

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**06-20-08  
11:00 AM

June 20, 2008

**Agenda ID # 7715**  
**Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 06-12-005 ET AL.

This is the proposed decision of Administrative Law Judge (ALJ) Koss. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Koss at [klk@cpuc.ca.gov](mailto:klk@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ JANET A. ECONOMO for  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:avs

Attachment

Decision **PROPOSED DECISION OF ALJ KOSS** (Mailed 6/20/2008)

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

In the Matter of the Application of the Exposition Metro Line Construction Authority for an order authorizing the construction of a two-track at-grade crossing for the Exposition Boulevard Corridor Light Rail Transit Line across Jefferson Boulevard, Adams Boulevard, and 23<sup>rd</sup> Street, all three crossings located along Flower Street in the City of Los Angeles, County of Los Angeles, California.

Application 06-12-005  
(Filed December 6, 2006)

And Related Matters.

Application 06-12-020  
Application 07-01-004  
Application 07-01-017  
Application 07-01-044  
Application 07-02-007  
Application 07-02-017  
Application 07-03-004  
Application 07-05-012  
Application 07-05-013

**DECISION DENYING THE PETITION FOR MODIFICATION OF  
DECISION 07-12-029 BY THE LOS ANGELES UNIFIED SCHOOL DISTRICT**

**1. Summary**

This decision denies the Petition for Modification of Decision (D.) 07-12-029 filed by the Los Angeles Unified School District (LAUSD). This proceeding remains open to address further matters.

## 2. Background

The Exposition Metro Line Construction Authority (Expo Authority) filed the 10 subject applications in this consolidated proceeding requesting authority to construct 38 rail crossings along the Exposition Boulevard Corridor Light Rail Transit Line, in Los Angeles County. Interim D.07-12-029 authorized construction of 36 of the 38 crossings, including the at-grade crossing at Western Avenue requested in Application (A.) 07-02-007.

Decision 07-12-029 also ordered that the record be further developed and an evidentiary hearing be considered with respect to the proposed crossings at Farmdale Avenue and Harvard Boulevard, the two crossings not authorized in the decision. The proposed Farmdale Avenue crossing is adjacent to the Susan Miller Dorsey High School (Dorsey), where Expo Authority is requesting an at-grade crossing for both vehicles and pedestrians (A.07-05-013). The Harvard Boulevard crossing is adjacent to the James A. Foshay Learning Center (Foshay), where Expo Authority is requesting a grade-separated pedestrian-only tunnel crossing (A.06-12-020).<sup>1</sup>

The two proposed crossings are approximately two miles apart. The authorized crossing at Western Avenue is approximately 600 feet west of the proposed Harvard Boulevard pedestrian tunnel.

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<sup>1</sup> Dorsey serves grades 9-12 with an enrollment of approximately 2,000 students. Foshay serves grades K-12 with an enrollment of approximately 3,500 students. Both schools are in the City of Los Angeles, under the jurisdiction of LAUSD. The Harvard Blvd. pedestrian tunnel crossing is an existing facility now in use as an undercrossing of Exposition Blvd.

### **3. Petition**

On April 22, 2008, pursuant to Rule 16.4,<sup>2</sup> LAUSD, a party to the proceeding, filed a Petition for Modification of D.07-12-029 requesting that the Commission reconsider its authorization of the Western Avenue crossing, due to its proximity to Foshay and the proposed Harvard Boulevard crossing. In the petition, LAUSD asks that we effectively rescind the authorization to construct the Western Avenue crossing, and modify the decision to include Western Avenue in the further ongoing procedural schedule for the Farmdale Avenue and Harvard Boulevard crossings.

LASUD's primary argument is that Western Avenue also serves Foshay and therefore should be considered in the same light as the proposed crossing at Harvard Boulevard. LAUSD also referred to a resolution of its board, dated November 13, 2007, that states the district is opposed to any at-grade light-rail train operations in close proximity to school sites, unless safety hazards are eliminated.

