cal.2d 126, 134, 37 Cal. Rptr. 432, 437-38, 1964 Cal. LEXIS 185.

res judicata, which protects parties from “endless relitigation of the same issues.”² The Commission explained:

Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed. Our past decisions recognize that the authority to reopen proceedings under Section 1708 must be exercised with great care and justified by extraordinary circumstances. [Citations omitted.] Particularly where, as here, one or more parties have relied on decisions granting authority to construct a major generating facility, with substantial investments of time, money, and other resources in accordance with the terms therein, reopening can be justified only under the most compelling circumstances.

The burden of demonstrating that reopening is justified is substantial. The showing required in any given case will necessarily depend on an assessment of the financial and other costs to the parties and the ratepayers should authority be suspended and a case reopened, as well as an evaluation of the information submitted in support of the request.

...

In view of these factors [including PG&E’s investment of approximately \$1.7 billion and near-completion of construction of energy facilities capable of generating 2,200 megawatts of electricity], only a persuasive indication of significant new facts or a major change in material circumstances, which would create a strong expectation that we would make a different decision based on these facts or circumstances, would cause us to reopen the proceedings.³

Concluding that the petitioners had not met their burden of persuasion, the Commission denied the petition to set aside submission and reopen the proceeding.⁴

The Commission has cited the *Diablo Canyon* case repeatedly to support the policy that the Commission should exercise its discretionary authority under Section 1708 to reopen settled proceedings sparingly, limiting it to extraordinary circumstances, where a

² *Application of PG&E Co. for Certificate to Own, Operate and Maintain Units 1 and 2 of the Diablo Canyon Nuclear Power Plant*, D.92058, 4 CPUC 2d 139, 1980 Cal. PUC Lexis 785 *23-24 (petition to set aside submission by Center for Law in Public Interest denied).

³ *Id.*, *24-26.

⁴ *Id.*, Conclusions of Law 4 and 5, *37-38. *See also, Sale v. Railroad Commission* (1940), 15 Cal.2d 612, 616 (exception to *res judicata* doctrine based on Commission’s continuing jurisdiction to modify its orders).

petitioner presents “a persuasive indication of significant new facts or a major change in material circumstances such as would create a strong expectation that we would make a different decision based on these facts or circumstances.”⁵

These principles have been applied in rail crossing cases where parties new to a proceeding have sought modification of final decisions reached prior to their participation. The Commission consistently has declined to grant such petitions for modification where the petitioner has failed to indicate significant new facts or a major change in material circumstances that would support an expectation of a different result.⁶ In denying an application for rehearing of one such decision, after citing *Diablo Canyon*’s recognition that the broad authority granted by Section 1708 “should be exercised with great care and justified only by extraordinary circumstances,” the Commission observed that its denial of a school district’s petition was not based solely on the district’s failure to provide new facts or circumstances, but also because the district had failed to provide a convincing justification for revisiting the prior decision and because similar arguments had been rejected before.⁷

Over the 36 years since the Commission declined to reconsider its approval of the Diablo Canyon plant, the Commission has considered many petitions for modification of subsequent decisions, sometimes granting them and sometimes denying them, based on the particular factual and procedural circumstances. In all that time, the *Diablo Canyon* case may

⁵ *Application of City of Vallejo to Modify Decision No. 92864*, D.85-05-053, 17 CPUC2d 307, 1985 Cal. PUC Lexis 117 *19 (petition to require relocation or undergrounding of PG&E transmission line denied); *accord*, *United Parcel Service, Inc.*, D.97-04-049, 71 CPUC2d 714, *13-17.

⁶ *See*, *Application of County of Los Angeles for Construction of a Proposed Grade Crossing of Canyon Park Boulevard*, D.89-09-043, 32 CPUC2d 406, 1989 Cal. PUC Lexis 428, *2 (property owner’s request to change configuration of approved at-grade crossing denied); *Application of Exposition Metro Line Construction Authority for Construction of a Two-Track At-Grade Crossing for the Exposition Boulevard Corridor Light Rail Transit Line*, D.08-07-028, 2008 Cal. PUC Lexis 280, *6 (school district’s petition to modify approval of at-grade crossing denied where no new or changed facts or circumstances were shown).

⁷ *Exposition Metro Line Construction Authority, supra*, D.09-02-032, 2009 Cal. PUC Lexis 74 *13-15.

be the one with facts most closely analogous to the present circumstances, where LACMTA and its construction contractor have pursued a multi-billion dollar construction project⁸ in reliance upon a final Commission decision and the cost of changing course at this late date is fast approaching \$1 billion.⁹

B. Rule 16.4 Presents Threshold Requirements That Must Be Met Before the Commission Will Consider the Merits of a Petition for Modification.

