Decision 11-12-032 December 15, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Pasadena Metro Blue Line Construction Authority (dba Metro Gold Line Foothill Extension Construction Authority) for an order authorizing the crossing alterations of the existing grade-separated crossing at Foothill Boulevard (LRT CPUC No. 84P-23.66-B, Freight CPUC No. 101PA-117.3-B) and existing at-grade crossing at Pasadena Avenue (LRT CPUC No. 84P-24.32, Freight CPUC No. 101PA-116.6) in the City of Azusa, County of Los Angeles.	Application 11-04-004 (Filed April 13, 2011)

DECISION GRANTING AUTHORITY TO ALTER THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY EXISTING GRADE- SEPARATED CROSSING AT FOOTHILL BOULEVARD AND EXISTING AT-GRADE CROSSING AT PASADENA AVENUE IN THE CITY OF AZUSA, LOS ANGELES COUNTY

Summary

This decision grants the Pasadena Metro Blue Line Construction Authority, doing business as the Metro Gold Line Foothill Extension Construction Authority, permission to alter the existing grade-separated crossing over Foothill Boulevard and the existing at-grade crossing at Pasadena Avenue, to include two light rail tracks and one freight track, including the closure of the existing at-grade crossing at Alameda Avenue, in the City of Azusa, Los Angeles County.

Discussion

Proposed Project

The Pasadena Metro Blue Line Construction Authority (Construction Authority) requests authorization to alter one existing grade-separated crossing at Foothill Boulevard, alter one existing at-grade crossing at Pasadena Avenue, and close the existing at-grade crossing at Alameda Avenue. The three crossings currently have one freight track at each crossing that provides for the BNSF Railway Company (BNSF) to operate freight service. The Los Angeles County Metropolitan Transportation Authority (LACMTA) owns the railroad right-of-way, and the crossings are along its Pasadena Subdivision tracks. The Southern California Regional Rail Authority (SCRRA) currently maintains the Pasadena Subdivision tracks, signals, crossing equipment, and related appurtenances on behalf of LACMTA.

The Construction Authority is charged with completing this project, identified as the Gold Line Phase II Extension (Pasadena to Montclair) – Segment 1 (Pasadena to Azusa) (also known as Phase 2A), on behalf of LACMTA. Upon completion of the project, LACMTA will operate on and maintain two light rail transit (LRT) tracks on the north side of the right-of-way and SCRRA will continue to maintain the one freight track and signal equipment on the south side of the right-of way for BNSF freight operations. The subject crossings are located within the City of Azusa, County of Los Angeles.

Foothill Boulevard Grade-Separated Crossing

The Foothill Boulevard underpass alterations include addition of two new bridge structures, one directly northwest and one directly

southeast of the existing single track bridge structure, such that three-separate bridges will exist within the right-of-way. The additional bridges will be constructed parallel to and match the structure type and appearance of the existing structure. The existing bridge will be seismically rehabilitated as necessary. The Foothill Boulevard bridges will consist of one track on each bridge. The southern bridge is designated for the single track freight operations while the two northern bridges will be used for the two LRT tracks. The Foothill Boulevard roadway will be re-profiled to meet the minimum 15-feet vertical clearance requirement for all structures. The proposed crossing number for the grade-separated structures will remain the same and is identified as CPUC Crossing No. 84P-23.66-B/101PA-117.3-B and DOT No. 026223R.

Pasadena Avenue At-Grade Crossing

The Pasadena Avenue crossing alterations include relocation of the existing mainline freight track and installation of two LRT tracks. The existing single freight track will be relocated to the south side of the right-of-way to make room for the dual LRT tracks on the north side, such that the final crossing configuration will contain three at-grade tracks. A four-quadrant gate system with full pedestrian treatments will be employed at the crossing.

