



**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-Marin Area Rail Transit (SMART) Track at Jennings Avenue Located in Santa Rosa, Sonoma County, State of California.

Application 15-05-014  
(Filed May 14, 2015)

**RESPONSE OF THE CITY OF SANTA ROSA TO SAFETY  
AND ENFORCEMENT DIVISION'S APPLICATION FOR  
REHEARING OF DECISION 16-09-002**

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In accordance with Rule 16.1(d) of the Commission's Rules of Practice and Procedure, the City of Santa Rosa (City) submits its response to Safety and Enforcement Division's (SED) application for rehearing of D.16-09-002, which granted the City's application for authority to construct an at-grade rail crossing. The application for rehearing fails to identify, or even properly allege, legal error in D.16-09-002. Because SED's application is meritless, it should be denied.

**I. INTRODUCTION**

Pedestrians and bicyclists have crossed at grade the railroad tracks that bisect Jennings Avenue in Sonoma County for over 100 years.<sup>1</sup> The Jennings Avenue crossing connects two neighborhoods that contain an elementary school, restaurants, the post office, a grocery store, a shopping mall, a business park, a transit center, a junior college, and various social services. Jennings Avenue is also a vital part of the City's adopted plans for the area,

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<sup>1</sup> The facts in this introductory section are taken from D.16-09-002.

including the General Plan, the Bicycle and Pedestrian Master Plan, the North Santa Rosa Station Areas Specific Plan, and the planned pedestrian and bicycle path being built along the rail corridor as part of the SMART project. In November 2015, during the pendency of this proceeding, a fence was erected across Jennings Avenue to stop the pedestrian crossings that have occurred for over a century, and the City posted signs for the half-mile detour route. The detour takes pedestrians on an isolated gravel path, next to a four-lane arterial road, and still requires them to cross the railroad tracks at grade near heavy traffic. A hole has since been cut in the fence at Jennings Avenue.

The City examined options for grade-separated and at-grade crossings for Jennings Avenue. The grade-separated crossing would require 900 feet of ramps—450 on either side—in order to comply with the ADA’s 8% grade requirement, which would nevertheless be a difficult incline for the elderly and disabled, particularly in the rain. The ramps would have hairpin turns that conceal loiterers and facilitate illegal activity. The 50-foot bridge itself would be concealed, confined, and would also promote illegal activity; city police and fire chiefs report that grade-separated crossings have higher instances of crime and illicit activity than at-grade crossings. Grade-separated crossings also present barriers to emergency services. The grade-separated crossing would have a “massive” footprint and, in the view of the community, would be an unsightly “behemoth.” SED is the lone voice of support for the grade-separated crossing.

The at-grade crossing, by contrast, meets the safety and legal requirements of GO 75-D, the ADA, the Caltrans Highway Design Manual path standards, the California Manual of Uniform Traffic Control Devices, and the Federal Highway Administration Railroad-Highway Grade Crossing Handbook. The at-grade crossing is also endorsed by the local community,

emergency authorities, the City's fire and police chiefs, the City Council, SMART, local public officials, local organizations, and the general public.

After a public participation hearing that showed the overwhelming community support for the at-grade crossing, testimony, evidentiary hearings, and briefing, the Commission issued D.16-09-002 approving the at-grade crossing for Jennings Avenue. The Commission undertook a detailed examination of the public interest in the grade-separated and at-grade crossing options; the Commission concluded that the City met its significant burden to justify an at-grade crossing. Decision 16-09-002 is supported by ample evidence and is consistent with longstanding Commission precedent. Rehearing is not necessary to correct any legal or factual deficiency. SED's application should be denied.

## **II. REHEARING OF D.16-09-002 IS NOT WARRANTED**

Neither the form nor the substance of SED's application for rehearing meet Commission standards to show rehearing of a decision is appropriate.

### **A. SED Fails to Allege Any Cognizable Legal Error Under Public Utilities Code Sections 1757 or 1757.1**

SED has the burden of demonstrating the specific grounds upon which it considers the Commission's decision to be unlawful.<sup>2</sup> SED's bare assertion in two headings and its one-sentence conclusion that D.16-09-002 violates Public Utilities Code sections 1757 and 1757.1 does not meet this burden. Simply identifying a legal principle or argument, without explaining why it applies to the circumstances of the proceeding, does not meet the requirements of Public Utilities Code section 1732 that an application for rehearing contain specific allegations of error.<sup>3</sup> The Commission has found it "particularly improper" to allege legal error on all the grounds contained in a separate document incorporated by reference instead of

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<sup>2</sup> See D.03-06-034 (1999 Cal. PUC LEXIS 948), pp. \*7-8; see also Pub. Util. Code, § 1732.

<sup>3</sup> See D.11-04-034 (2011 Cal. PUC LEXIS 246), p. \*49.

identifying each claim the applicant believes supports rehearing.<sup>4</sup> Between them, Sections 1757 and 1757.1 contain 12 separate claims of error. SED's vague invocation of both statutes forces the Commission to divine which provisions SED believes D.16-09-002 violates.<sup>5</sup> The application for rehearing is insufficient on its face to support the relief requested.

