

Decision **PROPOSED DECISION OF ALJ ROCHESTER** (Mailed 12/3/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Closure of the Highway-Rail At-Grade Crossing at West Doran Street south of State Route 134 between San Fernando Road and West San Fernando Road, in the City of Glendale, California, DOT Crossing No. 746804B, CPUC Crossing No. 101VY-7.99, and the Effects of that Closure on the City of Glendale and Nearby Residents in the City of Los Angeles, California.

Investigation 10-02-020
(Filed February 25, 2010)

DECISION ADOPTING THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF GLENDALE, THE CITY OF LOS ANGELES, THE SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY AND THE PELANCONI ESTATES HOMEOWNERS ASSOCIATION FOR IMPROVEMENTS TO THE WEST DORAN STREET AT-GRADE CROSSING

1. Summary

This decision adopts a settlement agreement between the City of Glendale, the City of Los Angeles, the Southern California Regional Rail Authority and the Pelanconi Homeowners Association regarding improvements to the Broadway-Brazil rail crossing and the West Doran Street rail crossing.

The settlement provides for a conversion of the two-way traffic at the West Doran Street crossing to a temporary one-way westbound crossing pattern with conforming automatic warning devices.¹ The one-way pattern enables vehicles to use the entire roadway to make wide turns and prevents congestion that eastbound traffic generates. An exception to the one-way pattern is that emergency response vehicles are able to approach and cross West Doran Street from any direction.

The configuration is temporary until a grade separation can be constructed. If a grade separation is impracticable and an alternative location for a grade separation is not possible, reconsideration of a full upgrade of the West Doran Street crossing to an improved two-way traffic pattern would be considered by all parties.

This proceeding is closed, but parties are required to provide periodic progress reports on the status of the Broadway-Brazil crossing improvement project.

2. Background

On February 25, 2010, the Commission issued Order Instituting Investigation 10-02-020 (OII) into the closure of the highway-rail at-grade crossing at West Doran Street between San Fernando Road and West San Fernando Road. The OII was issued to investigate whether the West Doran Street at-grade highway-rail crossing should be closed due to safety concerns.

¹ The warning devices will meet the standards of the Commission's General Order 75-D, the Southern California Regional Rail Authority and the California Manual on Uniform Traffic Control Devices.

The West Doran Street crossing is located over the double mainline tracks of the Southern California Regional Rail Authority's (Metrolink)² Antelope Valley line just south of the State Route 134 Freeway overpass. The east side of the West Doran Street crossing is in the City of Glendale (Glendale) and the west side is located in the City of Los Angeles (Los Angeles). The San Fernando Road and West Doran Street intersection is traffic signalized, but no traffic controls exist at the intersection of West Doran Street and West San Fernando Road. San Fernando Road is a four lane arterial highway with a speed limit of 35 miles per hour. West San Fernando Road is a minor collector road that ends at its intersection with West Doran Street, forming a T intersection. Metrolink's tracks parallel San Fernando Road and West San Fernando Road, lying between the two. The configuration results in a very small area between the tracks and San Fernando Road. Vehicles moving through the intersection may become stranded and/or queued on the tracks waiting for the traffic signal.

The West Doran Street crossing is used by all types of vehicles, from autos, light trucks and box vans to big rigs. A major safety concern and the basis for the Commission's investigation is the bulk propane storage facility located in the Southwest corner of the intersection, within 30 feet of the tracks. The substandard condition of the crossing increases the risk that vehicles may become stranded on the tracks, resulting in a collision with a train which could involve the propane facility. Additionally, trucks driving into and out of the propane facility use the West Doran Street crossing. Approximately 84 trains

² Metrolink is a high-speed passenger railroad operating in several counties in Southern California.

cross West Doran Street each day, the majority of which are passenger trains moving at speeds of up to 79 miles per hour.