Given the extraordinary nature of the remedy offered by Section 1708, contrary to the principle of *res judicata*, the Commission has defined conditions in Rule 16.4 to protect its processes and interested parties from the burden of frivolous re-litigation of settled proceedings. In particular, Paragraph 16.4(d) requires that any petition filed more than one year after the effective date of a decision proposed to be modified must explain why the petition could not have been presented within one year, and Paragraph 16.4(e) requires that if the petitioner was not a party to the proceeding in which a decision proposed to be modified was issued, the petition must state specifically how the petitioner is affected by the decision and why the petitioner did not participate earlier. The Commission may require compliance with these and other procedural requirements of Rule 16.4 before addressing the substance of a petitioner's proposed modification of a final Commission decision.¹⁰

The Commission has found, applying Rule 16.4, that a petitioner has the burden of showing that its request is justified, that it has acted in a timely way to request relief, and that its determination not to participate in the proceeding earlier was warranted. In a recent case

⁸ The overall project budget now is \$2.058 billion and the construction contract alone exceeds \$1.3 billion.

⁹ See Response of LACMTA to Petition of Chandra V. Mosley for Modification of Decision 14-08-045 ("LACMTA Petition Response"), at 7-8 and Att. 2 (an "updated estimate" of \$952,600,000 to convert the seven at-grade Crenshaw Boulevard crossings to below-grade).

¹⁰ See, *Rulemaking to Examine Current Procedures for Passenger Stage Corporations*, D.16-04-005, 2016 Cal. PUC Lexis 179, *10-12.

involving the authorization of a high-voltage aerial transmission line, the Commission denied a petition for modification on the grounds that the petitioner, the City of Ontario, had failed to meet that burden.¹¹ In denying an application for rehearing of that decision, the Commission cited, again, the “extraordinary remedy” reference from *Diablo Canyon* and emphasized the City’s failure to explain why a request that would cause significant delay and additional expense for a utility project was filed years after project approval.¹²

C. Rule 16.4 and the Relevant Case Law Provide a Compelling Basis for Denying Petitioner’s Request for Modification.

LACMTA will show in the following sections of this brief that its public outreach efforts during the Project planning phase, including especially the public notice and comment procedures implemented in the course of the environmental impact review mandated by the California Environmental Quality Act, Pub. Res. Code Section 21000 *et seq.*, were fully sufficient to inform members of the local communities in the vicinity of the Project of its potential impacts and had the effect of generating active involvement of the Park Mesa Heights community in the planning and design process for the segment of the Project alignment passing through that community. LACMTA will further show that the issues addressed and relief sought by the Petition are coextensive with the issues and relief addressed in the Protest filed by the Crenshaw Subway Coalition in the proceeding that led to the Commission’s adoption of D.14-08-045, and that D.14-08-045 sufficiently addressed those issues.

It is in this context that the provisions of Rule 16.4(d) and (e) should be applied to the Petition.

¹¹ *Application of Southern California Edison Company for a Certificate of Public Convenience and Necessity Concerning the Tehachapi Renewable Transmission Project (Segments 4 through 11)*, D.15-05-004, 2015 Cal. PUC Lexis 278 *34.

¹² *Southern California Edison Company, supra*, D.15-12-053, 2015 Cal. PUC Lexis 771 *8, 24-25.

While Ms. Mosley may not have been personally aware of the ongoing Project in its environmental and Commission review phases, LACMTA's ample public outreach efforts sufficiently informed other members of the Park Mesa Heights community to cause them to take an active role in the Project's development. Health problems or other circumstances may have prevented Ms. Mosley from becoming aware of and involved in the Crenshaw/LAX Project, but such factors do not justify the late submission of her petition. LACMTA's efforts made to inform Park Mesa Heights residents, along with members of other communities in the vicinity of the Project, of the Project's scope and character ensured there was a significant level of participation, which resulted in the incorporation of important changes to the Project in response to the community's needs. Ms. Mosley's petition fails to provide the degree of analysis and justification necessary to overcome the Rule 16.4 standard of review. Accordingly, the Commission reasonably may, under the terms of Rule 16.4(d), determine that the late submission of the Petition has not been justified and may, on that ground, summarily deny the Petition.

Likewise, Petitioner has failed to show whether, or how, she has been affected by D.14-08-045 any differently than other members of the Park Mesa Heights community or why she could not have participated in the proceeding at the earlier stages, from 2007 through 2013, when other members of the Park Mesa Heights community were actively and effectively involved but did not achieve the result that they, like Petitioner, now wish had been achieved. Petitioner has asked the Commission to reverse a final decision, yet she has failed to present sufficient evidence to satisfy the heavy burden that Rule 16.4(e) and the Commission's precedents require a petitioner to bear in order to be granted this "extraordinary remedy." Further, the cost of granting Petitioner's requested relief would amount to nearly

One Billion Dollars, several hundred million dollars of which would be the direct consequence of Petitioner's failure to present her case in a timely fashion.

Allowing a single member of the public, without any formal authority in the project development process, to present his or her lack of personal knowledge of the pending project as a basis for reversing permitting approvals that have been the basis for substantial investments of public or private funds would set a dangerous precedent for any future project. If the Commission finds validity in this argument, this could mean that anybody, at any time in the future, could argue that he or she did not receive actual notice, file a petition similar to this one, and thereby delay a project in perpetuity. If project proponents and reviewing agencies have met their statutory and regulatory obligations to give notice, then the fact that one or a few individual members of the community claim not to have had actual notice is not a proper basis for reopening a regulatory review proceeding that has run its lawful course.