SED also fails to recognize that Section 1757.1 is inapplicable to this proceeding. Section 1757 provides the six grounds for rehearing or judicial review available for ratemaking proceedings of specific application addressed to particular parties (i.e., not an industry-wide rulemaking). This proceeding falls squarely within Section 1757. Section 1757.1 applies to proceedings involving water corporations and anything not covered by Section 1757. SED's invocation of both 1757 and 1757.1 as providing a basis for reviewable error, when a cursory reading shows the statutes are mutually exclusive, further underscores the insufficiency of SED's allegations of legal error.

SED has failed to specify any cognizable legal error under either statutory provision it cites, let alone the applicable one. The application for rehearing should be denied on that basis alone.

**B. Decision 16-09-002 Does Not Misapply *Blue Line***

Even assuming SED had properly alleged that the Commission failed to proceed in the manner required by law under Section 1757(a)(2) when it applied the *Blue Line*<sup>6</sup> factors to the Jennings Avenue crossing,<sup>7</sup> the claim would still be meritless.

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<sup>4</sup> D.11-04-034, p. \*51. While the Commission expressed its disapproval of a party's incorporation by reference of arguments made in separate pleadings, the principle applies to SED's attempt to incorporate all 12 possible statutory bases for rehearing by invoking the statutes without referencing a specific cause of action.

<sup>5</sup> D.14-06-053, p. 33 (concluding that applicant failed to meet the requirements of sections 1731(b), 1732, and Rule 16.1(c) by making broadly stated claims of legal error without sufficient supporting authority and forcing the Commission to "guess"); *accord*, D.02-03-063.

<sup>6</sup> D.02-05-047.

*Blue Line* rejects the notion that practicability of grade-separated crossings must only be examined in connection with heavy rail.<sup>8</sup> Addressing an argument by the applicant for a distinction between light and heavy rail, the Commission in *Blue Line* noted that Section 1202(c) and the Commission’s Rules addressing railroad crossings did not distinguish between light and heavy rail.<sup>9</sup> The Commission also noted that, while the safety of the proposed crossing is influenced by heavy versus light rail traffic, “[t]he need to address practicability does not disappear with the reduction of heavy rail movements.”<sup>10</sup> The *Blue Line* decision does not limit its practicability factors to light rail, as SED claims.<sup>11</sup> Subsequent Commission decisions have reiterated *Blue Line*’s applicability to light rail, passenger rail, and heavy rail crossings.<sup>12</sup>

The Commission did not err in applying the *Blue Line* factors to the Jennings Avenue crossing. SED’s arguments to the contrary do not warrant further attention.

**C. Decision 16-09-002 Does Not Improperly Separate Public Interest From Safety**

SED concedes that the at-grade crossing at Jennings Avenue meets the applicable safety requirements and that the Commission may grant the City’s application.<sup>13</sup> Rehearing is nevertheless necessary, SED argues, because the Commission based its decision on a brand new public interest analysis that is inconsistent with Commission precedent.<sup>14</sup> SED is wrong. The Commission has authorized at-grade rail crossings after expressly dividing its public interest

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<sup>7</sup> See SED Application for Rehearing, pp. 1–2. SED’s claim that “Blue Line [*sic*] clearly provides that light-rail systems are significantly different from heavy-rail and so permits a different approach to at-grade crossings” misrepresents the *Blue Line* decision and is wholly unsupported by the cited excerpt. (*Id.* at pp. 1–2, and fn. 3.)

<sup>8</sup> D.02-05-047, p. 10.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Id.* at pp. 10–11.

<sup>11</sup> SED Application for Rehearing, p. 1.

<sup>12</sup> See, e.g., D.14-08-045, p. 12; D.13-08-005, p. 50.

<sup>13</sup> D.16-09-002, p. 25; SED Application for Rehearing, p. 3.

<sup>14</sup> SED Application for Rehearing, p. 3.

analysis into safety-related and non-safety-related factors.<sup>15</sup> Additionally, the Commission’s “more nuanced” evaluation of whether the at-grade crossing was in the public interest includes safety considerations beyond the narrow definition advocated by SED and is in-keeping with Commission precedent.<sup>16</sup>

Decision 16-09-002 states that safety is of paramount importance to the Commission. While the Commission also notes that safety and public interest are not synonymous,<sup>17</sup> it does not—as SED claims—hold that public interest is “separate and distinct” from safety.<sup>18</sup> In evaluating the public interest in the Jennings Avenue at-grade crossing, the Commission noted that its review must include the “safety impacts of a separated grade crossing and the alternative detour.”<sup>19</sup> The safety concerns associated with SED’s grade-separated crossing and the existing detour were wide-ranging and significant. The grade-separated crossing would create the possibility that individuals would cut the fence at ground level and walk across the tracks (which has already occurred with the existing fence).<sup>20</sup> That possibility alone negates the only safety advantage SED’s proposal has over the at-grade crossing: the lowered risk that people will be hit by trains. The grade-separated crossing, with its numerous blind corners and hairpin turns, would also promote loitering and other illicit activity.<sup>21</sup> The bridge area would be confined and obscured from view, which presents additional safety risks.<sup>22</sup>

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<sup>15</sup> See D.03-12-018, pp. 22–23 (containing these headings: “Evaluation of Factors Other than Safety,” and “Evaluation of Safety-Related Factors,” respectively).

