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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 23rd 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)

Application 06-12-020
(Filed December 19, 2006)

Application 07-01-004
(Filed January 2, 2007)

Application 07-01-017
(Filed January 8, 2007)

Application 07-01-044
(Filed January 24, 2007)

Application 07-02-007
(Filed February 7, 2007)

Application 07-02-017
(Filed February 16, 2007)

Application 07-03-004
(Filed March 5, 2007)

Application 07-05-012
(filed May 8, 2007)

Application 07-05-013
(filed May 8, 2007)

And Related Matters.

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTIONS BY EXPO COMMUNITIES UNITED FOR
FUNDING OF LEGAL COUNSEL AND OTHER MATTERS**

The motion by protestant Expo Communities United (ECU) for applicant to provide funding for legal counsel is denied, and other ECU motions not previously addressed also are denied.

Background

The Exposition Metro Line Construction Authority (Expo Authority) filed the 10 subject applications in this consolidated proceeding requesting authority to construct a total of 38 rail crossings along the Exposition Boulevard Corridor Light Rail Transit Line project in Los Angeles County. ECU, a coalition of neighborhood groups in the area of the project, protested all of the applications and has participated in this proceeding from the outset.

The Scoping Memo and Ruling (Scoping Memo) in this proceeding, issued on October 16, 2007, determined that an evidentiary hearing was not necessary with respect to 36 of the 38 proposed crossings. A proposed decision (PD) of the assigned Administrative Law Judge was issued on November 20, 2007, pursuant to the schedule in the Scoping Memo, authorizing construction of the 36 crossings not subject to hearing. Comments to the PD were due December 10, 2007.¹ ECU did not file comments.

The Commission adopted the PD on December 20, 2007 in Decision (D.) 07-12-029. The decision authorized construction of the 36 crossings not subject to hearing, and found that an evidentiary hearing is necessary regarding the two remaining crossings, at Farmdale Ave. and Harvard Blvd.

¹ Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure.

ECU Motions

ECU filed the following seven motions in this proceeding:

- 1) November 19, 2007: Motion to accept into the record a petition with approximately 2,650 signatures of individuals questioning the safety/design of the Expo Line.
- 2) November 19, 2007: Motion to accept into the record a resolution of the West Adams Neighborhood Council questioning the safety/design of the Expo Line.
- 3) November 19, 2007: Motion to accept into the record a resolution of the Los Angeles Unified School District regarding the safety of rail crossings in close proximity to school sites.
- 4) December 19, 2007: Motion to accept into the record information regarding the budget of the Los Angeles County Metropolitan Transportation Authority.
- 5) December 20, 2007: Motion to reconsider the Scoping Memo with respect to 19 of the 38 subject crossings.
- 6) December 26, 2007: Motion to order Expo Authority to fund legal counsel for ECU.
- 7) January 22, 2008: Motion requesting a two-week extension of time, to February 5, 2008, to file an application for rehearing of D.07-12-029. The deadline for filing an application for rehearing cannot be extended by the Commission as extensions of time are statutorily prohibited.² This motion was addressed by the Commission's Legal Division, State Appellate Practice Section, and is not discussed further here.

Expo Authority timely filed responses to the ECU motions discussed herein, generally arguing that each should be denied. The ECU motions and Expo Authority responses are discussed below.

² Pub.Util.Code § 1731(b). All statutory references are to the Public Utilities Code.

Motion Requesting Expo Authority to Fund ECU Legal Counsel

In its December 26, 2007 motion, ECU requests that the Commission order Expo Authority to provide funding for legal counsel for ECU. Sections 1801-1812 (Chapter 9, Article 5) set forth the rules and requirements of the Commission's intervenor compensation program. This program, in effect since 1985, directs the Commission to order utilities to compensate qualified intervenors for reasonable fees and expenses for participation in Commission proceedings.

Expo Authority appropriately argues that § 1801.3(a) limits the Commission's intervenor compensation program to proceedings that involve electric, gas, water and telephone utilities; and further that § 1802(b)(1)(A) limits awards only to advocates of consumers, customers or subscribers of any electrical, gas, telephone, telegraph or water corporation subject to the jurisdiction of the Commission. This consolidated proceeding involves a transportation matter. The statute regarding intervenor compensation is clear in that awards are limited only to proceedings that involve electric, gas, water or telephone utilities.

In addition to the statutory limitations discussed above, Expo Authority also argues that ECU would be ineligible for compensation from any other special "common fund" reimbursement programs such as those previously established through case law (i.e., *Consumers Lobby Against Monopolies v. P.U.C.*, 25 Cal.3rd 891 (1979); and *Serrano v. Priest*, 20 Cal.3rd 25 (1977)). This issue is moot with respect to determining intervenor eligibility. The intervenor compensation statutes, as noted above, have been in place since 1985. The cases noted above regarding the need for special "common fund" compensation awards occurred years before (1977 and 1979) the statute was in place. Any intervenor funding mechanisms established by these cases became moot as the 1985 legislation

“occupied the field” regarding the determination regarding intervenor eligibility. See *Southern California Gas Company et al v. P.U.C.*, 38 Cal.3rd 64 (1985).

Lastly, Expo Authority argues that ECU also would be ineligible for compensation from the Commission’s Advocates Trust Fund (ATF), an alternative Commission program that also awarded fees to intervenors for participation in specific cases. This issue also is moot. The ATF program was terminated (for lack of funds) by Commission Resolution ALJ-183, dated August 21, 2003, and is no longer applicable in Commission proceedings.

In view of the above, ECU’s motion that Expo Authority provide funding for its legal counsel is denied.

Motions Regarding Crossings Authorized in D.07-12-029

In D.07-12-029, the Commission denied all of the ECU protests, and denied all related motions, with respect to the 36 crossings authorized therein.³ All elements of ECU’s motions filed after the issuance of D.07-12-029 with respect to the 36 authorized crossings likewise are denied here.

Motions Regarding Crossings Not Authorized in D.07-12-029

The two crossings not authorized in D.07-12-029, at Farmdale Ave. and Harvard Blvd., are subject to future evidentiary hearings. Expo Authority argued in its response that much of the material ECU requests to be entered into the record should be considered as hearsay evidence, and also that such material and evidence should be subject to cross-examination.

All elements of ECU’s motions regarding the two crossings subject to hearing, for the purposes of accepting or entering any evidence or information

³ See Ordering Paragraphs 9-11.

into the record of this proceeding, are denied. ECU, appropriately, will have the opportunity to present any relevant evidence regarding these crossings at the hearings.

IT IS SO RULED.

Dated January 29, 2008, at San Francisco, California.

 /s/ KENNETH L. KOSS
Kenneth L. Koss
Administrative Law Judge

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 January 29, 2008, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

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