II. LACMTA Has Provided a Thorough Showing of the Sufficiency of Its Provision of Public Notice During the Project Proposal Phase and Subsequent to Issuance of D.14-08-045.

The July 1 Ruling calls for the parties to provide supporting details refuting or defending LACMTA's claims that LACMTA issued adequate public notice during the Project proposal phase and subsequent to when D.14-08-045 was issued.¹³ While LACMTA will show that it has provided more than adequate public notice during both these intervals, LACMTA wishes to state its position that the provision of public notice subsequent to issuance of D.14-08-045 is irrelevant to the validity of that decision or to the merits (or lack of merit) of Petitioner's claims. LACMTA's public outreach during the Project construction phase and once the Project becomes operational are important, especially from the public safety perspective, but they neither validate nor invalidate D.14-08-045.

¹³ ALJ's Ruling, at 5.

LACMTA first addressed the sufficiency of public outreach regarding the Crenshaw/LAX Light Rail Project in its opening brief filed in this proceeding in December 2013 (“2013 Opening Brief”). More recently, LACMTA has addressed its public outreach actions both during the Project proposal phase and subsequent to issuance of D.14-08-045 in its response to the Petition and by statements presented and materials provided at the Prehearing Conference, held May 24, 2016. LACMTA provided further documentation of its public outreach during the proposal phase in its Response to the July 1 Ruling, which LACMTA filed July 18, 2016.

A. LACMTA Has Explained Repeatedly That Communities Affected by the Project, Including Park Mesa Heights, Had Ample Notice and Opportunity to Participate in Planning and Approval Processes for the Project.

LACMTA noted in its response to the Petition, filed March 24, 2016, that the several communities affected by the Crenshaw/LAX Light Rail Project (the “Project”), including residents of the Park Mesa Heights neighborhood, had ample opportunities to participate in its planning over a period of many years, and that specific proposals for undergrounding the light rail alignment through the Park Mesa Heights portion of Crenshaw Boulevard were openly discussed and considered but ultimately not adopted.¹⁴

LACMTA issued a Notice of Preparation of an Environmental Impact Report (“EIR”) for the Crenshaw/LAX Light Rail Project in September 2007. Four broadly publicized public scoping workshops were held in cooperation with the Federal Transit Administration (“FTA”) in October 2007. Similarly noticed public “update” meetings were held in February 2009, and an additional round of public meetings was held in connection with the release for comment of a draft environmental impact statement and EIR (“EIS/EIR”)

¹⁴ LACMTA Response to Petition, at 2.

in September 2009.¹⁵ More public workshops and open houses were held, with broad notice to stakeholders and neighboring communities, in 2010 and 2011, including notice of the LACMTA Board meeting in September 2011 at which the Final EIS/EIR was considered, environmental findings were adopted, and the Project was approved.¹⁶

As LACMTA stated in its 2013 Opening Brief, and again in its response to the Petition, advocates of an underground design for the light rail alignment presented their views throughout the entire environmental review process, during the course of which those views were given thorough consideration.¹⁷ Responding to public concerns focused on the at-grade alignment planned for the Park Mesa Heights segment of Crenshaw Boulevard, LACMTA's Board directed that a special analysis be done of an undergrounding option for the Park Mesa Heights segment, between 59th and 48th Streets along Crenshaw Boulevard. This analysis concluded that neither existing policy nor specific regulatory requirements or physical conditions required grade separation of this segment of the Project.¹⁸ The Final EIS/EIR specifically addressed public comments urging a below-grade configuration for this segment of Project, noting that LACMTA's Board publicly considered and rejected a motion for a below-grade configuration of this segment at its May 2011 public meeting. As noted above, the LACMTA Board adopted CEQA findings and certified the EIR in September 2011, followed by the FTA's adoption of a Record of Decision in December of that year.¹⁹

LACMTA filed A.13-01-012 with the Commission in January 2013, proposing the same seven at-grade crossings along Crenshaw Boulevard that were included in the project studied in the EIS/EIR. The Crenshaw Subway Coalition ("CSC"), filed a protest on

¹⁵ *Id.* at 3; LACMTA Response to ALJ's Ruling, filed July 18, 2016, at i-ii, 2-24.

¹⁶ *Id.* at ii, 25-48.

¹⁷ LACMTA 2013 Opening Brief, at 7; LACMTA Response to Petition, at 3-4.

¹⁸ LACMTA 2013 Opening Brief, at 7-8, 21-22; LACMTA Response to Petition, at 4.

¹⁹ LACMTA 2013 Opening Brief, at 8-9; LACMTA Response to Petition, at 4.

March 4, 2013, calling for grade separation of the seven proposed crossings – the same relief Petitioner now seeks. The Scoping Memo and Ruling of Assigned Commissioner, issued October 14, 2013, accurately summarized CSC’s position along with LACMTA’s reply.