Pasadena Avenue will be equipped with one curb-mounted Commission Standard 9 (flashing light signal assembly with automatic gate), with 12″ LED flashing lights and one curb-mounted Commission Standard 9E (flashing light signal assembly with automatic gate installed on the departure side of grade crossings, also known as an exit gate), with 12″ LED flashing light warning devices and a vehicle presence detection

system for each roadway approach to the crossing. In addition, a four-foot wide, 100-foot long raised median will be installed south of the crossing for the northbound vehicular approach.

Pedestrian treatments for the Pasadena Avenue crossing include Commission Standard 9 pedestrian gate warning devices in combination with swing gates on all four sidewalk approaches to the crossing, Americans with Disabilities Act (ADA)-compliant sidewalks on both sides of the crossing, ADA-compliant standard detectible warning strips on all sidewalk approaches, and fencing and handrails at each crossing quadrant to channelize pedestrians. Improvements also include the installation of fencing along the right-of-way to prevent trespassing.

Other crossing alterations will include improvements to curbs and gutters; pre-cast concrete crossing panel surfaces; installation of an Overhead Contact System for 750 volt DC power for the LRT tracks; and new pavement striping and signage and pavement markings compliant with the California Manual on Uniform Traffic Control Devices , including W10-1 advanced warning signage, W48 (CA) 3 tracks signage, and RxR pavement markings.

In addition, the existing stop-sign controlled intersection of Pasadena Avenue and East 9th Street, located north of the crossing, will be improved with the installation of a new traffic signal system. The crossing warning devices and railroad track circuitry will be installed to provide interconnection with the traffic signal system to monitor crossing operation and safety and to provide advance preemption[1] at the crossing.

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[1] Preemption is the process where the regular traffic signal sequence is interrupted by a signal from the railroad regarding the approach of a train,

ADA compliant curb ramps will also be constructed including crosswalk improvements at the Pasadena Avenue and East 9th Street intersection. The proposed crossing number for the existing at-grade-crossing will remain the same and is identified as CPUC Crossing No. 84P-24.32/101PA-116.6 and DOT No. 026217M.

Alameda Avenue At-Grade Crossing Closure

The existing Alameda Avenue at-grade crossing is located less than one-quarter mile from the Pasadena Avenue at-grade crossing. The Construction Authority found that grade separation of the Pasadena Avenue crossing is not practicable for various reasons, with the primary reason being its proximity to the Azusa-Alameda at-grade light rail station. Grade separating Pasadena Avenue by constructing an overhead structure would create excessive vertical LRT track alignment interfering with LRT operations and create visual impacts through the City of Azusa's downtown low-profile area. Therefore, the project will also include the closure of the existing at-grade Alameda Avenue crossing (CPUC No. 101PA-116.80 and DOT No. 026219B) to increase the overall corridor safety of the Gold Line Foothill II Extension – Segment 1.

Environmental Review

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about potentially significant environmental effects of proposed

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which allows the traffic signal to truncate other movements and present a green signal phase to clear the railroad tracks in advance of the train's arrival.

activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission must approve the project pursuant to Section 99152 and 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,[2] or the one with the greatest responsibility for supervising or approving the project as a whole.[3] Here, the Construction Authority is the lead agency for this project and the Commission is a responsible agency. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.[4]

The Construction Authority prepared a combined Final Environmental Impact Statement/Report (FEIS/R) for Segment 1 of Phase II of the project to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. Section 4321 et seq.) and CEQA. The Construction Authority certified the FEIS/R on February 28, 2007.

Subsequent to the certification of the FEIR, refinements to the design of Segment 1 of Phase II were made and two Addendums to the FEIR were

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[2] CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

[3] CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(b).

[4] CEQA Guidelines, Sections 15050(b) and 15096.

approved for the project.[5] The first Addendum was approved on August 26, 2009, and the second Addendum was approved on June 18, 2010. Both Addendums to the FEIR found: (1) No substantial changes in impacts compared to the 2007 FEIR; (2) No substantial changes in the adopted 2007 mitigation measures; (3) No need to change the adopted 2007 mitigation and monitoring reporting plan; (4) No need to change the adopted 2007 Statement of Overriding Considerations (SOC); and (5) Findings were made pursuant to the provisions of CEQA.

