

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of San Clemente for an order authorizing the alteration and improvement of seven existing San Clemente Beach Trail At-Grade Crossings.

Application 11-08-004
(Filed August 2, 2011)

ORDER EXTENDING STATUTORY DEADLINE**Summary**

This decision extends the statutory deadline in this proceeding to February 28, 2015.

Background

Public Utilities Code Section 1701.5 provides that ratesetting matters such as this application shall be resolved within 18 months of issuance of the scoping memo for the proceeding, unless the Commission makes findings why that statutory deadline cannot be met and issues an order extending the 18-month deadline for a period not exceeding 60 days.

In this proceeding, the amended scoping memo was issued on May 1, 2013, therefore the 18-month deadline for resolving the proceeding is October 31, 2014. Decision (D.) 14-10-043 issued on October 16, 2014, extended the statutory deadline to December 30, 2014.

On August 2, 2011, the City of San Clemente (Applicant) filed the above-captioned Application seeking approval from the Commission to install an Audible-Warning System (AWS) as a Supplemental Safety Measure at each of

seven San Clemente Beach Trail pedestrian crossings. The seven crossings which are the subject of this application are the Dije Court Crossing, the El Portal Crossing, the Corto Lane Crossing, the San Clemente Pier Crossing, the T Street Crossing, the Lost Winds Crossing, and the Calafia Crossing. The AWS is provided in addition to Commission Standard No. 9 automatic warning system.

Before we could consider and resolve the application on the merits, BNSF Railway Company filed a Petition for Writ of Review challenging the lawfulness of D.12-08-028 wherein the Commission determined it had jurisdiction to resolve the application. On August 5, 2013, the Third Appellate District of the California Court of Appeal (Case No. C072746.) reversed D.12-08-028 in BNSF Railway Company *et al.* v. Public Utilities Commission of the State of California (2013) 218 Cal.App.4th 778 (Opinion). The Court of Appeal interpreted Section 7604 to mean that the Legislature has mandated that only an audible warning device mounted on a train could be used at every pedestrian rail crossing, and therefore, the Commission had no authority to consider an application that might authorize otherwise.

The Opinion is now final because all judicial review has been completed. The Commission's Petition for Rehearing in the Court of Appeal and its Petition for Review at the California Supreme Court were denied.

The Commission's Safety and Enforcement Division has been working with City of San Clemente to determine if any of the other relief sought by the application could proceed (with or without a Commission decision).

Recently, the assigned Administrative Law Judge (ALJ) invited the parties to comment on whether the proceeding should be dismissed. These comments have been received and are currently under consideration.

Therefore, a 60-day extension of the statutory deadline until February 28, 2015, is necessary to resolve any outstanding issues not affected by the Opinion.

Waiver of Comment Period

Under Rule 14.6(c)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of decisions extending the deadline for resolving ratesetting proceedings. We waive the period for public review and comment pursuant to this rule.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Robert Mason is the assigned ALJ in this proceeding.

Findings of Fact

1. This proceeding was initiated on August 2, 2011.
2. The amended scoping memo was issued on May 1, 2013, therefore the 18-month deadline for resolving the proceeding is October 31, 2014.
3. An extension of time until February 28, 2015, is necessary to determine if there are any remaining issues for the Commission to resolve in light of the Court of Appeal's ruling that the Commission lacked the jurisdiction to permit the City of San Clemente to alter the warning system at the seven existing San Clemente Beach Trail at-grade crossings.

Conclusions of Law

1. Pursuant to the authority granted the Commission under Public Utilities Code Section 1701.5(a), the statutory deadline for this proceeding should be extended to February 28, 2015.
2. Pursuant to Rule 14.6(c)(4), the comment period for the proposed decision should be waived.

IT IS ORDERED that the extension of the statutory deadline for this proceeding is extended to February 28, 2015.

This order is effective today.

Dated _____, at San Francisco, California.