As LACMTA summarized this procedural history in its Response to the Petition,

Thus, over the course of project planning, environmental review, and this proceeding, the several communities adjacent to the Crenshaw/LAX Light Rail Project, including residents of Park Mesa Heights, were afforded ample opportunities to participate in development of the Project over a period of many years. Representatives of Park Mesa Heights actively participated in the environmental review process, proposing an underground alternative for the Crenshaw Boulevard alignment between West 59th and West 48th Streets, and presented similar views in this proceeding. As noted above, the proposal of a below-grade configuration was carefully considered and evaluated but was not adopted either by LACMTA or by this Commission.²⁰

In an initial evaluation of the Petition and LACMTA’s Response, ALJ Colbert expressed concerns about the Petition but noted that it raised questions about LACMTA’s notification and community outreach process in this matter, especially with respect to local schools.²¹ In a further message, ALJ Colbert directed LACMTA to provide a detailed explanation of its public and community outreach leading up to and during the current proceeding as well as its plans for community education, outreach and safety during construction and operation of the Project.²²

LACMTA believes that the showing it has made with respect to public outreach, both at the prehearing conference and more recently, confirms that the communities adjacent to the Project, including residents of Park Mesa Heights, have had ample opportunities, with ample public notice, to participate in development of the Project over a period of many years. LACMTA also believes that its ongoing outreach

²⁰ *Id.* at 5.

²¹ Electronic message from ALJ Colbert to parties, April 27, 2016.

²² Electronic message from ALJ Colbert to parties, May 19, 2016.

and educational efforts directed to the schools in the communities adjacent to the Project area, especially as discussed in Section II.D, below, have been and will continue to be both sufficient and successful.

B. At the Prehearing Conference and by Its Response to the ALJ's July 1 Ruling, LACMTA Demonstrated the Extent of Its Public Outreach Efforts During the Project Proposal Phase.

During the prehearing conference held May 24, 2016, LACMTA provided a map, identified as PHC Exhibit 2, showing a portion of the Project alignment including the at-grade Crenshaw Boulevard segment and illustrating the outreach distribution within a quarter-mile of the alignment as well as indicating, over a broader area, the addresses to which information was mailed or where project meetings in the community were held. LACMTA also provided a table, identified as PHC Exhibit 3, providing an overview of Commission events and Project outreach to the community in the course of the environmental review phase, the CPUC grade crossing review and approval process, and the project implementation phase.

Counsel for LACMTA clarified that notices and informational flyers were hand delivered to all business and residence addresses within the half-mile corridor (a quarter-mile east and west of the proposed alignment) during the environmental phase, in the fall of 2007.²³ At ALJ Colbert's request, LACMTA Deputy Project Director Kimberly Ong explained that PHC Exhibit 2 illustrates communications during the environmental phase, which extended from the years 2007 through 2011, including the hand-delivery of flyers to everybody within the half-mile corridor (a quarter-mile along either side of the alignment), including businesses, homeowners, schools, and senior centers. During the scoping phase, the flyers provided information about the public workshops; later, public outreach regarding the

²³ PHC Tr. 35:6-28 (Statement of Counsel Mattes).

draft EIS/EIR was also distributed by this means.²⁴ Ms. Ong further explained that LACMTA developed a stakeholder database as people signed on, and so mailed information to that broader group including the locations illustrated by green dots on PHC Exhibit 2.²⁵

Mr. Mattes later described two mailings to all the addresses within the half-mile corridor (a quarter-mile east and west of the proposed alignment) – a “very general notice” of the EIS/EIR scoping meetings, sent in 2007, and a more detailed notice of the availability of the Draft EIS/EIR in the fall of 2009, the latter notice including “a diagram showing an at-grade alignment of the light rail in Park Mesa Heights.”²⁶ Exhibit PHC 3 specifies that LACMTA, in August 2007, mailed approximately 105,000 invitations to the scoping meetings to businesses and households within a quarter-mile of the alignment, followed that with 107,000 direct mail invitations to the same target area for a set of four project update meetings in February 2008, and sent 50,000 mailers to residents and businesses within the half-mile corridor inviting comments on the Draft EIS/EIR.²⁷

In its Response to ALJ Colbert’s July 1 Ruling, filed July 18, 2016, LACMTA described these mailers and provided copies of them in the Attachment to that Response. Specifically, the first two pages of that Attachment provide a revised version of the overview table previously identified as PHC Exhibit 3, with the revised version pared down to include only the elements of community outreach during the Project’s environmental phase for which specific outreach documents are available and included in the attachment.

The bilingual (English and Spanish) invitation to the October 2007 environmental scoping meetings, distributed by direct mail to 105,000 addressees within a quarter-mile of

²⁴ PHC Tr. 36:20-25, 37:20-38:8 (Statement of Ms. Ong).

²⁵ PHC Tr. 39:9-40:10 (Statement of Ms. Ong); see also, PHC Tr. 41:7-42:2 (Statement of Counsel Mattes).

²⁶ PHC Tr. 65:14-66:25 (Statement of Counsel Mattes).

²⁷ PHC Exhibit 3, at 1-2, col. 1.

the alignment, is provided at pages 2-3 of the Attachment, followed at page 4 by a flyer announcing the same meetings, some 2,000 copies of which were distributed at local community centers, churches, and schools. Pages 5-7 of the Attachment provide the same invitation to the same meetings as published in English, Spanish, and Korean in four local community newspapers. A similar bilingual invitation to the February 2008 project update meetings, mailed to 107,000 addresses within a quarter-mile of the alignment and also with about 3,000 copies distributed by hand, is provided at pages 9-10 of the Attachment. All these informational materials distributed early in the environmental review process included maps showing the proposed alignment along Crenshaw Boulevard, but did not announce an intention to construct that portion of the alignment at grade.