An additional concern of residents near the West Doran Street crossing is the noise. Trains are required to sound their horns at each crossing. The number of trains has increased significantly over the years, adding to the existing traffic, power plant and recycling center noise. These residents are in favor of full closure, which would eliminate the need to sound the train horn at the location. All parties are in general agreement that the Broadway-Brazil crossing, the first crossing south of the West Doran Street crossing, must be improved before closing or modifying the West Doran Street crossing. Prior to the issuance of the OII, Commission staff, Glendale, Metrolink and Los Angeles worked together to develop a design for safety improvements at the Broadway-Brazil crossing. The design was finalized conceptually and Metrolink developed a design plan. Eventually, however, the joint Broadway-Brazil crossing design negotiations reached an impasse between Metrolink and Los Angeles on indemnification and allocation of liability, and that is where the initial process stopped. However, the conditions at the Broadway-Brazil crossing are impacted by any changes at the West Doran Street crossing since the Broadway-Brazil crossing would be the most likely alternate route used by any traffic diverted from the West Doran Street crossing.

Two Public Participation Hearings were conducted on June 24 and September 29, 2010. All Public Participation Hearings were well attended and attendees represented a diverse group of interests. Nearby business owners, some nearby residents and safety personnel of both Los Angeles and Glendale opposed complete closure for a variety of reasons, such as negative business impacts, increased crime and the difficulty of providing emergency services to

surrounding areas. Other nearby residents favored closure because the number of train whistles per day would be reduced as a result.

On November 19, 2010, the proceeding was suspended pending resolution of California Environmental Quality Act questions. On October 14, 2011, a Revised Scoping Memo Ruling of the Assigned Commissioner and Administrative Law Judge was issued.

Two days of workshops were noticed for January 10 and 11, 2012. At the end of the first day, parties indicated a desire to enter into mediation. Mediation took place on March 29 and 30, 2012. Parties participating in the mediation were Glendale, Los Angeles, Metrolink, Pelanconi Home Owners Association (Pelanconi), Cinelease and Atwood Village Neighborhood Council (Atwood). An additional participant in the mediation was Los Angeles County Metropolitan Transportation Authority (Metro), which is not a party to this proceeding, but there were no objections to Metro's participation in the mediation and signing the settlement. Metro is the owner of the railroad right-of-way over which Metrolink operates in Los Angeles County.

On June 7, 2012, Glendale filed a motion on behalf of the settling parties to adopt the settlement on the issues.³ The settlement was signed by Glendale, Los Angeles, Metrolink, Metro and Pelanconi. Cinelease did not attend the second day of mediation, and although Atwood attended both days, it did not sign the settlement. No timely protests to the settlement were filed.

³ <http://docs.cpuc.ca.gov/PublishedDocs/EFILE/Motion/169195.pdf>

3. The Proposed Settlement

3.1. The Broadway-Brazil Crossing Improvements

The settlement provides for designing and constructing safety improvements at the Broadway-Brazil crossing, including:

- Advance preemption system;
- Extinguishable message signs;
- Widening at Broadway, Brazil and San Fernando Road West;
- Increased curb radii;
- Raised concrete medians;
- Four-quad gates;
- Modified traffic signal at San Fernando Road and Broadway on the Glendale side;
- New traffic signal at Brazil Street and West San Fernando Road on the Los Angeles side;
- Improved street lighting; and,
- Right-of-way dedication by Metro.

For the Broadway-Brazil improvements, Metrolink, Los Angeles and Glendale agreed to specific areas of responsibility for each party that are explained in further detail in the settlement.

Specific plans for identified improvements to the Los Angeles side of the crossing are not part of the settlement, but parties agreed to work cooperatively to finalize design and construction of the identified improvements. As such, Los Angeles will develop a project to signalize the Brazil Street-West San Fernando intersection and make other necessary improvements on the Los Angeles side of the tracks. We require Los Angeles to submit a General Order 88 request to the Commission's Consumer Protection and Safety Division, for authorization to modify the crossing. Los Angeles must also coordinate its

project with that of the Metrolink contractor doing the work in the Metrolink right-of-way.

3.2. The West Doran Street Crossing Improvements

The settling parties agreed to proceed with the following improvements for the West Doran Street crossing:

- Temporary one-way crossing with automatic warning devices until a grade separation can be constructed or, if a grade separation is impracticable and an alternative location for a grade separation is not possible, reconsideration of a full up-grade of the crossing with two-way traffic at the West Doran Street crossing.
 - The one-way crossing converts two-way traffic into a one-way westbound operation enabling vehicles to use the entire roadway for wide turns required by many large trucks. The one-way crossing also prevents the congestion that opposing eastbound traffic generates.
 - Emergency response vehicles would still be permitted to approach and cross the West Doran Street crossing from any direction.
- Glendale and Metrolink will implement a smoother approach grade at the West Doran Street crossing eliminating the possibility of a large truck getting “stuck” on the railroad tracks.
- The construction of the one-way modifications to the West Doran Street crossing will commence only after the improvements to the Broadway-Brazil crossing are complete.

