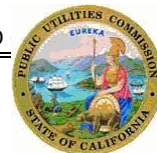


**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**9-22-17  
11:39 AM

September 22, 2017

Agenda ID #16005  
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 14-12-003:

This is the proposed decision of Administrative Law Judge Kimberly Kim. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 26, 2017, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMONAnne E. Simon  
Acting Chief Administrative Law Judge

AES:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ KIM** (Mailed 9/22/2017)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the City of San Diego for Authority to modify the Park Boulevard At-Grade Crossing of three light rail vehicle tracks of the Metropolitan Transit System and two heavy rail tracks of the BNSF Railway Company in the City of San Diego, County of San Diego, California.

Application 14-12-003

**DECISION GRANTING PETITION TO MODIFY DECISION 15-09-011****Summary**

This decision grants a petition filed by the San Diego Padres (Padres) and the City of San Diego (City) (collectively, Petitioners) to modify Decision (D.) 15-09-011. D.15-09-011 authorized the City to construct Park Boulevard as a new at-grade highway-rail crossing in the City and County of San Diego along with several safety measures. This decision modifies the crossing configuration and related measures authorized and ordered in D.15-09-011. This decision authorizes a modified crossing configuration and a safe path of travel for pedestrians away from the rail crossings to:

- (1) Ensure safe and efficient emergency response vehicle routing to minimize public safety critical response times in and around Petco Park; and
- (2) Enable Petco Park to operate in compliance with its safety procedures, Major League Baseball operations requirements,

as well as other state and federal safety regulations and guidelines.

This decision directs the Petitioners to finalize and submit their revised plans, consistent with this decision, for review and approval by the Commission's staff, within eight months, as ordered in this decision. This proceeding is closed.

### **Background**

Decision (D.) 03-12-018 authorized the City of San Diego (City) to permanently close the at-grade highway-rail crossing at Eighth Avenue and to construct, operate, monitor, and repair a new crossing at Park Boulevard over the tracks of the Metropolitan Transit System (MTS) and Burlington Northern Santa Fe Railway Company (BNSF) in downtown San Diego. This authorization was conditioned on the implementation of several safety measures at and near the authorized new crossing and was part of a much larger redevelopment plan for this high-traffic downtown area.

The City since filed Application (A.) 14-12-003 (Application) as a compliance filing, required by D.03-12-018,<sup>1</sup> and D.15-09-011 thereafter authorized the City's proposal submitted as part of that proceeding and ordered,<sup>2</sup> *inter alia*, that: "The new Park Boulevard crossing shall have the *crossing treatments and configuration described above and specified in the application and its exhibits... [emphasis added]*."<sup>3</sup> D.15-09-011 also ordered the City to:

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<sup>1</sup> The Commission issued D.04-04-039 on April 22, 2004, to correct two erroneous citations in D.03-12-018.

<sup>2</sup> D.15-09-011, Ordering Paragraph (OP) 1.

<sup>3</sup> *Id.* at OP 2.

- (1) Ensure that pedestrians are directed away from the at-grade highway-rail crossing and directed toward the pedestrian bridge in order to cross the tracks near Park Boulevard;<sup>4</sup>
- (2) Close southbound Park Boulevard during major events at the ballpark, and for a period of time before and after events;<sup>5</sup> and
- (3) Implement railroad preemption of the traffic signals with sufficient track clearance duration, and limited service operation during the preemption hold phase.<sup>6</sup>

On October 19, 2015, the San Diego Padres (Padres) and the City (collectively, Petitioners) filed a petition to modify D.15-09-011 (Petition) citing public safety concerns concerning the pedestrian pathway configuration requirements and related conditions of D.15-09-011. Petitioners specifically requested that the Commission reexamine and/or examine:

- (1) Location of pedestrian walkways such that the Padres would not be in violation of Major League Baseball's Best Stadium Operating Practices related to team security and Transportation Security Administration (TSA) airport screening;
- (2) Location of a pedestrian crossing to allow team buses from using the most efficient airport departure route;
- (3) Location of a pedestrian crossing to avoid impeding access to the Petco Park by ambulances, police and fire rescue vehicles; and
- (4) Adoption of alternatives on event days to implement an Event Traffic Management Plan (ETMP) to permit

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<sup>4</sup> *Id.* at OP 5.

<sup>5</sup> *Id.* at OP 6.

<sup>6</sup> *Id.* at OP 7.

temporary, managed modifications to pedestrian and vehicle paths of travel.<sup>7</sup>

The Commission's Safety and Enforcement Division (SED) timely filed its response to the Petition on November 3, 2015. A prehearing conference (PHC) was held on July 18, 2016.<sup>8</sup> During the PHC, SED and the Padres appeared, and the scope of the issues and schedule were discussed. Parties were directed to meet and confer to collaborate on the underlying safety concerns and potential solutions and to submit periodic updates to the assigned Administrative Law Judge (ALJ). Accordingly, Parties diligently met and conferred and submitted status reports and filings on September 16, and December 2, 2016.