Pursuant to Rule 16.4(h), unless otherwise ordered by the Commission, the filing of a petition to modify does not stay the provisions of the decision proposed to be modified.

### **4. Comments to the Petition**

Expo Authority filed comments to the petition on May 22, and LAUSD filed reply comments on June 2, 2008.<sup>3</sup> No other party commented.

LAUSD's petition is denied here based solely on the facts presented, and arguments made by Expo Authority and LAUSD pertinent to this matter are

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<sup>2</sup> Commission's Rules of Practice and Procedure (Rules).

<sup>3</sup> The comments and reply were filed pursuant to Rule 16.4(g), and timely filed.

included in the discussion below. Other procedural arguments, such as LAUSD's standing to file the subject petition, are therefore moot and not further discussed herein.

#### **5. Prior Motion and Comments by Neighbors for Smart Rail**

The initial Scoping Memo and Ruling of the Assigned Commissioner (Scoping Memo) in this proceeding was issued on October 16, 2007. The Scoping Memo determined that an evidentiary hearing was unnecessary with respect to the 36 crossings authorized therein, including the crossing at Western Avenue. On November 19, 2007, Neighbors for Smart Rail (NFSR), a neighborhood group and respondent party to A.07-05-013, filed a motion for reconsideration of the Scoping Memo, requesting that an evidentiary hearing be held with respect to the Western Avenue crossing. NFSR's primary argument was the proximity of the Western Avenue crossing to Foshay and Harvard Boulevard.

The proposed decision (PD) in this matter was issued for comment on November 20, 2007, the day following NFSR's motion. In comments to the PD filed December 10, 2007, NFSR argued that the Western Avenue crossing should be considered in tandem with the Harvard Boulevard crossing, as both crossings serve Foshay and both should be subject to hearing. NFSR further argued that Expo Authority did not adequately address the practicability of a grade-separated crossing at Western Avenue.

In authorizing the Western Avenue crossing, we found in D.07-12-029 (Findings of Fact 21-49) that: the crossing meets safety standards for the proposed traffic; the environmental review process related to the crossing complied with the California Environmental Quality Act; all potential safety hazards have been eliminated; the crossing warning devices must comply with applicable rules; and, it is not practicable to construct a grade-separation at

Western Avenue. For these reasons, D.07-12-029 specifically denied NFSR's motion to reconsider the Scoping Memo (Ordering Paragraph 10), and in denying the motion the decision took official notice of the LAUSD board resolution regarding at-grade crossings near school sites. (Decision, p. 14.)

## **6. Discussion**

LAUSD seeks the same relief for the same reasons in its petition as that sought by NFSR in its motion and comments to the PD. LAUSD's primary argument, and that of NFSR, is that the authorized Western Avenue crossing is in proximity to Foshay and the proposed Harvard Boulevard crossing, and will be used by students and others at Foshay. These facts and circumstances were considered in D.07-12-029. LAUSD otherwise did not provide or discuss any new or changed facts or circumstances with respect to the Western Avenue crossing.

We have reviewed LAUSD's petition carefully and find no basis to change any of our findings or conclusions in D.07-12-029. The decision reached the right result, and we affirm it. In view of these matters, we find that LAUSD has not demonstrated good cause to modify D.07-12-029.

## **7. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge 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 \_\_\_\_\_.

## **8. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Kenneth L. Koss is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. LAUSD did not demonstrate good cause to reopen this proceeding with respect to the Western Avenue crossing authorized in D.07-12-029.
2. This proceeding remains open pending disposition of other issues.

**Conclusions of Law**

1. LAUSD's petition for modification of D.07-12-029 should be denied.
2. This order should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that the Petition for Modification of Decision 07-12-029 by the Los Angeles Unified School District is denied.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated June 20, 2008, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
Antonina V. Swansen

\*\*\*\*\* PARTIES \*\*\*\*\*

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

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