Glendale, Los Angeles and Metrolink will be responsible for improvements within their respective jurisdictions. The details of specific areas of responsibility are contained in the settlement.

4. Settlement Standard of Review

In order for the Commission to consider a proposed settlement in this proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding of the application, and all of the underlying assumptions and data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement. These requirements are set forth in Rule 12.1(a)⁴ which states:

Parties may, by written motion any time after the first prehearing conference and within 30 days after the last day of hearing, propose settlements on the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding. Settlements need not be joined by all parties; however, settlements in applications must be signed by the applicant....

Rule 12.1(d) provides that:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

Rule 12.5 limits the future applicability of a settlement:

Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

⁴ All referenced Rules are to the Commission's Rules of Practice and Procedure. (http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF.)

In short, we must find whether the settlement comports with Rule 12.1(d), which requires a settlement to be “reasonable in light of the whole record, consistent with law, and in the public interest.” We address below whether the settlement meets these three requirements.

In this proceeding, because a settlement was filed before testimony or evidentiary hearings were held, the record consists of the OII, transcripts of the prehearing conferences and the Public Participation Hearings, the proposed settlement and the motion for its adoption. The settlement resolves the issues raised in the OII in a balanced way, acknowledging and addressing most of the concerns identified by all the affected parties, while improving the safety of the crossing.

Although full closure would eliminate most of the safety issues identified in the OII, and it was the option initially favored by both Glendale and Metrolink, the statements of safety personnel from both Los Angeles and Glendale opposing full closure were persuasive. Safety personnel who spoke at the Public Participation Hearings voiced concerns that full closure would leave only the Broadway-Brazil crossing to access the area, and if it were blocked or otherwise unavailable, emergency-response agencies would be unable to provide assistance to the area. The one-way option proposed in the settlement reduces the risk of a vehicle/train collision, but still provides emergency-response personnel and vehicle access to the area.

The one-way proposal represents a reduction in risks and is a safer alternative to full closure. It will accommodate westbound traffic into the area rather than shifting all traffic to the Broadway-Brazil crossing. It will use a smoother, less abrupt grade approach to avoid any risk of trucks getting stuck on the tracks and will accommodate large trucks making right turns from

southbound San Fernando Road to westbound West Doran Street. These safety measures make both the West Doran Street crossing and the Broadway-Brazil crossing safer than current conditions.

The settling parties represent a broad spectrum of interests from local business owners and nearby residents, to emergency services personnel, local governments of the affected cities and the rail authority. Therefore we find the settlement to be reasonable in light of the whole record.

The one-way crossing, while not eliminating all risk of vehicle/train collisions, represents a reduction in the risks at the West Doran Street crossing, while ensuring that no new safety risks are created at the Broadway-Brazil crossing. There are no terms within the settlement that violate existing law or bind the Commission in the future. Therefore, we find the settlement consistent with the law.

The settling parties addressed and resolved the issues identified in the proceeding. As noted above, the settling parties represent a broad spectrum of interests. The settlement improves conditions at both the Broadway-Brazil and West Doran Street crossings, and we may therefore conclude that the settlement is in the public interest.

5. Status Reports on Improvements to the Broadway-Brazil Crossing

The settlement agreement states that construction of the one-way modifications to the West Doran Street crossing will commence only after the improvements to the Broadway-Brazil crossing are complete. Completion of the Broadway-Brazil improvements are a crucial first step since the West Doran Street crossing remains dangerous in the interim. With that in mind, we require the parties to provide periodic updates on the status of the Broadway-Brazil

improvements. Therefore, starting March 1, 2013, and every 60 days thereafter until completion, parties must prepare a report on the status of design, funding and construction of their respective portions of the Broadway-Brazil crossing improvements. The first status report should include a timeline with milestones. Each successive report should detail the progress in achieving the next milestone. If no progress has been made during the reporting period, the report should include the reasons for the lack of progress and what actions are being taken to resolve the issue(s). The status reports should be provided to the Commission's Consumer Protection and Safety Division and served on the service list in this proceeding.