Under CEQA, on June 18, 2010, the Construction Authority adopted a Notice of Determination (NOD) in the second Addendum indicating that the project will have a significant effect on the environment, mitigations were a part of the approval, and because there were several impacts that could not be fully mitigated, an SOC was adopted in approving the project.

There was one potentially significant impact and one remaining impact after mitigation identified under CEQA relating to Noise and Vibration, and Traffic and Transportation, under the Commission's jurisdiction. Impacts to Noise and Vibration consist of construction-period impacts and long-term impacts. Construction-period noise and vibration impacts are reduced to "less than significant" by adhering to the local noise requirements for each City in which construction takes place during weekday daytime hours (generally from 7 AM to 6 PM), and by employing typical best management practices. The Construction Authority will also implement a complaint resolution procedure which includes a contact

[5] A Guidelines, Sections 15164 and 151562.

person and telephone number to resolve any construction related noise problems. After employing mitigation measures consisting of constructing noise barriers, and applying building sound insulation, residual noise levels above impact criteria at 61 locations would remain (second story of 56 residences).

Impacts to Traffic and Transportation consist of construction-period impacts and long-term impacts. Construction-period impacts are reduced to "less than significant" by employing mitigation measures consisting of transit bus rerouting, night-time street and lane closures, and using designated haul-routes for trucks. Long-term impacts are reduced to "less than significant" by employing mitigation measures consisting of signalizing affected intersections, modifying existing signalized intersections, increasing the number of vehicle lanes at some intersections, and establishing a system-wide traffic signal coordination and synchronization program.

The Commission reviewed and considered the lead agency's FEIS/R, Addendums, NOD and SOC adopted by Construction Authority, and finds them adequate for our decision-making purposes.

Filing Requirements and Staff Recommendation

The application is in compliance with the Commission's filing requirements, including Rule 3.11 of Rules of Practice and Procedure, which relates to the alteration of existing crossings.

The Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section has reviewed and analyzed the plans submitted with the application, and recommends that the Commission grant the Construction Authority's request.

Categorization and Need for Hearings

In Resolution ALJ 176-3273, dated May 5, 2011, and published in the Commission Daily Calendar on May 6, 2011, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary.

No protests were received during the 30-day public comment period. However, a Motion for Leave to File a Late Protest (Motion) was filed with the Commission on September 22, 2011, by Excalibur Property Holdings, LLC, and George Brokate (Excalibur/Brokate). This Motion was filed approximately four months after closure of the normal protest period, as this decision was being finalized.

Excalibur/Brokate state they own real property in the City of Monrovia that will be affected by the Gold Line Foothill Extension project. As such, they wish to protest: (1) the adequacy of the Construction Authority's CEQA documentation, and (2) the safety of the proposed modifications to the two crossings located in the City of Azusa.

Excalibur/Brokate also state they are engaged with the Construction Authority in an eminent domain CEQA lawsuit, and request that the Commission wait for a Court determination on the adequacy of the Construction Authority's CEQA documentation.

On September 27, 2011, the Construction Authority filed a response to Excalibur/Brokate's Motion. In its response, the Construction Authority requests that the Commission deny Excalibur/Brokate's Motion and late-filed Protest because it is without merit.

The Construction Authority states that Excalibur/Brokate is one of six property owners that are being relocated from their property through

eminent domain to make way for a 34-acre Maintenance and Operations (O&M) facility in the City of Monrovia. The Construction Authority further states that Excalibur/Brokate is an unwilling seller who has hired legal representation to argue the appraised value of his property. Furthermore, the Construction Authority states that Excalibur/Brokate has pursued several legal avenues in an effort to achieve its goal, such as:

(1) April 2010. Sued City of Monrovia alleging violation of the Brown Act by its Planning Commission. The claim was denied by Superior Court judgment in March 2011.

(2) February 2011. Sued Construction Authority alleging a violation of CEQA in its certification of a Supplemental EIR for the Gold Line Extension Project that focused on the final choice of the site for the O&M facility. This trial is scheduled for October 2011.