The remaining materials in the Attachment relate to the period of the environmental review phase following public release of the Draft EIS/EIR. As noted at the prehearing conference and in PHC Exhibit 3, the first of these materials was a bilingual invitation to a series of four open houses held September 30 to October 6, 2009, to discuss the just-released Draft EIS/EIR and also inviting comments on the Draft EIS/EIR. This invitation, which was sent to some 50,000 addresses within a quarter-mile of the now more limited “preferred” alignment, included a more detailed map illustrating that preferred alignment as planned for both a light rail transit (“LRT”) alternative, shown in green, and a bus rapid transit (“BRT”) alternative, shown in red. The LRT alternative includes distinctive indications of the portions of the alignment proposed for construction at-grade, below grade, and aerial construction, including depiction of the Park Mesa Heights segment along Crenshaw Boulevard as a solid green line – indicating at-grade construction.²⁸ Approximately 9,300 bilingual invitations for the same “Open House/Public Hearings” were distributed,

²⁸ See LACMTA Response to ALJ’s Ruling, Attachment, at 13.

showing the same detailed map of the LRT and BRT alternatives, including clear indication of the at-grade construction plan for the Park Mesa Heights segment of the LRT route.²⁹ The same map was linked to electronic messages that LACMTA distributed twice to a list of some 1,375 stakeholders in September 2009 and was included in newspaper notices published in English, Spanish, and Korean in thirteen (13) local community newspapers.³⁰

Links to the Project map continued to be provided with subsequent e-mail “blasts” distributed to the stakeholder list in connection with workshops in June 2010 and October-November 2010, and other events in September 2011.³¹ Flyers for the June 2010 and September 2011 events, distributed by e-mail, included a simplified alignment map showing just the preferred LRT alignment, with the Park Mesa Heights segment clearly depicted as “At-Grade LRT.”³²

It appears from Ms. Mosley’s own materials that she does not live within the half-mile corridor that received the greatest volume of direct mailings and notices. However, as LACMTA also published various notices in several local newspapers and other public sources, Petitioner certainly had many opportunities to learn about the Project during the seven-year period from the EIS/EIR scoping meetings through the Commission’s adoption of D.14-08-045. Petitioner indicated that she suffered from an illness that contributed to her lack of information about the Project.³³ However much one may sympathize, neither the Commission’s rules nor those that govern LACMTA’s compliance with CEQA require that any particular members of the community receive notice about a public transit project. As can be seen from the discussion above, LACMTA provided many thousands of notices

²⁹ *Id.* at 14-15.

³⁰ *Id.* at ii, 16, 21-24.

³¹ *Id.* at ii, 25-48.

³² *Id.* at 41-42, 45-48.

³³ Petition, at 8.

directly to members of the communities adjacent to the alignment, including the Park Mesa community, by mail, by hand, and by electronic media, and also published numerous meeting and availability notices in local newspapers. In addition, the Commission's reviews of LACMTA's at-grade crossing applications, including this one, were conducted by public proceedings for which all the normal public notices were provided by Applicant and the Commission.

Ms. Mosley had many opportunities to learn about the Project, but she says she did not know about it until this past year. Again, while this is unfortunate, it does not support a finding under Rule 16.4(e) to reopen the proceeding.

C. LACMTA's Public Outreach and Notice Efforts in the Project Proposal Phase Were Thorough and Both Legally and Practically Sufficient.

Environmental review and clearance of the Project extended throughout the course of project planning and development, from September 2007 through October 2011. During this period, extensive public and community/stakeholder outreach was conducted and opportunities for public comment and input were made available throughout the Project Study Area, fully sufficient to meet relevant requirements of both the California Environmental Quality Act ("CEQA")³⁴ and the National Environmental Policy Act.³⁵ This section of LACMTA's brief summarizes the course of public notice and outreach efforts during the project planning phase.

The process began with circulation of a Notice of Preparation on September 28, 2007, and publication of a Notice of Intent in the Federal Register on October 2, 2007. CEQA permits, but does not require, a lead agency to consult with other persons or

³⁴ Cal. Pub. Res. Code §21000 *et seq.*; *see also*, 14 Cal. Code Regs. §15000 *et seq.* ("CEQA Guidelines").

³⁵ 42 U.S.C. §4332 *et seq.*

organizations that may be concerned with the environmental effects of a project in the initial scoping phase.³⁶ LACMTA's practice is to engage proactively in such consultations, and so held a series of four public scoping meetings, with a total of 128 attendees, through the month of October 2007. Approximately 105,000 invitations were mailed to households and businesses within a quarter-mile of the potential project alignments, along with letters to major stakeholder organizations, including community leaders, business and homeowner groups, and, neighborhood councils throughout the Study Area. A total of 365 comments were received during the scoping period, which officially closed on November 5, 2007.