In the event it becomes necessary to reopen the proceeding, each reporting party shall file all reports prepared and circulated pursuant to this decision.

6. Categorization and Need for Hearings

The OII categorized this Investigation as ratesetting pursuant to Rules 1.3 and 7.1 and anticipated that this proceeding would require evidentiary hearings. Because a settlement was reached before evidentiary hearings were held, the evidentiary determination is changed to state that no evidentiary hearings are necessary.

7. Reduction of Comment Period

The proposed decision of Administrative Law Judge Linda A. Rochester in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments are allowed pursuant to Rule 14.3. The parties agreed to a reduced comment period pursuant to Rule 14.6. Opening comments are due on December 12, 2012 and reply comments are due on December 17, 2012.

No comments were filed on the proposed decision.

8. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Linda A. Rochester is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On June 7, 2012, Glendale, filed a motion on behalf of Glendale, Los Angeles, Metrolink and Pelanconi to adopt a settlement regarding improvements to the Broadway-Brazil and West Doran Street at-grade highway-rail crossings.
2. The record for the proposed settlement is composed of the OIL, transcripts of the prehearing conference, Public Participation Hearings, and all other filings.
3. The parties to the settlement adopted by this decision have a sound and thorough understanding of the issues, and all of the underlying assumptions and data and could therefore make informed decisions in the settlement process.
4. The proposed settlement fairly weighs the interests of the various parties to the proceeding and results in a balance of the options for improved safety at both the Broadway-Brazil and West Doran Street crossings.
5. The construction of the one-way modifications to the West Doran Street crossing will commence only after the improvements to the Broadway-Brazil crossing are complete.
6. Although the necessary improvements were identified, no plans for the Los Angeles side of the Broadway-Brazil crossing were included in the settlement. However, parties agreed to work cooperatively to finalize plans and construction of the necessary improvements.
7. Los Angeles will develop its own project to signalize the Brazil Street-West San Fernando crossing and make other improvements on the Los Angeles side of the tracks.

8. No comments on the settlement were filed.

Conclusions of Law

1. The settlement is reasonable in light of the whole record.
2. The settlement is consistent with the law and does not contravene or compromise any statutory provision or Commission decision.
3. The settlement is in the public interest.
4. Since the West Doran Street improvements cannot commence until the Broadway-Brazil crossing improvements are complete, the settling parties should provide status reports on the progress of the improvements to the Broadway-Brazil crossing.
5. Once final plans for the Los Angeles side of the Broadway-Brazil crossing are finalized, Los Angeles should submit a General Order 88 request for authorization to modify the crossing to the Commission's Consumer Protection and Safety Division and coordinate its project with that of the Metrolink contractor doing the work in the Metrolink right-of-way.
6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The motion of the City of Glendale on behalf of the settling parties which include the City of Glendale, the City of Los Angeles, the Southern California Regional Rail Authority, and the Pelanconi Homeowners Association to adopt the June 7, 2012 settlement, is granted.
2. The City of Los Angeles shall submit a General Order 88 request to the Consumer Protection and Safety Division for authorization to modify its side of

the Broadway-Brazil crossing and coordinate its project with that of the Metrolink contractor doing the work in the Metrolink right-of-way.

3. Starting March 1, 2013, and every 60 days thereafter until completion, the City of Glendale, the City of Los Angeles and the Southern California Regional Rail Authority shall each provide a report on the status of design, funding and construction of their respective portions of the Broadway-Brazil crossing improvements to the Commission's Consumer Protection and Safety Division and the service list. The first status report should include a timeline with milestones. Each successive report should detail the progress in achieving the next milestone. If no progress has been made during the reporting period, the report should include the reasons for the lack of progress and what actions are being taken to resolve the issue(s).

In the event it becomes necessary to reopen the proceeding, each reporting party shall file with the Commission's docket office all reports prepared and circulated pursuant to this decision.

4. Order Instituting Investigation 10-02-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.