(3) March 2011. Sued the City of Monrovia and the Construction Authority challenging the purchase of City-owned property for the O&M facility. The City's and Construction Authority's demurrers were sustained at an August 2011 court hearing.

(4) Tried unsuccessfully to forestall the Surface Transportation Board's approval of the necessary freight abandonment of a portion of the existing right-of-way.

(5) September 23, 2011. Sued the Construction Authority, its prime construction contractor, and local agencies by challenging the design-build contract approved in July 2011 for Phase 2-Segment 1 of the Gold Line Extension project.

The Construction Authority asserts that Excalibur/Brokate is attempting to use the Commission's approval process as another avenue in

which to stall progress of the Gold Line Extension project, and asks the Commission deny the protests for the following reasons:

(1) Excalibur/Brokate has failed to offer a valid excuse for filing late protest. Excalibur/Brokate claims they were not given notice of the application, and were not aware of the still-pending status of the subject application. Legal counsels representing Excalibur/Brokate have attended Applicant's Board of Directors meetings from February 2011 to the most recent meeting. Every Board meeting includes a CEO's Monthly Report and Project update, which includes the status of all approved and pending grading crossing applications before the Commission.

(2) Excalibur/Brokate's claims regarding their CEQA litigation and the Construction Authority's eminent domain action lend no support to their protest. Excalibur/Brokate fails to disclose that the CEQA litigation deals solely with its real property and eminent domain issues in City of Monrovia, and is unrelated to the two crossings located in City of Azusa that are the subject of the present application. The mainline right-of-way project received environmental clearance in 2007, and the supplemental EIR focuses solely on the M&O facility site selected by the Construction Authority.

On October 13, 2011, Excalibur/Brokate filed a Reply to the Construction Authority's Response to Motion. Excalibur/Brokate argues that although it was present at an April 2011 public meeting, the Construction Authority never informed Excalibur/Brokate of a deadline for filing protest for the application before the Commission. Excalibur/Brokate also argues that the Construction Authority did not discuss pedestrian or student crossings, with respect to the proposed at-

grade crossing alterations, either in its response to the motion or in the subject application.

The Commission's Law and Motion Administrative Law Judge, reviewed the Motion filed by Excalibur/Brokate and the Response filed by the Construction Authority, as well as the reply comments of Excalibur/Brokate. The Law and Motion Administrative Law Judge did not identify any merit in Excalibur/Brokate's allegations regarding a failure to mitigate safety hazards at the two existing crossings.

Excalibur/Brokate's Motion for Leave to File Late Protest was denied by Law and Motion ALJ Yacknin's Ruling dated December 8, 2011. We affirm ALJ Yacknin's Ruling.

Given these developments, it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3273, and no hearings are necessary.

Comments on Proposed Decision

The proposed decision 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 due on December 5, 2011, and reply comments were due on December 12, 2011. No party filed comments.[6]

Assignment of Proceeding

Michelle Cooke is the assigned Examiner in this proceeding.

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[6] Excalibur/Brokate submitted comments on the proposed decision, but because their Motion for Leave to Late File Protest was denied, they are not a party and are not entitled to file comments.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on April 15, 2011. There are no unresolved matters or protests; a public hearing is not necessary.

2. The Construction Authority requests authority to alter one existing grade-separated crossing at Foothill Boulevard and one existing at-grade crossing at Pasadena Avenue.

3. The project will include closure of the existing at-grade crossing at Alameda Avenue.

4. The Construction Authority is the lead agency for this project under CEQA, as amended.

5. The Construction Authority prepared an FEIS/R, as well as two addendums, for this project pursuant to CEQA and NEPA.

6. The Commission is a responsible agency for this project, and has reviewed and considered the lead agency's FEIS/R, Addendums, NOD and SOC.

7. A Motion for Leave to Late-File Protest was filed by Excalibur Property Holdings, LLC on September 22, 2011, approximately 4 months after the protest period had expired.