Following scoping and the refinement of alternatives based on public comments, a series of four project update meetings was held in February 2008, with 143 total attendees. Working groups were formed in August 2008 to ensure a wide range of representative participation in the planning process and to facilitate community consensus on the definition of the project. The working groups included more than 60 community leaders and were open to all members of the public. Three sets of working group meetings were held in August 2008, September 2008, and March 2009, with a total of 281 attendees.

The CEQA Guidelines require a lead agency to give public notice of the availability of a draft EIR at the time it submits a Notice of Completion to the Office of Planning and Research. LACMTA did so,³⁷ releasing the Draft EIS/EIR September 11, 2009, for public comment over a 45-day review period that concluded on October 26, 2009. During

³⁶ CEQA Guidelines, 14 Cal. Code Regs. §15083.

³⁷ CEQA and the CEQA Guidelines require that notice be mailed to all organizations and individuals who have previously requested such notice in writing and also be provided by at least one of the following procedures: publication in at least one local newspaper; posting on and off the project site; or direct mailing to owners and occupants of property contiguous to the project. Cal. Pub. Res. Code §§21092, 21092.2; 14 Cal. Code Regs. §15087. As described in Section B, *supra*, LACMTA substantially exceeded these requirements, publishing notices in several local newspapers and mailing them to properties within a quarter-mile of the alignment.

this period, four public hearings were held, with 285 total attendees, 56 of whom presented oral comments. LACMTA received 1,234 comments from 533 commenters during the circulation period for the Draft EIS/EIR. Chapter 9 of the Final EIS/EIR documents responses to all the comments.³⁸

Following the public review period for the Draft EIS/EIR, three sets of station area planning workshops were held in March, June, and November 2010. Also during this time, numerous community/stakeholder briefings took place.

At its meeting on May 24, 2011, the LACMTA Board considered a motion to implement a below-grade grade separation of the Park Mesa Heights segment of the Project and whether to add funding to the Project to cover the additional cost. Over 200 members of the community attended the Board meeting and more than two hours of oral testimony was received as comment to the proposed motion. The motion was not adopted.³⁹

The Final EIS/EIR was released on August 31, 2011. The document was made available at 16 public libraries throughout the Study Area and was published online at www.metro.net/crenshaw, and was the subject of a community open house on September 13, 2011. A total of 104 comments letters/emails were received from public individuals or groups during the subsequent review period, which concluded on October 10, 2011. On September 22, 2011, the LACMTA Board of Directors approved the Final EIS/EIR.

The FTA issued a Record of Decision (“ROD”) for the project on December 30, 2011. Among its findings, the FTA specifically found that “an adequate opportunity to

³⁸ Chapter 9 of the Final EIS/EIR may be accessed at http://media.metro.net/projects_studies/crenshaw/images/FEIS_FEIR/9%200_Responses_Comments.pdf.

³⁹ Further detail regarding community outreach during the EIS/EIR process is provided in Chapter 7 of the Final EIS/EIR, which is available as Attachment 5 to Petitioner’s Response, filed May 30, 2016, to LACMTA’s Response to the Petition. Chapter 7 of the Final EIS/EIR also may be accessed at http://media.metro.net/projects_studies/crenshaw/images/FEIS_FEIR/7.0_Community_Outreach.pdf.

present views was given to all parties having a significant economic, social, or environmental interest in the project,” and further found that, “with the execution of the mitigation monitoring program in Attachment A [to the ROD], all reasonable steps are being taken to minimize the adverse environmental effects of the Project, and where adverse environmental effects remain, no feasible and prudent alternative to such effects exists.”⁴⁰

As indicated, throughout the environmental review process summarized above, LACMTA substantially exceeded the public notice requirements of California law and there was substantial public participation in the development of the Project. The Park Mesa Heights community was especially active and its concerns were heard and considered by LACMTA’s Board of Directors at several steps along the way.

D. At the Prehearing Conference LACMTA Also Explained the Extent of Its Ongoing and Planned Public Outreach Efforts During the Construction and Initial Operation Phases of the Project.

While public outreach efforts during the construction and initial operation phases of the Project are not directly relevant to Petitioner’s burden of justifying the extraordinary relief of modifying a final Commission decision, such efforts are relevant to the Commission’s concern that LACMTA pursue the Project in a manner that places a high priority on public safety. As LACMTA representatives Anthony Crump and Jennifer Arndt explained, LACMTA’s ongoing and planned public outreach efforts at the prehearing conference, the Commission can have confidence that LACMTA is paying proper attention to safety in all phases of project development, construction, and operation.

Mr. Crump is responsible for LACMTA’s community outreach (including outreach to schools), during the construction phase for the Crenshaw/LAX Light Rail

⁴⁰ Federal Transit Administration, Record of Decision on the Crenshaw LAX Transit Corridor Project in Los Angeles County, California, dated December 30, 2011. LACMTA provided a copy of the FTA’s Record of Decision as Exhibit I to its Application in this proceeding.