Pursuant to an e-mail ruling of ALJ, dated December 6, 2016, SED and the Padres filed PHC statements on January 19, 2017 in anticipation of another PHC to be held on January 26, 2017. In its January 19, 2017 PHC statement, Padres contended that there was no need for an evidentiary hearing since there were no facts in dispute and that "legal briefs would suffice to outline their position about the at-grade crossing and why changes to the current plan are in the public interest, consistent with D.03-12-018, and encourage public safety." In its January 19, 2017 PHC statement, SED agreed that evidentiary hearing would not be necessary, and based on the progress made during their ongoing meet and confers with the Padres, SED recommended that the Petitioners should file their

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<sup>7</sup> Petition at 4-5.

<sup>8</sup> PHC was initially set for July 8, 2016 but was continued to July 18, 2016 pursuant to a continuance granted by ALJ Kim in response to an unopposed motion for continuance.

revised design plans with the Commission that reflect the design that was conceptually agreed to by all the parties at their meeting of January 12, 2017.<sup>9</sup>

On, March 22, 2017, the ALJ issued a ruling seeking more detailed comments (Ruling Seeking Comments) requesting the Petitioners to, *inter alia*, specifically itemize and describe the status of all outstanding and potential public or other safety concerns remaining after the meet and confers to date and to specify exactly how D.15-09-011 should be modified to address those concerns. In addition, the ALJ allowed SED to respond to the Petitioners' comments.

The Petitioners responded (Petitioners' Comments) to Ruling Seeking Comments on April 3, 2017, wherein they presented the following as the leading safety concerns:

- The relocation of the pedestrian crosswalk on Tony Gwynn Drive (Crosswalk), as previously authorized in D.15-09-011, raised several safety and operational concerns for the Padres at and around Petco Park;<sup>10</sup>
- The Crosswalk would be immediately adjacent to the player parking lot, which is used by the players, dignitaries and other high profile guests,<sup>11</sup> and the Padres house critical infrastructure such as fire suppression immediately outside and critical WIFI infrastructure immediately inside the player parking lot entrance that would be susceptible to damage through potential terrorist attacks;<sup>12</sup>

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<sup>9</sup> SED's January 19, 2017 PHC Statement.

<sup>10</sup> Petitioners' Comments at 1.

<sup>11</sup> *Ibid.* Petitioner's Response at 1.

<sup>12</sup> *Id.* at 1-2.

- The Crosswalk would also limit the operational space required for team bus parking, emergency vehicle staging and broadcast compounds in a compact downtown area;<sup>13</sup>
- The Crosswalk would reduce the size of the Secure Area (corner of Park Boulevard and Tony Gwynn Drive) by approximately 100 feet;<sup>14</sup> and this would impede airport travel since the TSA uses the Secure Area to screen players before airport departure;<sup>15</sup> and
- The Crosswalk would block emergency vehicles from being staged on Park Boulevard and force them to be staged in the Secure Area, which is already limited in space.<sup>16</sup>

The Petition proposes to alleviate all of the above safety concerns by relocating the Crosswalk during the Padres games, and other events, and modifying some of the previously approved pathway configurations at and near the Crosswalk.<sup>17</sup>

SED timely responded (SED's Response) to Petitioners' Comments on April 11, 2017 stating that while it was generally supportive of the Petitioners' Comments and proposal therein, SED recommended that the Commission require revised plans to be formally filed with the Commission prior to authorization.<sup>18</sup> The SED made seven specific recommendations to be made in

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<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> SED's Response at 5.

the revised plans and Petco Park's ETMP intended to keep pedestrians away from the railroad tracks.<sup>19</sup>

### Discussion

The Petition seeks approval of modifications of D.15-09-011 to enhance the safety and security of Petco Park attendees and the general public in and around this high-traffic urban area by seeking approval of revised crossing configuration and event day and non-event day plans for Petco Park in San Diego.<sup>20</sup> This would promote public safety, be in the public's interest and consistent with the directive of D.03-12-018. We therefore grant this Petition, as discussed below.

We applaud the diligent meet-and-confer efforts of the parties to date in this proceeding and review the status of the parties' seven outstanding safety concerns and related positions as set forth in their latest filings<sup>21</sup> and the parties' agreement and stipulation that any future revised plans should address the below concerns for both the non-event day plan and event day plan for Petco Park, as summarized below.