8. The Construction Authority filed a response to the Motion of Excalibur Property Holdings, LLC in support of its position that the Motion be denied.

9. Excalibur Property Holdings, LLC filed reply comments to the Motion response of the Construction Authority.

10. The Motion for Leave to Late-File Protest of Excalibur Property Holdings, LLC was denied by Law and Motion ALJ Yacknin's Ruling dated December 8, 2011.

Conclusions of Law

1. The FEIS/R, Addendums, NOD and SOC prepared by the Construction Authority as the documentation required by CEQA and NEPA for the project are adequate for our decision-making purposes.

2. The application is uncontested and a public hearing is not necessary.

3. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The Los Angeles to Pasadena Metro Blue Line Construction Authority, doing business as the Metro Gold Line Foothill Extension Construction Authority, is authorized to construct improvements to modify the existing grade-separated crossing over Foothill Boulevard (CPUC Crossing No. 84P-23.66-B/101PA-117.3-B and DOT No. 026223R) and the existing at-grade crossing at Pasadena Avenue (CPUC Crossing No. 84P-24.32/101PA-116.6 and DOT No. 026217M) in the City of Azusa, Los Angeles County, at the location and substantially as described in the application.

2. The authorization shall include the closure of the existing at-grade crossing at Alameda Avenue (CPUC No. 101PA-116.80 and DOT No. 026219B).

3. The Foothill Boulevard underpass alterations shall include the addition of two new bridge structures, one directly northwest and one

directly southeast of the existing bridge structure, such that three-separate bridges will exist within the right-of-way, as described above and specified in the application and attachments.

4. The Pasadena Avenue crossing alterations shall include relocation of the existing mainline freight track and installation of two (2) light rail transit tracks. Crossing treatments and configuration shall be as described above and specified in the application and attachments.

5. The Pasadena Avenue crossing alterations shall include the installation of a new traffic signal system at the Pasadena Avenue and East 9th Street intersection located north of the crossing, including interconnection with the crossing warning devices to provide advance preemption at the crossing, as specified in the application and attachments.

6. The Los Angeles to Pasadena Metro Blue Line Construction Authority shall notify the Southern California Regional Rail Authority and the Los Angeles office of Commission's Consumer Protection and Safety Division – Rail Crossing Engineering Section at least five (5) business days prior to opening of the crossing for light-rail transit operations. Notification should be made to rces@cpuc.ca.gov .

7. Within 30 days after completion of the work under this order, the Los Angeles to Pasadena Metro Blue Line Construction Authority shall notify RCES in writing, by submitting a completed Commission Standard Form G (*Report of Changes at Highway Grade Crossings and Separations*), of the completion of the authorized work. Form G requirements and forms can be obtained at the CPUC web site Form G page at

http://www.cpuc.ca.gov/formg. This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

8. Within 30 days after completion of the work under this order, the Los Angeles to Pasadena Metro Blue Line Construction Authority shall notify the Federal Railroad Administration of the modifications of the grade-separated crossing and the at-grade crossing by submitting a revised U.S.DOT CROSSING INVENTORY FORM, form FRA F6180.71, for each crossing. A copy of these submittals is to be provided concurrently to the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section. Those copies of the form may be submitted electronically to rces@cpuc.ca.gov .

9. The Los Angeles to Pasadena Metro Blue Line Construction Authority shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

10. This authorization shall expire if not exercised within three years, unless time is extended or if compliance with the above conditions has not been achieved. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

11. A request for an extension of the three-year authorization period must be submitted to Rail Crossings Engineering Section at least 30 days before the expiration of that period. A copy of the request must be sent to all interested parties.

12. Administrative Law Judge Yaknin's Law and Motion Ruling dated December 8, 2011 denying the Motion for Leave to Late-File Protest of Excalibur Property Holdings, LLC and George Brokate is affirmed.

13. This application is granted as set forth above.

14. Application 11-04-004 is closed.

This order becomes effective 30 days from today.

Dated December 15, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J. K. SANDOVAL
MARK J. FERRON
Commissioners