Project.⁴¹ He explained that even before construction began, LACMTA identified a construction safety awareness program to be rolled out along with the construction itself, in order to educate members of the community about how to work and live safely near a major construction project, with the goal preventing accidents, particularly among children and senior citizens, in construction activity zones along the Project alignment.⁴²

LACMTA identified schools and senior centers within a half-mile of the alignment and then developed informational materials, including a bilingual (English and Spanish) door hanger that was identified as PHC Exhibit 4 and other materials (some of them bilingual) for use in safety presentations at schools and senior centers. A packet of the latter materials was identified as PHC Exhibit 5. LACMTA has offered this construction safety presentation to all the identified schools and senior centers, which include all the schools of particular concern to Ms. Mosley.⁴³ Examples of the letters LACMTA sent to school principals offering the Construction Safety presentation were submitted as PHC Exhibit 6.⁴⁴ A number of schools accepted the offer, and classroom presentations were made at those schools during 2013 and 2014. LACMTA's outreach staff continues to use these materials in local school presentations, especially at schools near locations where construction has started (including Park Mesa Heights).⁴⁵ Mr. Crump confirmed that LACMTA identified all the schools within a half-mile radius of the Project alignment, and has had some type of contact with each of those schools.⁴⁶

⁴¹ Tr. 74:23-25 (Statement of Counsel Mattes).

⁴² Tr. 75:14-76:6 (Statement of Mr. Crump).

⁴³ Tr. 76:7-77:24; 80:23-81:17 (Statement of Mr. Crump).

⁴⁴ Tr. 77:24-79:2 (Statement of Mr. Crump).

⁴⁵ Tr. 79:9-80:14 (Statement of Mr. Crump).

⁴⁶ Tr. 84:9-17 (Statement of Mr. Crump).

Jennifer Arndt, LACMTA’s Director for Transit Safety Programs, explained LACMTA’s program for providing safety training that is targeted to all residents, businesses, and other institutions within a 1.5-mile radius of the Project alignment in anticipation of the light rail line becoming operational. This 1.5-mile radius is much broader than either the quarter-mile radius for outreach during the environmental review phase or the half-mile radius for construction phase outreach. LACMTA’s practice is to come in about a year prior to revenue operations to offer informative and site-specific safety programs.⁴⁷

As Ms. Arndt noted, they start off with the schools and then do yearly presentations to school assemblies or at various grade levels, including power point presentations in the classroom and follow-up presentations at career days, open houses, back-to-school nights, and other school functions. The goal is to talk not just to the students, who “get it,” but also to their parents, who may not understand the potential danger of, for example, driving around the gates to be installed at each at-grade crossing.⁴⁸

Once the new line is open, LACMTA invites all the schools within the 1.5-mile radius, class by class, to come out to the station and do a rail orientation tour. That includes teaching about the ticket vending machine, the safety strip at the platform, what to do in an emergency, using the call boxes, how to board the train – letting people exit first before entering – and then taking the students on board to travel one stop and then return. Another option is to offer an entire class at a school – once a year – a free pass for a day to explore the entire light rail system.⁴⁹

⁴⁷ Tr. 84:19-85:7 (Statement of Ms. Arndt). PHC Exhibits 7 and 8 illustrate the timing and contents of LACMTA’s safety training programs.

⁴⁸ Tr. 87:4-89:10 (Statement of Ms. Arndt).

⁴⁹ Tr. 89:11-90:3 (Statement of Ms. Arndt).

LACMTA is persistent with its safety programs. Sometimes a school is not inclined to entertain rail safety information programs year after year, so LACMTA changes its programs, offering interactive robots to go in and talk to the students, or social media, or other robust programs to “make sure that the safety messages are constantly out there, but we’re delivering it in a different way.”⁵⁰

LACMTA also deploys “Rail Safety Ambassadors” three to six months prior to opening service and keeps them at critical locations along the alignment until three to six months after opening. The role of the Rail Safety Ambassadors, who typically are retired bus and rail operators, is to assist pedestrians and speak with them about their behavior around the tracks, and also to observe and report what is taking place, resulting, if appropriate, in changes to features of the service or the facilities to address safety concerns.⁵¹

As demonstrated at the prehearing conference, LACMTA has devoted serious attention and imagination to developing transit safety programs for both the construction and operational phases of its light rail projects. Construction phase programs are presently underway. Plans are in place for deploying operational phase programs on a timely basis, engaging the community and especially local schools in a well-designed set of interactions and relationships. The Commission can rightly be confident that LACMTA will do what is needed to keep its neighboring communities safe.

⁵⁰ Tr. 90:19-91:13 (Statement of Ms. Arndt).

⁵¹ Tr. 91:14-92:13 (Statement of Ms. Arndt); *see also*, PHC Exhibit 8. LACMTA’s Safety Ambassador Program recently was honored with a “Gold Award for Program Innovation” by the American Public Transportation Association. *Id.*

III. The Issues That Petitioner Seeks to Pursue Already Were Presented in Crenshaw Subway Coalition’s Protest, Were Fully Addressed in LACMTA’s Responsive Pleadings, and Were Appropriately Resolved in D.14-08-045.