- (1) In the revised plans for both the non-event day plan and the event day plan, the ladder style crosswalk markings at the location of the event-only crosswalk across Tony Gwynn Way should be removed;
- (2) In the revised plans for both the non-event day plan and the event day plan, at the event-only crosswalk (at the corner of Tony Gwynn Way and Park Blvd. and at the corner closest to the tracks), a locking gate, rather than chain barrier, should be placed;

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> Petition at 4-5.

<sup>21</sup> Petitioners' Comments and SED's Response.



- (3) The revised plans for the non-event day plan should specify the minimum height of 42" for the locking gates;
- (4) The revised plans for the event day plan should specify the minimum height of the barricades to be placed on each side of the crosswalk at Tony Gwynn Way during events, including the detailed description of the type and height of these barricades;
- (5) The revised plans for both the event day plan and non-event day plan should specify the design of the railroad crossing in the area west of Park Boulevard and north of the tracks and should clearly depict the location of the barriers and/or walls shown on the non-event day plan at the corner of Tony Gwynn Way and Park Blvd., at the corner closest to the tracks;
- (6) The revised plans for both the event day plan and non-event day plan should specify the design of the railroad crossing along the medians and in other quadrants, or confirm that those areas of the design will remain consistent with the four-quadrant gate at the railroad crossing in the area west of Park Boulevard and north of the tracks, as set forth in A.14-12-003, and revised plans should be revised as follows:
  - (i) the non-event day plan should be updated to show a continuous median; and
  - (ii) the event day plan should be updated to remove the pathway between Harbor Blvd. and the tracks, from 5th Avenue to Park Blvd; and
- (7) The revised plan for the non-event day should specify the location and minimum height of the seat wall or "NEW LOW LEVEL BARRIER", at the corner of Tony Gwynn Way and Park Blvd., at the corner closest to the ballpark.

In addition, the Petitioners indicate that they intend to present a full set of revised plans for submission to the Commission within an estimated six to eight months. Petitioners also propose revisions to the ETMP language<sup>22</sup> and indicate

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<sup>22</sup> Petitioner's response, Exhibit A.

that they intend to continue to update it as necessary. The Petitioners should also submit a fully updated, revised and detailed revised plans and ETMP, including visual depictions and detailed design plans, consistent with the safety measures discussed and ordered in this decision.<sup>23</sup>

Parties in this proceeding diligently and effectively collaborated in the course of this proceeding to devise a set of public safety solutions to address the local government's redevelopment and public safety concerns as well as Petco Park's operation and safety concerns, with SED's creative input of its rail safety expertise throughout this collaboration. The resulting set of recommended safety solutions addresses all of the safety issues raise in this Petition.

Furthermore, the proposed modification of D.15-09-011 and approval of the modified pedestrian pathway and related conditions, as requested in the Petition, is also consistent with the terms of D.03-12-018 because these modifications provide a safe path of travel away from the rail crossing without jeopardizing public safety critical response times in and around Petco Park.

Reviewing the necessary safety requirements and related considerations to design, develop and finalize such plans require significant time. In addition, these safety and design complications are further compounded by the density and varied uses and events at and near Petco Park and the downtown San Diego area. We suspect such revised plans will likely require clearances through Petitioners' own internal review processes before they can be submitted to the Commission. Petitioners contend that they would need approximately six to

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<sup>23</sup> A.14-12-003, filed by the City on December 3, 2014, Exhibit B included detailed design plans on pages B-1 through B-35. A.14-12-003, Exhibit C, included the ETMP Plan, which discusses Rail Crossing Safety on pages 19 and 20. All these plans were authorized by the Commission in D.15-09-011.

eight months to finalize their plans once we adopt these modified configuration and proposals to revise their plans in this decision. Based on the foregoing, we believe this is a reasonable amount of time, considering the multitude of safety considerations that must be reviewed to ensure the safety of the public at and around downtown San Diego area and Petco Park.

In sum, we grant this Petition. Petitioners must submit all of the revised plans, including ETMP, to SED for review, as ordered herein. We delegate to SED to review Petitioners' submissions for approval, consistent with the directives of this decision. This proceeding is closed.

### **Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

### **Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In D.15-09-011, the Commission granted the City authorization, with conditions, to construct a new at-grade highway-rail crossing of Park Boulevard over the tracks of MTS and BNSF Railway Company in the City and County of San Diego.

2. On October 19, 2015, the Petitioners filed the Petition, which sought to modify D.15-09-011 and approve revised plans, including an updated ETMP, to address several safety concerns.

3. The Parties met and conferred and presented the seven outstanding safety concerns and related positions as set forth in their latest filings and the parties' agreement and stipulation that any future revised plans should address those detailed concerns for both the non-event day plan and event day plan for Petco Park.