<sup>16</sup> SED’s claim that this multi-faceted approach “permits an environmental aspect to rail crossings” cannot be readily understood. (SED Application for Rehearing, p. 2.) To the extent SED means to describe a multi-factor analysis that gives the Commission a sense of the “environment” in which the crossing will be used, SED’s objection is without merit.

<sup>17</sup> D.16-09-002, p. 25.

<sup>18</sup> SED Application for Rehearing, p. 2.

<sup>19</sup> D.16-09-002, p. 25.

<sup>20</sup> D.16-09-002, pp. 9, 25; *id.* at p. 38, Finding of Fact No. 6.

<sup>21</sup> D.16-09-002, pp. 9, 25.

<sup>22</sup> *Id.* at p. 25.

Emergency service access to the overcrossing would be limited.<sup>23</sup> The 8% grade of the entrance and exit ramps, which comprise 900 of the crossing's 950 feet, would be difficult for seniors and disabled persons to safely navigate and would become more perilous in the rain.<sup>24</sup> The existing half-mile detour route includes an isolated gravel path and busy streets, would take about 20 extra minutes to walk, and would still require the pedestrian to cross the tracks at grade.<sup>25</sup> SED's recitation of these same considerations under the guise of "unrelated issues" is disingenuous.<sup>26</sup> The Commission's nuanced examination of the public interest in the at-grade crossing does not, under any honest reading, separate safety from the public interest.<sup>27</sup>

Not only did the Commission properly examine the safety-related impacts of the at-grade and grade-separated crossing proposals, but its "more nuanced" review is consistent with Commission precedent. The *Blue Line* decision set forth the Commission's multi-factor balancing test for all at-grade crossings in 2002.<sup>28</sup> The factors include public need, support of community and emergency authorities, the opinion of the general public, consideration of costs, safety measures, and Commission precedent in factually similar crossings.<sup>29</sup> Since *Blue Line* was issued, the Commission has evaluated at-grade crossings by examining the public interest inherent in connecting two halves of a physically divided community,<sup>30</sup> in facilitating or increasing access for emergency services,<sup>31</sup> in garnering the support of the community and

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<sup>23</sup> D.16-09-002, p. 25.

<sup>24</sup> *Id.* at pp. 10, 20.

<sup>25</sup> *Id.* at pp. 25–26.

<sup>26</sup> SED Application for Rehearing, p. 2.

<sup>27</sup> Cf. SED Application for Rehearing, p. 2.

<sup>28</sup> D.02-05-047.

<sup>29</sup> *Id.* at p. 12 (the Commission precedent factor was added in subsequent decisions [see, e.g., D.13-08-005, p. 50]).

<sup>30</sup> See, e.g., D.03-12-018, p. 22; D.13-08-005, p. 51; D.14-08-045, pp. 13–15.

<sup>31</sup> See, e.g., D.03-12-018, pp. 10, 22.

emergency authorities,<sup>32</sup> and in eliminating an unsightly grade-separated project.<sup>33</sup> In most cases, the Commission also found that the city's plan for the at-grade crossing included adequate safety features to justify overcoming the presumption that rail crossings should be grade-separated.<sup>34</sup> The Commission's practice of considering a number of public interest factors in addition to safety is well established. SED's claim that D.16-09-002 forges new and improper legal ground by continuing this practice is incorrect. SED's attendant request for rehearing should be denied.

SED's final contention is that the public interest factors, if applied to heavy rail in the future, create "a very real likelihood that grade-separation would become a thing of the past."<sup>35</sup> This claim ignores Commission precedent, the governing statutes and Rules, and common sense. It is undisputed that Commission policy favors grade-separated crossings and that applicants for an at-grade crossing bear a heavy burden of proof.<sup>36</sup>

### **III. CONCLUSION**

Decision 16-09-002 is based on substantial evidence and is consistent with Commission precedent. The City met its burden to overcome the Commission's presumption that rail crossings will be grade-separated, as have a number of other applicants who have come before the Commission with similar requests. SED fails to identify a legal or factual deficiency in the decision that would justify rehearing. SED's application for rehearing should therefore be denied.

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<sup>32</sup> See, e.g., D.03-12-018, p. 22; D.07-03-027, p. 11; D.13-08-005, p. 53; D.14-08-045, p. 25.

<sup>33</sup> See, e.g., D.03-12-018, pp. 22, 37; D.13-08-005, p. 56.

<sup>34</sup> See, e.g., D.03-12-018, pp. 23-32; D.07-03-027, p. 12; D.13-08-005, pp. 51-53; D.14-08-045, pp. 21-22.

<sup>35</sup> SED Application for Rehearing, p. 3.

<sup>36</sup> D.16-09-002, p. 24.

Respectfully submitted October 31, 2016, at San Francisco, California.

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