Petitioner is concerned about safety – in particular, the safety of children and seniors – and is seeking a forum to address those concerns in connection with the at-grade crossings the Commission’s D.14-08-045 already has authorized LACMTA to construct. Specifically, Petitioner asks the Commission to modify D.14-08-045 by ordering LACMTA to grade-separate the seven intersections along Crenshaw Boulevard between West 59th Street and West 48th Street, and proposes that the light rail line be constructed either underground or as an overhead rail line through this portion of the Project alignment. Petitioner claims that LACMTA has “ignored” and “disregarded” safety concerns, and suggests that declining to modify D.14-08-045 consistent with the Petition will jeopardize the Commission’s safety credentials. However, Petitioner’s concern for the safety of her community is neither unique to Petitioner nor new to this proceeding. Rather, the issues raised and relief sought in the Petition are coextensive with issues and relief already raised and addressed in the earlier phase of this proceeding that led the Commission to adopt D.14-08-045.

On March 4, 2013, the Crenshaw Subway Coalition (“CSC”) timely filed its Protest and Request for Evidentiary Hearing (“Protest”) in response to LACMTA’s Application for Commission authorization to construct, maintain and operate the seven at-grade crossings that are the subject of the present Petition. A non-profit organization comprised of and led by property owners, residents, business owners and other stakeholders along the Crenshaw Boulevard corridor impacted by the Project, CSC initially objected to the construction of the proposed crossings at grade.⁵² Like the Petition, the CSC Protest alleged

⁵² D.14-08-045, at 2.

that LACMTA did not adequately evaluate the safety of the proposed crossings.⁵³ Also along the lines of the Petition, the CSC Protest raised concerns about the presence of schools and school children in the subject area.⁵⁴ Two other local organizations participated in the proceeding, the Park Mesa Heights Community Council, a neighborhood council representing residents and businesses in certain Los Angeles neighborhoods adjacent to the Project alignment (“Park Mesa”), and the Community Health Council, a non-profit health policy advocacy organization headquartered near Crenshaw Boulevard (“Health Council”). While neither Park Mesa nor the Health Council filed a formal protest to LACMTA’s Application, both organizations joined in and supported many of the same concerns about the Project as were raised by CSC.⁵⁵

On April 25, 2013, LACMTA filed its Reply to CSC’s Protest, responding to its safety-related allegations and concerns and indicating that LACMTA followed its standard, comprehensive procedure for evaluating safety hazards for the at-issue crossings, as well as for the Project in general. LACMTA and CSC’s respective positions on the safety issues were then summarized in the Scoping Memo and Ruling of Assigned Commissioner, issued on October 14, 2013 (“Scoping Memo”), which defined a set of issues for briefing. Consistent with the Scoping Memo’s directives, LACMTA briefed the various issues, including safety hazard concerns. As part of the evidentiary record in the case, those pleadings informed the Commission’s evaluation of LACMTA’s Application as well as its decision to approve LACMTA’s Application to construct the seven crossings between West

⁵³ CSC Protest, at 4 (asserting that LACMTA did not show that any potential safety hazards had been eliminated).

⁵⁴ CSC Protest, at 4-5.

⁵⁵ Scoping Memo and Ruling of Assigned Commissioner, at 4; D.14-08-045, at 4.

59th Street and West 48th Street at grade.⁵⁶ In approving the Application, the Commission concluded that:

LACMTA has eliminated all potential safety hazards regarding the seven proposed 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.⁵⁷

As demonstrated by the above chronology, safety issues have been front and center before the Commission from an early stage and throughout the pendency of this proceeding. The Commission appropriately resolved concerns regarding safety – of pedestrians and motorists – in its decision authorizing the at-grade crossings that the full Commission ultimately adopted on August 28, 2014. Because Petitioner’s issues have already been well vetted and the safety concerns alleged in the Petition have been properly resolved, the Petition raises no new issues that could support a determination by the Commission to grant the extraordinary relief sought by Petitioner’s request to modify D.14-08-045. The Petition therefore should be denied.

IV. Conclusion

Ms. Mosley’s Petition and the procedures by which the Commission and LACMTA have responded to it have directed attention to LACMTA’s public outreach efforts in connection with the Crenshaw/LAX Light Rail Project and to the safety of construction and operating plans for that Project. However, before the Commission will consider the merits of a petition under Rule 16.4, a petitioner in Ms. Mosley’s position must explain why the petition could not have been filed in a timely way, how the petitioner is affected by the

⁵⁶ D.14-08-045, at 38 (Finding of Fact No. 4) and 40 (Ordering Paragraphs Nos. 1 and 2)..

⁵⁷ D.14-08-045, at 40 (Finding of Fact No. 7).

decision, and why the petitioner did not participate in the proceeding earlier was warranted. Ms. Mosley has not met that burden.

LACMTA has shown that its public outreach efforts through the course of the Project have been sufficient and that the safety concerns presented by the Petition already were identified and fully addressed during the environmental review and application processes that resulted in D.14-08-045. LACMTA also has shown that converting from the approved plan for at-grade crossings to a grade-separated plan would cost nearly a billion dollars. Ms. Mosley has not explained her failure to participate in a timely way, has not distinguished her interest or the issues of concern to her from those previously raised by others and addressed by the Commission in D.14-08-045, and has not justified the costly relief she seeks. For all these reasons, the Petition for Modification of D.14-08-045 should now be denied.

Respectfully submitted,

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