4. The Petitioners indicate that they intend to present a full set of revised plans for submission to the Commission within an estimated six to eight months. Petitioners also propose revisions to the ETMP language and indicate that they intend to continue to update it as necessary.

5. No hearing is necessary.

**Conclusions of Law**

1. The Petition should be granted.

2. The Petitioners have presented good cause to modify Decision 15-09-011 to address safety concerns.

3. Granting the Petition promotes safety, is reasonable and in the public's interest.

4. Modification of D.15-09-011 and approval of the modified pedestrian pathway and related conditions, as requested in the Petition, is consistent with the terms of D.03-12-018.

5. It is reasonable and in the public interest to provide the Petitioners eight months to update and submit their revised plans, including ETMP.

6. Within eight months, the Petitioners should submit a fully updated, revised and detailed revised plans and ETMP, including visual depictions and detailed design plans, consistent with the safety measures discussed and ordered in this decision.

7. SED should promptly review Petitioners' submissions ordered in this decision for approval, consistent with the directives of this decision.
8. This proceeding should be closed.

### **O R D E R**

Therefore, **IT IS ORDERED** that:

1. The Petition to Modify Decision 15-09-011, filed by the San Diego Padres and the City of San Diego, dated October 19, 2015, is granted, and Decision 15-09-011 is modified to the extent ordered in this decision which directs and authorizes relocation of pedestrian pathways and other related plan modifications.

2. Within eight months from the date this decision is issued, the San Diego Padres and the City of San Diego shall submit their revised plans, including Event Traffic Management Plans, to the Commission, as a compliance filing, consistent with the following:

- (a) In the revised plans for both the non-event day plan and the event day plan, the ladder style crosswalk markings at the location of the event only crosswalk across Tony Gwynn Way should be removed;

- (b) In the revised plans for both the non-event day plan and the event day plan, at the event-only crosswalk (at the corner of Tony Gwynn Way and Park Blvd. and at the corner closest to the tracks), a locking gate, rather than chain barrier, should be placed;

- (c) The revised plans for the non-event day plan should specify the minimum height of 42" for the locking gates;

- (d) The revised plans for the event day plan should specify the minimum height of the barricades to be placed on each side of the crosswalk at Tony Gwynn Way during events, including the detailed description of the type and height of these barricades;
- (e) The revised plans for both the event day plan and non-event day plan should specify the design of the railroad crossing in the area west of Park Boulevard and north of the tracks and should clearly depict the location of the barriers and/or walls shown on the non-event day plan at the corner of Tony Gwynn Way and Park Blvd., at the corner closest to the tracks;
- (f) The revised plans for both the event day plan and non-event day plan should specify the design of the railroad crossing along the medians and in other quadrants, or confirm that those areas of the design will remain consistent with the four-quadrant gate at the railroad crossing in the area west of Park Boulevard and north of the tracks, as set forth in A.14-12-003, and revised plans should be revised as follows:
  - (i) the non-event day plan should be updated to show a continuous median; and
  - (ii) the event day plan should be updated to remove the pathway between Harbor Blvd. and the tracks, from 5th Avenue to Park Blvd;
- (f) The revised plan for the non-event day should specify the location and minimum height of the seat wall or "NEW LOW LEVEL BARRIER", at the corner of Tony Gwynn Way and Park Blvd., at the corner closest to the ballpark; and
- (g) A fully updated, revised and detailed Event Traffic Management Plan, including visual depictions and detailed design plans, should be consistent with the safety measures discussed and ordered in this decision.

3. Within eight months from the date this decision is issued, the San Diego Padres and the City of San Diego shall file a compliance filing of their revised

plans, including a fully updated, revised and detailed Event Traffic Management Plan, to the Commission's Safety and Enforcement Division for review and approval.

4. Once the San Diego Padres and the City of San Diego file a compliance filing pursuant to Ordering Paragraphs 2 and 3 of this decision, the Commission's Safety and Enforcement Division shall have the delegated authority for no more than two (2) months to review the filing (revised plans ordered in this decision) for consistency with the directives of this decision.

5. If the Commission's Safety and Enforcement Division approves the compliance filing (filed by the San Diego Padres and the City of San Diego), such delegated approval shall be made in writing and filed as a compliance filing in this proceeding.

6. If the Commission's Safety and Enforcement Division (SED) determines that it requires more than two months (or additional time than allotted in this decision) for its review of the compliance filing (filed by the San Diego Padres and the City of San Diego), or if SED is unable to approve the submitted revised plans due to inconsistencies with the directives of this decision, SED shall file a motion to reopen the proceeding to resolve the inconsistencies.

7. Application 14-12-003 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California.